



March 20, 2018

### **Request for Comments - Default Rule**

**Additional amendments (all as attached in blue text) to ICE Clear Canada, Inc.'s rules, Part A - General and a new Part D - Default revising the current rules for default and establishing new Rules relating to non-default losses and recovery tools**

#### **Introduction**

At a meeting held on October 25, 2017, the board of ICE Clear Canada, Inc. (ICCA) approved amendments to the rules for publication to the Website for comment.

These rule amendments were published to the website for public comment on October 26, 2017 (the "October 26 Rule Amendments"). The comment period was initially scheduled to end on January 12, 2018 but was later extended to January 26, 2018.

Written questions and comments were received from Clearing Participants and from Canadian regulators.

At a meeting held on March 19, 2018, the board of ICCA approved additional amendments to the October 26 Rule Amendments. These amendments are intended to address certain of the questions and comments received and to add additional clarification.

Comments on the additional rule amendments should be submitted on or before **Friday, April 27, 2018**. Please submit comments, by email, to:

Ms. Carol Klopko  
Legal Analyst  
[iceclearcanada-rules@theice.com](mailto:iceclearcanada-rules@theice.com)

The amendments to the October 26 Rule Amendments are set out **in blue text**. All of the October 26 Rule Amendments are in red text.

Please note that Part D is an entirely new Rule and is shown in standard black text. The amendments being proposed are shown in blue text.

#### **Definitions in sections A-102 and D-913**

Amendments to the definitions are intended to add clarity, correct drafting errors, and add new definitions where required for other amendments.

#### **Guaranty Fund Replenishments, Powers of Assessment, and Cooling-off Period**

The amendments to Sections A-608, D-909, and D-917 are intended to provide clarity, to correct drafting errors, and to remove redundant rules.

The key area where clarity is intended to be provided is for limits on Guaranty Fund replenishments and Assessment Contributions. The amendments are intended to ensure that

the rules clearly limit the assessments and Guaranty Fund replenishments in the ways described in the October 26, 2017 Request for Comment cover letter.

1. For a single default, the maximum obligation for a non-defaulting Clearing Participant is limited to its Guaranty Fund contribution at the time of the default (and explicitly excludes any replenishment contributions) plus an additional two times that Guaranty Fund contribution in assessments (for a total of three times the original Guaranty Fund contribution).
2. For multiple defaults subject to a Cooling-off Period, the maximum obligation for a non-defaulting Clearing Participant is limited to its Guaranty Fund contribution at the time of the first default plus an additional three times that Guaranty Fund contribution in any combination of assessments and Guaranty Fund replenishments (for a total of four times the original Guaranty Fund contribution).

### **Reduced Gains Distribution**

The amendments to Section D-914 provide for a cap on the number of days that ICCA can use Reduced Gains Distribution (D-914 b.), provide clarity and otherwise help with understanding of the application of the rule and the calculations in D-914 c. and d., and remove sections that are redundant or not relevant to ICCA.

Other than the addition of a cap on days of Reduced Gains Distribution, the amendments are not intended to change the Reduced Gains Distribution methodology.

REDLINED VERSION - - - ICE Clear Canada, Inc.

PART A – GENERAL

RULE A-1 DEFINITIONS

**Section A-101 Application**

Unless the context otherwise requires or unless different meanings are specifically defined, for all purposes of ~~Parts A, B and C~~ of these Rules the capitalized terms used herein shall have the meanings given them in Section A-102.

**Section A-102 Definitions**

**“ACT”** – means the Allocation and Claim Transactions system.

~~“Additional Deposit” – the additional amount which may be required to be added to a Guaranty Fund deposit.~~

**“Account”** - means a Customer Account or a House Account.

**“Accounting Standards”** - means applicable accounting standards and principles.

**“Affiliate” or “Affiliated Company”** - means, with respect to any specified Person, any other Person that Controls, is Controlled by, or is under common Control with, such specified Person.

~~“Affiliated Company” – Has the definition in *The Securities Act (Manitoba)*.~~

**“American Option”** (or American Style Option) - means an Option which can be exercised at any time until its Expiration Date.

**“Applicable Laws”** - means any applicable federal, provincial, local or other any other governmental statute, law, ordinance, regulation, rule, order, guidance, instrument, regulatory requirements, judgment or decision or order of any government, regulatory or self-regulatory organization, and, for the avoidance of doubt, includes all of the applicable and relevant provisions of the provincial securities acts, legislation, rules and regulations, model provincial rules, national instruments, as well as the laws, rules and regulations of jurisdictions in which the Corporation or its Clearing Participants and customers operate.

**“Application/Agreement” or “Clearing Participant Application/Agreement”** - means the form of contract between the Corporation and a Clearing Participant pursuant to the Rules.

**“Approved Depository”** - means any entity approved by the Corporation to accept and hold pledged assets. ~~A financial institution approved by the Corporation.~~

**“Approved Financial Institution”** - means a bank, deposit taking institution, credit union, trust company or other institution which has been designated as an approved financial institution by the Corporation for purposes of making and receiving cash transfers to and from the Corporation.

**“Assessment Contribution”** - has the meaning set out in Section D-909 b.

**“Assigned Position”** - means the position of the Clearing Participant in any account for which such Clearing Participant is the assigned Clearing Participant in such account.

~~“Associated Company” – has the definition in *The Securities Act (Manitoba)*.~~

**“Banking Day”** – means any day on which Canadian banks are open for business.

**"Bankruptcy"** - means, in relation to a Person, where that Person: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it, by a Governmental Authority with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such Governmental Authority; (v) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in (iv) above and either (1) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (2) is not dismissed, discharged, stayed or restrained in each case within fifteen (15) days of the institution or presentation thereof; (vi) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vii) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (viii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within fifteen (15) days thereafter; (ix) causes or is subject to any event with respect to it which, under the Applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in (i) to (viii) above; or (x) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

**“Base Guaranty Fund Calculation”** – means each calculation performed by the Corporation pursuant to Rule Section A-604 a.

**"Base Deposit"** - means the minimum Guaranty Fund deposit required of each Clearing Participant.

**"Board"** - means the Board of Directors of the Corporation.

**"Business Day"** - means any day on which any office of the Corporation is open for business.

**"By-laws"** - means the By-laws of the Corporation as the same may be amended from time to time.

**“CDS”** – means CDS Clearing and Depository Services Inc.

**“calendar spread”** – means a trade or position involving two contract months of the same Future, in which a purchase or long position is established in one month, and a sale or short position is established in the other month.

**“calendar spread option”** or **“CSO”** – means an option in which the Underlying Interest is a calendar spread. A buyer of a CSO has the right, but not the obligation, to buy or sell a specified quantity of the calendar spread, at a specified price within a specified period of time, The seller of a CSO has the obligation to take the opposite side of the calendar spread, from the option buyer, at the exercise price if the option is exercised. See also “outright option”.

“Call Option” - means an Option pursuant to which a Person with a Long position has the actual or notional right to buy a Deliverable from a Person with a Short position at the Strike Price and at a specified time.

“Capital” – In the case of a Clearing Participant in the category of General, has the meaning of Net Adjusted Capital as set out in the Exchange Rules 7, and in the case of a Clearing Participant in the category of Futures Commission Merchant, has the meaning commonly known as Risk Adjusted Capital as further defined by its self-regulatory organization.

“Cash Loss” - means the losses, liabilities, damages, costs, claims, shortfall or expenses incurred or suffered, to the extent that same are not subjected to any power of assessment under Section D-909 or any mechanism under Section D-914, arising in connection with the default of any Approved Financial Institution, or settlement bank, or other entity that holds cash deposits of the Corporation or of Clearing Participants, representing Margin Deposits. The failure or inability, even on a temporary basis, of an Approved Financial Institution, settlement bank or other entity to accept, transfer or otherwise deal with the cash deposits in the ordinary course may constitute a “Cash Loss”.

~~“Class Group” – all Options and Futures relating to the same Underlying Interest.~~

~~“Class of Futures” – all Futures covering the same Underlying Interest.~~

~~“Class of Options” – all Options of the same Type of Options covering the same Underlying Interest.~~

~~“Clearing Authorization and Guaranty” – Has the definition in Rules ICE Futures Canada, Inc.~~

“Clearing Advisory Committee” – means the committee mandated in these Rules;

~~“Clearing Participant” – A Person who has been approved by the Corporation as a Clearing Participant pursuant to the provisions of the Rules and By-laws.~~

~~“Client” – Customers or Clients of a Clearing Participant registered in the category of Futures Commission Merchant.~~

~~“Client Account” – The account or accounts required to be established for Exchange Transactions of Clearing Participants' clients pursuant to these Rules.~~

“Clearing Agency” – has the definition in the STA.

“Clearing Authorization and Guaranty” - has the meaning set out in the definition in the Rules of the Exchange.

“Clearing Fund” - has the same meaning as Guaranty Fund.

“Clearing Participant”- means a Person which has entered into a Clearing Participant Application/Agreement with the Corporation and which has been admitted to Clearing Participant status pursuant to these Rules.

“Client” - means “Customer”.

“Client Account” - means “Customer Account”.

~~“Clients Settlement Account” – the account established in these Rules.~~

“Closing Buy Transaction” – means an Exchange Transaction the result of which is to reduce or eliminate a Short Position in the Series of Futures involved in such Exchange Transaction, providing that the transaction is for:

- a. The Firm Account of a Clearing Participant, or
- b. The Client Account of a Clearing Participant, where the Clearing Participant submits a Gross Position Report within the required timeframe that supports the reduction or elimination of the Short Position.

**“Closing Purchase Transaction”** – means an Exchange Transaction the result of which is to reduce or eliminate a Short Position in the Series of Options involved in such Exchange Transaction, providing that the transaction is for:

- a. The Firm Account of a Clearing Participant, or
- b. The Client Account of a Clearing Participant, where the Clearing Participant submits a Gross Position Report within the required timeframe that supports the reduction or elimination of the Short Position.

**“Closing Sell Transaction”** – means an Exchange Transaction the result of which is to reduce or eliminate a Long Position in the Series of Futures involved in such Exchange Transaction, providing that the transaction is for:

- a. The Firm Account of a Clearing Participant, or
- b. The Client Account of a Clearing Participant, where the Clearing Participant submits a Gross Position Report within the required timeframe that supports the reduction or elimination of the Long Position.

**“Closing Writing Transaction”** – means an Exchange Transaction the result of which is to reduce or eliminate a Long Position in the Series of Options involved in such Exchange Transaction, providing that the transaction is for:

- a. The Firm Account of a Clearing Participant, or
- b. The Client Account of a Clearing Participant, where the Clearing Participant submits a Gross Position Report within the required timeframe that supports the reduction or elimination of the Long Position.

**“Collateral”** – means all securities, Securities Entitlements, Investment Property, Financial Assets, money, instruments, cheques, Margin, Underlying Interests, and all Positions which may from time to time be in the possession or control of the Corporation or in the possession of a Person acting on behalf of the Corporation, other than a Clearing Participant or an agent of a Clearing Participant, which have been deposited to secure the performance by a Clearing Participant of any of its obligations to the Corporation under the Rules, Operations Manual, and/or Clearing Participant Application/Agreement.

**"Collateral Offset Obligations"** - means obligations of a Clearing Participant arising pursuant to Section D-919 to pay the Corporation, which offset obligations of the Corporation to pay the Clearing Participant or return assets in respect of Permitted Cover transferred or pledged to the Corporation by the Clearing Participant.

**"Contract"** - means a contract between the Corporation and a Clearing Participant arising in accordance with these Rules, and as amended, subject to netting or aggregation in accordance with these Rules, the terms and conditions of which are the relevant Contract Terms.

**"Contract Position"**; see '**Open Contract Position**'

**"Contract Terms"** - means all the terms and conditions of a Contract, as applicable, in the Rules of the Exchange.

**"Contract Specifications"** - means the specifications provided in these Rules and in the by-laws of the Exchange on which the Option or Future is traded.

**"Control"** - means the power to direct or cause the direction of the management or policies of a Clearing Participant or an affiliated company of a Clearing Participant (including the parent company of a Clearing Participant), whether through ownership of securities, by contract, or otherwise.

~~**"Controlled Companies"** - has the definition in *The Securities Act (Manitoba)*.~~

**"Corporate Administrator"** - has the definition in the rules of the Exchange.

**"Corporation"** - means ICE Clear Canada, Inc.

**"Corporation Event"** - means a Failure to Pay or an Insolvency occurring in respect of the Corporation.

**"Corporation Priority Contribution"** - is the commitment of the Corporation to provide resources, of up to ~~CAD~~ \$1,000,000 (one million) dollars in the aggregate as resources to be applied to a Default Loss, pursuant to the provisions of Rule A-6.

**"Corporation's Security Interests"** – has the meaning set out in Rule A-11.

**"Custodian"** - means any bank, custodian, sub-custodian, nominee, agent, depository or settlement system, which has been designated as such by the Corporation.

**"Custodial Loss"** - means the Losses (either or both of Cash Loss and Pledged Asset Loss) as determined by the Corporation and published in a Notice pursuant to Section D-919 of these Rules.

**"Customer"** - means a Person who is a client or customer of a Clearing Participant (which Customer may, subject to Applicable Law, be acting for one or more other clients or customers for purposes of the clearing of Contracts).

**"Customer Account"** - means any account designated as such by the Corporation.

**"Customer Account Contract"** - means a Contract recorded in a Customer Position Account.

**"Customer Account Position"** - means an Open Contract Position as recorded in a Customer Position Account, or any sub-account thereof.

~~**"Customer Account"** - Has the same meaning as "Client Account".~~

**"Customer Margin Account"** - forms part of a Customer Account and the term means an account with the Corporation opened in the name of a Clearing Participant for the recording of debits and credits of Margin in respect of Customer Account Contracts recorded in the related Customer Position Account, which may be divided for administrative convenience only into sub-accounts relating to different Customers or groups of Customers.

**"Customer Position Account"** - forms part of a Customer Account and the term means an account (if any) with the Corporation opened in the name of a Clearing Participant relating to Contracts to which the Clearing Participant is a party as a result of it acting for one or more Segregated Customers and in which the Corporation records such Contracts, which may be divided for administrative convenience only into sub-accounts relating to different Customers or groups of Customers.

**"Daily Margin Requirement"** – means the margin deposit required or made pursuant to Rule A-7.

"Default Notice" - means a notice issued by the Corporation under Section D-902.

"Default Portability Preference"- means the identity of any one or more designated "preferred" Transferee Clearing Participant(s) specified to the Corporation by a Customer as being the Clearing Participant to which it would prefer its positions to be Transferred pursuant to the Default Portability Rules in the case of an Event of Default.

"Default Portability Rules" - means Section D-904 and any terms setting out the meaning of the defined terms used therein.

"Defaulter" - means a Clearing Participant or former Clearing Participant in respect of whom a Default Notice has been issued.

"Deliverable" - means any property, right, interest, register or book entry, commodity, certificate, property entitlement or Investment, which is capable of being delivered pursuant to a Contract.

"Delivery Default" - means a Clearing Participant failing to deliver or transfer to the Corporation in full any Deliverable required to be delivered or transferred by that Clearing Participant under or in connection with any Contract, including a failure to deliver or transfer a Deliverable in accordance with the Rules of the Exchange, unless such failure constitutes a Force Majeure Event affecting the relevant Clearing Participant.

"Delivery Facility" - means any Person or facility used for the delivery of Deliverables (excluding Transferors and Transferees), including but not limited to, elevators listed on the Website.

"Delivery Month" - means the calendar month in which a Future may be satisfied by making or taking delivery.

"ECS" – means the Extensible Clearing System.

"Electronic Communication" - means, in respect of the Corporation, any one or more of the following: the posting of a notice, report or other information on the Exchange's website, the transmission of a notice, report or other information to a Clearing Participant by facsimile or by e-mail.

"Electronic Interfaces", "access", "deliver", "furnish", "instruct", "issue", "make available", "notify", "receive", "submit" and "tender" shall mean and include, as appropriate, the movement of information by electronic means between the Corporation and a Clearing Participant. All words generally understood as pertaining to the movement of information by electronic means shall also include, where appropriate, the movement of information by paper.

"Eligible Currency" - means Canadian Dollars (CAD) and such other currency or currencies as are specified as eligible by the Corporation from time to time.

~~"Emergency" – Situation resulting from 1) events generally viewed as force majeure events, including riot, war or hostilities between any nations, acts of terrorism, civil disturbance, acts of God, floods, fire, accidents, strikes, under whatever euphemism described) earthquakes, labour disputes, health matters, including but not restricted to an influenza pandemic, SARS outbreak, or similar, lack of transportation facilities, inability to obtain materials, curtailment of or failure in obtaining sufficient power, gas or fuel, computer malfunction (whether mechanical or through faulty operation), malfunction, unavailability or restriction of the payment, computer or bank wire or transfer system and any other cause of inability that is beyond the reasonable control of the Corporation; ii) any action taken by Canada, a foreign government, a province, state or local government or body, authority, agency or corporation which may have an impact on the operations of the Clearinghouse; iii) the bankruptcy or insolvency of any Clearing~~

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~~Participant or the imposition of any injunction or other restraint by any government agency, court or arbitrator upon a Clearing Participant which may affect the ability of that Clearing Participant to perform its obligations; iv) any circumstance in which a Clearing Participant, CDS, or any other Person has failed to perform contracts, is insolvent or is in such financial or operational condition or is conducting business in such a manner that such Person cannot be permitted to continue in business without jeopardizing the safety of assets, of any Clearing Person or the Corporation; or v) any other unusual, unforeseeable, or adverse circumstance materially affecting the Corporation's operations or ability perform its obligations.~~

"Encumbrance" - means any claim, charge, mortgage, security, lien, equity, beneficial interest, power of sale, option or other right to purchase, hypothecation, retention of title, right of pre-emption or other third party right or security interest of any kind or an agreement to create any of the foregoing.

"Entitlement Holder" – has the definition in the STA.

"Entity" - has the same meaning as Person.

"Event of Default" - has the meaning in Part D of these Rules.

"Exchange" – means ICE Futures Canada, Inc.

"Exchange Traded Options" – means Negotiated Options Strategies as defined by the Rules of the Exchange and any Options listed by the Exchange which are traded on the electronic trading system utilized by the Exchange.

"Exchange Transaction" - means a transaction through the facilities of the Exchange for:

- a. The purchase or writing of an Option or for the closing out of a Long or Short Position in an Option; or
- b. For the buying or selling of a Future or the reduction or elimination of a Long or Short Position in a Future.

"Exercise Notice" - means a notice to the Corporation in the form prescribed by the Corporation, notifying the Corporation of the intent of the Clearing Participant executing such notice to exercise an Option.

"Exercised Position" - means the position of a Clearing Participant in any account in respect of Options which have been exercised by such Clearing Participant in such account.

"Exercise Price" - means the specified price per unit at which the Underlying Interest may be purchased (in the case of a call) or sold (in the case of a put) upon the exercise of an Option. (Sometimes referred to as the Strike Price).

~~"Exercise Settlement Date" – the date specified in the Rules.~~

"Expiration Date" – means the date on which an Option expires and becomes worthless, as specified in the Rules of the Exchange.

"Expiration Time" - means the time on the Expiration Date, at which an Option expires, as specified in the Rules of the Exchange.

"Failure To Pay" - means the failure of the Corporation to make any payment when due under these Rules (including the return of assets equivalent to any Permitted Collateral Pledged Collateral) if such failure is not remedied on or before:

- a. if no extension has been granted to the Corporation pursuant to these Rules prior to this date: the date falling three (3) Business Days after notice of such failure is given to it by the Clearing Participant to whom such payment or return is due; or
- b. if an extension has been granted to the Corporation as referred to in subsection a. of this definition, 10 a.m. on the next Business Day after service of a notice of that failure to the Corporation by the Clearing Participant to whom such payment or return is due, provided that such notice is given no earlier than the final day of a period for which an extension has been granted to the Corporation pursuant to these Rules;

save to the extent that any such failure to pay or return constitutes a Force Majeure Event affecting the Corporation, or a Loss of Pledged Assets for which the Corporation has made a determination in accordance with Section D-919.

"FCM" - means a Person registered as a futures commission merchant with the applicable regulatory authorities.

"FCM Clearing Participant" - means a Clearing Participant that is an FCM.

**"Financial Asset"** – has the definition in the STA.

"Financial Emergency" - means, with respect to any Clearing Participant, any situation in which the financial or operational condition of such Clearing Participant is not or is likely not to be, in either case determined at the sole discretion of the Corporation, adequate for such Clearing Participant to meet its obligations (including, without limitation, its obligations to comply with these Rules and the Procedures) or to engage in business, or is such that it would not be in the best interests of the Corporation, or the Exchange or the other Clearing Participants for such Clearing Participant to continue to be a Clearing Participant.

"Financial Indebtedness" - means any indebtedness for or in respect of: (a) monies borrowed; (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent; (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar Instrument; (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with applicable accounting standards, be treated as a finance or capital lease; (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis); (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing; (g) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other Instrument issued by a bank or financial institution; and (h) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in (a) to (g) above.

**"Firm"** - means a Clearing Participant.

**"Firm Account"** - has the same meaning as House Account. ~~or "House Account" - The account required to be established for proprietary Exchange Transactions of a Clearing Participant.~~

"Force Majeure Event" - means any occurrence outside the control of the Corporation or the relevant Clearing Participant, as applicable, which hinders or prevents the performance in whole or in part of any of its obligations hereunder (excluding an obligation to make a payment, except for a payment by the Corporation to a Clearing Participant that would be funded from an account of the Corporation at a clearing settlement bank which clearing settlement bank has not released or made available funds to the Corporation when expected or required) (and, in relation only to any obligation of the Corporation or a Clearing Participant under a Contract, which obligation has not yet fallen due, such an occurrence which

would hinder or prevent performance in whole or in part of any of its obligations thereunder where the occurrence or effects of the occurrence are expected to continue until the date of performance of the relevant obligation), including, but not limited to, fire, flood, storm, earthquake, explosion, war, hostilities, accidents howsoever caused, strike, labour dispute, lockout, work to rule or other industrial dispute, lack of energy supply, criminal action, terrorist action, civil unrest, embargoes, acts of God, acts of a public enemy, unavailability or impairment of computer or data processing facilities, the actions or omissions of third Persons (including, without limitation, repositories, delivery facilities, Approved Financial Institutions, depositories, custodians, clearing settlement banks, bank or electronic transfer and settlement systems, the Exchange, CDS, Governmental Authorities and Regulatory Authorities, but excluding the Corporation in the case of a Force Majeure Event affecting the Corporation and further excluding a Clearing Participant and its Customers in the case of a Force Majeure Event affecting a Clearing Participant); and in relation to delivery of a Deliverable pursuant to any Contract, any event that is an event of force majeure (or similar event, howsoever defined) for that Contract under the Exchange Rules.

**"Future"** - means a contract:

- a. In the case of a Future settled by delivery of the Underlying Interest, to make or take delivery of a specified quantity and quality, grade or size of an Underlying Interest during a designated future month; or
- b. In the case of a Future settled in cash, to pay to or receive from the Corporation the difference between the final settlement price of the Underlying Interest and the trade price.

**"Good Deliverable Form"** - Underlying Interests shall be deemed to be in good deliverable form for the purposes hereof only if the delivery of the Underlying Interests in such form would constitute good delivery under the Contract ~~Specifications~~ **Terms**.

**"Governmental Authority"** - means any Regulatory Authority and any national, federal, supranational, state, regional, provincial, local or other government, government department, ministry, governmental or administrative authority, regulator, agency, commission, secretary of state, minister, court, tribunal, judicial body or arbitral body or any other Person exercising judicial, executive, interpretative, enforcement, regulatory, investigative, fiscal, taxing or legislative powers or authority anywhere in the world with competent jurisdiction.

**"Gross Customer Margin"** or **"GCM"** – means the method for assessing margin on Customer accounts, where the margin required for each customer's positions is equal to the minimum margin that would be required from a Clearing Participant holding the same positions.

**"Gross Position Report"** – means the reports submitted, and data transmitted, by a Clearing Participant to the Corporation detailing the gross Long and gross Short positions in its Client Account(s).

**"Group", "Group Companies" or "Group of Companies"** - means, with respect to any entity, an undertaking which is a parent undertaking or subsidiary undertaking of that entity or a subsidiary undertaking of any parent undertaking of that entity.

**"Guaranty Fund"** – has the same meaning as Clearing Fund and is one of the funds established pursuant to these Rules.

**"Guaranty Fund Contribution"** - means Permitted Cover transferred by a Clearing Participant to the Corporation as a contribution to the Guaranty Fund pursuant to these Rules that has not been applied pursuant to Part D and includes, where the context so requires, any proceeds of the realization of same.

**"Guaranty Fund Re-Allocation"** – means each calculation performed by the Corporation pursuant to Rule A-604 a.

**“Hearing Committee”** – means the committee mandated in these Rules.

**"House Account" or "Firm Account"** - means the account or accounts required to be established for proprietary Exchange Transactions of a Clearing Participant.

**“ICE Block”** – **means** the system through which certain Ancillary Transactions are entered.

**“ICE Community”** – **means** a website operated by ICE for distribution of technical and related information to registered users.

**"Illegality"** - means where, after giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, these Rules, the Policies and the applicable Contract Terms, due to an event or circumstance (other than any action taken by a Clearing Participant) occurring after a Contract arises, it becomes unlawful under any Applicable Law on any day, or it would be unlawful if the relevant payment, delivery or compliance were required on that day to perform any absolute or contingent obligation to make a payment or delivery in respect of such Contract, to receive a payment or delivery in respect of such Contract or to comply with any other material provision of the Rules and Policies relating to such Contract.

**"Impossibility"** - means where, after giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, these Rules, the Policies and the applicable Contract Terms, due to an event or circumstance (other than any action taken by a Clearing Participant ) occurring after a Contract arises, it becomes impossible on any day, or it would be impossible if the relevant payment, delivery or compliance were required on that day, to perform any absolute or contingent obligation to make a payment or a delivery in respect of such Contract, to receive a payment or delivery in respect of such Contract or to comply with any other material provision of the Rules and Policies relating to such Contract.

**“Include”, “includes” and “including”** - where used in these Rules, mean “include”, “includes” and “including”, in each case, “without Limitation”.

**“Instrument”** – means a letter of credit and an advice of credit if the letter or advice states that it must be surrendered upon claiming payment thereunder, but does not include a Security.

**“Intra-Day Margin”** – means the deposits required or made pursuant to these Rules.

**"In-the-Money-Option"** - **means** a call Option with an Exercise Price that is less than the Market Price of the Underlying Interest or a put Option where the Exercise Price exceeds the Market Price of the Underlying Interest.

**"Insolvency"**- means, in relation to any Person: a bankruptcy or winding-up petition being presented; a bankruptcy order being made; a voluntary arrangement being approved; an Insolvency Practitioner being appointed or petition or order being made for such an appointment; a composition or scheme of arrangement being approved by a court or other Governmental Authority; an assignment, compromise or composition being made or approved for the benefit of any creditors or significant creditor; an order being made or resolution being passed for winding up; dissolution; the striking off of that Person's name from a register of companies or other corporate bodies; a distress process being levied or enforced or served upon or against property of that Person; a Governmental Authority making an order pursuant to which any of that Person's securities, property, rights or liabilities are transferred; or any event analogous to any of the foregoing in any jurisdiction (always excluding any frivolous or vexatious petition or solvent reorganisation, or change of Control or merger notified to the Corporation in accordance with these Rules.

"Insolvency Practitioner" - means a receiver, administrator, bank administrator, manager or administrative receiver, liquidator, conservator, examiner, trustee in bankruptcy, or any other Person appointed or with powers in relation to an Insolvency in any jurisdiction.

"Investment Property" – has the definition in the STA.

"IIROC" - means the Investment Industry Regulatory Organization of Canada, which is an SRO for the purposes of these Rules.

"Liquidating Settlement Account" - means the account established by Section A-402.

"Long Position" - means a Clearing Participant's interest, as per the Corporation's records, as:

- a. The holder of one or more Options of a Series of Options; or
- b. The buyer of one or more Futures of a Series of Futures.

"Loss Assets" - means the assets of the Corporation of a value specified pursuant to the provisions set out in Section D-919 and which are intended to be applied towards Cash Losses and/or Pledged Asset Losses as provided for in these Rules.

"Margin" – means any and all deposits required or made pursuant to these Rules.

"Margin Account" - means a House Margin Account or Customer Margin Account.

"Margin Deposit" – means, collectively:

- a. Any and all Securities, Securities Entitlements, Investment Property, Financial Assets, Money, Instruments, cheques, Underlying Interests, Long Positions and Short Positions;
- b. Any and all of the deposits required or made pursuant to these Rules for Margin, Super Margin, Original Margin, Variation Margin, Stress Loss Charge, Options Premium, Intra-Day Margin, and Guaranty Fund deposits, including cash deposits, ~~Letters of Credit~~, securities, bills, bonds, and any other form of deposit as from time to time are accepted by the Corporation and/or its agent for payment of Margin requirements; and
- c. Any and all securities pledged or deposited (together with any gains accrued or earned on such securities) to the Corporation and/or its agent, through the facilities of CDS, by or on behalf of the Clearing Participant with the Corporation and/or its agent.

"Market Price" - means the price of the Series of Futures or Series of Options, including the Settlement Price provided by the Exchange, or other information provided by the Exchange, or other information from any other source specified in the Rules.

"Merchant Clearing Participant" – means a Clearing Participant that is also registered with the Exchange as a Merchant.

"Merchant Sub-Accounts" – means the account or accounts required to be established for Exchange transactions of the Merchant Clearing Participant's ~~Associated and/or~~ Affiliated Companies.

"Money" – means a medium of exchange authorised or adopted by the Parliament of Canada as the currency of Canada or by a foreign government as its currency;

**“Monthly Financial Report”** - means the financial returns, documents and related information required to be filed by each Clearing Participant under the relevant rules of the Exchange and/or SRO applicable to that Clearing Participant.

**“Morning Adjustments”** – means final adjustments to gross positions, reported to the Clearinghouse prior to the published deadline on the morning of each Trading Day.

**“Monetary Default”** - means a Clearing Participant failing to transfer to, deposit with, or pay to, the Corporation in full any Margin, Guaranty Fund Contribution, amount due under or in connection with any Contract or other amount due to the Corporation or required by or pursuant to the Rules of the Exchange, unless such failure constitutes a Force Majeure Event affecting the relevant Clearing Participant.

**“Net Daily Settlement”** - when applied to any account of a Clearing Participant for any Settlement Time, means the net amount payable to or by the Corporation at such Settlement Time in respect of all Exchange Transactions of the Clearing Participant in such account.

**“NI 24-102”** - means National Instrument 24-102 *Clearing Agency Requirements*, as published by the Canadian Securities Administrators, as amended, supplemented or superseded from time to time.

**“Non-Default Losses”** - means losses, liabilities, damages, costs, claims, shortfalls or expenses incurred or suffered by the Corporation which are the result of business or operational issues and problems which threaten the Corporation’s solvency and which arise due to an event or events other than an Event of Default, a Non-Default event, a Loss of Pledged Assets, a Cash Loss or a Corporation Event.

**“Non-Transfer Positions”** - in respect of a Customer Account of a Clearing Participant, means the Customer Account Positions in respect of which either: (i) the relevant Customer has not made a Default Portability Preference; or (ii) a Default Portability Preference has been made by the relevant Customer but has not been communicated to the Corporation by such Clearing Participant or, where permitted, by such Customer, in each case in accordance with the Rules.

**“Notice”** - means a publication issued by the Corporation for the attention of all Clearing Participants and which may be provided by email or by publication on the Website.

**“Open Contract Position”** - in respect of each Set of Contracts for a Clearing Participant, from time to time, comprises the Contract Position and the Net Amount Position, where:

a. Contract Position means:

- (i) in relation to a House Position Account that are Futures; where a Clearing Participant is party to one or more Futures Contracts of a particular Set, the number that equals the netted sum of buy and sell obligations pursuant to those Contracts recorded in that account;
- (ii) in relation to a House Position Account that are Options; where a Clearing Participant is party to one or more Options Contracts of a particular Set, the number that equals the netted sum of long and Short obligations pursuant to those Contracts recorded in that account;
- (iii) in relation to a Customer Position Account that are Futures; where a Clearing Participant is party to one or more Futures Contracts of a particular Set, the gross number of buy positions and the gross number of sell positions pursuant to those Contracts recorded in that account (subject to any netting pursuant to these Rules);
- (iv) in relation to a Customer Position Account that are Options; where a Clearing Participant is party to one or more Options Contracts of a particular Set, the gross number of Long positions and the gross number of Short positions pursuant to those Contracts recorded in that account (subject to any netting pursuant to these Rules);

In any case as calculated by the Corporation from time to time based on data received by the Corporation in respect of Contracts entered into by the Clearing Participant up to the close of business on the immediately preceding Business Day (or such other period as determined by the Corporation at its discretion) and

b. Net Amount Position means the price at which the Contract Position for any Set is recorded on the Corporation's books based on the Exchange Settlement Prices for each Contract.

"Open Position" - means the position, as per the Corporation's records, of a buyer or a seller of a Future or Option.

"Opening Buy Transaction" – means an Exchange Transaction the result of which is to create or increase a Long Position in the Series of Futures involved in such Exchange Transaction, providing that the transaction is for:

- a. The Firm Account of a Clearing Participant, or
- b. The Client Account of a Clearing Participant, where the Clearing Participant submits a Gross Position report within the required timeframe that supports the creation or increment of the Long Position.

"Opening Purchase Transaction" - means an Exchange Transaction the result of which is to create or increase a Long Position in the Series of Options involved in such Exchange Transaction, providing that the transaction is for:

- a. The Firm Account of a Clearing Participant, or
- b. The Client Account of a Clearing Participant, where the Clearing Participant submits a Gross Position report within the required timeframe that supports the creation or increment of the Long Position.

"Opening Sell Transaction" – means an Exchange Transaction the result of which is to create or increase a Short Position in the Series of Futures involved in such Exchange Transaction, providing that the transaction is for:

- a. The Firm Account of a Clearing Participant, or
- b. The Client Account of a Clearing Participant, where the Clearing Participant submits a Gross Position report within the required timeframe that supports the creation or increment of the Short Position.

"Opening Writing Transaction" – means an Exchange Transaction the result of which is to create or increase a Short Position in the Series of Options involved in such Exchange Transaction, providing that the transaction is for:

- a. The Firm Account of a Clearing Participant, or
- b. The Client Account of a Clearing Participant, where the Clearing Participant submits a Gross Position report within the required timeframe that supports the creation or increment of the Short Position.

"Option" - means a contract which, unless otherwise specified, gives the buying Clearing Participant the right to buy (a call) or sell (a put) a specified quantity of an Underlying Interest at a fixed price during a specified time period and which obligates the writing Clearing Participant to sell (a call) or buy (a put) the Underlying Interest.

**"Original Margin"** – means the margin payable by Clearing Participants to the Corporation for the Futures and Options positions held in all accounts, based on the applicable margin rates, ~~and calculated using the Standard Portfolio Analysis of Risk (SPAN<sup>†</sup>)~~

**"Out-of-the-Money Option"** - means a call Option with an Exercise Price that exceeds the Market Price of the Underlying Interest or a put Option where the Exercise Price is less than the Market Price of the Underlying Interest.

**"outright option"** – means an option in which the Underlying Interest is a Future. A buyer of an outright option has the right, but not the obligation, to buy or sell a specified quantity of the Future, at a specified price within a specified period of time, The seller of an outright option has the obligation to take the opposite side of the Future, from the option buyer, at the exercise price if the option is exercised. See also "calendar spread option."

**"PCS" or "Position Change Submission"** – means a report of open positions, submitted by a Clearing Participant to the Clearinghouse.

**"PTMS"** – means the Post-Trade Management System.

**"Permitted Cover"** - means cash in Eligible Currencies and other assets determined by the Corporation as permissible for Margin or Guaranty Fund Contributions and includes, where the context so requires, any such cash or assets transferred or pledged to the Corporation and any proceeds of realisation of the same.

**"Person"** – means an individual, cooperative, corporation, company, trust or other entity, as the context may require.

**"Pledged Assets"** - means Permitted Cover that is of a form that is pledged by a Clearing Participant to the Corporation through the facilities of a Custodian. For greater clarity, cash is transferred, not pledged and does not fall under this definition.

**"Pledged Asset Loss"** - means the losses, liabilities, damages, costs, claims, shortfall or expenses incurred or suffered, to the extent that the same are not subjected to any power of assessment under Section D-909 or any mechanism under Section D-914, arising in connection from a default of a Custodian holding pledged assets that Clearing Participants have provided for Margin Deposit requirements. The failure or inability, even if only on a temporary basis, of a Custodian to accept, transfer, accept or carry out instructions provided by the Corporation, or otherwise deal with the pledged assets in the ordinary course may constitute a "Pledged Asset Loss".

**"Position Account"** - means a House Position Account or Customer Position Account.

**"Position Risk Margin"** – has the same meaning as Super Margin.

**"Potential Event of Default"** - means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

**"President"** - means the president of the Corporation from time to time.

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<sup>†</sup>Neither Intercontinental Exchange, Inc. nor any of its affiliates is the source of SPAN<sup>®</sup>. The SPAN<sup>®</sup> methodology was developed by Chicago Mercantile Exchange Inc. and is used by Intercontinental Exchange, Inc. and its affiliates to develop customized versions of SPAN<sup>®</sup>. SPAN<sup>®</sup> is a registered trademark of Chicago Mercantile Exchange Inc., used herein under license. Chicago Mercantile Exchange Inc. assumes no liability in connection with the use of SPAN<sup>®</sup> by any person or entity.



**"Put Option"** - means an Option pursuant to which the Person with a Long position has the right to sell a Future or Futures to the Person with a Short position at the Strike Price and at a specified time.

~~**"Quarterly Financial Report"** – the financial returns, documents and related information required to be filed by each Clearing Participant under the relevant rules of the Exchange and/or the SRO applicable to that Clearing Participant.~~

**"Regulatory Authority"** - means any Governmental Authority which exercises a regulatory or supervisory function under the laws of any jurisdiction in relation to financial services, the financial markets, Exchanges or Clearing Agencies (including, without limitation, the Manitoba Securities Commission, all other provincial securities commissions, the Bank of Canada, the Office of the Superintendent of Financial Institutions, the European Securities and Markets Authority, the Bank of England, HM Treasury, the college (as defined in EMIR) or any member of such college, the European System of Central Banks, the CFTC and the SEC).

**"Replenishment Contribution"** - has the meaning in Section A-608 of these Rules.

**"Representative"** - means any person that carries out or is responsible for (or purports to carry out or be responsible for) any of the functions of another Person, including without limitation any employee, directors, partner, officer, executive, Affiliate, Customer, contractor or agent of that other Person (provided, in the case of a Clearing Participant, that a Customer will only be treated as a Representative of a Clearing Participant in respect of any act, omission, conduct or behaviour in its capacity as a Customer to the extent that the Clearing Participant is bound by the conduct of such Customer pursuant to these Rules.

**"Responsible Representative"** – means an individual appointed as such by for whom a Clearing Participant in accordance with the Rules, Operations Manual and/or the Clearing Participant Application/Agreement, has filed evidence of authority.

**"Risk Ratio"** – means the ratio of a Clearing Participant's average Original Margin requirements for all accounts to the average of the sum of the Original Margin requirements for all accounts of all Clearing Participants, where the averages are calculated over the twenty (20) Trading Days immediately preceding the Trading Day of a Base Guaranty Fund calculation. In the event that a Clearing Participant has been registered for less than twenty (20) Trading Days, then its Risk Ratio will be calculated based on its average Original Margin during the Trading Days it has been registered.

**"Rules"** - means the Rules and the Operations Manual of the Corporation as the same may be amended from time to time, including, as appropriate to the context, ~~all regulations, the by-laws, resolutions, policies, procedures, operations manuals, interpretations, decisions and orders of the Corporation.~~

**"SRO"** – means a self-regulatory organization, as recognized by the Corporation from time to time.

**"Sanction"** - means any Applicable Law executing foreign policy, security, sanction, trade embargo, boycott, export control, foreign trade control, non-proliferation or anti-terrorism objectives or similar restrictions on any business with a particular jurisdiction, certain types of business or activity or specified Persons that is imposed, administered or enforced from time to time by: (i) the Canadian government; (ii) OFAC or the United States of America and/or its President; (iii) the United Nations Security Council; or (iv) any of their successors.

**"Securities Intermediary"** – has the definition in the STA.

“**Security**” or “**Securities**” – has the meanings provided in *The Securities Act (Manitoba)*.

“**Security Entitlements**” – has the definition in the STA.

“**Segregated Customer**” - means a Customer of a Clearing Participant in circumstances where, whether as a result of any requirement of Applicable Law, agreement or arrangement, a customer asset segregations, client money, client asset, trust or other client asset protection regime (being more than a requirement to distinguish Customer Account assets and positions from House Account assets and positions of the Clearing Participant) applies as between the Customer and the Clearing Participant to assets at the time immediately prior to transfer to the Corporation as Margin for a relevant Customer Margin Account.

“**Series of Futures**” - has the same meaning as “Set” for Futures Contracts. - All Futures covering the same Underlying Interest and having the same delivery month.

“**Series of Options**” - has the same meaning as “Set” for Options Contracts. All Options of the same Type, covering the same Underlying Interest and having the same Exercise Price and Expiration Date.

“**Set**” - means:

- a. for Futures Contracts: a set or class of Contracts that are identical as to their terms (including the Deliverable to which such Contract relates and contract date; but excluding any amount paid or to be paid for entry into the Contract and any amount paid or to be paid in respect of settlement or delivery of a Contract);
- b. for Options Contracts: a set of Contracts that are identical as to their terms (including the Deliverable to which such Contracts relate, contract date and strike price; but excluding any amount paid or to be paid for entry into or writing of a Contract and any amount paid or to be paid in respect of settlement).

**“Settlement Amount”** - means the amount calculated in accordance with these Rules payable to the delivering Clearing Participant upon delivery of or cash settlement for the Underlying Interest in respect of a Future.

“**Settlement Bank**” – means any Financial Institution designated as such by the Corporation which the Corporation utilizes to make payments to and accept payments from, Clearing Participants.

**“Settlement of Gains and Losses”** - means the settlement with the Corporation of the gains and losses on Open Positions in Futures.

**“Settlement Price”** - means the official daily closing price of a Future or Option.

**“Settlement Time”** – Settlement Time in respect of Exchange Transactions means the time established by the Corporation for the payment of margin requirements payable to the Corporation;

- a. For Daily Margin Requirements Settlement Time is 9:30 am (CT) on the Banking Day immediately following a Trading Day.
- b. For the purposes of Intra-Day Margin calls Settlement Time is one (1) hour after the Clearing Participant receives notification that an Intra-Day Margin payment is required.

**“Short Position”** - means a Clearing Participant’s obligation, as per the Corporation’s records, as:

- a. The writer of one or more Options of a Series of Options; or

b. The seller of one or more Futures in a Series of Futures.

**"Spread Position"**

~~a. The situation in which there is carried in a Clearing Participant's Client Account both an Option in the Short Position and an Option of the same Class of Options in the Long Position; or~~

~~b. The assumption in the same account of a Long Position and a Short Position in the same Class of Futures.~~

**"STA"** – means *The Securities Transfer Act (Manitoba) C.C.S.M. c. S60*

**"Stress Loss Charge"** - means the deposits required or made pursuant to these Rules.

**"Strike Price"** – see Exercise Price.

~~**"Subsidiary Company"** – has the definition in *The Securities Act (Manitoba)*.~~

**"Super Margin"** - means the deposits made or required pursuant to these Rules.

**"Surplus Collateral"** - in respect of a Clearing Participant or particular Account or account for Guaranty Fund Contributions at any time, means any Permitted Cover transferred to the Corporation that is not required to satisfy the current or most recently calculated applicable requirements in respect of Margin or Guaranty Fund Contributions at such time.

**"Systems Managed Account" (SMA)** – is a means of accessing the Trading System that must be permissioned and/or authorized by both the Exchange and a Clearing Participant.

**"Tender Notice"** - **means** a notice to the Corporation in the form prescribed by the Corporation, notifying the Corporation of the intent of the Clearing Participant executing such notice to deliver the Underlying Interest of the Future.

**"Termination Close-Out Deadline Date"** - **means:**

(i) in respect to termination of Clearing Participant status under Section A-213 a. (ii) to (iv) or A-213 c., the date falling thirty (30) Business Days after the Termination Notice Time or the Termination Request Time;

(ii) in respect of a termination of Clearing Participant status under Section D-917 c., or D-918; the date falling 20+x Business Days after the relevant Termination Request Time where x = the total number of unexpired Business Days in the Cooling-Off Termination Period;

(iii) notwithstanding (i) and (ii), in any case, such later date as the Corporation may, at its discretion, permit and notify in writing to the affected Clearing Participant; or

(iv) in respect of termination of Clearing Participant status following an Event of Default under Section A-213 a.(i), is inapplicable.

**"Termination Close-Out Time"** - **means:** (i) in respect of termination of clearing participant status (other than following an Event of Default under Rule A-213 a. (i), the time at which a Clearing Participant ceases to be party to any open Contract with the Corporation; or (ii) in respect of termination of Clearing Participant status generally following an Event of Default under Rule A-213 a. (i) is inapplicable.

"Termination Date" - means: (A) in respect of the termination of Clearing Participant status (other than following an Event of Default under Rule A-213 a. (i)) the later of: (i) where applicable, the Termination Close-Out Deadline Date, and (ii) the date of the Termination Close-Out Time; or (B) in respect of a termination of Clearing Participant status following an Event of Default under Rule A-213 a. (i), the date on which the default proceedings are completed or such other date as is specified by the Corporation in writing.

"Termination Request" - means a notice served by a Clearing Participant of termination of its Clearing Participant status under the Rules.

"Termination Request Time" - means the time of service by a Clearing Participant of a Termination Request.

**"Trading Day"** – means a day that the Exchange designates as such.

**"Trade Price"** - means the price agreed upon for the Future when the Contract is entered into on an Exchange.

**"Trading System"** – includes all facilities and services provided by the Exchange to permit trading, including, but not limited to, data entry services, the ICE Platform, all other computer-based trading systems and programs, and price quotations and other market information services, and applies to the provision, use, performance, maintenance, or malfunction of the Trading System.

"Transaction" - means a futures contract or an option on futures contract. For the avoidance of doubt a transaction will be valid and constitute a Transaction for purposes of this definition regardless of whether it reflects a binding contract or transaction between two Clearing Participants or between a Clearing Participant and its Customer and shall include any trade particulars or any data resulting from the matching of any trade or ancillary orders; and the Transaction need not yet have been reported to the Corporation in order to give rise to a Contract.

"Transaction Rights or Obligations" - means the rights, liabilities or obligations (if any) of a Clearing Participant relating to, or arising out of or in connection with any Transaction, whether pursuant to contract, tort, equity, restitution or otherwise, whether joint or several, pursuant to the laws of any jurisdiction, which fall or fell due for performance to any Person other than as between a Customer of a Clearing Participant in relation to the Transaction in question and such Clearing Participant (to which the relevant Standard Terms shall apply).

"Transfer" - has the meaning given to that term in Section D-904 a.

"Transferee" - means a Person nominated by a Buyer to whom a transfer or delivery is to be made under a Contract and includes reference to the Buyer where transfer or delivery is to be made to the Buyer.

"Transferee Clearing Participant" - means a Clearing Participant which becomes party to a Contract as a result of a transfer, novation, sale or termination and replacement pursuant to Part D of the Rules.

"Transferor" - means a Person nominated by a Seller by whom a transfer or delivery is to be made under a Contract and includes reference to the Seller where transfer or delivery is to be made by the Seller.

**"Type of Options"** - includes either a "put" option or a "call" option.

**"Underlying Interest"** - means:

a. The Futures contract subject to being assumed upon the exercising of an Outright Option;

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- b. The Futures calendar spread subject to being assumed upon the exercising of a Calendar Spread Option; or
- c. The property interest subject to being delivered or settled upon tender in respect of a Future.

**“Uncovered Risk”** – means the calculation of the difference between margin coverage deposited, and a plausible extreme price movement.

**“Unit of Trading”** - means the number of units of Underlying Interest which have been designated by the Exchange as the number to be the subject of a single Option in such Series of Options.

**“Variable Deposit”** - means the Guaranty Fund deposit which may be required in addition to a Base Deposit.

**“Variation Margin”** – means the margin required to be provided to the Corporation by Clearing Participants in respect of Futures and Options by reference to the difference between the value of such Futures and Options and the Settlement Price; and amounts due to the Corporation from a Clearing Participant or to a Clearing Participant from the Corporation, as the case may be, arising out of the Settlement of Gains and Losses.

**“Website”** – means [www.theice.com](http://www.theice.com)

**“Withdrawal Date”** - means, if at any time the Corporation decides to terminate its services, either generally or in relation to a significant part of its business or certain categories of Contract, the date on which that termination will take effect.

### **Section A-103 Interpretation**

- a. Any reference to a statute, statutory provision or rule shall include any notice, order, guidance, example, regulation or subordinate legislation made from time to time under that statute, statutory provision or rule which is in force from time to time. Any reference to a statute or statutory provision shall include such statute or provision as from time to time amended, modified, re-enacted or consolidated from time to time and (so far as liability thereunder may exist or can arise) and shall include also any past statute or statutory provision (as from time to time modified, re-enacted or consolidated) which was applicable at the time of any relevant action or omission.
- b. References to any rules or any agreement are references to such rules or agreement as amended from time to time, provided that such amendments are made in accordance with these Rules.
- c. The headings in these Rules are for reference purposes only and do not affect, in any way, the meaning or interpretation of these Rules.
- d. To the extent there is any conflict between any of the provisions of these Rules, a Clearing Participant Application/Agreement, the Operations Manual, the Policies (including all attachments), any Guidance or Notice, or the Rules of the Exchange, or between any of the foregoing, the provision of the first document specified in the paragraphs below shall prevail, control, govern and be binding upon the parties:
  - (i) these Rules;
  - (ii) the Clearing Participant Application/Agreement;

- (iii) the Operations Manual;
  - (iv) the Contract Terms other than those set out in these Rules or the Rules of the Exchange (excluding the Rules and any other document incorporated by reference);
  - (v) the Policies;
  - (vi) [reserved];
  - (vii) any Notice (except for a Notice communicating an amendment to any of the above documents in accordance with these Rules, in which case the amendments communicated in such Notice shall be binding on the effective date specified in the Notice);
- e. [reserved]
- f. All references to timings or times of day are to Winnipeg, Manitoba, Canada, Central Time zone, unless indicated otherwise. Business hours shall occur only on Business Days and shall be construed accordingly.
- g. All references to "tax" shall include, without limitation, any tax, levy, duty, or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying the same).
- h. Each FCM Clearing Participant shall be bound by any act, omission, conduct or behaviour ("conduct") of its Customers and clients of such Customers but only in an instance in which any such Customer or client of such Customer:
- (i) is permitted by the Clearing Participant to have access to any system or interface of the Exchange or the Corporation which access enables or results in the entry into of Contracts and relates to Clearing by that Clearing Participant for such Customer or client;
  - (ii) is permitted by the Clearing Participant to have access to any system or interface of the Exchange or the Corporation which relates to Clearing by that Clearing Participant for such Customer or client and which is used for the enriching of data held by the Corporation relating to Contracts, the post-trade management of Contracts, allocations from one Clearing Participant to another Clearing Participant, the transfer of Contracts between any House Account or Customer Account or between different House Accounts or Customer Accounts (or any sub-account of any of the foregoing) of a Clearing Participant, position transfers, novations or assignments, the service of any notice, the exercise or abandonment of any Option, the closing-out, expiry or termination of any Future or the netting, combining or offsetting of any Contract recorded in a particular account;
  - (iii) is nominated by a Clearing Participant for purposes of delivery under a Contract; or
  - (iv) is otherwise duly appointed to carry out such conduct as an agent of the Clearing Participant.

If a Customer or client of a Customer or any of their Representatives would have breached the Rules in respect of any instance listed in subparts (i), (ii), (iii) or (iv) of this Rule as if it were a

Clearing Participant, then such Customer, client or Representative or their Clearing Participant may be subject to disciplinary proceedings.

In addition, a Clearing Participant shall be bound by and responsible for any conduct of or by any of the following Persons (including for purposes of disciplinary proceedings):

- (1) the Clearing Participant itself (including its employees, officers, directors or partners); and
  - (2) the Clearing Participant's Representatives (excluding Customers and their Customers' clients), as if such conduct were the conduct of the Clearing Participant itself (but this provision shall not, for the avoidance of doubt, apply to determine any liability of a Clearing Participant or Defaulter for losses of the Corporation or any of its Affiliates or the Exchange or any of their officers, directors or employees, which liabilities are governed solely by Section A-114 and Section D-905 f.
- i. Any capitalised term used in these Rules that is not defined shall have the meaning given to it (in order of priority) in the Operations Manual, the Policies, the Corporation's standard form Clearing Participant Application/Agreement and any relevant Rules of the Exchange.
  - j. If any provision of these Rules (or part of any provision) is found by any court or other Governmental Authority to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Rules, and the validity, legality or enforceability of the other provisions of these Rules shall not be affected.
  - k. The Rules, together with the Clearing Participant Application/Agreement, and other documents given contractual force pursuant to these Rules, form a contract between the Corporation and each Clearing Participant. All obligations of the Corporation hereunder are solely to Clearing Participants. No Person other than the Corporation has any obligation to Clearing Participants pursuant to these Rules except as expressly provided in these Rules. No other Person shall have any right to enforce any provision of these Rules, the Operations Manual or the Policies.
  - l. Any matter or right stated to be in, of or at the Corporation's discretion shall be subject to the Corporation's sole, unfettered and absolute discretion and such discretion may be exercised at any time. Where there is a provision that the Corporation (or its Directors, officers or committees) may make further directions upon or in relation to the operation of a Rule or may make or authorise any arrangement, direction or procedure thereunder, the Corporation may make such direction or make or authorise such arrangement or procedure in relation to or under the whole or any part of the Rule and may make or authorise different directions, arrangements or procedures in relation to different Persons and may make or authorise such directions, arrangements or procedures generally or in relation to a particular Person or particular occasion and in all cases subject to such conditions as it may think fit. Any action taken at the discretion of the Corporation may not be challenged by any Person (subject to the requirements of Section A-114).
  - m. Without prejudice to the requirements of any Applicable Laws and notwithstanding any other provision of these Rules, nothing in these Rules shall have the effect of enabling, requiring or implying that any Margin or other amounts deposited in relation to a Clearing Participant's or Defaulter's:
    - i. Customer Account be used to meet a loss or shortfall on any of that Clearing Participant's or Defaulter's House Accounts;

- ii. particular Customer Account be used to meet a loss or shortfall on another of the same Clearing Participant's or Defaulter's Customer Account;  
(which restrictions, for the avoidance of doubt, shall not apply to any Guaranty Fund Contribution or Assessment Contribution).  
Without prejudice to the requirements of any Applicable Laws nothing in these Rules shall have the effect of enabling, requiring or implying that any Contracts recorded in a Clearing Participant's or Defaulter's:
  - iii. Customer Account of any class be netted, combined or offset with any Contract recorded in any of that Clearing Participant's or Defaulter's House Accounts;
  - iv. particular Customer Account be netted, combined or offset with any Contract recorded in another Customer Account of the same Clearing Participant or Defaulter;
  - v. particular House Account be netted, combined or offset with any Contract recorded in another House Account of the same Clearing Participant or Defaulter; or  
(except as expressly provided under the Rules and to the extent permissible under Applicable Laws).
- n. The Rules shall at all times be observed, interpreted and given effect to in the manner most conducive to the promotion and maintenance of recognition of:
  - i. the Corporation as a recognised Clearing Agency under Applicable Laws, including but not limited to, NI 24-102 and any orders issued by the Manitoba Securities Commission to the Corporation, and any other legal or regulatory status it has from time to time under any other Applicable Law;
  - ii. the good reputation of the Corporation (and Clearing Participants);
  - iii. high standards of integrity and fair dealing in accordance with all Applicable Laws;
  - iv. the Corporation's obligation under Applicable Law to act fairly and professionally in accordance with the best interests of Clearing Participants and Customers and sound risk management; and
  - v. proper protection for all Persons interested in the performance of Contracts.

To the extent that the Corporation or any Clearing Participant has any right under these Rules which may on its face be performed in a manner that goes beyond that which is permitted by Applicable Law, such right or rights may only be exercised to the extent permitted under Applicable Law.
- o. Subject to these Rules, each Contract and all non-contractual obligations arising out of or in connection with these Rules or any Contract, shall be governed by and construed in accordance with the laws of Manitoba and Canada, as applicable.
- p. These Rules may be supplemented by processes established pursuant to documents governing the internal governance of the Corporation and its committees.



- q. [reserved]
- r. To the extent permitted by Applicable Laws and without prejudice to the ability of the Corporation to transfer any contracts in accordance with these Rules, a Clearing Participant may outsource performance of any of its obligations under the Rules to an Affiliate or other Person, but will remain fully liable to the Corporation for such performance notwithstanding the outsourcing, provided that a Clearing Participant may nominate another Person to perform its responsibilities with respect to the submission of end-of-day prices, becoming party to Contract allocations under Part D of the Rules following an Event of Default (to the extent that the Corporation has rights to require entry into of such Contracts) and such other obligations as permitted by the Corporation, if such Person is acceptable to the Corporation and enters into an agreement with the Clearing Participant and Corporation on such terms and conditions as may be required and specified by the Corporation. In any circumstances in which a Person performs pursuant to an outsourcing arrangement or such a nomination, such Person will act as the Clearing Participant's Representative.
- s. If a Person with obligations under these Rules or a Contract is a partnership, the liability of each partner in the partnership under or in connection with these Rules or the Contract shall be joint and several. In the event of any circumstances which would be operation of Applicable Law give rise to the dissolution of the partnership, or entitle a partner to seek an order to dissolve the partnership, the obligations of the partners shall remain in full force and effect.

#### **Section A-104 Delay in Performance by the Corporation**

Subject to the provisions of the Contract Terms, where an obligation of the Corporation must be performed immediately, promptly or by or prior to a specified time or date but is not so performed, the Corporation shall not be in breach of these Rules if, having used all reasonable endeavours to perform such obligation by such specified time or date, it performs the relevant obligation promptly after such specified time or date.

#### **Section A-105 Clearing Participant Status Equivalent to Membership**

For the purposes of all Applicable Laws and legislation, including *The Commodity Futures Act* C.C.S.M. c. C152, and the *Payment Clearing and Settlement Act*, S.C. 1996, c. 6, Sch., Clearing Participant status shall be considered to be, and in all respects is, the same as, “membership” status.

#### **Section A-106 4 Delegation of the Corporation's Powers**

Whenever the Corporation is stated to have any powers, rights, discretion or is entitled to take any action, the Board may set out in Board Policies who it will delegate to exercise same. The Board Policy will set out the delegation to one or more of the following: the President, the appropriate officer or officers of the Corporation, or any committee. All Clearing Participants are entitled to a copy of such Board Policies upon request.

#### **Section A-107 5 Pledged Assets**

In accordance with these Rules, the Operations Manual and the Clearing Participant Application/Agreement ~~between the Corporation and each Clearing Participant~~, the Corporation accepts certain uncertificated securities as Permitted Cover ~~deposits~~ for the margin and guaranty fund obligations of Clearing Participants. Uncertificated securities ~~Such deposits~~ are pledged by Clearing Participants to the Corporation and are held in one or more accounts at CDS which accounts are in the name of the Corporation. It is the intent of the Corporation and each Clearing Participant that, with respect to all pledges of uncertificated securities for margin and guaranty fund obligations, same will be made in a

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manner consistent with *The Securities Transfer Act (Manitoba)* and, without in any way restricting the generality of the forgoing;

- a. Each uncertificated security pledged by a Clearing Participant to the Corporation for any obligation arising under the Rules, is a “*financial asset*”, and each pledge is a “*delivery*”;
- b. The Corporation acquires a “*securities entitlement*” upon CDS indicating, by book entry, that a financial asset has been credited to the account(s) of the Corporation;
- c. The Corporation’s account or accounts at CDS in which the pledged assets are held are “*securities accounts*”;
- d. The Corporation is the “*entitlement holder*” of, and holds a “*securities entitlement*” over, all financial assets pledged by Clearing Participants;
- e. CDS is the “*clearing agency*” and the “*securities intermediary*”; and
- f. Each direction or instruction provided by the Corporation to CDS, including a direction to seize a financial asset, is an “*entitlement order*”.

Specifically, each Clearing Participant agrees that it intends, by pledging a financial asset to the Corporation, that the Corporation will have “*control*” over the financial assets, within the meaning of the STA.

#### **Section A-1086 Netting**

With respect to the *Payment Clearing and Settlement Act*, S.C. 1996, c. 6, Sch., (Canada) the provisions of the Rules, the Operations Manual and the Clearing Participant ~~application~~[Application/agreements](#) ~~Agreements~~ collectively constitute;

- a. settlement rules of a designated clearing and settlement system within the meaning of section 8 of that Act;
- b. a netting agreement between two or more financial institutions within the meaning of section 13 of that Act; and
- c. a netting agreement between a derivatives clearing house and a clearing member within the meaning of section 13.1 of that Act.

#### **Section A-1097 Eligible Financial Contract**

The Corporation and each Clearing Participant acknowledge that:

- a. each obligation to deposit a margin and/or Guaranty Fund contribution(s) constitutes an eligible financial contract between the Corporation and the Clearing Participant; and
- b. each of the Rules, Operations Manual and Clearing Participant Application/Agreement constitute master agreements in respect of such eligible financial contracts and accordingly are also eligible financial contracts between the Corporation and each Clearing Participant.

The Rules, Operations Manual, and each Clearing Participant Application/Agreement shall be interpreted so as to ensure that the Corporation or a Clearing Participant, as the case may be, is accorded the rights and powers of a party to an eligible financial contract pursuant to the *Bankruptcy and Insolvency Act*, the *Companies’ Creditors Arrangement Act*, the *Winding-Up and Restructuring Act*, the *Canada Deposit Insurance Corporation Act* or any similar legislation.

## **Section A-108** Situs

Each Clearing Participant Application/Agreement provides that it shall constitute a contract made under the laws of Manitoba. The Corporation and each Clearing Participant acknowledge and agree that Manitoba is the jurisdiction of the Corporation as the securities intermediary acting for a Clearing Participant, for all purposes of the laws of Manitoba, of *The Securities Transfer Act (Manitoba)* or of any provision of any other Applicable Laws. ~~such Act.~~

## **Section A-109** Rules Prevail

~~The Rules, Operations Manual, and the Clearing Participant Application/Agreement govern the rights and obligations between the Corporation and the Clearing Participants and they are effective even if the Rules, Operations Manual, and/or Clearing Participant Application Agreements conflict with *The Securities Transfer Act (Manitoba)* and/or the *Personal Property Security Act (Manitoba)* and affect another person who does not consent to the Rules, Operations Manual, and the Clearing Participant Application/Agreement.~~

## **Section A-110** Hearings

- a. In any hearing pursuant to these Rules, the formal technical rules of evidence do not apply and the committee or board hearing a matter may receive any evidence that it considers relevant to the hearing. Evidence may be given orally or by affidavit at the determination of the panel hearing a matter.
- b. In any hearing pursuant to these Rules, the burden of proof required to be met on any matter is the civil standard “on a balance of probabilities” and not the criminal standard.

## **Section A-112** Alteration of Rules, Operations Manual, Policies ~~Procedures, Guidance and Notices~~

- a. The Corporation shall provide details of any Rule and/or Operations Manual amendments in a Notice published to the Wwebsite. Where appropriate, the Corporation shall provide additional detail and reasoning on its determination to make such amendments. Rule and Operations Manual amendments shall take effect and be binding on the Corporation, Clearing Participants and other persons who have agreed to be bound by the Rules and Operations Manual on the relevant date specified by the Corporation in a Notice. Where the reason for any amendment is not manifest in the amended text, the Corporation will seek to provide an appropriate reasoned account of the amendment. Provided however, that the failure of the Corporation to provide any advance notice of Rules and Operations Manual amendments shall not affect the validity, force or effect of any rules change or of any action taken by the Corporation pursuant thereto.
- b. The Corporation shall be entitled, at its discretion, to make any Rule and/or Operations Manual amendments at any time and without consultation with Clearing Participants or any other Persons, where such Rule and/or Operations Manual amendments;
  - (i) ~~are~~ is of a minor nature and relates to matters of an administrative or commercial nature;
  - (ii) ~~are~~ is of a limited, technical nature, if a consultation is reasonably considered by the Corporation not to be appropriate;
  - (iii) ~~are~~ is considered by the Corporation to be necessary as a result of a Force Majeure/Emergency Event situation;

- (iv) ~~are~~ is required to ensure compliance by the Corporation or any Clearing Participant with Applicable Laws, relevant accounting standards, or the requirements of any Government Authority or statutory regulatory authority, or ~~are~~ is necessary or desirable to maintain the Corporation's status as a recognized and/or regulated ~~Clearing Agency clearinghouse~~ under *The Commodity Futures Act* (Manitoba) or any other legal or regulatory status it has under any other Applicable Law;
- (v) involves a technical or operational specification of any contract specification previously published in a Notice or found in one of the Corporation's policy or procedure documents which is not otherwise set out in the Rules or Operations Manual;
- (vi) involve the removal of an existing Contract Set or the addition of a new Contract Set; or
- (vii) are considered by the Corporation to be of an urgent nature (provided that the Corporation may consult Clearing Participants in relation to the continued applicability of the amendments after the urgent event or circumstances has concluded or ended), of a nature that would not affect significantly the rights of Clearing Participant or of a nature where a consultation would otherwise not be appropriate or necessary;

Provided that, in any such case, the requirements of Applicable Laws do not prohibit such amendments.

- c. In relation to the determination of an Event of Default, a Force Majeure Event or a Financial Emergency or, in the event that the Corporation is unable to convene a meeting of the Board sufficiently promptly in the circumstances, the President or his designate may make such determination or approval, as the case may be, provided that the Corporation shall convene a meeting of the Board as soon as practicable thereafter to ratify such determination or approval, rescind such determination or approval (only where, if rescission is desired, this is possible and practicable) or, where rescission is desired but not possible and practicable, to amend such determination or approval as appropriate.
- d. [reserved]
- e. [reserved]
- f. The Corporation may issue, amend or revoke interpretative guidance in relation to any aspect of the management of the Corporation, its action under the Rules or the Operations Manual, or the conduct of business of the Corporation, Clearing Participants or Customers at any time at its discretion and without prior consultation.
- g. The Corporation may issue Notices or amend or revoke the contents of Notices in connection with Clearing, the Rules or any action taken by it under the Rules at any time at its discretion and without prior consultation.

### **Section A-113 Termination**

- a. If at any time the Corporation decides to or must cease acting as a Clearing Agency, either generally, in relation to a class of Contracts (including following loss of any authorisation, status, approval or recognition from a Regulatory Authority that it is unable to continue its business or a particular business), it shall give advance notice of the proposed Withdrawal Date in accordance with the requirements of Applicable Law.

- b. If, at any Withdrawal Date, any affected Contracts have not been finally settled, the Corporation shall be entitled to terminate any or all such Contracts and require any such Contracts to be cash settled on terms specified by the Corporation.
- c. Section D-918 a. (i), (ii), (iii), (v), and (viii) and Section D-918 b., shall apply, *mutatis mutandis*, in relation to a termination of the Corporation's services, whether generally or in respect of a particular Contract, as applicable, in the event of any termination under this Rule. For such purposes, the term Termination Notice Time as used in Part D shall be read as referring to the time at which the Corporation issues a Notice relating to the withdrawal, the terms Termination Close-out Deadline Date and Termination Date shall be read as referring to the Withdrawal Date and the term Relevant Contract Category refers to the Sets of Contracts being withdrawn.

### **Section A - 114 Liability**

- a. Each Clearing Participant shall indemnify and hold harmless the Corporation against any and all losses, liabilities, damages, injuries, costs, claims, shortfalls and expenses (excluding any consequential losses, liabilities, damages, injuries, costs, claims, shortfalls or expenses) incurred or suffered by the Corporation or any of its officers or employees arising out of or in connection with any of the following:
  - (i) a breach (or an allegation made by the Corporation or any Governmental Authority of a breach) by such Clearing Participant of any of its obligations under these Rules, the Operations Manual, the Policies, its Clearing Participant Application/Agreement, or any Contract;
  - (ii) such Clearing Participant's conduct (excluding conduct attributed to a Clearing Participant solely as a result of the conduct of a Customer) excluding conduct which the Clearing Participant is obliged to perform and has performed in accordance with the Rules, Operations Manual, Policies, or its Clearing Participant Application/Agreement;
  - (iii) a breach by such Clearing Participant of any Customer Account Contract, agency relationship or other contract with its Customer or a failure to perform by such Clearing Participant in breach of any other obligation to such Customer (including, without limitation, any failure by such Clearing Participant in whole or in part to pass on or credit to any Customer equivalent performance under a Customer Account Contract or other contract with its Customer to that which such Clearing Participant has received under a Customer Account Contract from the Corporation where such failure constitutes a breach or failure to perform as aforementioned);
  - (iv) a breach (or an allegation made by the Corporation or any Governmental Authority of a breach) by the Clearing Participant of any Applicable Law,

Provided that a Clearing Participant shall not indemnify or hold harmless the Corporation or any of its officers or employees to the extent that any such loss, liability, damage, injury, cost or expense arises out of or in connection with:

- (1) a breach by the Corporation of any of its obligations under these Rules, the Operations Manual, the Policies, or any Contract; or
  - (2) fraud, bad faith, gross negligence or willful misconduct by the Corporation or any of its officers or employees.
- b. The provisions of this Section A-114 shall apply:

- (i) without prejudice to the liability of any other Person subject to the Rules or the Exchange Rules for the same conduct;
  - (ii) in the case of inconsistency with any other provision of the Rules, in priority to that other provision;
  - (iii) whether or not the Clearing Participant's Representative(s) are subject to the Rules; and
  - (iv) whether or not the Clearing Participant's Representative(s) can be conclusively identified (provided that it is established that the relevant conduct was in fact carried out by a Clearing Participant's Representative, albeit an unidentified Clearing Participant's Representative).
- c. Neither the Corporation nor any of its Representatives, its Affiliates or its Affiliates' Representatives shall be liable to any Clearing Participant or any other Person in respect of any loss, liability, damage, injury, cost or expense incurred or suffered by such Clearing Participant or Person, whether in contract, tort or restitution, as a fiduciary or under any other cause of action, arising out of or in connection with any of the following:
- (i) any suspension, restriction or closure of the Corporation or its services;
  - (ii) any failure or malfunction of or inability to use any systems, communication lines or facilities or technology supplied, operated or used (directly or indirectly) by the Corporation, the Exchange, or any Delivery Facility or the suspension, restriction or closure of the Exchange or a Delivery Facility;
  - (iii) any act or omission of the Exchange, a Delivery Facility, any Clearing Participant or any other third party including any error in relation to price data;
  - (iv) any Force Majeure Event affecting the Corporation (including, in relation to a delivery, a Force Majeure Event affecting a Person making or taking delivery on behalf of the Corporation);
  - (v) any dispute relating to the validity, existence or terms of any Contract;
  - (vi) the exercise (or failure to exercise) by the Corporation of any discretion or right conferred upon it pursuant to these Rules;
  - (vii) the exercise (or failure to exercise) by the Exchange of any discretion or right conferred upon it pursuant to the Exchange Rules (including, without limitation, in relation to error trades);
  - (viii) any indirect or consequential loss, liability, damage, injury, cost or expense or any loss of profit (whether direct or indirect);
  - (ix) any action in libel, defamation or slander in connection with the issue of any Default Notice, conduct of any proceedings relating to an Event of Default, the timing of termination of any Contracts or the manner in which or the price at which any Contracts are terminated following an Event of Default;
  - (x) the rejection of any application to become a Clearing Participant;
  - (xii) any action or inaction on the part of a Transferor or Transferee;
  - (xiii) in respect of a Contract subject to delivery:

- (1) the performance by the Corporation of its obligations of delivery under these Rules; or
- (2) any other loss, liability, damage, injury, cost or expense arising under the terms of a Contract in relation to delivery.

Unless, the relevant Clearing Participant gives notice of its loss, liability, damage, injury, cost or expense within seven (7) Business Days of the day on which the delivery obligations under these Rules were effective;

- (xiv) as a result of any action taken by it pursuant to the Rules of the Exchange on the basis that the Rules of the Exchange are to any extent invalid or *ultra vires* or that a determination or request made by the Exchange or any agreement made by the Exchange, is *ultra vires* or incompatible with the Rules of the Exchange;
- (xv) any express or implied representations or warranties in relation to the Corporation's Clearing Systems, including, but not limited to, representations or warranties of good title, merchantability and fitness for purpose or for a particular use;
- (xvi) any statement, representation, assurance or warranty of the Corporation or any other Person other than as expressly set out in the Rules, Operations Manual, Policies, the Contract Terms, or a Clearing Participant Application/Agreement; or
- (xvii) any action, suit or proceeding brought against the Corporation over one (1) year after the time that a cause of action, suit or proceeding has accrued.

provided that; neither this Rule nor any other provision of these Rules shall exclude or restrict the liability of the Corporation or any other Person for:

- (1) fraud, bad faith, gross negligence or willful misconduct;
- (2) personal injury or death resulting from negligence, recklessness, or an intentional act or omission;
- (3) obligations under Contracts (except that, other than as provided in the Rules, the Operations Manual and the Policies, the Corporation shall have no obligation to physically make or accept delivery of any Deliverable and shall have no liability arising out of the failure or lateness of another Clearing Participant (or its Transferor or Transferee) to physically make or accept any such delivery or make any such payment); or
- (4) any liability which in accordance with Applicable Laws cannot be excluded, to the extent such liability cannot lawfully be excluded.

d. Any possible action, suit or proceeding against the Corporation must be notified to the Corporation as soon as reasonably practicable, including all relevant details then known and supporting documentation.

e. Save for any liability which it cannot exclude pursuant to Applicable Laws, the Corporation shall not be liable pursuant to these Rules or any Clearing Participant Application/Agreement, to any Person who is not a Clearing Participant. Without prejudice to the generality of the foregoing, the Corporation shall not be liable (save for any liability which it cannot by law exclude) to any Transferor or Transferee (that is not the seller or buyer under a Contract, respectively) or to any Customer of a Clearing Participant.

### **Section A - 115 Force Majeure and similar events**

- a. Neither the Corporation nor a Clearing Participant shall be liable for any failure, hindrance or delay in performance in whole or in part of its obligations under these Rules or of any Contract if and to the extent that such failure, hindrance or delay arises as a result of a Force Majeure Event.
- b. On the occurrence of any Force Majeure Event (and, where the Force Majeure Event affects the Corporation, an affirmative vote of the Board at a quorate meeting recognising such Force Majeure Event):
  - (i) the Affected FM Party shall immediately notify the Corporation of the same (or, if the Affected FM Party is the Corporation, the Corporation shall issue a Notice in relation to the Force Majeure Event);
  - (ii) the Corporation shall be entitled to require any Contract affected by the event or circumstance to be performed in accordance with directions issued by the Corporation;
  - (iii) the Corporation shall be entitled to require any Clearing Participant to take such action as the Corporation may direct in respect of Contracts affected by the event or circumstance;
  - (iv) the Corporation shall be entitled to require Clearing Participant to comply with any directions issued by the Corporation regarding the performance of, or otherwise in respect of, such affected Contracts as are specified by the Corporation; and, upon receipt of such an invoice, settlement of all affected accounts shall be due immediately and shall be made forthwith in discharge of such Contracts;
  - (v) a Clearing Participant affected by a Force Majeure Event shall use all reasonable endeavors to mitigate the effects of the same upon its ability to perform its obligations to the Corporation and if the Corporation is affected by a Force Majeure Event, it shall use all reasonable endeavors to mitigate the effects of same upon its ability to perform such obligations to Clearing Participants; and
  - (vi) the Affected FM Party shall notify the Corporation immediately as soon as its ability to perform is no longer affected by the Force Majeure Event (or, if the Affected FM Party is the Corporation, the Corporation shall issue a Notice in relation to the cessation of the Force Majeure Event).
- c. If the Exchange determines that an excessive position or unwarranted speculation or any other undesirable situation or practice is developing or has developed which is affecting or capable of affecting the markets, the Corporation may take such action as is requested of it by the Exchange in respect of one or more Contracts.

### **Section A-116 Extension or Waiver of Rules**

- a. The performance by any Clearing Participant of any of its obligations under the Rules, Operations Manual, the Application/Agreement and/or Policies, or any Contract may be waived by the Corporation whenever in its discretion it considers that such waiver is necessary or in the best interests of the Corporation.
- b. Subject to sub-part c. of this Rule, the time fixed by the Rules, Operations Manual and/or Policies, for filing any report or other document, for submitting any information or for making transfers, deposits or payments may be extended by the Corporation whenever in its discretion it considers



that such extension is necessary or in the best interests of the Corporation. Any such extension may continue in effect after the event or events giving rise thereto.

- c. Any extension of the time for making transfers, deposits, payments or performance for any length of time longer than three (3) Business Days after such transfer, deposit, payment or performance is due must be approved, in advance, by the President or his designate, and provided further that the use of this power will be undertaken subject to any processes established pursuant to documents governing the internal governance of the Corporation.
- d. Any waiver of any right or consent given by the Corporation is only effective if it is in writing, applies only in the circumstances for which it is given, and shall not prevent the Corporation from subsequently relying on the relevant provision. No delay or failure to exercise by the Corporation of any of its rights or pursuing any of its remedies hereunder shall constitute a waiver. No single or partial exercise of any right or remedy by the Corporation shall prevent any further exercise of the same or any other right or remedy.
- e. If any extension of any length of time is approved in respect of any payment, deposit, transfer or performance under this Rule, any notice given to the Corporation prior to the end of such extension period shall be deemed not to have been given.
- f. The Corporation shall be entitled, without breach of these Rules, to delay the making of a payment to any Clearing Participant in respect of a Variation Margin payment in respect of all or any of a Clearing Participant's accounts on an intra-day basis without following the procedures set out in sub-parts a. to e. of this Rule, in circumstances in which:
  - (i) another Clearing Participant has, or other Clearing Participants have, been or will be, asked to make payment in respect of a Variation Margin call occurring at or around the same time;
  - (ii) that other Clearing Participant has, or those other Clearing Participants have, failed to pay the Corporation (which term for purposes of these Rules includes a request for payment or planned request for payment not yet being made, confirmed or due including for technical or operational reasons); and
  - (iii) the total amount of such failure or failures to pay exceeds the Original Margin for each House Account or Customer Account to which the unpaid call relates provided by the Clearing Participant or Clearing Participants that has or have failed to pay the Corporation.
- g. No right of the Corporation under this Rule shall be exercised so as to extend the time at which a payment to any Clearing Participant in respect of Variation Margin is otherwise due on any Business Day, in respect of all or any of a Clearing Participant's accounts, beyond the time immediately prior to the commencement of the daily payment cycle for the next following Business Day.

#### **Section A-~~117~~217.4 Confidential Information, Personal Information, and Disclosure**

All information received by the Corporation concerning;

- a. Transactions, Contracts, or past or current Open Contract Positions, past or current positions held by the Corporation for a Clearing Participant or for customers of a Clearing Participant;

- b. margin deposits or Guaranty Fund deposits, including amounts paid, dates paid, forms of deposits, bank wire information, and similar;
- c. deliveries made by or with a Clearing Participant or any of its Customers;
- d. financial information, including financial statements (whether audited or not), adjusted net capital calculations, financial questionnaires, and similar;
- e. any information that would generally be considered proprietary and/or confidential which is required to be provided by a Clearing Participant or customer of a Clearing Participant to the Corporation pursuant to any written agreement, the By-laws, Rules and/or Operations Manual of the Corporation; ~~and~~
- f. all Personal Information (as that term is as that term is defined in the *Personal Information Protection and Electronic Documents Act* R.S.C. 2000) pertaining to the employees, officers, directors, or customers of a Clearing Participant; and/or
- g. Any information that is determined to be confidential or personal under any Applicable Laws of Manitoba and/or Canada;

shall be held in confidence by the Corporation and accessed only by such employees of the Corporation which are required to access same and then only for the purposes required, and shall not be made known to any other Person, except as follows:

- (i) with the written consent of the Clearing Participant or customer involved;
- (ii) to the Manitoba Securities Commission or the US Commodity Futures Trading Commission as required by the statutes, rules, regulations, and/or regulatory orders the Corporation is subject to;
- (iii) pursuant to an order issued by a court of competent jurisdiction;
- (iv) to an exchange, clearinghouse, or self-regulatory organization that the Corporation has entered into a written Memorandum of Understanding or Information Sharing Agreement with for the purposes of compliance, market surveillance, and/or regulation;
- (v) to counsel for the Corporation;
- (vi) to the regulatory authority of any foreign jurisdiction in which the Corporation has been approved to conduct business, to the extent that the consent of the Corporation to make such disclosure was a condition of such approval and in such case the Corporation shall advise the Clearing Participant or customer of the Clearing Participant in writing of the extent of the disclosure and the stated purpose for the provision of same;
- (vii) to any entity, including an affiliated corporation (as that term is defined in *The Corporations Act (Manitoba)*) which the Corporation has entered into a written agreement with for the purposes of the provision of services relative to the business of the Corporation. Information provided to the affiliated corporation, including Personal Information, may be provided to foreign entities and such Information will be subject to the laws of the foreign jurisdictions in which such foreign entities reside; ~~and~~
- (viii) in the case of information concerning any Customer, to any Clearing Participant with a relationship with such Customer, in respect of one of its Customer Accounts; and/or

(xix) to any other person, to the extent and pursuant to such terms and conditions as the Board, from time to time, may deem appropriate.

#### **Section A-118 247.2 Confidential Information of Corporation**

All information provided to a Clearing Participant which is designated, in writing, as Confidential by the Corporation, shall be held in confidence and provided only to such officers, directors and/or employees of the Clearing Participant as are required to access same and then only for the purposes required, except as follows:

- a. with the written consent of the Corporation;
- b. to a statutory regulatory authority with jurisdiction over the Clearing Participant, in which case the Clearing Participant provide written notification to the Corporation simultaneously with the provision of the Confidential Information to the said statutory regulatory authority, and in such instance, the Clearing Participant shall also provide a short explanation of the reason(s) for which the Confidential Information has been sought;
- c. pursuant to an order issued by a court of competent jurisdiction, and in such case, the Clearing Participant shall provide written notification to the Corporation together with a copy of the relevant order, unless the order expressly provides that the Corporation cannot be given notice of same;
- d. to its own counsel or accounting professional(s), provided that such persons are given a copy of this Rule and made aware of the restrictions set out herein.

#### **Section A-119 A-220 Receipt of Documents**

- a. An item transmitted to a Clearing Participant by e-mail, facsimile, or other Electronic Communication method, shall be deemed received by the Clearing Participant when transmitted.
- b. Every Clearing Participant shall ensure that:
  - (i) The details of Electronic Communication methods (such as e-mail addresses and fax numbers) on file with the Exchange are kept current and up to date.
  - (ii) A representative of the Clearing Participant routinely checks for Electronic Communication from the Exchange at such intervals as may be necessary for the Clearing Participant to perform all obligations and duties required by these Rules.

#### **Section A-120 224 Documents and Other Items Submitted to the Corporation**

- a. All reports, documents, papers, statements, notices, cheques, drafts, and other items required by the Rules to be submitted to the Corporation in other than electronic form, shall, except as may otherwise be specifically prescribed by the Rules, be delivered to the office of the Corporation or its agent at such times, on such forms and in such manner as the Corporation shall prescribe. Each item delivered to the Corporation shall clearly indicate the identity of the Clearing Participant making such submission.
- ~~b. Every Clearing Participant shall be required to use an authorization stamp, in a form approved by the Corporation, in lieu of manual signatures, on such reports, documents, papers, statements, notices, and other items that are submitted in physical form, as the Corporation shall from time to time prescribe.~~

- ~~c. The Corporation may provide each Clearing Participant with two authorization stamps at no charge. Any additional authorization stamps requested by a Clearing Participant will be charged based upon the Corporation's costs.~~
- ~~d. Each Clearing Participant shall be bound by all such reports, documents, papers, statements, notices and other items as the Corporation shall prescribe bearing the Clearing Participant's authorization stamp.~~

#### **Section A-~~121~~ 223 Notices and Reports**

- a. (i) Unless otherwise specifically provided for in any other Rule, the Corporation may give notice to a Clearing Participant in such manner as the Corporation deems appropriate in the circumstances of the notice being given, including by telephone, by fax and by Electronic Communication.
- (ii) Each Clearing Participant is required to update the Corporation with all required contact information for its Responsible Persons and operational contacts. The Corporation may rely upon the information provided to it by Clearing Participants to provide notices in this Section. ~~shall provide to the Corporation the names of at least two individuals and their positions for the purposes of telephone communications. The Corporation shall attempt to contact such individuals (or any other person at the Clearing Participant holding such position) (the "Contacts") in connection with all telephone communications during business hours. If the Contacts are not available, the Corporation shall be entitled, during business hours, to provide the notice to any person answering the telephones at the Clearing Participant.~~
- (iii) Telephone notification shall constitute full and proper notice notwithstanding the absence of any written or electronic confirmation of same.
- (iv) "Business hours" shall mean from 8:00 a.m. to 4:00 p.m. (CT) on any Business Day.
- b. The Corporation may from time to time prescribe the form of reports to be given by the Corporation to Clearing Participants. These reports may be sent by hand delivery, fax or Electronic Communication.
- c. Each Clearing Participant shall have an obligation to review promptly each report, notice, instruction, data or other information made available by the Corporation through Electronic Communication or otherwise. Each Clearing Participant shall be responsible for advising the Corporation by telephone (confirmed in writing), fax or hand delivered notice on the Business Day on which a report is deemed to have been received or the Expiration Date of any item requiring change for any reason and the failure to report any such errors by such time shall constitute a waiver of the Clearing Participant's right to have such item changed.
- d. Upon the Corporation delivering or making available a notice or report as set out herein the Corporation's obligation to furnish, issue or deliver such notice or report shall have been fulfilled.
- e. Subject to this Rule:
- (i) a notice given by telephone shall be deemed to have been received by a Clearing Participant as of and to be effective from the time of the telephone call ~~to an individual or as recorded in the relevant Notice File,~~ unless the notice or another Rule specifically provides otherwise;
- (ii) a notice given or report sent by fax ~~shall be addressed to one or more of the Contacts and~~ shall be deemed to have been received as of and to be effective from and after the time of

the fax on the day it is sent, unless the notice or another Rule specifically provides otherwise;

- (iii) a notice or report given by Electronic Communication ~~may be addressed to one or more of the Contacts and~~ shall be deemed to have been received on and to be effective as of the day it is sent, unless the notice or another Rule specifically provides otherwise; and
  - (iv) a notice given by mail ~~shall be addressed to one or more of the Contacts and~~ shall be deemed to have been received and to be effective on the fifth day after mailing and a notice given or report sent by hand delivery ~~shall be addressed to one or more of the Contacts and~~ shall be deemed to have been received and to be effective on the earlier of when it actually is received by the Clearing Participant and the next Business Day following the date it was sent.
- f. Where a notice is given or a report is sent by any means out of business hours or on a day that is not a Business Day, the notice or the report, as the case may be, shall be deemed to have been received on the earlier of:
- (i) the time the Corporation confirms it has actually been communicated to ~~a responsible individual with~~ the Clearing Participant; and
  - (ii) the beginning of the next following Business Day.

For greater certainty, where a notice is given or report is received prior to 8:00 a.m. (CT) on a Business Day, it shall be deemed to have been received not later than 8:15 am (CT) on that Business Day. ~~The Corporation may maintain a list of emergency contact telephone and/or fax numbers of not less than two responsible individuals employed by each Clearing Participant with whom the Corporation can communicate out of ordinary business hours if the Corporation determines such communication is necessary or advisable.~~ It shall be the responsibility of each Clearing Participant to ensure that ~~the individuals so selected~~ its Responsible Representatives can be readily contacted outside of ordinary business hours. ~~, and that the contact numbers for them are kept current.~~

#### Section A-122 Conversion to other Eligible Currency

The Corporation shall be entitled to direct Approved Financial Institutions to convert any cash standing to the debit or credit of any Clearing Participant into such other Eligible Currency, as the Corporation, in its discretion, determines is appropriate or expedient. Any such conversion shall be effected at a reasonable exchange rate determined by the Corporation at its discretion.

#### Section A-123 Priority of Corporation Records

Whenever the records of the Corporation and the records of Clearing Participants are not in agreement, the records of the Corporation shall take priority.

**RULE A-2**  
**CLEARING PARTICIPANT REQUIREMENTS**

**Section A-201 General**

- a. Confirmation of Clearing Participant status must be obtained from the Corporation prior to carrying out any of the activities of a Clearing Participant.
- b. Clearing Participant status with the Corporation does not entitle a Clearing Participant to any shareholding or other similar interest in the Corporation or in any of the Corporation's Affiliates. Nothing in these Rules is intended to, or shall be deemed to, establish any partnership or joint venture between any Clearing Participant, the Corporation, and/or any other Person.

**Section A-202 Requirements for Clearing Participant Status**

- a. Clearing Participants must be registered as Participants in the class of Direct Access Trading Participant with the Exchange;
- b. Clearing Participants must be Canadian companies, partnerships or co-operatives. Individuals are not eligible for Clearing Participant status;
- c. Clearing Participants must, at all times, adhere to the By-laws and Rules of the Exchange, the By-laws and Rules of the Corporation, the requirements of *The Commodity Futures Act* C.C.S.M. c. C152 and the rules of all self-regulatory organizations of which they are a member;
- d. Clearing Participants must have, in the judgement of the Corporation, such qualities of financial responsibility and capacity, operational capacity, experience, business integrity, reputation and competence as the Corporation, in its discretion, may consider necessary and appropriate to be a Clearing Participant;
- e. Each Clearing Participant must have such facilities, equipment, operational capability, personnel, hardware and software systems as are capable of supporting the proper performance of its business as a Clearing Participant, including such IT links to the Corporation and software as, in the judgment of the Corporation, are necessary;
- f. If it is an FCM Clearing Participant, the Clearing Participant must be a member of IIROC and registered with at least one Canadian provincial securities commission as an FCM/broker-dealer or equivalent registration status;
- g. Clearing Participants must hold one (1) or more Accounts at an Approved Financial Institution(s);
- h. Clearing Participants must appoint two (2) or more individuals who are authorized signatories for the firm and who have the corporate authority to take all action necessary for conducting business with the Corporation. These actions will include all required decisions and the termination of trading access to Customers as and when required. These individuals will be required to satisfy such criteria as the Corporation may require. These individuals shall be designated as "Responsible Representative" and will be listed as same on the Website. One Responsible Representative must be available on every Business Day between such hours as may be specified from time to time by the Corporation. Proof of the authorization of the individuals by the Clearing Participant firms, will be in such form as the Corporation may from time to time require. Full contact details for the Responsible Representatives shall be filed with the Corporation and the Clearing Participant must ensure that the required information is kept up to date at all times.
- j. Clearing Participants must also appoint no fewer than two (2) operational contacts, each of whom

shall have the authority to act on its behalf with respect to all day-to-day clearing operational matters. Full contact details for the operational contacts shall be filed with the Corporation and the Clearing Participant must ensure that the required information is kept up to date at all times.

~~A representative of the Clearing Participant authorized to sign all instruments and take all action necessary for conducting business with the Corporation shall be available on every Business Day between such hours as may be specified from time to time by the Corporation. Such representative shall be subject to the approval of the Corporation and shall be authorized to act on behalf of the Clearing Participant by a written power of attorney in the case of a partnership or by a resolution of the board of directors in the case of a corporation. Such power of attorney or resolution, as the case may be, shall be in a form approved by the Corporation.~~

- k. Every Clearing Participant must have systems and controls in place in order to ensure that:
- (i) its internal affairs are organised and controlled in a responsible and effective manner;
  - (ii) it has adequate risk management systems that are applied appropriately;
  - (iii) its internal record-keeping is adequate;
  - (iv) its Responsible Representatives and operational contacts are suitable, adequately trained and properly supervised;
  - (v) all clearing business conducted by it complies with its obligations under the Rules and Applicable Laws;
  - (vi) it is able continuously to monitor communication facilities for receipt of communications from the Corporation; and
  - (vii) it promptly reviews Notices and other communications delivered or made available to it or to its Representatives by the Corporation;
- l. If a Clearing Participant is subject to Control by any other Person or Persons, the Clearing Participant may be required, at the sole discretion of the Corporation, to have on file with the Corporation, a Guarantee in such form as the Corporation may prescribe from such other Person or from one or more of such other Persons (as the Corporation may specify) guaranteeing payment of all amounts owing by the Clearing Participant to the Corporation.

### **Section A-203 Categories Classes of Clearing Participants**

There are two categories of Clearing Participants;

- a. Futures Commission Merchants (FCMs); and
- b. General.

### **Section A-204 FCM Clearing Participants**

FCM Clearing Participants are entitled to clear their proprietary business and clear customer accounts and grant access to the Trading System by issuing SMAs or providing LMA access, all as provided for in these Rules and the Rules of the Exchange. ~~issue Clearing Authorizations in the form prescribed by these Rules.~~ FCM Clearing Participants must adhere to all Exchange Rules for Futures Commission Merchants and must adhere to all Applicable Laws, applicable statutory requirements and meet all requirements of any self-regulatory organizations they are members of. ~~SRO requirements.~~

## Section A-205 General Clearing Participants

General Clearing Participants are entitled to clear Exchange Transactions for ~~their~~ its own account(s). If a General Clearing Participant is registered in the category of Merchant with the Exchange it is also entitled to clear Exchange Transactions for ~~their Affiliates~~ its ~~Affiliated and/or Associated companies~~ which are registered Participants with the Exchange, upon completion of the appropriate documentation and filing same with the Corporation.

## Section A-206 Admission Procedures

- a. All prospective Clearing Participants shall file the standard form of Clearing Participant Application/Agreement and ancillary documents as prescribed by the Corporation from time to time. The Board shall make the final determination as to whether an applicant will be approved for Clearing Participant status.
- b. The Corporation will appoint an Officer to review all Clearing Participant Application/Agreements. That Officer may, but is not obligated to, examine the books and records of any applicant, and/or take such evidence as he/she may deem necessary, including interviewing employees, officer and directors of the applicant and attending to conduct an on-site review of the offices of the applicant, or employ any other means he/she may deem desirable or appropriate to ascertain relevant facts bearing upon the applicant's qualifications.
- c. After conducting its review, the Officer will determine to approve or disapprove an applicant.
- d. If the determination of the Officer is to accept the Application/Agreement the matter will proceed to the Board. If the Board does not agree with the determination to approve the applicant, it must first provide the applicant with an opportunity to be heard. If the determination of the Officer is to disapprove the application/agreement, he/she must provide notice to the applicant of the proposed recommendation and the grounds therefore, and the applicant must be provided with an opportunity to be heard.
- e. In the event that an applicant is entitled to an opportunity to be heard, it will be provided with no less than ten (10) ~~days~~ Business Days notice. The applicant may attend the hearing in person or by conference call and may be represented by counsel, at its cost.
- f. At a hearing, the Board shall hear from both Staff of the Corporation, and the applicant. Both parties will be afforded an opportunity to be heard and to present evidence and to cross-examine the evidence presented by the other party. The Board shall provide written notice of its decision, accompanied by a statement of the grounds thereof, to the applicant and to Staff of the Corporation. The decision of the Board will be final.
- g. If an applicant's Application/Agreement is denied by the Board the applicant may not submit a new application/agreement for six (6) months.

## Section A-207 Annual Clearing Participant Fee

- a. Clearing Participants shall pay the applicable pro-rata portion of the Annual Clearing Participant Fee before beginning to exercise any rights of Clearing Participant status. The Annual Clearing Participant fee is payable annually, in advance, no later than December 31 in each year.
- b. The Annual Clearing Participant fee is:
  - (i) For FCM Clearing Participants CAD \$5,000.00 (CDN.)
  - (ii) For General Clearing Participants CAD \$2,500.00 (CDN.)



- c. The Annual Clearing Participant fee is not refundable upon a Clearing Participant's withdrawal from Clearing Participant status, whether such withdrawal is voluntary or involuntary.

#### **Section A-208 Clearing Authorization and Guaranty Forms / System Managed Accounts**

- a. Clearing Participants may only grant access to the Trading System in accordance with the Exchange Rules.
- b. By entering into Clearing Authorization and Guaranty form(s) a Clearing Participant is expressly agreeing, inter alia;
- (i) to accept for clearance all Transactions effected by the guaranteed Participant including all employees and customers of that Participant if an FCM, and all employees and proprietary traders of the Participants, on or subject to the Rules of the Exchange, when and as provided in the Rules of the Exchange or these Rules. A Clearing Participant is responsible for all Transactions effected by the third parties it has entered into Clearing Authorization and Guaranty form(s) for, regardless of how they are transacted.
  - (ii) to pay any claim by any present or future Participant against the guaranteed Participant arising from any order or Transaction for the purchase, sale, delivery, exercise or expiration of a futures contract or option executed, or to be executed, on or subject to the Rules of the Exchange; and
  - (iii) to comply on a timely basis with the provisions of the Rules and to furnish such information as the Exchange and/or the Corporation may from time request.
- c. Clearing Participants registered in the category of General which are registered with the Exchange in the category of Merchant Participants may apply to guarantee the activities of Exchange Participants who are Affiliated ~~and/or Associated~~ Companies of the Merchant Clearing Participant. The guarantee shall be in the form required by the Exchange from time to time. By entering into a Clearing Authorization and Guaranty with and for their Affiliated ~~or Associated~~ Companies the Clearing Participant is agreeing inter alia;
- (i) to pay all fees and monies owed to either the Exchange and/or the Corporation by the Affiliated ~~and/or Associated~~ Company, arising under the Rules of the Exchange or the Rules;
  - (ii) that it will accept for clearance all Transactions effected by the Affiliated ~~and/or Associated~~ Company on or subject to the Rules of the Exchange or the Rules. A Clearing Participant is responsible for all Transactions of the guaranteed Affiliated ~~and/or Associated~~ Company regardless of how they are transacted.
  - (iii) to comply on a timely basis with the provisions of the Rules and to furnish such information as the Exchange may from time to time request.
- d. By issuing SMAs a Clearing Participant is expressly agreeing, inter alia;
- (i) to accept for clearance all Transactions effected through the SMA. A Clearing Participant is responsible for all Transactions effected through the SMAs it has issued, regardless of how they are transacted.
  - (ii) to pay any claim arising from any order or Transaction effected through the SMAs it has issued, including claims for the purchase, sale, delivery, exercise or expiration of a

futures contract or option executed, or to be executed, on or subject to the Rules of the Exchange; and

- (iii) to comply on a timely basis with the provisions of the Rules and to furnish such information as the Exchange and/or the Corporation may from time to time request.
- e. By permissioning ICE Block access to an entity, a Clearing Participant is expressly agreeing, inter alia;
- (i) to accept for clearing and be responsible for all transactions entered into ICE Block.
  - (ii) to pay any claim arising from any order or transaction entered into ICE Block, including all claims for the purchase, sale, delivery, exercise or expiration of a futures contract or options contract executed, on or subject to, the Rules of the Exchange; and
  - (iii) to comply on a timely basis with the provision of the Rules and to furnish such information as the Exchange and/or the Corporation may from time to time request.

#### **Section A-209 Notifications by Clearing Participants**

- a. In addition to any other notification requirements in these Rules, including the requirements of Section A-303, each Clearing Participant shall notify the Corporation by email, without delay, providing full particulars known to it:
- (i) in relation to any change of Control, as soon as it becomes aware of that change or proposed change of Control, provided that it is not prevented from disclosing the change of Control by Applicable Laws;
  - (ii) of an Insolvency affecting it or any of its Group Companies;
  - (iii) of any Event of Default affecting it; and/or
  - (iv) of any breach by it of an Applicable Law relating to its status and performance as a Clearing Participant, or, of any of the Rules, including full particulars of the breach.

#### **Section A-209 Non-Conforming Clearing Participant**

- ~~a. A Clearing Participant which is or has any reason to believe that it may become insolvent or unable to meet its obligations shall immediately notify the Corporation of the situation by telephone and shall provide full particulars of the situation. The notification shall be confirmed by the Clearing Participant in writing, sent to the Corporation within eight (8) hours of the verbal notification.~~
- ~~b. A Clearing Participant who, in the judgement of the Corporation or pursuant to notification to the Corporation under Subsection (a), is or may become insolvent or unable to meet its obligations, becomes a Non-Conforming Clearing Participant.~~
- ~~c. Without limiting the application of this Rule, any one of the following events, whether actual or anticipated by the Corporation, constitutes a reasonable ground for the Corporation to determine, in its sole discretion, that a Clearing Participant is a Non-Conforming Clearing Participant:~~
- ~~(i) The breach of any term, eligibility, qualification, standard, or condition of the Clearing Participant Application/Agreement or any other violation of these Rules;~~

- ~~(ii) The breach of a rule of, or obligation to, any clearing agency, any exchange, any statutory regulatory authority, the Exchange, CDS, and/or any self-regulatory organization that the Clearing Participant is subject to;~~
  - ~~(iii) The refusal of an application for participant status, breach of the terms of participant status or contractual agreement, or suspension, termination or expulsion from membership of any exchange, of CDS, of any self-regulatory organization, or of any other exchange or clearing agency;~~
  - ~~(iv) The refusal of a licence, breach of the terms of a licence or withdrawal or suspension of any such licence by any statutory regulatory authority;~~
  - ~~(v) contemplated, threatened, or actual action by a statutory regulatory authority, a court of justice or administrative authority against or in respect of the Clearing Participant under any provision or process of law or regulation;~~
  - ~~(vi) the default in any payment, deposit, delivery, or acceptance of delivery required or payable under the Application/Agreement or these Rules;~~
  - ~~(vii) the event that an order, arrangement, proposal, distress or execution is presented, made or approved in any jurisdiction to or by a court of competent jurisdiction relating to the bankruptcy, insolvency, or winding up of the Clearing Participant or the appointment of an administrator, receiver, manager, trustee, or person with similar power in connection with respect to the Clearing Participant;~~
  - ~~(viii) the determination, on reasonable grounds by the Corporation, that the Clearing Participant is in such financial or operating condition that its continuation as a Clearing Participant in good standing would jeopardize the interests of the Corporation or other Clearing Participants;~~
  - ~~(ix) any of the conditions set out in paragraphs (i) to viii) as they apply to an Affiliated Company of a Clearing Participant;~~
  - ~~(x) the results of any special examination conducted in accordance with these Rules;~~
  - ~~(xi) such other event as the Board or, if time does not permit action by the Board, the Corporation, in its sole discretion, reasonably determines to constitute reasonable grounds for such determination.~~
- ~~d. If a Clearing Participant is late in making any payment required, the Corporation may deem that Clearing Participant a Non-Conforming Clearing Participant. In addition, the Board may take disciplinary measures against the Non-Conforming Clearing Participant.~~
- ~~e. Except where the Corporation has been notified under Subsection (a), the Corporation shall, in writing or by telephone, notify a Clearing Participant that it has become a Non-Conforming Clearing Participant. The Corporation may also, in its sole discretion, notify the Board, all Clearing Participants, the Exchange, the appropriate self-regulatory organization or statutory regulatory authorities that the Clearing Participant is a Participant of, the statutory regulatory authorities of the Corporation, and such other Entities as the Corporation may consider appropriate.~~
- ~~f. The Corporation can revert the status of a Non-Conforming Clearing Participant to a Clearing Participant in good standing if the Clearing Participant resolves, to the satisfaction of the Corporation, the issue(s) which led to its Non-Conforming status.~~

## Section A-210 Suspension

- a. The Board may suspend a Clearing Participant, whether or not it has it has been determined to have had an Event of Default, ~~been deemed to be a Non-Conforming Clearing Participant in accordance with Rule A-209~~, taking into consideration whether the suspension may protect the integrity of the market and/or the protection of the Corporation. In the event there is insufficient time to call a Board meeting, the President or his designate may suspend a Clearing Participant provided the President notifies the Board in writing within eight (8) hours.
- b. Upon such suspension, the Corporation shall cease to act for the suspended Clearing Participant. The Board may, as an alternative, determine that it is in the public interest or in the interest of the Corporation that the Corporation should continue to act for the suspended Clearing Participant in certain capacities, including to clear Exchange Transactions but on such terms and conditions as the Board may determine, including but not limited to, requiring that auditors acceptable to the Corporation, should regulate and generally supervise the operations of the Clearing Participant, as they relate to its activities or performance as a Clearing Participant, for such period and in such manner as the Corporation may direct. Any appointments, work, report, examination or supervision required by the Board pursuant to this Rule shall be conducted at the expense of the suspended Clearing Participant involved.
- c. The suspension may be total or may be for any specific function or functions.
- d. The Board may lift the suspension of a Clearing Participant if the Corporation, in its sole discretion, determines that the Clearing Participant has corrected the situation(s) which caused the Corporation to suspend the Clearing Participant in such a manner that it is unlikely to occur again.
- e. A suspended Clearing Participant shall remain liable to the Corporation for all obligations, costs and expenses, including all Margin Deposit requirements, including calls whether occurring before or after suspension, and other requirements, arising out of, or in connection with, such Clearing Participant's positions, and shall cooperate fully with the Corporation in respect of all matters arising out of, or relating to, the settling of or dealing with such positions.

## Section A-211 Notice of Suspension to Clearing Participants

Upon the suspension of a Clearing Participant, the Corporation shall notify the suspended Clearing Participant, all other Clearing Participants, the Exchange, and the suspended Clearing Participant's applicable self-regulatory organizations and statutory regulatory authorities, the statutory regulatory authorities of the Corporation and such other Entities as the Corporation may consider appropriate. Such notice may include information, in general terms, on how pending Exchange Transactions, Open Positions, tendered Exercise Notices or Tender Notices, Exercised Positions, Assigned Positions, and other pending matters will be affected, what steps are to be taken in connection therewith, and the right of the suspended Clearing Participant to appeal the suspension before the Board.

## Section A-212 Appeal of Suspension - for suspensions of Clearing Participant other than for an Event of Default

This section is applicable only to Clearing Participants which are suspended for a matter which does not involve an Event of Default.

- a. A suspended Clearing Participant shall receive from the Corporation a written statement of the grounds for its suspension, and shall have the right to appeal its suspension within five (5) Business Days from the effective date of the suspension.

- b. In order to appeal the decision the suspended Clearing Participant (the “Appellant CP”) must file, by email, a written notice of appeal in which all details of the ground for appeal are included.
- c. The Board shall give the Appellant CP the opportunity to be heard as promptly as possible, and in no event shall the hearing be set more than eight (8) Business Day after the filing of the notice of appeal.
- d. The Appellant CP shall be notified of the time, place and date of the hearing not less than three (3) Business Days in advance of the hearing date.
- e. The Appellant CP shall be afforded an opportunity to be heard and to present evidence on its own behalf and may, if it so desires, be represented by counsel at its cost.
- f. As promptly as possible after the hearing, the Board shall affirm or reverse the suspension, and then instruct the Secretary of the Corporation to notify the Appellant CP in writing of the decision. If the decision is to affirm the suspension, the Appellant CP shall be given a written statement of the grounds thereof.
- g. The filing of an appeal of a suspension or an appeal from the decision of the Board shall not impair the validity or stay the effect of the suspension appealed from.
- h. The reversal of a suspension shall not invalidate any acts of the Corporation taken prior to such reversal pursuant to such suspension and the rights of any Person which may arise out of any such acts shall not be affected by the reversal of such suspension.
- i. An Appellant CP whose appeal has been denied by the Board may appeal to the Manitoba Securities Commission.

#### **Section A-213 Termination of Clearing Participant Status**

- a. The Corporation shall be entitled to terminate the Clearing Participant status of any Clearing Participant, upon written notice to the Clearing Participant:
  - (i) Following the occurrence of any event of Default affecting that Clearing Participant;
  - (ii) As a result of disciplinary proceedings brought against that Clearing Participant under Section A-5;
  - (iii) Following any material and un-remedied breach by the Clearing Participant of these Rules;
  - (iv) Upon such Clearing Participant ceasing to meet, or being unable to satisfy the Corporation that it is able to meet, any of the Clearing Participant criteria set out in, or pursuant to, Section A-202;

In each case with such termination taking effect no less than thirty (30) Business Days after the date of service of the notice.

- b. Rule D-918 a. (i), (ii), (iii), (v), (viii) and b., shall apply, *mutatis mutandis* following service of a notice of termination by the Corporation under Rule A-213 a.(ii) to (iv).
- c.
  - (i) A Clearing Participant shall be entitled to terminate its Clearing Participant status with the Corporation upon service of a Termination Request to the Corporation;

- (1) taking effect no less than thirty (30) Business Days after the date of the Termination Request time; or
    - (2) pursuant to Rule D-917 c.
  - (ii) The Clearing Participant status of a Clearing Participant shall terminate automatically upon the occurrence of an Insolvency in respect of the Corporation. In any such circumstances, Section D-912 applies.
- d. Section D-918 a. (ii), (iv), (v), (viii) and b. shall apply, *mutatis mutandis*, following service of a Termination Request under Section A-213 c. (i) (1). Unless it served such notice during a Cooling-Off Termination Period, a Clearing Participant that serves a Termination Request shall be liable immediately upon service of the Termination Request to pay the Corporation Assessment Contributions of an amount equal to three (3) times its required Guaranty Fund Contribution (as calculated prior to the time of the Cooling-off Trigger Event) such amounts to be held as Permitted Cover until the Termination Date and applied only as permitted in accordance with Part D of these Rules. A Clearing Participant that has served a Termination Request and made such payments shall not be liable for any further replenishments of its Guaranty Fund Contribution or Assessment Contributions, regardless of how many Events of Default take place. Any reference in these Rules to Assessment Contributions being called or to Guaranty Fund Contributions being replenished or applied, in respect of a Clearing Participant which has provided such Permitted Cover to the Corporation under this Rule, shall be interpreted as a reference to the Permitted Cover in question being similarly applied.
- e. The Corporation will issue a Notice promptly following any termination of Clearing Participant status of a Clearing Participant specifying the name of the Clearing Participant affected. The Corporation may, at its discretion, publish a copy of any Termination Request or other termination notice.

**Terminations of Clearing Participant status following suspensions under Section A-210**

- ~~(i) The Board shall, at its next meeting following the calendar month in which a Clearing Participant is suspended, or if an appeal is heard pursuant to Section A-212, following the calendar month in which the Board has affirmed a decision to suspend, lift the suspension or terminate the Clearing Participant status of a suspended Clearing Participant.~~
- ~~(ii) A suspended Clearing Participant shall be given the opportunity to be heard by the Board before its membership is terminated.~~
- ~~(iii) No less than five (5) days before the meeting of the Board at which the termination of a suspended Clearing Participant is to be considered, the Corporation shall give to the suspended Clearing Participant notice in writing of the meeting and a summary of the reasons for the proposed termination.~~
- ~~(iv) The Board and the suspended Clearing Participant may mutually agree on a variation of such notification and meeting date.~~
- ~~(v) The Board shall conduct the hearing on such basis as it deems appropriate, provided that it accords the suspended Clearing Participant and Staff of the Corporation with an opportunity to be heard, to present relevant evidence, and to cross-examine the evidence presented by the other party.~~

~~(vi) The suspended Clearing Participant shall cease to be a Clearing Participant as of the date and hour specified in the written decision of the Board. The decision of the Board shall be final.~~

~~(vii) The Corporation shall notify the statutory regulatory authorities which have jurisdiction over the Corporation when a meeting of the Board is called to authorize the termination of the membership of a suspended Clearing Participant.~~

~~Notices: The Corporation shall promptly notify other Clearing Participants, the Exchanges, the suspended Clearing Participant's applicable self-regulatory organization(s) or regulatory agency, the regulatory agency(ies) of the Corporation and such other as the Corporation may consider appropriate, as to the decision of the Board on matters of termination. The notice may be published to the website.~~

#### **Section A-214 ~~[reserved]~~ Voluntary Withdrawal**

~~a. A Clearing Participant, which shall include a Non-Conforming Clearing Participant (whether or not suspended), may at any time notify the Corporation in writing of its withdrawal as a Clearing Participant. and shall cease to be a Clearing Participant thirty (30) days following said notification.~~

~~b. The Corporation shall promptly notify the Board, the other Clearing Participants, the Exchange(s), the suspended Clearing Participant's applicable self-regulatory organization or statutory regulatory authorities, the statutory regulatory authorities of the Corporation and such other Persons as the Corporation may consider appropriate, that has received notice of the Clearing Participant's withdrawal from membership in the Corporation and the effective withdrawal date. A notice shall be published to the website.~~

#### **Section A-215 Transfer/Survival of Obligations**

b. A Clearing Participant may not allocate or transfer any rights or obligations under any Transaction confirmed in its name except as otherwise expressly provided in these Rules or with the prior consent of the Corporation.

b. The liabilities and obligations of a Clearing Participant to the Corporation and to other Clearing Participants, and of the Corporation and other Clearing Participants to the Clearing Participant, arising from its Clearing Participant status shall survive the suspension, termination or withdrawal of the Clearing Participant's membership as though the former Clearing Participant were still a Clearing Participant.

#### **Section A-216 Reinstatement of Clearing Participant status**

a. A Clearing Participant which has withdrawn as a Clearing Participant or had its Clearing Participant status ~~suspended and~~ terminated ~~for reasons other than as an Event of Default,~~ may at any time be considered for reinstatement by the Board provided that the Clearing Participant, if it is then eligible for Clearing Participant status, re-applies to become a Clearing Participant, pays any entrance or reinstatement fee determined by the Board, meets the standards and qualifications for Clearing Participant status, demonstrates to the satisfaction of the Board that it has discharged all of its liabilities and indebtedness to the Corporation and the other Clearing Participants, and its application for Clearing Participant status is accepted by the Board.

b. The Board may, in its sole discretion and on terms and conditions determined by the Board, approve or reject the new application for Clearing Participant status from a terminated or withdrawn Clearing Participant.

**[Moved to Rule A-117] Section A-217.1 Confidential Information, Personal Information, and Disclosure**

All information received by the Corporation concerning;

- a. ~~past or current positions held by the Corporation for a Clearing Participant or customers of a Clearing Participant;~~
- b. ~~margin deposits or Guaranty Fund deposits, including amounts paid, dates paid, forms of deposits, bank wire information, and similar;~~
- d. ~~financial information, including financial statements (whether audited or not), adjusted net capital calculations, financial questionnaires, and similar;~~
- d. ~~any information that would generally be considered proprietary and/or confidential which is required to be provided by a Clearing Participant or customer of a Clearing Participant to the Corporation pursuant to any written agreement, the By-laws, Rules and/or Operations Manual of the Corporation; and~~
- e. ~~all Personal Information (as that term is as that term is defined in the *Personal Information Protection and Electronic Documents Act* R.S.C. 2000) pertaining to the employees, officers, directors, or customers of a Clearing Participant;~~

~~shall be held in confidence by the Corporation and accessed only by such employees of the Corporation which are required to access same and then only for the purposes required, and shall not be made known to any other Person, except as follows:~~

- ~~(i) with the written consent of the Clearing Participant or customer involved:~~
  - ~~(ii) to the Manitoba Securities Commission or the US Commodity Futures Trading Commission as required by the statutes, rules, regulations, and/or regulatory orders the Corporation is subject to;~~
- ~~(iii) pursuant to an order issued by a court of competent jurisdiction;~~
- ~~(iv) to an exchange, clearinghouse, or self-regulatory organization that the Corporation has entered into a written Memorandum of Understanding or Information Sharing agreement with for the purposes of compliance, market surveillance, and/or regulation;~~
- ~~(v) to counsel for the Corporation;~~
- ~~(vi) to the regulatory authority of any foreign jurisdiction in which the Corporation has been approved to conduct business, to the extent that the consent of the Corporation to make such disclosure was a condition of such approval and in such case the Corporation shall advise the Clearing Participant or customer of the Clearing Participant in writing of the extent of the disclosure and the stated purpose for the provision of same;~~
- ~~(vii) to any entity, including an affiliated corporation (as that term is defined in *The Corporations Act (Manitoba)*) which the Corporation has entered into a written agreement with for the purposes of the provision of services relative to the business of the Corporation. Information provided to the affiliated corporation, including Personal Information, may be provided to foreign entities and such Information will be subject to the laws of the foreign jurisdictions in which such foreign entities reside; and~~



~~(viii) —~~

~~(xix) — to any other person, to the extent and pursuant to such terms and conditions as the Board, from time to time, may deem appropriate.~~

### **[Moved to A-118] Section A-217.2 Confidential Information of Corporation**

All information provided to a Clearing Participant which is designated, in writing, as Confidential by the Corporation, shall be held in confidence and provided only to such officers, directors and/or employees of the Clearing Participant as are required to access same and then only for the purposes required, except as follows:

- ~~a. — with the written consent of the Corporation;~~
- ~~b. — to a statutory regulatory authority with jurisdiction over the Clearing Participant, in which case the Clearing Participant provide written notification to the Corporation simultaneously with the provision of the Confidential Information to the said statutory regulatory authority, and in such instance, the Clearing Participant shall also provide a short explanation of the reason(s) for which the Confidential Information has been sought;~~
- ~~c. — pursuant to an order issued by a court of competent jurisdiction, and in such case, the Clearing Participant shall provide written notification to the Corporation together with a copy of the relevant order, unless the order expressly provides that the Corporation cannot be given notice of same;~~
- ~~d. — to its own counsel or accounting professional(s), provided that such persons are given a copy of this Rule and made aware of the restrictions set out herein.~~

### **Section A-218 Officers**

A representative of the Clearing Participant authorized to sign all instruments and take all action necessary for conducting business with the Corporation shall be available on every Business Day between such hours as may be specified from time to time by the Corporation. Such representative shall be subject to the approval of the Corporation and shall be authorized to act on behalf of the Clearing Participant by a written power of attorney in the case of a partnership or by a resolution of the board of directors in the case of a corporation. Such power of attorney or resolution, as the case may be, shall be in a form approved by the Corporation.

### **Section A-217.9 Evidence of Authority**

The Corporation shall be entitled to assume the authenticity of the authorization stamp and the authority of documents or data, including electronic data, submitted to it by or initiating the electronic transfer to do so on behalf of a Clearing Participant, where the document or data is submitted using the Clearing Participant's authorizations under any access provided by the Corporation or where the document or data is submitted by any individual that the Clearing Participant has held out as acting on its behalf, including where such individual is a Representative.

- ~~a. — a document is presented by a Clearing Participant to the Corporation which bears the authorization stamp of a Clearing Participant in the form approved by the Corporation; or,~~
- ~~b. — data is transferred electronically from a Clearing Participant to the Corporation.~~
- ~~a. — Every Clearing Participant shall appoint two or more Responsible Representatives, each of whom shall have the authority to bind the Clearing Participant with respect to all matters, including all required clearing decisions and the termination of trading access to Customers, as and when required. Full contact details for the Responsible Representatives shall be filed with the Corporation and the Clearing Participant must ensure that the required information is kept up to date at all times.~~

~~b. Every Clearing Participant shall appoint two or more operational contacts, each of whom shall have the authority to act on its behalf with respect to all day-to-day operational matters. Full contact details for the operational contacts shall be filed with the Corporation and the Clearing Participant must ensure that the required information is kept up to date at all times.~~

**[Moved to A-119] Section A-220 Receipt of Documents**

~~a. An item transmitted to a Clearing Participant by e-mail, facsimile, or other Electronic Communication method, shall be deemed received by the Clearing Participant when transmitted.~~

~~b. Every Clearing Participant shall ensure that:~~

~~(i) The details of Electronic Communication methods (such as e-mail addresses and fax numbers) on file with the Exchange are kept current and up to date.~~

~~(ii) A representative of the Clearing Participant routinely checks for Electronic Communication from the Exchange at such intervals as may be necessary for the Clearing Participant to perform all obligations and duties required by these Rules.~~

**[moved to A-120] Section A-221 Documents and Other Items Submitted to the Corporation**

~~a. All reports, documents, papers, statements, notices, cheques, drafts, and other items required by the Rules to be submitted to the Corporation shall, except as may otherwise be specifically prescribed by the Rules, be delivered to the office of the Corporation or its agent at such times, on such forms and in such manner as the Corporation shall prescribe. Each item delivered to the Corporation shall clearly indicate the identity of the Clearing Participant making such submission.~~

~~b. Every Clearing Participant shall be required to use an authorization stamp, in a form approved by the Corporation, in lieu of manual signatures, on such reports, documents, papers, statements, notices, and other items that are submitted in physical form, as the Corporation shall from time to time prescribe.~~

~~c. The Corporation may provide each Clearing Participant with two authorization stamps at no charge. Any additional authorization stamps requested by a Clearing Participant will be charged based upon the Corporation's costs.~~

~~d. Each Clearing Participant shall be bound by all such reports, documents, papers, statements, notices and other items as the Corporation shall prescribe bearing the Clearing Participant's authorization stamp.~~

**Section A-218 222-Records**

a. Every Clearing Participant shall keep records showing with respect to each Exchange Transaction:

(i) the names of the parties to the transaction;

(ii) the trade date;

(iii) the name of the customer (if applicable);

(iv) if in respect of a Future, the Class and Series of Futures the Underlying Interest, the number of contracts, the contract price, the delivery month and year, whether the

transaction was a buy or sell transaction and whether it was an opening or closing transaction;

- (v) if in respect of an Option, the Class and Series of Options, the Underlying Interest, the number of contracts, the premium, the Exercise Price, the expiry month, whether the transaction was a purchasing or a writing transaction and whether it was an opening or a closing transaction; and
  - (vi) such other information as may from time to time be required by law, regulation, the Exchange or the Corporation.
- b. Every Clearing Participant shall retain and keep readily accessible to the Corporation all records required by these Rules, for at least **seven (7)** years from the date of the document in such form as the Corporation may authorize. The Corporation shall be entitled to inspect or take temporary possession of any such records at any time upon demand.

**[moved to A-121] Section A-223 Notices and Reports**

- ~~a. (i) Unless otherwise specifically provided for in any other Rule, the Corporation may give notice to a Clearing Participant in such manner as the Corporation deems appropriate in the circumstances of the notice being given, including by telephone, by fax and by Electronic Communication.~~
- ~~(ii) Each Clearing Participant shall provide to the Corporation the names of at least two individuals and their positions for the purposes of telephone communications. The Corporation shall attempt to contact such individuals (or any other person at the Clearing Participant holding such position) (the "Contacts") in connection with all telephone communications during business hours. If the Contacts are not available, the Corporation shall be entitled, during business hours, to provide the notice to any person answering the telephones at the Clearing Participant.~~
- ~~(iii) Telephone notification shall constitute full and proper notice notwithstanding the absence of any written or electronic confirmation of same.~~
- ~~(iv) "Business hours" shall mean from 8:00 a.m. to 4:00 p.m. (CT) on any Business Day.~~
- ~~b. The Corporation may from time to time prescribe the form of reports to be given by the Corporation to Clearing Participants. These reports may be sent by hand delivery, fax or Electronic Communication.~~
- ~~c. Each Clearing Participant shall have an obligation to review promptly each report, notice, instruction, data or other information made available by the Corporation through Electronic Communication or otherwise. Each Clearing Participant shall be responsible for advising the Corporation by telephone (confirmed in writing), fax or hand delivered notice on the Business Day on which a report is deemed to have been received or the Expiration Date of any item requiring change for any reason and the failure to report any such errors by such time shall constitute a waiver of the Clearing Participant's right to have such item changed.~~
- ~~d. Upon the Corporation delivering or making available a notice or report as set out herein the Corporation's obligation to furnish, issue or deliver such notice or report shall have been fulfilled.~~
- ~~e. Subject to this Rule:
  - ~~(i) a notice given by telephone shall be deemed to have been received by a Clearing Participant as of and to be effective from the time of the telephone call to an individual or~~~~

~~as recorded in the relevant Notice File, unless the notice or another Rule specifically provides otherwise;~~

- ~~(ii) a notice given or report sent by fax shall be addressed to one or more of the Contacts and shall be deemed to have been received as of and to be effective from and after the time of the fax on the day it is sent, unless the notice or another Rule specifically provides otherwise;~~
  - ~~(iii) a notice or report given by Electronic Communication may be addressed to one or more of the Contacts and shall be deemed to have been received on and to be effective as of the day it is sent, unless the notice or another Rule specifically provides otherwise; and~~
  - ~~(iv) a notice given by mail shall be addressed to one or more of the Contacts and shall be deemed to have been received and to be effective on the fifth day after mailing and a notice given or report sent by hand delivery shall be addressed to one or more of the Contacts and shall be deemed to have been received and to be effective on the earlier of when it actually is received by the Clearing Participant and the next Business Day following the date it was sent.~~
- f. ~~Where a notice is given or a report is sent by any means out of business hours or on a day that is not a Business Day, the notice or the report, as the case may be, shall be deemed to have been received on the earlier of:~~
- ~~(i) the time the Corporation confirms it has actually been communicated to a responsible individual with the Clearing Participant; and~~
  - ~~(ii) the beginning of the next following Business Day.~~

~~For greater certainty, where a notice is given or report is received prior to 8:00 a.m. (CT) on a Business Day, it shall be deemed to have been received not later than 8:15 am (CT) on that Business Day. The Corporation may maintain a list of emergency contact telephone and/or fax numbers of not less than two responsible individuals employed by each Clearing Participant with whom the Corporation can communicate out of ordinary business hours if the Corporation determines such communication is necessary or advisable. It shall be the responsibility of each Clearing Participant to ensure that the individuals so selected can be readily contacted outside of ordinary business hours, and that the contact numbers for them are kept current.~~

#### **Section A-224 Payment of Fees and Charges**

- ~~a. The Corporation may levy such fees and charges related to such services provided to Clearing Participants as it deems appropriate. All or any part of the proceeds from such levy may be applied to such purposes as the Corporation shall determine from time to time.~~
- ~~c. Fees and charges owing by a Clearing Participant to the Corporation shall be due and payable within 15 days following the date of the invoice.~~

#### **Section A-225 Force Majeure/Emergency Events**

- ~~a. The President or his designate shall have the right to declare that an Emergency Event, or a force majeure event has occurred and in such event, the Corporation is entitled to take such action as it deems necessary and appropriate or require any Clearing Participant to take such action as the Corporation may direct in respect of the same. The Corporation shall publish a Notice to the website advising of the Emergency and the action it intends to take. In taking such action the Corporation reserves the right, with regards to the Settlement of a Transaction, to make a Cash Settlement in lieu of the delivery of the Underlying Interest.~~

- ~~b. The Corporation shall be subject to no penalty or other liability for non-performance or delay in performance of its obligations if performance is prevented or delayed by reason of force majeure.~~
- ~~c. For the purposes hereof, "force majeure" means any fortuitous event, act of governmental authority, act of public enemies, war (whether or not declared), invasion, insurrection, riot, civil disturbance, labour trouble, strike (under whatever euphemism described), flood, fire, shortage of labour, materials or transport, computer failure or malfunction (whether mechanical or through faulty operation), pandemic influenza outbreaks as defined by the World Health Organization or other cause of inability to perform or delay in performing obligations which are beyond the reasonable control of the Corporation.~~

#### **~~Section A-226 Time~~**

~~All times in the Rules are shown in Central Time.~~

#### **~~Section A-227 Distribution of Information~~ **Now Rules A-117 and A-118.****

~~The Corporation may provide, on a confidential basis, any information regarding a Clearing Participant to other exchange(s) of which the Clearing Participant is a member, the Clearing Participant's applicable SROs or regulatory agencies, as the case may be, other clearing organizations of which the Clearing Participant is a member, and such other persons and organizations as the Corporation may consider appropriate, when, in the opinion of the Corporation, such information is relevant to the preservation of the integrity of the securities and futures industry or the provision of such information is in the public interest.~~

~~The Corporation may also receive, on a confidential basis, any information regarding a Clearing Participant from the exchange(s), the Clearing Participant's applicable SRO or regulatory agency, as the case may be, and such other persons and organizations as the Corporation may consider appropriate. Where in the opinion of the Corporation such information is relevant, the Corporation shall be entitled to rely upon such information.~~

~~Clearing Participants, by virtue of their Participant status in the Corporation, shall be deemed to have authorized the Corporation to provide any information regarding the Clearing Participant to the exchange(s) of which the Clearing Participant is a member, the Clearing Participant's applicable self-regulatory organizations or regulatory agencies, as the case may be, other clearing organizations of which the Clearing Participant is a member and such other persons and organizations as the Corporation may consider appropriate. This information will be provided and received in the manner contemplated in this section and the Clearing Participant, by virtue of its Participant status in the Corporation, shall be deemed to have released the Corporation and each of its directors, officers and employees from any and all liability whatsoever which may arise by virtue of information being furnished to the Corporation or any organization considered appropriate, for such purposes, by the Corporation.~~

#### **Section A-219 Approved Financial Institutions**

- a. The Corporation will maintain a list of Approved Financial Institutions. Clearing Participants must maintain one or more accounts at an Approved Financial Institutions as necessary to conduct its operations as a Clearing Participant.
- b. All cash transfers made by Clearing Participants to the Corporation must be made from an account at an Approved Financial Institution unless the Corporation gives its prior written consent to another method being used.
- c. The Corporation may suspend, or terminate the status of an Approved Financial Institution or attach, amend or revoke conditions to the continued status of an Approved Financial Institution. The Corporation may take such steps if an institution no longer meets all of the requirements of the

Corporation, or if the Corporation determines that it would be advisable for the Corporation's own protection, the protection of Clearing Participants or the protection of the Exchange.

## Section A-220 ~~9~~ Deposits and Withdrawals

### a. ~~General~~ Payment Obligations

- (i) ~~From time to time, each~~ Clearing Participant shall be liable ~~will be required~~ to make payments, deposits or transfers of cash, securities, property or other interests or rights to the Corporation under these Rules, at the times and in the amounts specified by the Corporation to assure the performance of the obligations of such Clearing Participant and/or to fulfil such Clearing Participant's obligations to the Corporation hereunder.
  - (ii) Fee charged to Clearing Participants by the Corporation may include the fees of the Exchange.
  - (iii) Clearing Participants shall be liable to pay all amounts due under Contract Terms, upon entering into a Contract, as Margin, and upon delivery or settlement, as further described in these Rules and in the Contract Terms.
  - (iv) All amounts payable to the Corporation (except with the prior written consent of the Corporation) shall be payable by electronic transfer from an Account at an Approved Financial Institution. The Clearing Participant shall remain liable for any amount due under these Rules and no payment obligation of a Clearing Participant shall be treated as having been satisfied or discharged unless and until the relevant electronic transfer of funds is actually received by the Corporation in unencumbered, fully cleared and fully available funds in a Corporation account at a Financial Institution which is not subject to an insolvency.
  - (v) No Clearing Participant shall be declared subject to an Event of Default as a result of failing to make any payment due pursuant to this provision unless and until the Corporation has notified the Clearing Participant of the failed payment in question and requested that the payment be made using alternative means and the Clearing Participant has defaulted in making the latter payment.
  - ~~(v) Each payment, deposit or transfer, whether of cash, securities, property, or other interests or rights (a "Deposit") shall be deemed to have been made at the time that (i) the Deposit has been delivered to and accepted by the Corporation, or (ii) where the Corporation has the authority or under these Rules is entitled to transfer or apply any monies, securities or position from any Clearing Participant's account, whether such account is held at the Corporation or elsewhere, at the time such transfer or application is effected by the Corporation.~~
  - ~~(iii) At the time of any Deposit hereunder the Clearing Participant shall indicate on the appropriate form filed with the Corporation the details and purpose of the Deposit.~~
- b. [reserved] ~~The Clearing Participant shall deliver the Deposit to the Corporation (together with such covering forms as the Corporation may require), between the hours specified by the Corporation.~~
- c. A Deposit may be withdrawn by a Clearing Participant between the hours specified by the Corporation in the Operations Manual, provided, however, that the Corporation may continue to hold a Deposit;
- (i) following the Expiration Date of the relevant Options until all obligations of the Clearing Participant arising from the assignment of Exercise Notices have been performed; or

(ii) following the acceptance of a Futures Tender Notice until all obligations of the Clearing Participant arising from the delivery of or payment for the Underlying Interest have been performed.;

~~(iii) in relation to a Guaranty Fund Deposit until all obligations of the Clearing Participants have been performed.~~

A Clearing Participant seeking to withdraw a deposit shall submit a duly completed withdrawal request in the form prescribed by the Corporation in the Operations Manual.

d. Deposits

(i) No deposit held for the account of a Client may be deposited hereunder in respect of a position in any account other than a Client Account.

(ii) The Deposit hereunder by a Clearing Participant of any deposit held for the account of any Client may be made only to the extent permitted by applicable law, regulations and policies and shall constitute the certification of the Clearing Participant to the Corporation that such Deposit does not contravene any provision of applicable law, regulations or policies.

(iii) The Clearing Participant shall not deposit hereunder more for the account of any Client than is fair and reasonable in light of the indebtedness of the Client to such Clearing Participant and the Client's positions with the Clearing Participant.

~~(iv) The Corporation shall not use any deposit in a Client Account or the proceeds therefrom, to satisfy any obligation of the Clearing Participant to the Corporation other than an obligation arising out of such Client Account.~~

**Section A-221 Set-off**

~~a. Subject to Section A-103 m., the Corporation may set off any obligation due to it from a Clearing Participant against any obligation owed by the Corporation to, or for the account of, the Clearing Participant, regardless of the place of payment, account, branch or currency of either obligation. If the obligations referred to in this Rule are in different currencies, the Corporation may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set off.~~

~~b. Subject to Section A-103 m., the Corporation shall be entitled to make any necessary adjustments to the Clearing Participants' House Accounts and Customer Accounts resulting from exercise of its rights of set-off.~~

~~c. The rights of the Corporation under this Rule are without prejudice to any rights of lien, set-off, netting, liquidation, combination of accounts or appropriation, or to instruct the same or any other rights or remedies of the Corporation or any Approved Financial Institution, whether under these Rules or otherwise.~~

~~d. Without prejudice to Applicable Laws of mandatory application following an Insolvency, notwithstanding any existing or futures agreement and except as expressly provided in these Rules, the Clearing Participant Application/Agreement, the Policies or a Contract, each Clearing Participant irrevocably waives any and all rights it may have to set off, net, recoup, combine accounts or otherwise withhold or suspend or condition payment or performance of any obligation between the Corporation and such Clearing Participant under these Rules or any Contract against any obligations between the Corporation and such Clearing Participant under any other agreements.~~

### **Section A-230 Accounts with Financial Institutions**—Now in Rule A-219

Every Clearing Participant shall designate an account or accounts established and maintained by it in a Canadian financial institution acceptable to the Corporation.

### **Section A-231 Electronic Interfaces**—Now in definitions

The words "access", "deliver", "furnish", "instruct", "issue", "make available", "notify", "receive", "submit" and "tender" shall include, where appropriate, the movement of information by electronic means between the Corporation and a Clearing Participant. All words generally understood as pertaining to the movement of information by electronic means shall also include, where appropriate, the movement of information by paper.

### **Section A-232 Liability** Now in Rule A-114

- a. For the purposes of this section the term "Clearing System" shall mean both clearing systems and data transmission systems of whatever kind and includes all the facilities and services provided by the Corporation to Clearing Participants in connection with the acceptance and/or clearance of trades in Options and Futures including, but not limited to, clearing and settlement, margining, holding of deposits and the preservation or communication of data in or through any computer or electronic data transmission system.
- b. The Corporation shall not be liable to a Clearing Participant for any losses, damage, cost, expense, or any other liability or claim suffered or incurred by or made against a Clearing Participant as a result of the use by the Clearing Participant of the Corporation's Clearing System. By making use of the Corporation's Clearing System, Clearing Participants expressly agree to accept all liability arising from the use of such Clearing System.
- c. The Corporation shall not be liable to a Clearing Participant for any loss, damage, cost, expense, or other liability or claim arising from any failure of the Corporation's Clearing System or any act or omission of the Corporation, its directors, officers or employees, or members of any standing or ad hoc committee formed by the Corporation, regardless of whether such act or omission constitutes negligence.
- d. In the event any legal proceeding is brought by any person against the Corporation seeking to impose liability on the Corporation as a direct or indirect result of the use by a Clearing Participant of the Corporation's Clearing System, the Clearing Participant shall reimburse the Corporation for:
  - (i) all expenses and legal fees (on a solicitor and own client basis) incurred by the Corporation in connection with the proceeding;
  - (ii) any recovery adjudged against the Corporation in the event it is found to be liable; and
  - (iii) any payment made by the Corporation, with the consent of the Clearing Participant, in settlement of any such proceeding.
- e. Notwithstanding anything to the contrary in the Rules, all obligations of the Corporation described in the Rules are solely obligations to its Clearing Participant(s). The Rules are not to be interpreted or construed to imply that the Corporation has any obligation to any person or entity other than its Clearing Participant(s).



## **RULE A-3 CAPITAL REQUIREMENTS AND PROVISION OF FINANCIAL INFORMATION**

### **Section A-301 Minimum Capital Requirements**

- a. Every Clearing Participant shall at all times meet the minimum capital requirements adopted from time to time by the Corporation.
- b. Every Clearing Participant shall at all times meet the minimum capital requirements provided for in the Rules of the Exchange.
- c. No Clearing Participant shall permit its minimum capital at any time to be less than the applicable amount determined in accordance with these requirements unless it has been granted a specific temporary exception in writing from ~~is made by the Corporation. in the case of a particular Clearing Participant due to unusual circumstances.~~
- d. Every Clearing Participant shall file with the Corporation, on request, such financial or other relevant information, in addition to what is explicitly required in these Rules, as may be requested by the Corporation from time to time. a report covering the computation of its capital requirements.
- e. ~~No Exchange Transaction shall be cleared by the Corporation for any Clearing Participant or customer/client of that Clearing Participant at any time when such Clearing Participant does not meet the requirements prescribed in these Rules. ~~Section A-301.~~~~
- f. ~~The Corporation has the authority to inspect the books and records of Clearing Participants and may require any Clearing Participant and any director, officer, employee, or auditor of a Clearing Participant to appear personally before the Corporation and produce its books and records and answer questions regarding the financial position of the Clearing Participant and/or any actual or alleged violation of the Rules.~~

### **Section A-302 [reserved] ~~Minimum Capital~~ Now Section A-301 e. and f.**

- a. ~~No Exchange Transaction shall be cleared by the Corporation for any Clearing Participant or customer/client of that Clearing Participant at any time when such Clearing Participant does not meet the requirements prescribed in Section A-301.~~
- b. ~~The Corporation has the authority to inspect the books and records of Clearing Participants and may require any Clearing Participant and any director, officer, employee, or auditor of a Clearing Participant to appear personally before the Corporation and produce its books and records and answer questions regarding the financial position of the Clearing Participant and/or any actual or alleged violation of the Rules.~~

### **Section A-303 Notification of Capital Reduction, Capital Deficiency or an Early Warning**

A Clearing Participant shall notify the Corporation immediately if;

- a. it has any indication or suspicion that it may not meet its capital requirements or that any calculation of its capital requirement, as determined from time to time by the Corporation, reflects a capital deficiency or an early warning situation; and/or
- b. it has any indication or suspicion that its Risk Adjusted Capital calculation if registered in the category of FCM, or its adjusted net capital calculation if registered in the category of General, has declined from that shown on the last financial statements filed by it with the Corporation by twenty percent (20%) or more for any reason; and/or

- c. it enters into any early warning level as defined from time to time by any self-regulatory organization it is a member of.

Notifications shall take the form of a written e-mail and shall include all relevant information including, if applicable, all correspondence between the Clearing Participant and the SRO(s) relating to an early warning incident.

#### **Section A-304 Audited Financial Statements**

- a. Each Clearing Participant shall comply with the financial reporting requirements set out in the Rules of the Exchange.
- b. Unless otherwise agreed to by the Corporation, the audit of a Clearing Participant will take place on the fiscal year-end of such Clearing Participant.
- c. The audit of a Clearing Participant shall be conducted in accordance with generally accepted auditing standards and shall include a review of the accounting system, and the internal accounting control procedures. It shall include all audit procedures necessary under the circumstances to support the opinions which must be expressed to meet all legal and regulatory requirements applicable to such Clearing Participant. All qualifications, reservations, and reports of a Clearing Participant's auditors in any financial report must be satisfactory to the Corporation.

#### **Section A-305 Financial Reporting and Filing Requirements**

- a. Each Clearing Participant shall file the following financial information with the Corporation;
  - (i) with their written application/agreement form; an annual audited financial statements including profit and loss accounts and balance sheet drawn up in accordance with Applicable Laws and Accounting Standards, for the most recent fiscal year ended and unaudited monthly financial statements for the three (3) most recent months.
  - (ii) After acceptance as a Clearing Participant; an annual audited financial statements including profit and loss accounts and balance sheet drawn up in accordance with Applicable Laws and Accounting Standards, within ninety (90) days after the end of the Clearing Participant's fiscal year, and unaudited monthly financial statements are to be filed within seventeen (17) ~~business days~~ Business Days after the end of each month. All financial statements are to be accompanied by a fully completed Exchange Annex 7.A "Financial Questionnaire and Report Form", Exchange Annex 7.D "Adjusted Net Capital Calculation" and any other forms required by the Corporation. Provided however, that Clearing Participants registered in the category of Futures Commission Merchant may file such financial statements with its designated Self-Regulatory Organization if the designated SRO has entered into a form of Memorandum of Understanding with the Corporation to permit the Corporation to review and access the Clearing Participant's financial statements.
  - (iii) A copy of each financial statement, financial report, and/or financial notice a Clearing Participant files with any self-regulatory organization, exchange or clearinghouse which has jurisdiction over it and/or of which it is a member, participant, or registrant at the same time it files such statement or report with such body, if such statement or report is other than a routine periodic statement or report required under the by-laws, rules or regulations of such entity. The copy shall be accompanied by a written statement setting forth (to the extent known) the reasons why such Clearing Participant is filing the documentation. In addition, Futures Commission Merchants which are registered as Clearing Participants are required to advise the Exchange of financial matters that require notification to their SROs immediately after they provide such notice to their designated SROs; ~~and~~

(iv) In the case of a Clearing Participant registered with IIROC, the Corporation shall be authorized, at its discretion, to obtain copies of financial filings, returns and reports, directly from IIROC rather than from the Clearing Participant. The Clearing Participant will not be relieved of any of its obligations to the extent that the Corporation does not verify the accuracy of any financial report or report obtained by it from IIROC; and

(v) In addition to what is specified in these Rules and in the Rules of the Exchange, such other financial information and documentation as may be requested by the Corporation from time to time.

- b. In the event that a Clearing Participant fails to meet any obligation to deposit or pay any margin payment or make any other payment due to any clearinghouse, or fails to be in compliance with any applicable financial requirement of any governmental regulatory authority, self-regulatory organization, exchange, or clearinghouse which has jurisdiction over it and/or of which it is a member, participant or registrant, such Clearing Participant shall immediately advise the Corporation, both telephonically and in writing.

### **Section A-306 Special Examinations**

- a. The Corporation may, at any time, require an auditor appointed by the Corporation, to make any general or special examination of the financial affairs of any Clearing Participant or to report upon the whole or any aspect of the business or affairs thereof.
- b. The auditor appointed by the Corporation for the purpose of this special examination shall be entitled to request from the Clearing Participant, or its auditors, any information pertinent and relevant to any transactions directly or indirectly related to the business of the Corporation and no person or Clearing Participant shall withhold, conceal, destroy or refuse to give any information or thing reasonably required by the auditor appointed by the Corporation for the purpose of this examination.

### **Section A-307 Action Relating to Capital Deficiency Concerns**

- a. If the Corporation determines as a result of any early warning notice, any filing or required financial information, a general or special examination, or from any other information given to or obtained by it that a Clearing Participant is insolvent or does not have minimum capital satisfying the capital requirements herein or otherwise is in such financial condition that the Corporation in its discretion deems it is undesirable in the public interest or in the interest of the Corporation that the Corporation continue to accept and/or clear such Clearing Participant's Exchange Transactions, the Corporation may take any action that it deems appropriate in the circumstances, including any of the actions set out in Section A-401 or Part D of these Rules. ~~Without in any way restricting the generality of the foregoing, the Corporation may suspend such Clearing Participant for such period and/or on such terms and conditions as the Corporation may determine. The Corporation may, as an alternative, determine that it is in the public interest or in the interest of the Corporation that the Clearing Participant should continue to clear Exchange Transactions but on such terms and conditions as the Corporation may determine, including but not limited to, requiring that auditors or agents appointed by the Corporation should regulate and generally supervise the operations of the Clearing Participant, as they relate to its activities or performance as a Clearing Participant, for such period and in such manner as the Corporation may direct. Notice of the decision shall be provided to the Exchange. At the discretion of the Corporation, notice of the decision may be provided to every Clearing Participant.~~
- b. ~~Any examination, report or supervision required by the Corporation pursuant to this Rule shall be conducted at the expense of the Clearing Participant involved.~~

## Section A-308 Restrictions on Certain Transactions and Positions

a. If the Corporation shall at any time determine that the financial or operational condition of a Clearing Participant makes it necessary or advisable, for the protection of the Corporation, other Clearing Participants or the general public, to impose restrictions on such Clearing Participant's positions with the Corporation, the Corporation shall have the authority:

- (i) to prohibit and/or impose limitations on the acceptance and/or clearance of Transactions by such Clearing Participant;
  - (ii) to require such Clearing Participant to reduce or close out existing Transactions in any of the Clearing Participant's accounts with the Corporation; and/or
  - (iii) to require such Clearing Participant to transfer any account maintained by it, any position in any account maintained by it or any accounting carried by such Clearing Participant, to another Clearing Participant.
- ~~(i) to prohibit or to impose limitations on the acceptance and/or clearance of Opening Purchase Transactions or Opening Writing Transactions by such Clearing Participant;~~
- ~~(ii) to require such Clearing Participant to reduce or eliminate existing Long Positions or Short Positions in such Clearing Participant's accounts with the Corporation; and/or~~
- ~~(iii) to require such Clearing Participant to transfer any account maintained by such Clearing Participant with the Corporation, any position maintained in any such account, or any account carried by such Clearing Participant, to another Clearing Participant.~~

## RULE A-4 ENFORCEMENT ACTIONS

Notwithstanding anything in this Rule A-4, if at any time in the process, the Corporation finds a suspended Clearing Participant to have committed an “Event of Default”, the Corporation may, at its sole discretion, declare that an Event of Default has occurred and, in such case, the Rules of Part D shall henceforth be applicable.

### Section A-401 Actions Against a ~~Non-Conforming~~ Participant

- a. In addition to the provisions of the Rules, including Part D, ~~a measure made available to the Corporation under the Rules and/or the Application/Agreement for Clearing Participant status to remedy a specific or general default of a Clearing Participant, or wherever a Clearing Participant has been determined to be a Non-Conforming Participant,~~ the Corporation may take any of the actions prescribed by the Rules in respect of ~~such a~~ a Clearing Participant including, but not limited to:
- (i) prohibiting and/or imposing limitations on the acceptance and/or clearance of Transactions by ~~such a~~ a Clearing Participant;
  - (ii) requiring ~~such a~~ a Clearing Participant to reduce or close out existing Transactions in ~~such~~ any of the Clearing Participant’s accounts with the Corporation;
  - (iii) requiring ~~such a~~ a Clearing Participant to transfer any account maintained by ~~such Clearing Participant~~ it with the Corporation, any position maintained in any ~~such~~ account, or any account carried by such Clearing Participant, to another Clearing Participant;
  - (iv) applying the Clearing Participant’s Margin Deposit - (including, without limitation, Margin and Guaranty Fund); ~~of the Non-Conforming Participant;~~
  - (v) sanctioning, reprimanding, fining or imposing a penalty on the Clearing Participant;
  - (vi) ~~prevent~~ing or ~~restrict~~ing the Clearing Participant’s right to withdraw any excess ~~in~~ Margin Deposits; and/or
  - (vii) suspending the ~~Non-Conforming~~ Clearing Participant
- b. The actions set out in subpart a. to this Rule ~~contemplated by the Rules in respect of Non-Conforming Participants~~ may be taken in any sequence the Corporation deems appropriate.

### Section A-402 Creation of Liquidating Settlement Account

- a. The Corporation may convert to cash all Margin Deposits of a ~~Non-Conforming Clearing Participant~~ ~~or a~~ suspended Clearing Participant. The Corporation may sell, transfer, use or otherwise deal or dispose of any Margin Deposits at any time, without advance notice to the suspended Clearing Participant. These and all other funds of the suspended Clearing Participant subject to the control of the Corporation shall be placed by the Corporation in a special account, to be known as the Liquidating Settlement Account, for the purposes set out in these Rules.

- b. Notwithstanding the provisions ~~set out in subpart a. to this Rule, set out above,~~ if the President or his designate shall determine in his or her discretion, taking into account the size and nature of a suspended Clearing Participant's Margin Deposits, the market conditions prevailing at the time, the potential market effects of liquidating transactions that might be directed by the Corporation, and such other circumstances as the President or his designate deems relevant, that the conversion to cash of some or all of the suspended Clearing Participant's Margin Deposits would not be in the best interest of the Corporation, other Clearing Participants or the general public, such deposits need not be converted to cash, provided that any determination made pursuant to this Rule shall be reported to the Board within twenty-four (24) hours.

#### **Section A-403 Utilization of Margin Deposits**

The Corporation shall, at its discretion, apply the Margin Deposits of a ~~Non-Conforming~~ suspended Clearing Participant to the discharge of:

- a. the ~~Non-Conforming~~ suspended Clearing Participant's obligations with respect to any Transaction accepted by the Corporation, regardless of whether the failure is caused by the ~~Non-Conforming~~ suspended Clearing Participant;
- b. any required payment due to the failure or anticipated failure to make such payment to the Corporation, regardless of whether such failure is solely attributable to the ~~non-Conforming~~ suspended Clearing Participant;
- c. any loss or expense suffered by, or anticipated to be suffered by, the Corporation, upon the liquidation of the ~~Non-Conforming~~ suspended Clearing Participant's positions;
- d. any loss or expense suffered by, or anticipated to be suffered by, the Corporation, with respect to the ~~Non-Conforming~~ suspended Clearing Participant's obligations in respect of exercised Options or tendered Futures for which settlement has not yet been made;
- e. a loss or anticipated loss incurred as a result of any hedging transactions entered into for the account of the Corporation pursuant to Rule A-4 in respect of the ~~Non-Conforming~~ suspended Clearing Participant's positions; or
- f. any other requirement determined by the Board.

#### **Section A-404 Pending Transactions**

- a. Unsettled processed Exchange Transactions of a suspended Clearing Participant shall be accepted or rejected by the Corporation in accordance with the By-Laws and Rules of the Exchange, and in the event that an Exchange Transaction is rejected, it shall be closed by the Clearing Participant thereto in accordance with the By-Laws and Rules of the Exchange.
- b. With respect to Open Positions and accepted transactions in Futures:
  - (i) monies payable in Settlement of Gains and Losses shall be credited by the Corporation to the Liquidating Settlement Account;
  - (ii) monies owed to the Corporation in Settlement of Gains and Losses in any account shall be withdrawn by the Corporation from the Liquidating Settlement Account.
- c. With respect to Options;

- (i) premiums payable to the suspended Clearing Participant on Opening Writing Transactions or Closing Writing Transactions shall be credited by the Corporation to the Liquidating Settlement Account; and
- (ii) premiums payable to the Corporation on those purchase transactions accepted by the Corporation in any account shall be withdrawn by the Corporation from the Liquidating Settlement Account.

#### **Section A-405 Open Positions**

- a. In the case of a discrepancy as to the Open Position of a Clearing Participant between the records of the Corporation and those of the Clearing Participant, the Corporation shall, in its ~~sole~~ complete discretion, determine what the Open Positions are.
- b. In the case of a ~~Client~~ Customer Account of a Clearing Participant, the Open Position shall be determined with reference to the most recent Gross Position Report submitted by the Clearing Participant. If Exchange Transactions have occurred since the last Gross Position Report was submitted, the Corporation shall calculate the Open Position as follows:
  - (i) The Long position shall be the Long position from the most-recent Gross Position Report, plus any buy Exchange Transactions that have occurred since that time.
  - (ii) The Short position shall be the Short position from the most-recent Gross Position Report, plus any selling Exchange Transactions that have occurred since that time.
- c. With respect to Futures, and Options, all Open Positions of a suspended Clearing Participant may, at the Corporation's discretion, be closed by the Corporation at such prices as the Corporation deems reasonable, transferred to another Clearing Participant, or maintained by the Corporation. Amounts payable to the Corporation in Settlement of Gains and Losses as a result of closing transactions effected by the Corporation shall be withdrawn from the suspended Clearing Participant's Liquidating Settlement Account. Amounts receivable by the suspended Clearing Participant in Settlement of Gains and Losses as a result of a closing transaction effected by the Corporation or the transfer of an Open Position shall be credited to the suspended Clearing Participant's Liquidating Settlement Account. Open positions in Options may be exercised at the discretion of the Corporation and the resulting futures position(s) will be dealt with in accordance with these Rules. ~~Clients~~ Customers affected by any closing or transfer of an Open Position shall be notified as promptly as possible.
- d. If the Corporation elects to close both Long Positions and Short Positions in the same series of Options or Futures carried by a suspended Clearing Participant, the Corporation may, in lieu of closing such positions through closing transactions on an Exchange, offset such positions against each other, reducing the Open, Long and Short Positions of the Clearing Participant in such series by the same number of Option contracts or Futures contracts. If the Corporation closes positions in any series of Options or Futures by offset pursuant to the foregoing sentence, the Corporation shall notify the suspended Clearing Participant or its representative thereof, and such positions shall be deemed to have been closed at a price equal to the Settlement Price as determined by the Exchange involved for such series on the date when the positions were offset.
- e. Notwithstanding the provisions of ~~Section A-405 c.~~ subpart c. to this Rule, if the President or his designate shall determine in his discretion, taking into account the size and nature of a suspended Clearing Participant's positions, the market conditions prevailing at the time, the potential market effects of liquidating transactions that might be directed by the Corporation, and such other circumstances as the President deems relevant, that the closing out of some or all of the suspended Clearing Participant's Positions would not be in the best interests of the Corporation, other Clearing Participants or the general public, such positions need not be closed out, provided that any

determination made pursuant to this paragraph subpart c. to this Rule shall be reported to the Board within twenty-four (24) hours.

- f. If the President or his designate shall;
- (i) determine that the Corporation is unable, for any reason, to close out in a prompt and orderly fashion, any Open Positions, or to convert to cash any Margin Deposits of a suspended Clearing Participant, or
  - (ii) elect not to close out any Open Positions or not to convert to cash any such Margin Deposits;

the President or his designate may authorize the execution from time to time for the account of the Corporation, solely for the purpose of reducing the risk to the Corporation resulting from the continued maintenance of such positions or the continued holding of such Margin Deposits, the execution of hedging transactions, including, without limitation, the purchase or sale of Underlying Interests or interests deemed similar thereto or Options or Futures on any such Underlying Interests or similar interests. The President may delegate to specified officers or agents of the Corporation the authority to determine, within such guidelines, if any, as the President shall prescribe, the nature and timing of such hedging transactions. Any authorizing of hedging transactions shall be reported to the Board within 24 hours, and any such transactions that are executed shall be reported to the Board on a daily basis. Hedging transactions effected for the account of the Corporation pursuant to this Rule shall be closed out or exercised promptly as the positions to which they relate are eliminated, whether by expiration, transfer, close out or assignment. All costs and expenses, including losses sustained by the Corporation in connection with transactions affected for its account pursuant to this paragraph, shall be charged to the Liquidating Settlement Account of the suspended Clearing Participant, and any gains realized on such transaction shall be credited to such Liquidating Settlement Account; provided, however, that costs, expenses and gains allocable to the hedging of positions in a Firm Account shall be charged or credited, as the case may be, to that account, and only the excess, if any, of such costs and expenses over the funds available in that account shall be charged to the Liquidating Settlement Account. Reasonable allocations of costs, expenses and gains among accounts made by the Corporation for the purpose of implementing these processes shall be binding on the Clearing Participant and any persons claiming through the Clearing Participant and its respective successors and assigns.

#### **Section A-406 Exercised Options and Tender Notices**

Unless the Corporation, in its sole discretion determines otherwise, exercised Options to which a suspended Clearing Participant is a party or Futures, which have been the subject of Tender Notice to which a suspended Clearing Participant is a party, shall be closed through any procedures the Corporation deems appropriate. All losses and gains on such buy-ins and sell-outs shall be paid from or credited to, as the case may be, the Liquidating Settlement Account of the suspended Clearing Participant.

#### **Section A-407 Amounts Payable to the Corporation**

The Corporation shall be entitled promptly to recover from a suspended Clearing Participant, any amount payable to the Corporation in accordance with these Rules and the By-laws, including all costs and expenses, including legal expenses, incurred by the Corporation, from such Clearing Participant's Liquidating Settlement Account upon completion of the liquidation of such Clearing Participant's positions in accordance with this Rule A-4.

#### **Section A-408 Participant Claims**

All claims upon the Liquidating Settlement Account of a suspended Clearing Participant by other Clearing Participants resulting from losses incurred when closing pending transactions, or closing Open Positions or



in the delivery of Underlying Interests or buying in or selling out exercised Options in accordance with this Rule A-4 shall be filed with the Corporation in the form prescribed. Such claims shall be paid as follows:

- a. Claims for losses incurred when closing pending transactions with a suspended Clearing Participant that are rejected for clearance shall be subordinate to all other claims upon the Liquidating Settlement Account. The Corporation shall pay such claims, to the extent funds are available, from the Liquidating Settlement Account of the suspended Clearing Participant only after payment of all other applicable claims including all costs and expenses of the Corporation. Such claims shall not constitute a claim upon the Guaranty Fund contributions of other Clearing Participants; and
- b. Claims by other Clearing Participants for losses incurred on buy-ins and sell-outs, and the closing of Open Positions, shall be senior to all other claims upon the Liquidating Settlement Account. If a buy-in, sell-out or closing transaction does not occur by the close of the first full Trading Day following the issuance of the notice of suspension, the claim thereon shall be limited to the amount that would have been recoverable if, in the case of a buy-in or sell-out, the buy-in had been made at the highest price or the sell-out at the lowest price at which the Underlying Interest traded in the market in which it trades, on the first full Trading Day or, in the case of the closing of Open Positions, if the positions had been closed by the close of the first full Trading Day.

#### **Section A-409 Accounting by Corporation**

In the event of a suspension in which the Corporation is required to take steps to close out or transfer positions, or convert Margin Deposits, or set up a Liquidating Settlement Account, or any other similar action, the Corporation shall, upon completing all requirements of these Rules, prepare an accounting and shall submit the accounting, together with a request for any additional funds owed to the Corporation, to the suspended Clearing Participant or its representative at law, for distribution to the persons entitled to such knowledge in accordance with all Applicable Laws. applicable laws. In a situation in which there are funds remaining in the Liquidating Settlement Account to the credit of the suspended Clearing Participant, the Corporation shall provide details of same and shall provide payment of same, upon receipt of a properly executed Release in a form satisfactory to the Corporation.

#### **Section A-410 No Waivers**

~~No failure by the Corporation to exercise, nor any delay on its part in exercising any of its rights (in whole or in part) under these Rules shall operate as a waiver of the Corporation's rights or remedies upon that or any subsequent occasion, nor shall any single or partial exercise of any right or remedy prevent any further exercise thereon or any other right or remedy.~~

## RULE A-5 DISCIPLINARY PROCEEDINGS

### Section A-501 Sanctions

- a. ~~The Corporation may reprimand, suspend, expel or limit the activities, functions or operations of any Clearing Participant for any violation of the By-laws or Rules, of any applicable law, or any order or direction of the Corporation, or of its agreements with the Corporation. The Corporation may, in addition to or in lieu of such sanctions, impose a fine or a penalty, not to exceed \$1,000,000.00 per rule violation, on, and assess any reasonable costs, including legal fees, incurred by the Corporation against any Clearing Participant for any violation of the By-laws or Rules, applicable laws, orders or directions or its agreements with the Corporation, or for any neglect or refusal by such Clearing Participant to comply with any applicable order or direction of the Corporation, or for any error, delay or other conduct embarrassing to the operations of the Corporation or for failure to provide adequate personnel or facilities for its transactions with the Corporation.~~
- b. ~~The Corporation shall be entitled to recover from any defaulting Clearing Participant, the amount of any penalties or sanctions assessed against it, plus the Corporation's reasonable costs and expenses, including legal expenses, incurred in connection with the matter giving rise to the penalty or sanction.~~

### Section A-502<sup>1</sup> Complaints and Investigations

- a. Any Person, including the Corporation, a Clearing Participant, a customer of a Clearing Participant, a market participant of ICE Futures Canada, and any Regulatory Authority may make a complaint about the conduct or business of a Clearing Participant, and/or any of their employees, officers, directors, Representatives or agents, in respect to any one or ~~of~~ more of the Rules or the Operations Manual.
- b. A complaint shall be made to the Corporation and shall be handled by such individuals as the Corporation may designate ("Staff").
- c. Complaints against a former Clearing Participant can proceed provided that the complaint relates to conduct that occurred during the time that the entity was a Clearing Participant and an Originating a Notice is issued in accordance with these Rules within twelve (12) months from the date that the entity ceases to be a Clearing Participant, whether voluntary or otherwise.
- d. Investigations may be conducted into any matters arising from a Complaint or otherwise.

### Section A-503<sup>2</sup> Cooperation with Investigations

Every Clearing Participant shall co-operate with Staff during an investigation and shall comply with all requirements to provide information and documents as set forth in the Rules. The failure to cooperate fully with an investigation by the Corporation shall constitute a breach of these Rules.

### Section A-503<sup>3</sup> No Disclosure of Details of Investigation

Staff are not required to provide any Person with any details or particulars relating to an inspection a complaint or investigation, including its purpose, the nature of any complaint, or any findings or conclusions resulting therefrom.

#### **Section A-505~~4~~ Requirement to Provide Information and Documents and Records**

- a. For the purposes of any investigation, Staff may obtain Documents and Records and/or information from any source whatsoever, including from any Clearing Participant or a customer of a Clearing Participant.
- b. A Clearing Participant shall, forthwith upon the request of the Staff:
  - (i) provide any Documents and Records and/or information in its possession or control in such manner and form, including electronically, as may be required by Staff;
  - (ii) allow the inspection of, and permit copies or the original to be taken of, any Documents and Records and/or information in its possession or control, provided however, that if the original of any document is taken, Staff shall provide a certified copy thereof within a reasonable period of time and at no cost;
  - (iii) provide a statement or statements from such person or persons, in such form and manner and at such time and place as may be specified by Staff on any matter or issue that Staff, in its sole discretion, determines may be relevant to an inspection or investigation. In the case of a person other than an individual, the statement(s) shall be made by the appropriate employee(s), officer(s), director(s), partner(s), auditor(s) or other individual or individuals associated with the Clearing Participant and Staff may, in its sole discretion, specify the individual or individuals who are to provide the statement(s);
  - (iv) produce for an oral examination by Staff, such person or persons, in such manner and at such time and place as may be specified by Staff on any matter or issue that Staff, in its sole discretion determines may be relevant to an ~~inspection of~~ investigation. In the case of a person other than an individual, the examination(s) shall be conducted of the appropriate employee(s), officer(s), director(s), partner(s), auditor(s) or other individual or individuals associated with the Clearing Participant and Staff may, in its sole direction, specify the individual or individuals who are to be produced for examination.
  - (v) Staff may specify that any statement(s) required to be given under this Rule be given in writing, by electronic recorded means and/or under oath.
  - (vi) Staff may specify that any examination(s) required to be conducted under this Rule, be conducted under oath and/or recorded by any means, including by and in the presence of an official reporter.

#### **Section A-506~~5~~ Failure to Provide Documents and Records and/or Information or to Appear**

- a. Where a Clearing Participant fails to comply with any requirement to provide information and documents or ~~fails~~ to cooperate in any way with an investigation, Staff may report the matter to a panel of the Hearing Committee, which may, after a hearing, suspend the registration or other privileges of Clearing Participant status or make any other order it ~~thinks fit~~ **determines appropriate**, including sanctioning by way of costs or fines or other measures, until the required cooperation is provided to Staff.
- b. Where service on the Clearing Participant or the holding of a hearing would cause a delay which, in the opinion of a panel of the Hearing Committee would be prejudicial to the proper regulation of the Corporation, a panel of the Hearing Committee may suspend the registration or other Clearing Participant privileges of any Clearing Participant, or may make any other order it ~~thinks fit~~ **determines appropriate**, without notice to the Clearing Participant.

- c. Where a panel of the Hearing Committee makes a suspension or other order under sub~~part~~-rule ~~(b) b. above~~ to this Rule, Staff shall forthwith serve the order on the Clearing Participant and the Clearing Participant may, within five (5) Business Days after service of the order, apply to the Hearing Committee to vary or set aside the order.
- d. ~~An appeal~~ An order of a panel of the Hearing Committee made under subpart b. to this Rule ~~to the Board~~ may be appealed ~~made~~ by either the Clearing Participant or Staff. The appeal shall be to three (3) members of the Board. The decision of the Board shall be final.

#### **Section A-5076 Confidentiality During the Investigation Process**

- a. Prior to filing and serving of a Notice, all matters and proceedings relating to investigations, including any facts, documents or information sought or obtained by Staff are and remain strictly confidential and may not be disclosed to any person. Provided however, that any person may seek legal advice at their own cost, in respect of the investigation.
- b. Notwithstanding the provisions of sub~~part~~-rule a. to this Rule ~~above~~, Staff may disclose such information as it deems necessary to conduct the investigation, or any subsequent hearing in respect of the matter. Staff may also disclose to any person that it has received a complaint against a Clearing Participant, or that a complaint or other matter is or will be under investigation by it.
- c. Notwithstanding any other provision of these Rules, Staff may disclose to a law enforcement authority any information respecting possible criminal activity on the part of a Clearing Participant, or an employee, officer, director or agent of a Clearing Participant that is obtained during an investigation.

#### **Section A-5087 Conclusion of Investigation**

- a. ~~Upon concluding an investigation, Staff shall either;~~
  - (i) ~~take no further action in relation to the complaint if, in its sole discretion, it determines that there is not a prima facie case to justify disciplinary proceedings under these Rules;~~  
or
  - (ii) ~~issue a Notice in accordance with these Rules.~~
- ~~b.~~a. Upon concluding an investigation, Staff shall submit a detailed written report (the "Investigation Report") to one member of the Hearing Committee. The Investigation Report will detail all relevant facts and particulars in relation to the investigation and recommend to either; a) close the file; or b) proceed to a disciplinary hearing. Investigation reports are, and shall remain, strictly confidential and shall not be disclosed to any other Person for any purpose whatsoever. The member of the Hearing Committee who reviews an Investigation Report shall not participate in any subsequent hearing of the matter.

#### **Section A-5098 Disciplinary Hearing Process**

- a. Upon determining that disciplinary proceedings should be commenced, a panel of the Hearing Committee shall be established in accordance with the following:
  - (i) the Corporate Administrator shall, upon the issuance of a Notice in accordance with these Rules, contact the Independent Board Member appointee to the Special Regulatory Committee of the Exchange, who shall select three (3) members from the Hearing Committee, one of whom shall be a lawyer or a retired judge; or

- (ii) In the event that the Independent Board Member is unable, due to a conflict or otherwise, to appoint a panel of the Hearing Committee, the President of the Corporation shall ~~select the panel~~ select three (3) members from the Hearing Committee, one of whom shall be a lawyer or a retired judge.
- b. The Corporate Administrator shall be responsible for:
- (i) organizing and scheduling all meetings, hearings, and communications concerning the panel of the Hearing Committee or, in the event of an appeal, the board;
  - (ii) all communications with the Independent Board Member and/or the President, in accordance with subsection a. above, pertaining to the appointment of a panel of the Hearing Committee;
  - (iii) maintaining files concerning each hearing held pursuant to these Rules, which files are to maintain ~~original~~ copies of all pleadings and copies of all correspondence;
  - (iv) the exchange of all correspondence between counsel for the parties to a hearing and the panel of the Hearing Committee appointed to hear the matter;
  - (v) accepting for filing all pleadings pertaining to a hearing as required by these Rules, and the service of same where required by the Rules; and
  - (vi) such ancillary matters as are necessary to properly carry out the obligations set out in sub paragraphs (i) to (v) ~~above~~ to this Rule.

The Corporate Administrator shall not provide information relating to the duties and responsibilities listed above to Staff other than as required by these Rules.

### **Section A-5409 Pleadings**

- a. When Staff commences disciplinary proceedings, a Notice shall be prepared and served, which Notice shall include;
- (i) a reference to the regulatory provisions governing the matter;
  - (ii) a summary statement of the facts alleged and the conclusions drawn based upon those facts;
  - (iii) a statement of the intent to hold a hearing on a date and time set out or ~~to be~~ at a date and time which will be scheduled and set in the future;
  - (iv) a reminder of the settlement processes in these Rules; and
  - (v) a reminder to file a Reply, as provided for in these Rules.
- b. The Clearing Participant and any other Person named as a Respondent in a Notice shall have twenty (20) Business Days (or such further time as either the Corporation or panel of the Hearing Committee may in their discretion allow) from the service of the Notice in which to provide a Reply. A Reply shall responding to all ~~or any~~ of the allegations in the Notice, stating ~~state~~ its intended plea(s) and what admissions of fact, if any, it makes. If no Reply has been served within twenty (20) Business Days of service of the Notice or such extended period as has been agreed, a panel of the Hearing Committee may, in its discretion, deem the Clearing Participant or other Person to have accepted everything set out in the Notice and shall proceed directly to determining sanctions and penalties.

- c. Having seen and considered the Reply, Staff may proceed with the disciplinary proceedings, or discontinue the disciplinary proceedings.
- d. Staff may at any time amend a Notice by deletion, alteration or addition, change the Rule breach(s) alleged in the Notice or add another Rule breach in the Notice.
- e. Upon amendment of a Notice, the Clearing Participant or any other Person affected shall have ten (10) ~~days~~ Business Days or such extended period as may be agreed with Staff or as directed by a panel of the Hearing Committee to make any consequential amendment(s) to its Reply. If no amended Reply has been served within ~~ten (10) days~~ ten (10) Business Days of service of ~~the~~ an amended Notice, a panel of the Hearing Committee may in its discretion deem the Clearing Participant, or other Person(s) to have accepted the facts and matters alleged in the Notice.

#### **Section A-514~~0~~ Hearing**

- a. Upon completion of Pleadings, a hearing date shall be set and the Respondents to a Notice shall be provided with at least fifteen (15) Business Days' notice of the date, time and location of the hearing.
- b. The panel of the Hearing Committee shall conduct a hearing and shall adopt such procedures as it thinks fit, but must provide each of Staff and the Respondents to a Notice:
  - (i) with an opportunity to present its case, including calling witnesses;
  - (ii) with the opportunity to hear the other party's case, including cross examining witnesses;
  - (iii) to make submissions by way of a closing statement.
- c. The panel of the Hearing Committee shall apply the civil standard of proof on the balance of probabilities.
- d. The panel of the Hearing Committee 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 statutory authority or self-regulatory organization.
- e. If Staff or Clearing Participants should fail to meet a time limit imposed by the panel of the Hearing Committee or fail to attend a hearing, the panel of the Hearing Committee may in its discretion allow an extension of time, adjourn its proceedings or proceed, if necessary in the absence of the Clearing Participant.

#### **Section A-511 Hearing in Absence of Respondent**

- a. If a Respondent has been served with notice of the hearing date, time and location but fails to attend the hearing, the Hearing Committee may proceed with the hearing and dispose of the matter on the date and at the time and place set out in the notice provided, without further notice and in the absence of the Respondent or the Respondent's agent or representative, even if the Respondent has filed any pleadings in the matter.
- b. The failure of a Respondent to attend a hearing is considered a significant violation.

## Section A-512 Deliberations

The deliberations of the panel of the Hearing Committee hearing the matter shall be made in the absence of any other person, except for the committee's own legal counsel.

## Section A-513 Findings of the Panel of the Hearing Committee and Penalties and Sanctions

- a. If, at the conclusion of a hearing, the panel of the Hearing Committee finds that the Respondents or any one of them is guilty of any one or more of the charges set out in the Notice, or in the event that a Clearing Participant has failed to respond to a Notice in the manner provided for in these Rules, the panel of the Hearing Committee shall re-convene the hearing to permit the parties to make representations on penalties and sanctions. The hearing will take such form as the panel of the Hearing Committee may determine and may include written submissions, verbal submissions, or a combination.
- b. To assist the panel of the Hearing Committee in making a decision to impose any ~~penalty~~ penalties and sanctions, the panel of the Hearing Committee may be advised of any disciplinary history pertaining to the Respondent(s) upon which a penalty or sanction was included.
- c. Following the submissions as to penalties and sanctions, the panel of the Hearing Committee may impose one or more of the penalties and sanctions set out in the Rules.
- d. The panel of the Hearing Committee may make any ancillary order that is appropriate or required in connection with a penalty imposed or may make any other order that it considers appropriate in the circumstances, including an order that a further or new investigation be held into any matter.

## Section A-514 Sanctions

- a. The sanctions which may be imposed on a Respondent by a panel of the Hearing Committee may include one or more of the following:
  - (i) the issue of a private warning or reprimand;
  - (ii) the issue of a public notice of censure;
  - (iii) in the case of an employee, director, or officer, a finding that any Clearing Participant for which such individual is a director, controller or officer would not meet the Corporation's membership criteria for any period, or indefinitely;
  - (iv) in the case of a Clearing Participant, disqualification (either indefinitely or for a fixed term) of any of its Representatives from being a Director or member of a committee of the Corporation;
  - (v) a fine, not to exceed CAD \$1,000,000 (one million) per offence, to be paid on such terms as may be prescribed;
  - (vi) the disgorgement of any gain made by the Clearing Participant or its Representatives in connection with the breach of the Rules;
  - (vii) a suspension;
  - (viii) a termination;

- (ix) provided that a panel of the Hearing Committee may, in an appropriate cases, take more than one of the above actions in relation to any one Clearing Participant and/or different actions in relation to different Clearing Participants concerned in the same investigation or on similar facts; and
- (x) any combination of the foregoing.

b. The Corporation shall be entitled to recover from any defaulting Clearing Participant, the amount of any penalties or sanctions assessed against it, plus the Corporation's reasonable costs and expenses, including legal expenses, incurred in connection with the matter giving rise to the penalty or sanction.

c. Following the suspension or expulsion of a Clearing Participant, the Corporation may make such directions as it thinks fit in respect of Contracts to which that Clearing Participant is a party (including, without limitation, directions for the reduction, transfer or elimination of any of them).

d. A panel of the Hearing Committee may order the Clearing Participant or any other Respondent to the proceedings to pay costs as it thinks appropriate, including, but not limited to the costs of the panel of the Hearing Committee, further administration costs directly attributable to the disciplinary proceedings, costs incurred in the investigation, preparation and presentation of the case, including the costs of the Corporation's external counsel and/or third party expert witnesses.

e. The contravention of any sanction imposed or direction made by the panel of the Hearing Committee may be treated for all purposes as a breach of the Rules.

#### **Section A-515 Appeals**

a. Within eight (8) Business Days ~~10 days~~ of receiving notice in writing of a decision of a panel of the Hearing Committee, a Respondent (whether current or former in the case of expulsion) or other Person affected, or Staff, may appeal to the Board by lodging with the Corporation a Notice of Appeal in writing and by delivering a copy thereof to any other party to the disciplinary proceedings.

b. 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:

- (i) the panel of the Hearing Committee misdirected itself; or
- (ii) the panel of the Hearing Committee's decision was:
  - (1) one which no reasonable tribunal could have reached; or
  - (2) unsupported by the evidence or was against the weight of the evidence; or
  - (3) based on an error of law, or a misinterpretation of the Rules; or
- (iii) the sanction or penalty(ies) imposed was excessive or, in the case of an appeal by Staff, was insufficient or inappropriate; or
- (iv) new evidence is available and that, had it been made available, the panel of the Hearing Committee, could reasonably have come to a different decision. This will not apply if the evidence could have been adduced before the panel of the Hearing Committee by the exercise of reasonable diligence.



- c. In the case of appeal against a sanction or penalty, the Board may affirm, vary or revoke the sanction. The Board 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 panel of the Hearing Committee.
- d. Upon receipt of a Notice of Appeal, a meeting of the Board shall be convened. A quorum of the Board for this purpose will constitute four (4) members, at least one (1) of which shall be an Independent Board Member.
- e. The Board, in hearing an appeal, may adopt such procedures as it thinks fit and just. The Board shall further enjoy all powers vested in disciplinary panels, procedural or otherwise. The appellant and the respondent(s) to the appeal may appear, make representations and (subject to any restriction on adducing new evidence), call witnesses, who may be examined and cross-examined.
- f. The Board shall issue a decision, in writing, which shall provide detailed reasons for its findings. The decision with reasons shall be notified to the appellant and respondent in writing without undue delay.
- g. Either party may appeal the decision of the Board to the Manitoba Securities Commission.
- h. The filing of an appeal from a decision of a panel of the Hearing Committee or of the Board shall not impair the validity or stay the effect of the decision. The reversal of a suspension shall not invalidate any acts of the Corporation taken prior to such reversal pursuant to such suspension and the rights of any Person which may arise out of any such acts shall not be affected by the reversal of such suspension.

## **Section A-516 Settlement**

### **Section A-516.1 Offers of Settlement**

- a. A Respondent may, at any time prior to ~~two (2)~~ five (5) full Business Days before a scheduled hearing before a panel of the Hearing Committee, serve Staff with an Offer of Settlement to dispose of any matter that is the subject of the hearing.
- b. Staff may, at any time prior to ~~two (2)~~ five (5) full Business Days before a scheduled hearing before a panel of the Hearing Committee, serve the Respondents, or one or more of them, with an Offer of Settlement to dispose of any matter that is the subject of the hearing.

### **Section A-516.2 Form of the Offer of Settlement**

An Offer of Settlement must:

- a. be in writing in the form prescribed by the Corporation;
- b. be signed by the Person (Staff ~~of~~ or the Respondent(s)) proposing the Offer of Settlement; and
- c. contain the following:
  - (i) details of the specific violations to be admitted by the Respondent(s);
  - (ii) a statement of the facts to be admitted by the Respondent(s);
  - (iii) the proposed disposition of the matter, including any sanction(s) to be imposed and the amount of costs and expenses to be paid by the Respondent(s);
  - (iv) the consent of the Respondent(s) to the Offer of Settlement;

- (v) an acknowledgement that the settlement must be approved by Staff, failing which it shall not bind the parties concerned and the hearing of the matter shall proceed as scheduled; and
- (vi) a waiver by the Respondent(s) of all rights under the Rules to a hearing or to an appeal should the Offer of Settlement be approved by a panel of the Hearing Committee as provided for in these Rules, together with an acknowledgement that notice of the settlement will be published on the Website of the Corporation.

### **Section A-516.3 Submission and Approval of Offer of Settlement**

- a. An Offer of Settlement from a Respondent shall be submitted to Staff who may conduct negotiations with the Respondent(s) to amend the Offer of Settlement. If Staff agree to the terms of the Offer of Settlement as submitted or amended, the Offer of Settlement shall be signed by the parties and submitted to the office of the Corporate Administrator. The Corporate Administrator shall do such scheduling as is necessary to have a separate panel of the Hearing Committee empanelled and a hearing scheduled all in accordance with these Rules.
- b. Staff may submit an Offer of Settlement to one or more Respondents to a matter and the parties may negotiate the terms of same. If the Respondent(s), or any of them, agree to the terms of the Offer of Settlement as submitted or amended, the Offer of Settlement shall be signed by the parties and submitted to the office of the Corporate Administrator. The Corporate Administrator shall do such scheduling as is necessary to have a separate panel of the Hearing Committee empanelled and a hearing scheduled all in accordance with these Rules.

### **Section A-516.4 Agreement to Terms of Offer of Settlement**

An Offer of Settlement shall not be presented to a panel of the Hearing Committee unless all of its terms have been agreed to in writing, by both the Respondent(s) and Staff.

### **Section A-516.5 Hearing Before Panel of the Hearing Committee**

Where an Offer of Settlement is presented to a panel of the Hearing Committee:

- a. the panel of the Hearing Committee shall convene a hearing to consider the Offer of Settlement;
- b. Staff and the Respondent(s) to the Offer of Settlement may make submissions to the panel of the Hearing Committee with respect to the reasons the committee should accept the Offer of Settlement;
- c. the panel of the Hearing Committee may ask any questions of the parties; and
- d. the hearing will not be open to the public.

### **Section A-516.6 Decision of the Panel of the Hearing Committee**

Following a hearing under this Rule, the panel of the Hearing Committee shall either:

- a. accept the Offer of Settlement; or
- b. reject the Offer of Settlement.

Under no circumstances may the panel of the Hearing Committee amend or require the amendment of any terms of the Offer of Settlement.

### **Section A-516.7 Privilege of Offers of Settlement and Negotiations**

All matters relating to an Offer of Settlement, including any discussions, negotiations and submissions to the panel of the Hearing Committee are without prejudice to the parties and shall not be disclosed by them in any way in any subsequent proceedings.

### **Section A-516.8 Acceptance of Offer of Settlement**

If the panel of the Hearing Committee accepts an Offer of Settlement:

- a. The panel of the Hearing Committee shall issue an order in accordance with the terms of the Offer of Settlement;
- b. The matter(s) which is the subject of the Offer of Settlement is deemed to be final and binding on the parties and is not subject to any further review or appeal;
- c. The disposition of the matter that is the subject of the Offer of Settlement shall be included in the permanent records of the Corporation with respect to the Person(s) who are parties to the Offer of Settlement.

### **Section A-516.9 Rejection of Offer of Settlement**

If the panel of the Hearing Committee rejects an Offer of Settlement, the parties may renegotiate a new Settlement Proposal, or may proceed with a hearing of the matter and any member of the Hearing Committee that reviewed an Offer of Settlement may not participate in any subsequent proceedings in relation to the matter.

### **Section A-517 Publication of Information**

The office of the Corporate Administrator shall cause to be published on the Website the following information at the following times:

- a. A Notice of Hearing, no less than two (2) business days prior to the date of a hearing. In the event that a hearing is called for a panel of the Hearing Committee panel to determine whether or not to accept a joint settlement proposal, a notification shall be placed in the Notice of Hearing that settlement hearings are not public.
- b. A Notice shall be published to the website of all decisions of disciplinary committees, whether contested hearings or settlement hearings, on or after the date that such decision is effective and the appeal period has expired. The Notice shall include details of the facts giving rise to the disciplinary matters, and the sanctions, if any, assessed by the disciplinary committee(s) or agreed by the parties under the provisions of a Joint Settlement Agreement. For clarity, Notices are to be published and do not require an agreement by, or the consent of, any Respondent to a hearing.

## RULE A-6 GUARANTY FUND DEPOSIT

### Section A-601 Base Guaranty Fund Establishment

- a. The Corporation shall establish and determine a Base Guaranty Fund for all Classes of Options on Futures and Futures cleared by the Corporation.
- b. Each Clearing Participant is liable to the Corporation for, and is required to make and maintain, deposits to the Guaranty Fund as required by these Rules.
- c. The Guaranty Fund shall be used for the purposes set out in ~~Section A-606~~ these Rules, and shall not be used by the Corporation as working capital.
- d. All Guaranty Fund specifications are in Canadian currency.

### Section A-602 Base Guaranty Fund Amount

The amount of the Base Guaranty Fund shall be determined by the Corporation in accordance with the Guaranty Fund Policy.

### Section A-603 Guaranty Fund Deposits Required by Clearing Participant

- a. Each Clearing Participant is liable to pay to the Corporation the Guaranty Fund amount allocated to it in ~~compliance~~ accordance with these Rules and with the Guaranty Fund Policy.
- b. Each Clearing Participant is required to deposit ~~acceptable collateral~~ Permitted Cover with the Corporation in an amount which is the greater of:
  - (i) \$250,000.00; or
  - (ii) the amount determined according to the allocation methodology set out in the Guaranty Fund Policy;

Provided that, each Clearing Participant is required to deposit no less than 50% of their Guaranty Fund requirement in cash.

### Section A-604 Guaranty Fund Re-Allocation

- a. Each Clearing Participant's required Guaranty Fund deposit shall be re-calculated by the Corporation;
  - (i) once per month, on the first Trading Day of each month; and
  - (ii) more frequently than once per month, following each change to the amount of the Base Guaranty Fund.
- b. Each Guaranty Fund Re-Allocation will be conducted according to the allocation methodology set out in the Guaranty Fund Policy.
- c. Clearing Participants will be notified, in writing, by the Corporation, of every Guaranty Fund Re-allocation conducted and will be advised of their required deposit.
- d. The new deposit requirements applicable to each Clearing Participant will become effective at the close of business on the third Trading Day following receipt of notice from the Corporation of a Guaranty Fund Re-Allocation.

- e. If a Clearing Participant's Guaranty Fund deposits are insufficient to cover its deposit requirements at the close of business on any Trading Day, whether due to fluctuations in value of securities deposited, or due to new requirements coming into effect, or for any other reason, then the Clearing Participant will be notified of the deficiency (debit) amount, and the deficiency must be paid in cash according to the procedures specified in the Operations Manual, and prior to the deadline specified in the Operations Manual.
- f. ~~(moved to A-607) In the event there are surplus deposits provided by a Clearing Participant for its Guaranty Fund obligations, such surplus may be withdrawn by submission to the Corporation between the hours specified by the Corporation, of a withdrawal request in the form prescribed by the Corporation. A Withdrawal will not be processed where Guaranty Fund deposits held by the Corporation would then be insufficient to cover current Guaranty Fund requirements or requirements for which a notice of Guaranty Fund Re-Allocation has been distributed and the requirements have not yet become effective.~~

### **Section A-605 ~~Acceptable Forms of~~ Permitted Cover for Guaranty Fund Requirements Deposit**

The acceptable forms of following are the acceptable forms of Guaranty Fund Deposits Permitted Cover for Guaranty Fund requirements are set out in the Operations Manual.;

- a. ~~**Cash** — Clearing Participants may deposit cash to cover Guaranty Fund requirements in such manner as is specified by the Corporation. Funds will be deposited to a trust account or accounts set up by the Corporation with such financial institution or institutions as the Corporation may determine.~~
- b. ~~**Government Securities** — Clearing Participants may deposit, Government guaranteed securities as may be specified by the Corporation which are freely negotiable. It is the Clearing Participant's obligation to provide evidence sufficient to the Corporation of such guarantee before a security shall be accepted.~~

~~The government securities that are acceptable, and the requirements pertaining to them, are set out in the Operations Manual.~~

- ~~— The Government securities shall be deemed to be accepted as pledged with the Corporation at the time the Corporation confirms acceptance of such pledge(s). All interest or gain received or accrued on such Government securities shall belong to the Corporation upon default or Non-Conforming status.~~

### **Section A-606 Use Application of Guaranty Funds and Corporation Priority Contribution Use of Suspended Clearing Participant's Margin Deposits**

The Corporation may apply a suspended Clearing Participant's Margin Deposits (including, without limitation, Margin and Guaranty Fund deposits), in accordance with the provisions of these Rules, including Part D, subject to the requirements of Section A-103 m.

### **Section A-607 Withdrawal of Surplus Collateral in Guaranty Fund**

Provided that the requirements of the Rules are met, in the event that the Clearing Participant has provided surplus funds for deposit to the Guaranty Fund, such surplus Surplus Collateral may be withdrawn upon such notice as the Corporation shall specify by submission to the Corporation by the Clearing Participant, between the hours specified by the Corporation, of a withdrawal request in the form prescribed by the Corporation. A Withdrawal will not be processed where Guaranty Fund deposits held by the Corporation would then be insufficient to cover current Guaranty Fund requirements or requirements for which a notice of Guaranty Fund Re-Allocation has been distributed and the requirements have not yet become effective.

## **Section A-608 Clearing Participants' Contributions ~~Guaranty Fund Refund~~**

- a. The Guaranty Fund Contributions of a Clearing Participant, following termination of its clearing participant status will be returned to the Clearing Participant on the first date of the next Guaranty Fund Re-Allocation beginning after the Transfer, close out or termination of all its positions at the Corporation and the payment of all other amounts due to the Corporation (subject to the Guaranty Fund Contributions being applied under Part D or under this Rule A-6 and further subject to any extension to the Guaranty Fund period pursuant to subpart f. to this Rule). For greater clarity, the obligation of the Corporation to return to a Clearing Participant any remaining portion of its Guaranty Fund contributions will be satisfied by accounting for the amount of that obligation by, if applicable, accounting for the amount of that obligation in its determination of a net sum under Section D-906, or, a net sum as referred to in Section D-918 a. (viii) (whichever is applicable or the earlier) in either case payable by the Corporation or the Clearing Participant to the other, provided that in the case of a termination under Section A-213 the determination may be made up to and including the first date of the first Guaranty Fund Re-allocation period beginning after the transfer or liquidation of all of the relevant Clearing Participant's Contracts at the Corporation.

~~Whenever a Clearing Participant ceases to be a Clearing Participant, the amount of its deposit, to the Guaranty Fund shall be returned, subject to the time limit specified in this Section, but not until all Exchange Transactions, Options or Open Positions of the Clearing Participant from which losses or payments chargeable to the Guaranty Fund might result, have been fulfilled or closed, or with the approval of the Corporation, another Clearing Participant has been substituted thereon. All amounts chargeable against a Clearing Participant's deposit in the Guaranty Fund on account of transactions effected while a Clearing Participant, including pro-rata charges, shall be deducted from the amount to be returned. Thirty days after all outstanding items have been eliminated from the Clearing Participant's accounts with the Corporation the balance of the Guaranty Fund owed to the former Clearing Participant will be paid to that Clearing Participant.~~

b. [reserved]

c. In the event of the application of any Guaranty Fund Contributions taking place pursuant to Section D-908 or Section A-609, the Corporation shall:

- (i) give notice to all Clearing Participants of the amount by which the Guaranty Fund has been reduced;
- (ii) notify each Clearing Participant and any relevant former Clearing Participant of the amount for which it is liable to make additional Guaranty Fund Contributions in order to replenish the Guaranty Fund ("Replenishment Contribution"); and
- (iii) specify the new amount of the Corporation's Priority Contribution by Notice.

Clearing Participants must make required ~~replenishment~~ ~~Guaranty~~ ~~Fund Contributions~~ Replenishment Contributions upon notification (subject to Section D-917 and Section D-918 a. (ii)). The Corporation shall ensure that any specified new Corporation Priority Contribution is held by it in accordance with Section A-609 f., on the same date as the Guaranty Fund Contributions of the Clearing Participant are so due. Any obligation on a Clearing Participant to make payments pursuant to this Rule is separate from, and shall apply in addition to, any obligation to make payment in respect of Assessment Contributions pursuant to Section D-909. Any Replenishment Contribution or amounts designated as Corporation Priority Contributions that are required as a result of the application of any Guaranty Fund Contributions or Corporation Priority

Contributions to meet liabilities arising in connection with an Event of Default shall not be applied to meet liabilities arising in connection with that same Event of Default.

d. If:

(i) An Event of Default is Events of Default are declared in relation to more than one Defaulter contemporaneously (the defaulter in respect of whom default proceedings are first completed being the "First Defaulter" and any other defaulter being an "Additional Defaulter" or, if default proceedings are completed at the same time, the Defaulter whose name would appear first alphabetically being the "First Defaulter" and any other Defaulter or Defaulters being an "Additional Defaulter"); or

(ii) A separate Event of Default is declared in relation to a Defaulter or Defaulters that has or have made a Guaranty Fund Contribution or Guaranty Fund Contributions to the same Guaranty Fund (any, an "Additional Defaulter") prior to the termination of default proceedings in relation to an existing Defaulter ("First Defaulter").

and recourse is made to Guaranty Fund Contributions in respect of the First Defaulter (or any Additional Defaulter), then (subject to Section D-917 and Section D-918 a.(ii)), Clearing Participants shall be required to replenish the Guaranty Fund pursuant to subpart c. to this Rule, separately in respect of each Defaulter causing a reduction in the Guaranty Fund. The Corporation may apply Guaranty Fund Contributions and the Corporation Priority Contribution resulting from replenishment following default proceedings in relation to the First Defaulter to meet the liabilities of an Additional Defaulter and may apply Guaranty Fund Contributions and the Corporation Priority Contribution resulting from replenishment following default proceedings in relation to an Additional Defaulter to meet the liabilities of another Additional Defaulter. Other than as set out in this Rule, amounts transferred by Clearing Participants or former Clearing Participants in order to replenish Guaranty Fund Contributions under subpart c. to this Rule or amounts designated as Corporation Priority Contributions may not be applied to meet liabilities arising in connection with any Event of Default occurring prior to the time at which the relevant replenishment or designation is required under these Rules. For the avoidance of doubt, any Replenishment Contribution or amounts designated as Corporation Priority Contributions that are required as a result of the application of any Guaranty Fund Contributions or Corporation Priority Contributions to meet liabilities arising in connection with an Event of Default shall not be applied to meet liabilities arising in connection with that same Event of Default.

e. In the event of the Corporation applying any Guaranty Fund Contributions of non-defaulting Clearing Participants, the Corporation will make payment to the Persons whose Guaranty Fund Contributions have been applied *pro rata* in respect of any amounts received from the Defaulter as a result of its being a creditor of the Defaulter in the Defaulter's Insolvency or otherwise (net of the Corporation's costs of recovery), up to the amount by which the Guaranty Fund was reduced (excluding the Guaranty Fund Contribution of the Defaulter) but without counting for interest, subject to the Corporation first: (i) retaining or repaying amounts up to the amount of any other assets of the Corporation (not including Corporation Priority Contribution monies) or other third parties applied to meet any shortfall or loss following exhaustion of the assets specified in Section D-908 or in substitution of any such assets; and (ii) making reimbursement payments to Persons that have made Assessment Contributions (in that order of priority). Subsequent to these payments, the Corporation will be reimbursed for the Corporation Priority Contribution. Only after all of the above parties have been fully paid will any balance be repaid to the Defaulter(s).

f. The Corporation shall not be obliged to make any repayment to Clearing Participants in respect of Guaranty Fund Contributions to the Guaranty Fund until and subject to completion of the relevant Default proceedings pursuant to the Rules at Part D and this Rule A-6. For the avoidance of doubt, in such circumstances, the Corporation shall nonetheless be entitled to make periodic adjustments to Guaranty Fund Contribution Re-Allocations, as otherwise set out in these Rules, at its discretion.

## Section A-609 Use of Guaranty Fund Contributions

a. Following an Event of Default, or otherwise in accordance with the Rules, the Corporation shall apply the Guaranty Fund Contributions of a Defaulter pursuant to Section D-906 and Section D-908. Otherwise, Guaranty Fund Contributions of a Clearing Participant or proceeds thereof may be applied or used by the Corporation at its discretion in any of the following manners to the extent of the relevant Clearing Participant's Guaranty Fund Contribution:

- (i) against any amount that becomes due to the Corporation by that Clearing Participant for any reason (including but not limited to Margin, amounts due pursuant to Contract Terms, fees, dues, assessments and fines);
- (ii) in managing an Event of Default or an event which could be declared by the Corporation as an Event of Default, including:
  - (1) where necessary, to meet the Corporation's costs involved in facilitating the transfer of Contracts recorded in a Clearing Participant's Customer Position Account, if that Clearing Participant is experiencing financial difficulty or during a termination of Clearing Participant status, to another Clearing Participant;
  - (2) provisionally, in respect of any actual or potential shortfall, loss, obligation or liability if the Corporation, at its discretion, determines that Guaranty Fund Contributions are likely to be applied pursuant to Section D-908 or subsection a (i) of this Rule, provided that to the extent that any Guaranty Fund Contributions are not applied pursuant to Section D-908 or subpart a. (i) to this Rule within a reasonable period of time, the Corporation shall account to the relevant Clearing Participant for the difference between the amount by which any Guaranty Fund Contributions were actually applied and the amount by which the same were provisionally applied under subpart a.(ii) (1) to this Rule; or
- (iii) for making payments, including for liquidity or to raise liquidity for liabilities to make payments in respect of obligations incurred by the Corporation in its capacity as a Clearing Agency,

provided that: (1) nothing in this subsection a. of this Rule shall affect the order of application of assets following a declared Event of Default pursuant to Section D-908; (2) any Guaranty Fund Contributions used or applied under this subsection a. of this Rule (but not actually applied under Section D-908) shall be returned or reallocated by the Corporation to the Guaranty Fund; and (3) following an Event of Default declared by the Corporation, Guaranty Fund Contributions may only be used or applied under subsection a. of this Rule after available resources of the Defaulter have been exhausted.

b. The Corporation may, at any time, and from time to time, sell, substitute, set off, transfer, assign, mortgage, pledge, re-pledge or otherwise create or grant a lien, interest, charge or other security interest on or use as collateral by way of title transfer arrangement, any proceeds of Guaranty Fund Contributions for any of the purposes set out in subsection a. of this Rule. Any borrowings using proceeds of Guaranty Fund Contributions as collateral shall be on terms and conditions deemed necessary or advisable by the Corporation in its sole discretion, and may be in amounts greater, and extend for periods of time longer, than the obligations, if any, of any Clearing Participant to the Corporation for which such cash, securities or other property was pledged to or deposited with the Corporation. Any amounts so borrowed shall be used and applied by the Corporation solely for the purposes set out in subpart a. to this Rule; provided that the failure of the Corporation to comply with subsection a. of this Rule in respect of any borrowings, facility or agreement shall not impair any of the rights or remedies of any transferee, assignee, mortgagee, pledgee, collateral taker or holder of any lien or security interest.



- c. Any expense (including, without limitation, legal fees and expenses) incurred by the Corporation in connection with the use, application or transfer of Guaranty Fund Contributions, or the return of equivalent assets to a Clearing Participant, may, at the option and discretion of the Corporation, be charged to the account of such Clearing Participant.
- d. A Clearing Participant's entitlement to repayment of any Guaranty Fund Contribution or any part of it or interest thereon shall not be capable of assignment or transfer by the Clearing Participant or being made subject to any Encumbrance whatsoever purporting to rank in priority over, *pari passu* with, or subsequent to, the rights of the Corporation or in conflict with Section D-908. Any purported Encumbrance of a Clearing Participant in respect of any Guaranty Fund Contribution shall be null and void.
- e. [reserved]
- f. The Corporation will notify Clearing Participants from time to time, by Notice, of the Corporation Priority Contribution amount. The Corporation undertakes to maintain an amount equal to the Corporation Priority Contribution in a separate account from its other assets (other than any restricted regulatory capital and Loss Assets) and to use the Corporation Priority Contribution only for the purposes of meeting shortfalls arising directly or indirectly from Defaults.
- g. The total amount of the Guaranty Fund Contributions and Corporation Priority Contribution applied in connection with any Event of Default shall be notified to Clearing Participants in a Notice at the time, or as soon thereafter as practicable, to the same being applied.
- ~~a. The Corporation shall apply a Non-Conforming Clearing Participant's (for the purposes of this Section A-606 and Section A-610, the "defaulting Clearing Participant") Margin Deposit (including, without limitation, Margin and Guaranty Fund Deposits), as well as the Corporation Priority Contribution and the Guaranty Fund deposits of other Clearing Participants in accordance with Subsection A-606 b., Subsection A-606 d., and Section A-4.~~
- ~~b. If the amount of the undischarged obligation, payment, loss or expense exceeds the total value of the defaulting Clearing Participant's Margin Deposit (including, without limitation, Margin and Guaranty Fund Deposits), and if the defaulting Clearing Participant fails to pay the Corporation the amount of the deficiency on demand, the remaining shall be paid out first from the Corporation Priority Contribution and, in the event that the Corporation Priority Contribution is fully exhausted, then from the deposits to the Guaranty Fund made by the non-defaulting Clearing Participants, on a pro-rata basis, based on the size of each of the non-defaulting Clearing Participants' Guaranty Fund requirements at that time.~~
- ~~Notwithstanding payments made from the Corporation Priority Contribution and the Guaranty Fund deposits of the non-defaulting Clearing Participants, the defaulting Clearing Participant who failed to pay the deficiency shall remain liable to the Corporation for the full amount of such deficiency until repayment thereof has been made in full, including any costs and charges, including solicitor and own-client costs, that are properly charged to the defaulting Clearing Participant.~~
- ~~c. Whenever any payments are made from the Corporation Priority Contribution and/or any pro-rata charges are made against non-defaulting Clearing Participants' deposits to the Guaranty Fund, the Corporation shall promptly notify all Clearing Participants of the amount of the charge and the reasons therefore. For the purposes of this Section A-606, the amount of any loss sustained by the Corporation shall be determined without reference to the possibility of any subsequent recovery in respect thereof, through insolvency proceedings or otherwise, but the net amount of any such recovery shall be applied in accordance with Section A-610.~~

- d. ~~Without limiting the rights of the parties under Section A-609 and Subsections A-606 a. and b., at the sole discretion of the Corporation, all property deposited with the Corporation by non-defaulting Clearing Participant(s) as a Guaranty Fund deposit may be pledged, repledged, hypothecated, rehypothecated or transferred by the Corporation as security for, or in connection with, the Corporation's own obligations to pay any person incurred in order (a) to obtain liquidity or credit for the purpose of assisting the Corporation to honour its obligations on a timely basis further to the designation by the Corporation of a Clearing Participant as being a Non-Conforming Clearing Participant, or (b) to fund a payment obligation of the Corporation which arises pursuant to a Failed Delivery by any Clearing Participant, and any such security or transfer will be effective without the holder or recipient thereof being required to make any enquiry as to whether the application obligations have been incurred for the purposes set out in this Subsection A-606 d. or whether the funds so obtained are being used for such purposes. Without limiting the rights of the Corporation under Section A-4., at the sole discretion of the Corporation, in the case of the situation described in (a) above, the Corporation shall pledge the Non-Conforming Clearing Participant's Margin Deposits (including, without limitation, Margin and Guaranty Fund Deposits), before pledging the Guaranty Fund deposits of other Clearing Participants. In the case of the situation described in Subsection A-606 b., the Corporation shall pledge the Guaranty Fund deposits of the Clearing Participant responsible for the Failed Delivery before pledging the Corporation Priority Contribution or the Guaranty Fund deposits of other Clearing Participants. The Corporation shall be deemed to continue to hold all property deposited with the Corporation as Guaranty Fund deposits, regardless of whether the Corporation has exercised its rights under this Subsection A-606 d.~~

#### **Section A-607 Making Good on Charges to Guaranty Fund**

~~Whenever an amount is paid out of the Guaranty Fund deposit of a Clearing Participant, whether by pro-rata charge or otherwise, such Clearing Participant shall be liable promptly to make good the deficiency, if any, in its deposit resulting from such payment. After making good the deficiency, the Clearing Participant has two choices:~~

- a. ~~If the Clearing Participant determines to remain a Clearing Participant, it must put up an additional 100% of the amount of the deposit to the Guaranty Fund then prescribed by the rules plus any additional amounts required to cover liabilities outstanding from the Guaranty Fund as a result of the default, no later than 1:00 pm on the Trading Day following the date that the additional amount is called; or~~
- b. ~~If the Clearing Participant does not wish to remain a Clearing Participant, it will be liable for up to an additional 100% of the amount of the deposit to the Guaranty Fund then prescribed by the Rules, but will not be liable for more than 100% in the event that;~~
- ~~(i) within three business days following the pro-rata charge notifies the Corporation in writing that it is terminating its clearing participant status;~~
  - ~~(ii) no Opening Purchase transaction or Opening Writing Transaction is submitted for clearance through any of the Clearing Participant's accounts after the giving of such notice;~~
  - ~~(iii) the Clearing Participant closes out or transfers all of its Open Positions as promptly as practicable after the giving of such notice; and~~
  - ~~(iv) the Clearing Participant immediately provides such notices and does all things necessary and required to suspend any SMAs it has issued, and to terminate all Clearing Authorization and Guaranty forms it has registered with the Exchange.~~

#### **Section A-610 Recovery of Loss**

- a. ~~If any charges have been made against the Corporation Priority Contribution or the deposits to the Guaranty Fund by non-defaulting Clearing Participants, and monies are afterward recovered by the Corporation, in whole or in part, the net amount of such recovery shall be paid or credited to the non-defaulting Clearing Participants against whose deposits to the Guaranty Fund the loss was charged, in proportion to the amount charged against their respective deposits, whether or not they are still Clearing Participants. The balance of any monies recovered shall be paid to the Corporation for the charges made against the Corporation Priority Contribution.~~
- b. ~~Any Clearing Participant (a "Contributing Participant") that has had a loss charged against its deposit to the Guaranty Fund, shall have the right to claim from the defaulting Clearing Participant(s) whose failure to pay led to the loss being charged and the defaulting Clearing Participant(s) shall be obligated to reimburse to such Contributing Participant(s), the amounts charged against the Contributing Participants' deposits to the Guaranty Fund, including any additional assessment that were called by the Corporation and paid by the defaulting Clearing Participant.~~
- c. ~~The Corporation shall have the right to claim from a defaulting Clearing Participant(s) whose failure to pay led to the use of the Corporation Priority Contribution and the defaulting Clearing Participant(s) shall be obligation to reimburse the Corporation the amounts it paid out from the corporation Priority Contribution.~~

#### **Section A-611 Approved Depositories**

~~Any financial institution that is and maintains full Participant status in CDS meets the conditions prescribed by the Corporation for an Approved Depository. The Corporation may, at any time, request such evidence as it deems necessary to satisfy itself of the financial institution's ongoing status at CDS.~~

## RULE A-7 MARGIN REQUIREMENTS

### Section A-701 Margin Maintenance and Purpose

- a. Each Clearing Participant shall transfer Permitted Cover to the Corporation in respect of Margin, in such amounts and in such forms and at such times as are required under these Rules, the Operations Manual and the Policies.

~~The Corporation shall determine margin rates applicable to each Futures and Options issued by it, and shall publish margin rates and any amendments to margin rates on the Website.~~

~~The Corporation requires each Clearing Participant to maintain margin deposits with it to secure the Clearing Participant's obligations to the Corporation and to provide stability of value and liquidity.~~

- b. Prior to Settlement Time every Clearing Participant is obligated to provide Permitted Cover for Margin requirements deposits as determined by the Corporation, in respect of:
- (i) each Long Position,
  - (ii) each Short Position,
  - (iii) each Assigned Position,
  - (iv) each exercised Option position, and
  - (v) each tendered Futures position;

for each account maintained by such Clearing Participant.

- c. Without in any way limiting the generality of the foregoing, at the sole discretion of the Corporation, all property deposited with the Corporation as Margin Deposit, (including, without limitation, Margin and Guaranty Fund), by the Clearing Participant may be pledged, re-pledged, hypothecated or re-hypothecated, or transferred as a security for or in connection with, the Corporation's own obligations to any person. The Corporation shall be deemed to continue to hold all Margin Deposit with the Corporation, regardless of whether the Corporation has exercised its rights under this Rule.
- d. At any time on which a requirement for any Margin payment falls due and insufficient Permitted Cover is held by the Corporation, the Clearing Participant must initially transfer cash in an Eligible Currency. Thereafter a Clearing Participant may substitute such cash Margin with other Permitted Cover by delivery of the replacement Permitted Cover to the Corporation.
- e. Details of Eligible Currencies and Permitted Cover will be notified to the Clearing Participants from time to time, in the Operations Manual, the Policies, and/or by Notice. The Corporation may, at its discretion, vary or alter the standard Margin requirements, nature or types of acceptable Eligible Currencies and Permitted Cover, specify proportions or maximum proportions of asset classes or modify any valuation procedures or haircuts set out in or established pursuant to these Rules and the Policies.
- f. Certain types of Permitted Cover may be subject to haircuts in accordance with the Operations Manual and/or the Policies (as specified from time to time by Notice) pursuant to which certain types of Permitted Cover do not count for their full face or market value in the determination of Margin for the account of a Clearing Participant.
- g. The Corporation may require a Clearing Participant or Clearing Participants to transfer cash in other Eligible Currencies or Permitted Cover with the Corporation in substitution for any Permitted Cover already transferred to the Corporation.

- h. The Corporation may impose, amend or withdraw additional Margin requirements in respect of any Clearing Participant at any time and at its discretion.
- i. Changes to the matters described in subparts e. and f. to this Rule, will be based on an analysis of appropriate factors as determined by the Corporation, including historical and implied price volatility of such assets, current and anticipated conditions in the market for those assets, spread and correlations between relevant assets, liquidity in the market for those assets, composition of the relevant market, default risk (including sovereign risk) with respect to those assets, relevant foreign exchange market conditions and other relevant information.
- e.j. Deposits for Margin requirements. ~~The Margin Deposits~~, excluding deposits to the Guaranty Fund, of a Clearing Participant shall not be utilized by the Corporation to cover a default of another Clearing Participant.

#### **Section A-702 Rights relating to Margin and Representations of Clearing Participants**

- a. The rights and liabilities of the Corporation and of each Clearing Participant in relation to Permitted Cover are set out in the Clearing Participant Application/Agreement and the Rules.
- b. Each Clearing Participant will act as principal and not as agent in providing Margin to the Corporation. The Corporation will take no account of any right or interest which any Person other than the Clearing Participant may have in any margin provided by such Clearing Participant to the Corporation.
- c. Each Clearing Participant is deemed to represent and warrant to the Corporation on each date on which such Clearing Participant transfers Permitted Cover to the Corporation that:
- (i) immediately prior to any such Permitted Cover being transferred to the Corporation, the Clearing Participant is or was the sole legal and beneficial owner of all such assets (or such assets are provided with all legal and beneficial owners' unconditional consent for their use and application pursuant to these Rules);
  - (ii) the Corporation is not subject to any obligation to perform directly to any of a Clearing Participant's Customers, Affiliates or Representatives or any third party as a result of the Clearing Participant granting any interest in any receivable from the Corporation resulting from the Corporation's receipt or use of such Permitted Cover, except as expressly provided pursuant to these Rules or as mandated pursuant to Applicable Law;
  - (iii) such Permitted Cover is provided on the basis that it may be used by the Corporation and applied in accordance with these Rules; and
  - (iv) it will not claim that any use of Permitted Cover by the Corporation in accordance with the Rules or the relevant Clearing Participant Application/Agreement is contrary to, or in breach of, any requirement of Applicable Law, third party right or other contractual obligation.
- d. Any amount or pledged asset recorded in a particular Account may be applied by the Corporation to the extent permitted under Part D of these Rules as against the net sum for such Account or transferred to the extent permitted under Section D-906 regardless of the origin or status of such amount or pledged assets at the time of transfer or prior to the time of transfer to the Corporation.
- e. A Clearing Participant shall take any action reasonably requested by the Corporation that may be necessary or desirable to create, preserve, perfect or validate the right, title or interest of the Corporation in all Margin Deposits intended to be created under these Rules or under the relevant Clearing Participant Application/ Agreement, to enable the Corporation to exercise or enforce any of its rights with respect thereto.

### **Section A-703 2-Additional Margin Rule**

The amount of margin which a Clearing Participant may otherwise be required to deposit with the Corporation pursuant to this Rule may be increased by the Corporation at any time and from time to time without advance notice whenever the Corporation, in its sole discretion, considers such increase necessary or advisable for the protection of the Corporation and/or other Clearing Participants or the integrity of the markets. If the Corporation deems it necessary, it may require that the additional margin payment be made by cash deposit, provided that, in such case, it will provide reasonable notice to the Clearing Participant.

### **Section A-704 3-Variation Margin**

- a. Variation Margin requirements reflect the settlement of Gains and Losses as set out in Rule C-3.
- b. Variation Margin requirements are calculated separately for each House Account and each Customer Account of a Clearing Participant.

### **Section A-705 4-Original Margin**

- a. Original Margin requirements are calculated separately for each House account and for each Customer Account of a Clearing Participant. For a House account, Original Margin requirements reflect the projected total net risk of loss for all futures and options positions in the account. For a Customer account, Original Margin requirements are the sum of the minimum margin required for each customer's positions, calculated according to ICE's Gross Customer Margin (GCM) specification, which is available to Clearing Participants on ICE Community.
- ~~b. The Corporation uses the Standard Portfolio Analysis of Risk (SPAN<sup>2</sup>) algorithm to establish Original Margin requirements.~~
- ~~c. The margin parameters used by the SPAN<sup>2</sup> algorithm to calculate Original Margin are determined according to the Corporation's Margin Policy.~~
- ~~d. Margin parameters are published on the Website and changes to margin parameters will be published in notices to Clearing Participants.~~

### **Section A-706 5 Net Liquidating Value**

- a. Net Liquidating Value reflects the projected proceeds resulting from the close out of all options positions in a Customer Account or House Account.
- b. Net Liquidating Value is calculated based on the Market Price of each Series of Options.
- c. Net Liquidating Value is calculated separately for each commodity with positions in an account. For each commodity, the Net Liquidating Value is a debit or a credit against total margin requirements, such that:
  - (i) A negative (debit) Net Liquidating Value is a margin requirement.
  - (ii) A positive (credit) Net Liquidating Value is a credit that may be used to cover other margin requirements for the same Customer Account or House Account. A Net

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<sup>2</sup>Neither Intercontinental Exchange, Inc. nor any of its affiliates is the source of SPAN<sup>2</sup>. The SPAN<sup>2</sup> methodology was developed by Chicago Mercantile Exchange Inc. and is used by Intercontinental Exchange, Inc. and its affiliates to develop customized versions of SPAN<sup>2</sup>. SPAN<sup>2</sup> is a registered trademark of Chicago Mercantile Exchange Inc., used herein under license. Chicago Mercantile Exchange Inc. assumes no liability in connection with the use of SPAN<sup>2</sup> by any person or entity.

Liquidating Value credit may not be used to cover margin requirements that must be covered with cash.

### **Section A-707 6 Super Margin**

- a. The Corporation establishes Allowable Risk Levels and Maximum Risk Levels for each Clearing Participant, which are based on a calculation of Original Margin as a ratio to Capital. In calculating the ratio, the Corporation shall utilize the most recent financial statements and information filed or reported to the Corporation by a Clearing Participant to determine Capital. Clearing Participants that exceed Allowable Risk Levels will be required to deposit Super Margin with the Corporation.
- b. For the purposes of this Rule:
  - (i) Net Original Margin - is the Original Margin calculated on the total net positions in each Customer or House account. For a Customer account that is subject to gross margining, the Net Original Margin is calculated separately based on the total net positions in that account.
  - (ii) Risk Level – is the ratio that results from calculating a Clearing Participant’s Net Original Margin as a percentage of its Capital;
  - (iii) Allowable Risk Level - is the amount of Risk Level determined by the Corporation, at or below which Super Margin is not assessed. The Allowable Risk Level for a Clearing Participant’s combined Customer Accounts and House Accounts is a ratio of Net Original Margin to Capital of 1.0 or less;
  - (iv) Super Margin – is the margin that a Clearing Participant is assessed whenever its Risk Level exceeds Allowable Risk Levels. Super Margin is an amount equal to that part of the Net Original Margin that exceeds the Allowable Risk Level.
  - (v) Maximum Risk Levels – means that amount of Risk Level that a Clearing Participant is not permitted to exceed. The Maximum Risk Level for a Clearing Participant’s combined Customer Accounts and House Accounts is a ratio of Net Original Margin to Capital of 2.0 or less.
- c. In determining Risk Levels no Clearing Participant will be deemed to have more than \$100 million in Capital, without Board approval.
- d. Notwithstanding anything in these Rules, or in the Operations Manual, the Board may establish, for any Clearing Participant, an Allowable Risk Level that is lower than those established or a Maximum Risk Level that is higher than those established, based on the Board’s evaluation of the financial and operational capacity of the Clearing Participant, and such other factors as the Board in its sole discretion, may deem appropriate. In establishing these new levels, the Board may require such conditions to be met, as it may, in its sole discretion, consider reasonable, including but not limited to, the depositing of additional margin.
- e. In no event may a Clearing Participant exceed the Maximum Risk Levels as set by the Corporation, from time to time, without the Corporation’s approval.
- f. Any Clearing Participant which exceeds the Maximum Risk Levels as set by the Corporation shall transfer and/or liquidate such number of Contracts as may be necessary to eliminate the excess within such time as the Corporation may prescribe and shall report to the Corporation when such transfers or liquidations have been completed. If a Clearing Participant fails to transfer and/or liquidate Contracts within the time specified by the Corporation, the Corporation may liquidate

such Contracts. In addition, the Corporation, may, in its sole discretion, require the Clearing Participant holding positions that result in its exceeding Maximum Risk Levels to provide additional margin deposits in such amounts and in such forms of deposit as the Corporation may specify.

#### **Section A-708 ~~7~~ Stress Loss Charge**

- a. The Corporation runs stress tests on a regular basis in accordance with policies approved by the board. In the event that a stress test evidences that a Clearing Participant would be under-collateralized in the test scenario, the Corporation will call for a Stress Loss Charge (SLC) payment which is a margin requirement.
- b. The Corporation will notify the Clearing Participant of the amount of the SLC requirement according with the provisions of Section 6 of the Operations Manual.

#### **Section A-709 ~~8~~ Intra-Day Margin**

- a. The Corporation may require the deposit of Intra-Day Margin by any Clearing Participant in any account at any time during any Trading Day which the Corporation, in its discretion, considers necessary or advisable to reflect changes during such day in the Market Price of any Underlying Interest, or changes in the financial position of the Clearing Participant or to protect the Corporation, Clearing Participants or the public. Intra-Day margin calls shall be assessed, as more particularly set out in Section 6 of the Operations Manual.
- b. If a Clearing Participant has excess margin on deposit with the Corporation, the Corporation shall be entitled, upon determining that supplementary margin is required, immediately to apply such portion of the excess margin as is necessary to meet the supplementary margin requirements. If there is no excess margin then on deposit, the Corporation will notify the Clearing Participant of the amount of supplementary margin required. Such supplementary margin shall be deemed to be owing upon a Clearing Participant receiving notice thereof and shall be deposited by the Clearing Participant within the time frames set out in Section 6 of the Operations Manual.
- c. The Corporation shall notify a Clearing Participant of any supplementary margin requirements according to the procedures set out in Section 6 of the Operations Manual, by email, telephone or fax. Such notifications will be provided by the Corporation as soon as practicable.
- d. Except where otherwise specified, Intra-Day Margin requirements will be removed during the next end of day processing, and credit will be provided at that time for any supplementary margin deposits.

#### **Section A-710 ~~09~~ Daily Margin Activity**

- a. Each Trading Day, the Corporation shall notify each Clearing Participant, for each account maintained by the Clearing Participant with the Corporation, of the amount of all margin requirements required to be deposited with the Corporation by virtue of the Clearing Participant's positions. All margin requirements shall be satisfied by the Clearing Participant by Settlement Time notwithstanding any error in such report
- b. It shall be the responsibility of each Clearing Participant to ascertain from the Corporation the amount of all margin requirements and make such margin payments to the Corporation before Settlement Time.



## **Section A-7110 Return of Surplus Collateral ~~Withdrawals of Margin~~**

The Corporation shall return to a Clearing Participant the amount of any Surplus Collateral, provided that the Corporation receives a request for such a release from the Clearing Participant pursuant to the requirements established or set out in the Operations Manual and/or relevant Policies. ~~In the event that on any particular day the amount of a Clearing Participant's margin on deposit exceeds the amount required to be deposited by such Clearing Participant on such day pursuant to this Rule, the Corporation shall authorize the withdrawal of the amount of the excess upon the submission to the Corporation, by such Clearing Participant during the hours specified by the Corporation, of a withdrawal request in the form prescribed by the Corporation.~~

## **Section A-7121 ~~Acceptable Forms of Margin Deposit~~ **Permitted Cover for Margin requirements****

- a. ~~At its option, and in its sole discretion, the Corporation may require a Clearing Participant to provide cash to satisfy all, or any part of, its margin requirements. If a Clearing Participant is directed by the Corporation to provide cash to satisfy part or all of its margin requirements, it will be accorded reasonable notice of such direction.~~
- b. Subject to subpart a. to this Rule, the acceptable forms of Permitted Cover for Margin requirements are set out in the Operations Manual.

~~Unless otherwise provided for in the Rules, the following are the acceptable forms of deposits to cover margin requirements;~~

- a. ~~**Cash** – Clearing Participants may deposit cash to cover Margin requirements. These funds shall not be commingled with funds of the Corporation or used by the Corporation as working capital. Cash deposits will be held in trust accounts set up by the Corporation in such financial institutions as the Board may select.~~
- b. ~~**Government Securities** – Clearing Participants may deposit Government guaranteed securities, as may be specified by the Corporation, which are freely negotiable. It is the Clearing Participant's obligation to provide evidence sufficient to the Corporation of such guarantee before a security shall be accepted.~~

~~The government securities that are acceptable to the Corporation, and the requirements pertaining to them, are set out in the Operations Manual.~~

~~The Government securities shall be deemed to be deposited with/pledged to the Corporation at the time the Corporation confirms acceptance of such deposit/pledge. All interest or gain received or accrued on such Government securities shall belong to the Corporation upon default or Non-Conforming status.~~

- c. ~~**Letters of Credit** – Clearing Participants may deposit with the Corporation Letters of Credit issued by banks or other organizations approved by the Corporation for this purpose. Such Letters of Credit shall be in such form as the Board may approve from time to time. The requirements pertaining to Letters of Credit are set out in the Operations Manual.~~

- d. ~~**Other Forms of Acceptable Margin Deposit** – The Corporation may from time to time accept other forms of margin deposit in accordance with its operating policies then in effect. The Corporation may alter any such accepted form of deposit and may at any time cease accepting any alternative form of deposit previously accepted by it. Where a previously accepted form of deposit is determined to be no longer acceptable by the Corporation, it shall notify all Clearing Participants~~

~~who shall promptly replace all such unacceptable forms of deposit with forms of deposit acceptable to the Corporation.~~

## **RULE A-8 DAILY SETTLEMENT**

### **Section A-801 Daily Settlement Summary**

Each Trading Day the Corporation shall notify each Clearing Participant, for each Customer Account and House Account, of:

- a. the Options Premium: the debit and credit premium for options trades made on that Trading Day;
- b. the Variation Margin: the net gains and losses on futures positions;
- c. the Original Margin Requirements;
- d. any additional margin required pursuant to these Rules;
- e. the Super Margin requirements;
- f. the Net Liquidating Value;
- g. any other credits or debits;
- h. the total margin deposits held by the Corporation; and
- i. the Daily Margin Requirement: the net cash amount due to, or from the Corporation.

### **Section A-802 Daily Settlement**

- a. On or before Settlement Time on each Trading Day, each Clearing Participant shall be obligated to pay the Corporation, in the currency applicable to the Option or Future, by irrevocable funds transfer utilizing the SWIFT Large Value Transfer System or another acceptable bank wire facility or any other method as may be approved by the Corporation from time to time, the Daily Margin Requirement shown to be due to the Corporation for such day (notwithstanding any error in such reports nor any credit balances which may be due from the Corporation to the Clearing Participant in any other accounts). Notwithstanding the foregoing, at any Settlement Time the Corporation may, in its discretion, require any Clearing Participant to pay the gross amount of Options premiums or Futures losses due to the Corporation in respect of all of such Clearing Participant's Exchange Transactions in an account due to be settled on such Trading Day (i.e., without credit for Options premiums or Futures gains payable to the Clearing Participant) and the Corporation shall be paid in the manner described herein by the Clearing Participant in such amount.
- b. It shall be the responsibility of each Clearing Participant to ascertain from the Corporation the amount of the Daily Margin Requirement and make the payment before Settlement Time each Banking Day.
- c. Upon receipt of all Daily Margin Requirement deposits required to be made to the Corporation by all Clearing Participants, the Corporation shall be obligated to pay a Clearing Participant the amount of any Daily Margin Requirement shown to be due from the Corporation to such Clearing Participant for such day. The Corporation may, in its sole discretion, make such payment to the Clearing Participant by SWIFT Large Value Transfer system, any bank wire facility, uncertified cheque or electronic funds transfer.

### **Section A-803 Application of Daily Settlement Credit**

The Corporation may apply any funds payable to a Clearing Participant on a Trading Day in satisfaction of any margin required to be deposited by such Clearing Participant on such Trading Day.

### **Section A-804 Application of Margin Deposit Excess**

The Corporation may apply any excess Margin Deposit provided to it by a Clearing Participant against any amount due to the Corporation by that Clearing Participant, except that it may not apply Margin Deposits identified as margin for a Customer Account for any purpose other than that Customer Account.

## **RULE A-9 [RESERVED] CLEARING FEE AUDITS OF FUTURES COMMISSION MERCHANTS**

### **Section A-901 Clearing Fee Audits**

- a. ~~The Corporation shall be entitled, upon five (5) business days' written notice, to conduct an audit of clearing fees. Any person or persons designated by the Corporation shall have access to the offices of the Clearing Participants in the category of Futures Commission Merchant where records are usually held, or as designated by the Clearing Participant, in order to observe, examine and inspect all records kept by the Clearing Participant in connection with the payment of clearing fees. All observations and examinations shall be reasonable and the person or persons designated by the Corporation shall ensure that the audit is carried out with the minimum of disruption to the Clearing Participant's business operations.~~
- b. ~~Costs of the audit shall be borne by the Corporation except where a discrepancy is discovered by the audit which is in excess of ten percent (10%) of the required payment, in which case the Clearing Participant shall pay all of the reasonable costs of the Corporation relating to the audit.~~
- c. ~~The Clearing Participant will be required to pay the Corporation the amount of any discrepancy determined by the audit, together with interest which shall be payable at the rate of 1.5% compounded monthly. Payment must be made within ten (10) business days of demand by the Corporation.~~

### **Section A-902 Agent for Clearing Fee Audits of Futures Commission Merchants**

~~The Corporation designates ICE Futures Canada, Inc. as its agent for conducting clearing fee audits of Clearing Participants in the category of Futures Commission Merchant.~~

## RULE A-10 COMMITTEES

### **Section A-10.01-1001 - Committees - Mandating and Delegation**

- a. The committees set out in these Rules are constituted, mandated and appointed by the Board of Directors pursuant to the provisions of Article Five of the By-law.
- b. The Board of Directors delegates to the committees all powers necessary to fulfil the purpose and duties set out therein.
- c. The President of the Corporation, is, ex officio, appointed to all committees, other than the Hearing Committee.

### **Section A-10.02 1002 - Confidentiality**

- a. Committee members shall maintain in strictest confidence all information, including, but not limited to, all discussions held, decisions taken, information sought or obtained, facts disclosed, Documents and Records received, as a result of his or her service on a committee. No such information may be used to the detriment of any third party or to the advantage or gain of the committee member or his or her employer.
- b. Notwithstanding the provisions of (1) above, the committee and/or the Corporation shall disclose such information as is necessary for the proper execution of the committee's mandating Purpose and Duties and as required elsewhere in these Rules. All such disclosure shall be made through the regular administrative channels of the Corporation.

### **Section A-10.03 1003 - Term, Removal, Resignation, Vacancies**

- a. All committee members shall hold office until the appointment of his or her successor. All committee members hold office subject to the pleasure of the Board.
- b. A committee member may resign at any time by giving written notice of his or her resignation to the President and such resignation, unless specifically contingent upon its acceptance, will be effective as of its date or the date specified therein.
- c. Any resignations may be replaced and any vacancy may be filled by the President, subject to ratification by the Board at its next meeting.

### **Section A-10.04-1004- Minutes and Reporting**

Each committee shall keep minutes of its meetings in which shall be recorded all action(s) taken by it, and the minutes together with a written report shall be submitted to the Board at its next meeting.

### **Section A-10.05 1005 [Reserved]**

### **Section A-10.06 1006 – Clearing Advisory Committee**

- a. Composition

The Clearing Advisory Committee shall be composed of up to twenty-five (25) members, including the President and a member of the Board. The balance of the committee members shall include directors, officers, and/or employees of Clearing Participants and persons with knowledge and expertise in clearing and risk management.

b. Purpose and Duties

- (i) to review all matters brought forward to it by management of the Corporation including but not limited to clearing operations and processes, risk management, financial standards and operational requirements, and provide advice and perspective, including the position of the member's employing Clearing Participant on a given issue;
- (ii) to review and report to the Board on such further and other matters as the Board may, from time to time, request advice.

**Section A-10.07 ~~1007~~ – Hearing Committee**

a. Composition

- (i) The Hearing Committee shall be comprised of up to twenty-five (25) members. It shall comprise persons with knowledge and expertise in clearing, risk management, and/or regulation of clearinghouses. The Board shall endeavour to include representation from employees, officers or directors of Clearing Participants. The Board shall endeavour to appoint individuals with varied expertise and abilities and shall ensure that the appointments include lawyers and/or retired judges.
- (ii) No member of the Hearing Committee shall sit on the Board.
- (iii) A quorum of the Hearing Committee is three (3) members. At least one (1) member of each panel shall be a lawyer or retired judge.
- (iv) The Chairman of each panel of a Hearing Committee panel shall be a lawyer or retired judge.

b. Purpose and Duties

- (i) The Hearing Committee is responsible for conducting the hearings prescribed to it under these Rules.

**Section A-10.08 ~~1008~~ – Risk Committee**

a. Composition

The Risk Committee shall be comprised of up to seven (7) members including the President, ex officio, one (1) independent Board member, and a minimum of three (3) representatives from Clearing Participant firms or affiliates of Clearing Participant firms. All members shall be individuals with expertise in derivatives clearinghouse operations, regulation and compliance and/or risk management.

b. Purpose and Duties

- (i) The Risk Committee shall advise the Board on operational, credit, and liquidity risk matters and shall ensure that the Corporation's comprehensive risk policies, procedures and controls are appropriate and reasonable. In addition, the Risk Committee is tasked with providing guidance, as requested by staff or the Board, on related matters, including but not limited to, legal risks, internal controls, operational and business risks, incentives to manage risks, information and control systems and recovery and reconciliation matters.

- (ii) The Risk Committee is responsible for advising the Board on the Corporation's overall current and future risk tolerance and strategy, and may make recommendations to the Board on Rule, Policy, and or Procedure amendments as may be required from time to time, due to statutory amendments, regulatory requirements, or changes to the operations or scope of the business of ICE Clear Canada.
- (iii) The Risk Committee is responsible for reviewing the guidelines applicable to the setting of margin requirements for existing and/or new Futures and Options and making any recommendations on same to the Board;
- (iv) The Risk Committee is responsible for reviewing the forms of deposit that the Corporation accepts for margin and Guaranty Fund requirements and making recommendations to the Board for amendments;
- (v) The Risk Committee is responsible for reviewing the amount of the Guaranty fund and making recommendations on same to the Board as provided for in the Guaranty Fund Policy.
- (vi) In an event of default where a Clearing Participant is suspended and/or where an Event of Default has been determined placed in ~~Non-Conforming Clearing Participant status, or suspension status~~, the Risk Committee will provide guidance to the Board, as required.
- (vii) The Risk Committee is to report to the Board on a quarterly basis, or more often, as the Board requests and/or the Risk Committee deems appropriate.

## RULE A -11 SECURITY INTERESTS

### Section A-11.01-~~1101~~ – Corporation's Security Interest

- a. To guarantee the due payment and performance of all financial and other obligations under these Rules, the Operations Manual, and the Clearing Participant application/agreements, each Clearing Participant grants to the Corporation a security interest (the Corporation's Security Interest) in, and pledges, charges, and assigns to the Corporation, its Collateral, and all dividends, interests, amounts due on maturity, principal repayment and all other entitlements and proceeds arising with respect to the Collateral. The pledged Collateral may be held in a securities account in the name of the Corporation or an agent of the Corporation. The granting of the Corporation's Security Interest secures the due payment of all amounts due, from time to time to the Corporation from the Clearing Participant, and the performance of all obligations of the Clearing Participant to the Corporation under the Rules, the Clearing Participant application/agreement, and Operations Manual.
- b. Each Clearing Participant represents and warrants to the Corporation that it has full authority and power to grant the Corporation Security Interest, including any exemption or authorization that may be required pursuant to any statute or regulation binding on the Clearing Participant. The granting of the Corporation's Security Interest by a Clearing Participant shall survive the suspension, termination, or withdrawal of a Clearing Participant from Clearing Participant status.
- c. Each Clearing Participant shall execute and deliver to the Corporation such financing statements and other documents as the Corporation may request for the purpose of confirming or perfecting this pledge, hypothecate and the Corporation's Security Interest.
- d. Each Clearing Participant will assure that the Collateral and such other assets furnished or deposited by the Clearing Participant to or with the Corporation or through an Approved Depository, in pledge, hypothecate or as additional security interest:
  - (i) are the sole legal and beneficial property of the Clearing Participant. The Clearing Participant shall ensure that no party other than the Corporation or an authorized agent of the Corporation shall have control (as that term is defined in the STA) over the Collateral. A Clearing Participant shall not furnish or deposit securities or other assets to or with the Corporation in pledge, hypothecate or as security interest otherwise than in conformity to this Rule; and
  - (ii) are negotiable and meet the rules of good delivery, and the Clearing Participant shall indemnify and save harmless the Corporation against any claim, action, demand, loss or expense which may be made against or suffered or incurred by the Corporation in the event that any securities deposited by the Clearing Participant are not negotiable and do not meet the rules of good delivery.
- e. Upon the suspension, termination or withdrawal of a Clearing Participant, or upon the default of a Clearing Participant to make any payment or deposit of funds required, the Corporation may call in and realize the Corporation's Security Interest, for such price and upon such terms as the Corporation deems best, without notice or other prior indication to the Clearing Participant.



**REDLINED VERSION - - - ICE Clear Canada, Inc.**

**PART D - DEFAULT**

*Without prejudice to the status of any other provision of these Rules, all the provisions of this Part D are intended to constitute the “default rules” and “default proceedings”, of the Corporation, and are further intended to constitute part of the “settlement rules” of the Corporation. These Rules constitute part of the contracts between the Corporation and Clearing Participants that detail and determine the basis on which payment and delivery obligations are calculated and required to be met, and how the netting agreement that the Corporation and Clearing Participants enter into can be terminated, all as provided for herein, pursuant to the provisions of the Payment Clearing and Settlement Act S.C. 1996, c.6, Sch. These Rules are also intended to comply with provisions of “National Instrument 24-102 Clearing Agency Requirements”, in addition to other Applicable Laws. In addition to these Rules, the Corporation relies on its legal rights under Applicable Laws in handling Events of Default, including under the Payment, Clearing and Settlement Act, S.C. 1996, c.6, The Corporations Act (Manitoba), the Securities Transfer Act (Manitoba), the Personal Property Securities Act, and all relevant and applicable bankruptcy and insolvency legislation.*

**Section D-901 Events of Default affecting Clearing Participants**

- a. If any of the following events should occur with respect to any Clearing Participant (regardless of whether it is cured by the Clearing Participant or other third party on behalf of the Clearing Participant or otherwise), such event shall, if so declared by the Corporation, constitute an **"Event of Default"**:
- (i) any breach by that Clearing Participant of these Rules, the Policies, the Clearing Participant Application/Agreement, any other agreement with the Corporation or the Exchange Rules;
  - (ii) that Clearing Participant being unable, or likely to be unable, to meet its obligations under these Rules or in respect of any Contract;
  - (iii) a Monetary Default or Delivery Default occurring with respect to that Clearing Participant;
  - (iv) any Financial Indebtedness of that Clearing Participant or any of its Group of Companies: (1) not being paid when due or within any originally applicable grace period; or (2) being declared to be or otherwise becoming due and payable prior to its specified maturity as a result of an event of default (however described);
  - (v) any commitment for any Financial Indebtedness of that Clearing Participant or any of its Group of Companies being cancelled or suspended by a creditor as a result of an event of default (however described);
  - (vi) any creditor of that Clearing Participant or any of its Group of Companies becoming entitled to declare any Financial Indebtedness due and payable prior to its specified maturity as a result of an event of default (however described);
  - (vii) an Insolvency in relation to that Clearing Participant or any of its Group of Companies;
  - (viii) any material action being taken against that Clearing Participant (including, without limitation, any declaration of default, material adverse notice or finding, material fine, suspension or expulsion or withdrawal of, revocation of or failure to renew any permission, licence or authorization) by any Governmental Authority, Regulatory Authority, Exchange, or Clearing Agency;

- (ix) a breach by that Clearing Participant of any Applicable Law relevant to its business as a Clearing Participant;
  - (x) [reserved]
  - (xi) any situation where the Clearing Participant consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, reincorporates or reconstitutes into or as, another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganisation, reincorporation or reconstitution the resulting, surviving or transferee entity fails to assume all the obligations of such Clearing Participant.
- b. The Corporation may assume that the occurrence of any Event of Default means that a Clearing Participant is unable, or likely to be unable, to meet its obligations under these Rules or in respect of any Contract.
  - c. [reserved]
  - d. [reserved]
  - e. The Corporation may inform any relevant Regulatory Authority of an Event of Default prior to declaring an Event of Default and disclose such information to such Regulatory Authority as it sees fit.

#### **Section D-902 Actions to be taken following declaration of a Clearing Participant Event of Default**

- a. If an Event of Default has been declared, the Corporation may immediately suspend or terminate the Defaulter's status as a Clearing Participant and any other entitlements under these Rules, take any action to close out the Defaulter's positions under this Part D and take such other action as is necessary to control or reduce losses or liquidity pressures resulting from the Event of Default. Any such suspension or termination may be temporarily postponed or may not be enforced if the Corporation in its discretion determines that any such suspension or termination would either (i) not be in the best interests of the Corporation; or (ii) be likely adversely to affect the operation of the markets it clears.
- b. As soon as practicable after the Corporation has declared that a Clearing Participant is subject to an Event of Default, the Corporation shall issue a Default Notice to the Defaulter. The Corporation will further issue a Notice in respect of any Default Notice specifying the name of the Defaulter. The Corporation may, at its discretion, publish a copy of the relevant Default Notice in or together with a Notice. The Corporation shall, as soon as reasonably practicable after issuing a Default Notice, appoint a day on which any net sums certified under Section D-906 are to be paid.
- c. The Corporation may take such steps pursuant to this Part D as appear in the circumstances to be necessary or expedient to discharge all the Defaulter's rights and liabilities under or in respect of Contracts to which it is party, to protect the Corporation, its non-defaulting Clearing Participants, the markets it clears, or to complete the process described in this Part D.

#### **Section D-903 Treatment of Contracts following a Clearing Participant Event of Default and Hedging**

- a. The Corporation shall be entitled to take any of the following steps, at its discretion, following the occurrence of an Event of Default with respect to a Clearing Participant:

- (i) to arrange for Contracts to be subject to a Transfer to a Transferee Clearing Participant in accordance with Section A-904 and effect the same;
  - (ii) if it determines, at its discretion, that the protection of the financial integrity of the Corporation so requires, or because of the cessation or curtailment of trading on the Exchange, to delay a close out or termination of some or all Contracts of the Defaulter; and
  - (iii) subject always to Section A-103 m. if the Defaulter acts as both the buying counterparty and the selling counterparty in respect of Contracts of the same Set, to net, offset, mutually close out or terminate such Contracts (or any part thereof) provided that, following such netting, offsetting, closing out or termination, Contracts representing in aggregate the Open Contract Position of the Defaulter in the relevant Set are recognized.
  - (iv) [reserved]
- b. All Contracts to which a Defaulter is party shall be closed out in the manner set out in Section D-905 except to the extent that subpart a. to this Rule applies to such Contracts.
- c. To the extent that any Contracts to which a Defaulter is party remain open from time to time (whether pursuant to subpart a.(ii) to this Rule, pending Transfers, terminations or otherwise) or if the Corporation is otherwise unable for any reason to liquidate Contracts in a prompt and orderly fashion, or if the Corporation otherwise determines it is appropriate to do so, the Corporation may authorise the execution from time to time for the account of the Corporation, for the purpose of an orderly unwind of any Contracts to which a Defaulter is party or reducing the risk to the Corporation and the risk to Clearing Participants (in the case of Clearing Participants, except to the extent that reducing any risk to Clearing Participants creates or increases any risk for the Corporation) resulting from the continued maintenance of such Contracts, of hedging transactions including, without limitation, the purchase, exercise, sale or grant of Contracts. Any costs, expenses or losses sustained by the Corporation in connection with transactions effected pursuant to this subpart c. shall be charged to the Defaulter and any gains shall be credited to the Defaulter in the relevant net sum calculation under Section D-906 for the Account in respect of which exposures were hedged.
- d. [reserved]
- e. Upon an Event of Default being declared with respect to a Clearing Participant, any accrued or invoiced amounts shall be immediately due and payable by the Defaulter to the Corporation.

**Section D-904 Transfer of Contracts and Margin on a Clearing Participant Event of Default Provisions applicable to all Defaulters and all Contracts**

- a. The Corporation may arrange for any of the following steps (any such step, a "**Transfer**" and the term "**Transferred**" shall be interpreted accordingly) to take place in respect of the Contracts of a Defaulter as part of its default proceedings:
- (i) a transfer, sale, assignment or novation of Contracts, including Contracts in the Customer Accounts, of a Defaulter to a Transferee Clearing Participant; or
  - (ii) the termination of Contracts between the Corporation and a Defaulter, including Contracts in the Customer Accounts, and the entry into of new replacement Contracts between the Corporation and the Transferee Clearing Participant (by way of novation and amendment or otherwise).

- b. All Contracts subject to a Transfer shall be Transferred on the basis of the Exchange Settlement Price or other price specified by the Corporation. Transferee Clearing Participants will be notified of applicable prices determined pursuant to this provision prior to the Transfer.
- c. For the avoidance of doubt, the Corporation shall have no obligation to enter into or effect any Transfer if to do so:
- (i) would result in or risk an Account being under-collateralised with respect to any remaining Contracts;
  - (ii) would result in or risk an Event of Default or a Failure to Pay in respect of the Corporation, the application of Guaranty Fund Contributions of non-Defaulters, a call for Assessment Contributions or invocation of any of the procedures in Sections D-912 to D-918;
  - (iii) would result in or risk a breach of Applicable Laws; or
  - (iv) lacks any Governmental Authority, Customer or other consent or approval that is required or desirable in the circumstances, in each case as determined by the Corporation at its discretion. Any Transfers shall be fair to Customers and indirect Customers of the Defaulter.
- d. If any Contracts recorded in a Defaulter's Customer Account are subject to any Transfer pursuant to subpart a.(i) to this Rule:
- (i) any related Margin recorded in the relevant Customer Account may, at the discretion of the Corporation, also be transferred from that Customer Account to the Transferee Clearing Participant's Customer Account;
  - (ii) to the extent that any transfer of Margin takes place in accordance with subpart d.(i) to this Rule, the Defaulter shall have no claim against the Corporation or any Transferee Clearing Participant for the return of such Margin and the Corporation shall be released from any liability or obligation to return such Margin (or any property in substitution thereof) to the Defaulter; and
  - (iii) as between the Transferee Clearing Participant and the Corporation, the Corporation shall have all rights in relation to any Margin transferred pursuant to subpart d.(i) to this Rule as if the same were Margin transferred to the Corporation directly from the Transferee Clearing Participant.
  - (iv) [reserved]
  - (v) [reserved]
- e. The Corporation may rely upon any information relating to the positions, assets or identities of individual Customers provided to it by the Exchange or Clearing Participant, without need for further enquiry by the Corporation with respect thereto. The books and records of the Corporation may be treated as definitive evidence of the positions and Customers which correspond to Contracts recorded in a Defaulter's Customer Account.
- f. The Corporation shall be entitled to make partial or full transfers of available Margin at any time from the relevant account of a Defaulter in respect of Contracts subject to a Transfer, provided that in any case the total amount of Margin transferred in respect of any Contracts relating to a particular Customer remains commensurate to the Margin that was provided in respect of such transferred Contracts and held by the Corporation immediately prior to the Event of Default.

- g. Nothing in these Rules shall require a Clearing Participant to accept any Transfer of Contracts as a Transferee Clearing Participant, without the prior written consent of that Clearing Participant (and for these purposes no such consent shall have been provided as a result of a Clearing Participant being named as a potential Transferee Clearing Participant in a Default Portability Preference). Subject to the preceding sentence, the Corporation shall be entitled (but not required) to Transfer any Contract regardless of whether the relevant Customer has designated the Transferee Clearing Participant as a permitted or desired transferee or has consented to such Transfer.
- h. If the Corporation determines that any Contracts of the Defaulter are to be Transferred pursuant to this Section D-904, the Corporation may estimate the loss or gain that it would incur in respect of the relevant Customer Account Positions (i.e. the amount *L-A* in Section D-906 as calculated in respect of those Customer Account Positions) and the extent, if any, to which any Margin would be applied to any such loss and may (but shall not be required) to prioritise and give effect first to any Transfers on the basis of the extent of any potential resulting loss or gain to a Customer Account notwithstanding the time at which any Transfer instructions are submitted or confirmed.
- i. The Corporation may take into consideration such factors as the Corporation determines to be relevant in accepting or effecting any Transfer. Without limiting the foregoing, any Transfer or transfer of Margin shall be subject to any requirements or limitations under Applicable Law, and any approvals or consents that the Corporation may determine to be required or desirable under the circumstances.
- j. The Corporation will have regard to any Default Portability Preference in determining whether or not to give effect to any Transfer.
- (i) Any termination payments due or payable in respect of the termination of the Contracts, including Contracts in the Customer Account(s) to which the Defaulter was party and any amounts due or payable in respect of the establishment of the replacement Contracts to which the Transferee Clearing Participant is party shall be equal (in each case based on the amount determined by the Corporation for purposes of close out of the Contract in accordance with these Rules, and not taking into account any clearing fees or similar amounts agreed to by the relevant parties or affecting any other amount mentioned in Section D-906) and all obligations to make such termination payments shall be deemed to have been paid, netted and satisfied among the relevant parties beneficially entitled to such payments.
  - (ii) [reserved]
  - (iii) If the Transferee Clearing Participant and a relevant Customer have previously entered into an agreement, any Contracts between the Transferee Clearing Participant and the Customer shall be subject to such agreement. If the Transferee Clearing Participant and Customer have not entered into an agreement, the Transferred Contracts shall be deemed subject to an agreement in such form as is specified by the Transferee Clearing Participant.
  - (iv) Following any Transfer of Contracts, the Corporation may transfer, and if such transfer occurs, will record the transfer, of any available Margin recorded in the corresponding Customer Margin Account(s) for the Customer Account(s) which are to be Transferred (to the extent that the same has not been subject to netting under this subpart j.) to the applicable Customer Margin Account of the Transferee Clearing Participant, to be treated in the same way as if such assets had been transferred by the Transferee Clearing Participant direct to the Corporation pursuant to the Clearing Participant Application/Agreement and these Rules. In relation to any such transfer, the Defaulter

shall be deemed to agree and consent to any such transfer and shall take any necessary action to facilitate such transfer (and the Corporation may take any action on the Defaulter's behalf in connection therewith). Notwithstanding the foregoing, the Transferee Clearing Participant shall remain obliged to satisfy any Margin requirements resulting from its becoming party to, Contracts for the Customer Accounts pursuant to this Section D-904 which may be calculated without taking into account any amount that may be transferred by or due from the Defaulter to the Corporation pursuant to the foregoing requirement but which has not been transferred.

- k. The Corporation may recalculate the balance between margin and Surplus Collateral for a Customer Account of a Defaulter to reflect any increase in the Margin requirement for such Customer Account as a result of the Transfer of fewer than all of the Customer Account Positions.
- l. [reserved]
- m. For the avoidance of doubt, and without limiting the other provisions hereof, the Corporation may effectuate any Transfer of Margin and Open Contract Positions recorded in a Customer Account if: (i) each Customer is not itself also a Defaulter or subject to Insolvency; (ii) the conditions precedent set out in subpart c. to this Rule are satisfied in respect of each Customer; and (iii) a single Transferee Clearing Participant accepts all the Transfers relating to all Customers in writing. A Transferee Clearing Participant shall be deemed to have accepted the Transfer if it has previously entered into a contractual relationship with a Customer by which it has committed itself to do so and the same has been notified to the Corporation pursuant to a Default Portability Preference.

#### **Section D-905 Termination and close out of Contracts on a Clearing Participant Event of Default**

- a. The following contracts shall be terminated or closed out in such manner as the Corporation, in its discretion, may direct for the purposes of discharging all the rights, obligations and liabilities of the Defaulter:
  - (i) Contracts to which a Defaulter is party and which are required to be terminated or closed out pursuant to Section D-903 b.; and
  - (ii) contracts arising from hedging transactions made pursuant to Section D-903 c., which shall be treated as if they were "Contracts" for purposes of this Section D-905 and Section D-906.
  - (iii) [reserved]

The Corporation shall not be entitled to terminate or close out any rights or liabilities attributable to the Defaulter arising out of the relationship of principal and agent, where a Defaulter has entered into a contract as agent, but for the avoidance of doubt this requirement shall not restrict the Corporation from closing out any Contract recorded in a Customer Account of an FCM Clearing Participant. To the extent necessary, the Corporation may take such steps pursuant to such powers as are granted pursuant to the Clearing Participant Application/Agreement.

- b. Without prejudice to the generality of subpart a. to this Rule, at the Corporation's discretion, any of the following steps may be taken in respect of contracts to which subpart a. to this Rule applies:
  - (i) The Corporation may place, with one or more registered participants of the Exchange orders for the purchase, grant, exercise or sale of Contracts. The Corporation may designate and authorise an individual to be responsible for the placement of such orders or may enter into Contracts with non-defaulting Clearing Participants.

- (ii) For purposes of liquidation of Contracts, hedging market risks of the Defaulter or otherwise, Contracts (or any part thereof) may be terminated or closed out by the Corporation pursuant to the submission of any Transactions, or the creation of new Contracts to which the Defaulter is party at the Corporation's discretion (regardless of whether they are held for different accounts or different beneficial owners), but subject always to, and accounting for, the close-out amounts under, Section D-906. For the avoidance of doubt, but without prejudice to subpart c. to this Rule, this subpart b.(ii) does not empower the Corporation to oblige non-defaulting Clearing Participants to become party to any Contracts.
- (iii) [reserved]
- (iv) Any Contracts (including those recorded in one of the Defaulter's Customer Position Accounts) which are sale and purchase Contracts in the same Set may be closed out and terminated (in whole or in part), together with any termination payments settled by way of off-set.
- (v) An Option may be terminated, exercised or abandoned, at the discretion of the Corporation, and in any case where an Option is exercised, the Corporation may terminate or close out the Future or Contract of Sale, if any, arising as a result of such exercise in accordance with the provisions of this Section D-905.
- (vi) Notwithstanding any other provision of this Section D-905, the Corporation may pair and cancel offsetting long and short positions in the same Set; and where it is necessary or desirable for there to be a price (for example, in the case of a liquidation of offsetting Customer Account and House Account Contracts, where the close-out values of the offsetting Contracts are required to be taken into account for the calculation of different net sums pursuant to Section A-103 m. and Section D-906), the price for a Contract will be equal to the Exchange Settlement Price on the day such cancellation is ordered (or alternatively, such other price shall apply as the Corporation may determine.
- (vii) The Corporation shall be entitled (without the prior or subsequent consent or agreement of the Defaulter or any court order) to sell, transfer, value (subject to subpart b. (ix) to this Rule) or create any interest in any Permitted Cover, Margin, Guaranty Fund Contributions or other assets that are credited to the Defaulter's House Margin Account, any of its Customer Margin Accounts (or any other asset of the Defaulter that is otherwise in the Corporation's possession (subject always to Section A-103 m.)) subject to an obligation to account for the net proceeds of such actions after having deducted the Corporation's reasonable and properly incurred expenses and costs in doing so.
- (viii) Without prejudice to subpart b. (xvii) to this Rule, where a Pledged Asset is held by a Clearing Participant who is a Defaulter or is capable of being declared a Defaulter, the Corporation shall be entitled, in addition to its other rights and remedies under Part D to exercise the rights of a secured party under Applicable Law with respect to any Pledged Assets, including to appropriate, exercise rights of use and appropriation over and liquidate such Pledged Asset and, once such exercise of rights of use, appropriation or liquidation results in a realised value for such Pledged Asset, that is to be taken into account of in a relevant net sum calculated under Section D-906, shall thereupon apply the proceeds thereof to the applicable obligations of such Clearing Participant in respect of the relevant Customer Account or House Account and in determining the net sum under Rule D-906 if the Clearing Participant has then been declared a Defaulter. For the avoidance of doubt, rights of use or appropriation shall not be exercised in respect of a Pledged Asset of a Clearing Participant that is not a Defaulter or capable of being declared a Defaulter.

- (ix) When either;
- (1) following the exercise of a right of use in respect of Pledged Assets of a Defaulter, the Corporation exercises its right to set-off the value of the relevant Pledged Asset in discharge of the obligations of the Defaulter due to the Corporation; or
  - (2) appropriating Pledged Assets,

the Corporation shall value such Pledged Assets in the case of (1) at the time that the obligation to redeliver equivalent Pledged Assets would arise but for the set-off, or, in the case of (2) at the time of such appropriation. For this purpose, the value of such Pledged Assets shall be the market price of the relevant Permitted Cover determined by the Corporation by reference to a published pricing information source or by such other process as the Corporation may at its discretion select. The Corporation shall be entitled (without the prior or subsequent consent or agreement of the Defaulter or any court order) to sell, transfer, value or create any interest in any Permitted Cover, Margin, Guaranty Fund Contribution or other assets that are credited to the Defaulter's House Margin Account, any of its Customer Margin Accounts or any of its accounts used for Guaranty Fund Contributions or any other asset of the Defaulter that is otherwise in the Corporation's possession (subject always to Rule A-103 m.) subject to an obligation to account for the net process of such actions after having deducted the Corporation's reasonable and properly incurred expenses and costs in doing so in accordance with these Rules.

- (x) The Corporation shall be entitled to take such actions, take or make delivery and give such notices on behalf of the Defaulter in respect of a Contract under delivery as it determines; or to make or receive a tender in the Defaulter's name.
- (xi) The Corporation shall be entitled to determine an amount due from the Defaulter in substitution for delivery obligations.
- (xii) The Corporation shall be entitled to take any other action with respect to the Event of Default or the Defaulter as it deems to be necessary or prudent.
- (xiii) If applicable, the Corporation's powers to convert currency under Rule A-122 may be applied.
- (xiv) The Corporation shall be entitled to Transfer Contracts to which a Defaulter is party to one or more other Transferee Clearing Participants at a price agreed between the Corporation and the Transferee Clearing Participant pursuant to this Part D.
- (xv) Subject to Section D-904 g. the Corporation shall be entitled to effect the Transfer of the Defaulter's rights, title and interest to Contracts, any related Margin or other assets of the Defaulter or other transactions between a Customer and a Defaulter to a Transferee Clearing Participant, without any further action being required on the part of any Person.
- (xvi) The Corporation may take action so as to terminate or replace transactions or other arrangements between a Customer and a Defaulter which are consequential on it taking actions in relation to Contracts in accordance with Section D-904.
- (xvii) The Corporation shall be entitled to take any other action with respect to the Defaulter, the Contracts to which the Defaulter is party or any Margin, Guaranty Fund Contribution



or Surplus Collateral provided by the Defaulter as the Corporation at its discretion considers to be necessary or prudent in the circumstances.

- (xviii) The Corporation may make appropriate entries on the records of the Corporation and submit appropriate data to third parties as are appropriate, to give effect to any action taken in accordance with this Part D.
  - (xix) if the Corporation determines it is not practicable or advisable under the circumstances in light of liquidity, open interest, market conditions or other relevant factors to liquidate or attempt to liquidate some or all Contracts pursuant to subpart b. (i) to (vii) to this Rule, the Corporation may determine to liquidate such Contracts pursuant to one or more default auctions to be conducted by the Corporation pursuant to procedures adopted by the Corporation for such purpose. In any such auction, the Corporation may require Clearing Participants to participate in such auction in a minimum amount, and may provide for the consequences of a failure to so participate or for uncompetitive participation. Such auction procedures may also specify the terms, if any, on which Customers of Clearing Participants may participate (directly or indirectly) in such an auction.
- c. [reserved]
  - d. If, as a result of the rules of the Exchange which limit fluctuations in price or other circumstances, it is not possible to close out or terminate all Contracts to which the Defaulter is party pursuant to subpart b. to this Rule, the Corporation may close out or terminate such Contracts by taking opposite positions for Contracts in Contracts in the current expiration period, and terminating the resultant terminated positions.
  - e. All terminations and closing out of Contracts pursuant to this Section D-905 shall be for the account and cost of the Defaulter.
  - f. Without prejudice to the generality of the indemnities in Section A-114, but without duplication of any other obligation under these Rules, the Defaulter, acting for its own account as principal, shall indemnify, hold harmless and be liable to the Corporation in respect of all the losses, unpaid fees, liabilities, damages, injuries, taxes, costs, claims, shortfalls and expenses (including, without limitation, legal, accountancy or other professional services expenses and disbursements, the costs of close-out, termination or Transfer of Contracts or Margin, amounts payable by the Corporation to Approved Financial Institutions or custodians and any amount payable by the Corporation to any Person in respect of tax in connection with the Defaulter or its Contracts, Margin, obligations or the Event of Default), in the case of any such item whether relating to a House Account or Customer Account of the Defaulter incurred or suffered by any of the Corporation, the Exchange or any of their officers or employees or those of their Affiliates arising out of the Defaulter's conduct (whether such conduct took place prior to or after declaration of the Event of Default) or in connection with the Event of Default. Section A-114 b. shall apply in respect of this subpart f. in the same way as it applies to Section A-114 a.

#### **Section D-906 Net Sums Payable**

- a. Following discharge of a Defaulter's rights, obligations and liabilities under Contracts pursuant to this Part D, the Corporation shall carry out the following calculation separately in respect of each different House Account and each different Customer Account of the Defaulter. Upon termination of all Contracts following an Event of Default, the only obligation of the Corporation or Defaulter, except for any obligation which had already fallen due for performance but at the time had not been performed, shall be limited to calculation and payment of the net sum and such other obligations as are expressed to apply in Section A-213 or this Part D. Following an Event of Default, there shall be no requirement for future payments or deliveries to be made in respect of

any terminated Contracts (including in each case no requirement to pay or deliver any related Margin that has not at the time fallen due for payment, except as part of the net sum). The methodology of the calculation below involves aggregating or setting off various amounts (as applicable) so as to produce separate net sums for each different House Account and each different Customer Account of the Defaulter (each such net sum, *N*) in each case defined by the formula:

$$N = L - A - D - C - M - GFC - SC - OA + OL$$

where such letters have the meanings set out below in this subpart a.:

*L* = the aggregate amount, expressed as a positive number, of all sums payable by the Defaulter in respect of Contracts recorded in the relevant Account taking into account any of the following actions under Sections D-903, D-904 or D-905:

- (i) any rescission, termination, close-out, or liquidation;
- (ii) the Transfer of any of the Defaulter's Contracts to a Transferee Clearing Participant (not being the Defaulter) or acceptance or entry into by a Clearing Participant of any of the Defaulter's Contracts or contracts similar to any of the Defaulter's Contracts; and
- (iii) the exercise by the Corporation of any Option,

plus all amounts that were payable but remain unpaid by the Defaulter under the terms of Contracts, plus any costs and expenses of the Corporation in any way relating to any Contract to which the Defaulter was party, including, without limitation, legal, accountancy or other professional services expenses and disbursements, the costs of close-out, termination or Transfer of Contracts and any amount payable by the Corporation to any Person in respect of tax in connection with the Defaulter or its Contracts, Margin, obligations or the Event of Default; but excluding, in respect of a Contract where the Defaulter acts as agent (if any), any liabilities attributable to the Defaulter arising out of the relationship of principal and agent; and the Corporation may assess any one or more elements of such amount *L* in its discretion, provided that any costs, expenses, taxes or other amounts falling within the scope of the indemnity in Section D-905 f. (not being amounts payable in respect of Contracts falling under *L*(i) to (iii) above) shall be allocated to the House Account regardless of the Contracts or Account to which they relate.

*A* = the aggregate amount, expressed as a positive number, of all sums payable to the Defaulter in respect of Contracts recorded in the relevant Account, taking into account any of the actions referred to under *L* (i), (ii) or (iii) above, plus all amounts that were payable but remain unpaid by the Corporation under the terms of Contracts, excluding, in respect of a Contract where the Defaulter acts as agent (if any), any rights attributable to the Defaulter arising out of the relationship of principal and agent and further excluding any amount included under *D*, *C*, *M*, *GFC* or *SC*; and the Corporation may assess any one or more elements of such amount *A* in its discretion.

*Note on calculation of the amounts L and A:* For the purposes of calculating amounts *L* and *A*, the amount payable by or to the Defaulter in respect of any Contract or Open Contract Position is the difference between:

- (x) the price of the Contract or Open Contract Position recorded in the Corporation's books for the later of: (A) the last date on which a payment in respect of Variation Margin was successfully and fully made by the Clearing Participant to or to the account of the Corporation; or (B) the last date on which a return of amounts following a Variation

Margin call was successfully and fully made by the Corporation to the Clearing Participant or to the account of the Clearing Participant; and

(y) the price at which the Contract or Open Contract Position was Transferred, terminated or closed out pursuant to Sections D-903 to D-905.

For such purposes, payment or return of Variation Margin will be treated as having been successfully and fully made even if Cash Gainer Adjustments and Cash Loser Adjustments are made pursuant to Section D-914 and no additional credit or debit shall be applied in the net sum calculation for any Cash Gainer Adjustment or Cash Loser Adjustments applied to any Account of the Clearing Member prior to the time of declaration of the Event of Default.

*D* = if the Corporation so determines at its discretion, the aggregate amount of any sums in respect of a Deliverable delivered, physically settled, to be delivered or to be physically settled under a Contract with the Defaulter or in respect of which cash settlement is to be made as calculated by the Corporation at its discretion relating to the relevant Account (if payable to the Clearing Participant being a positive number and hence set off in the calculation under this subpart a. against any amount *L-A* if that amount is also a positive number or if payable to the Corporation being a negative number and aggregated in the calculation under this subpart a. with any amount *L-A* if that amount is a positive number), in any case excluding any amount included under *C*, *M*, *GFC* or *SC*.

*C* = if relevant, any sum owed by or to the Corporation to or from a recognized exchange or another recognized clearing agency of which the Defaulter is or was a participant or member, under an indemnity given or reimbursement or similar obligation in respect of a margin set off agreement in which the Defaulter chose to participate (if payable to the Clearing Participant being a positive number and set off in the calculation under this subpart a. against any amount *L-A-D* if that amount is also a positive number or if payable to the Corporation being a negative number and aggregated in the calculation under this subpart a. with any amount *L-A-D* if that amount is a positive number).

*M* = means the following, expressed as a positive number:

- (i) in relation to a net sum calculation for the House Account of the Defaulter, the value of any property provided by or on behalf of the Defaulter in respect of its House Account as margin, Original Margin, buyer's security or seller's security (without any double counting) or in satisfaction of such Margin requirements and recorded in the House Margin Account of the Defaulter;
- (ii) in relation to a net sum calculation for any Customer Account of the Defaulter, the value of any property provided by or on behalf of the Defaulter as margin, Original Margin, buyer's security or seller's security (without any double counting) in respect of such Customer Account or in satisfaction of such Margin requirements and that is recorded in the related Customer Margin Account of the Defaulter, excluding any Margin that would otherwise fall under amount *M* but that is transferred to a Transferee Clearing Participant pursuant to this Part D.
- (iii) [reserved]

*GFC* = the value, expressed as a positive number, of any property provided by or on behalf of the Defaulter as Guaranty Fund Contributions, which may be applied in connection with the net sum for any Customer Account or the House Account of the Defaulter at the discretion of the Corporation regardless of the basis under which any Guaranty Fund Contribution was calculated,

provided that the total applied to the Customer Accounts and House Account of a Defaulter under *GFC* shall not exceed the total Guaranty Fund Contributions of the Defaulter.

*SC* = the value, expressed as a positive number, of any property provided by or on behalf of the Defaulter in respect of the relevant Account that constitutes Surplus Collateral (other than any pledged collateral returned to a Clearing Participant or its customers outside of the net sum calculation).

*OA* = the aggregate of any amounts, expressed as a positive number, not falling under *A*, *D*, *C*, *M*, *GFC* or *SC* standing to the credit of the Defaulter or payable to the Defaulter or any right or claim of the Defaulter against the Corporation relating to the relevant Account, in any case whether pursuant to these Rules, any Contract or otherwise, including without limitation any available assets that would be recorded in the House Account but for subpart c. to this Rule, but excluding, in any case, any Surplus Collateral and any pledged collateral returned to a Clearing Participant or its customers outside of the net sum calculation.

*OL* = the aggregate of any other amounts, expressed as a positive number, not falling under *L* payable by the Defaulter to the Corporation or any right or claim of the Corporation against the Defaulter relating to the relevant Account, in any case whether pursuant to these Rules, any Contract or otherwise (including without limitation any fines payable pursuant to these Rules and any other amounts payable in respect of any breach by the Defaulter of these Rules in either case not falling under *L*), in any case at the discretion of the Corporation, provided that any amounts falling within the scope of the indemnity in Section D-905 f. but not falling under *L* shall be allocated to the House Account regardless of the Contracts or Account to which they relate.

All such amounts specified above must be aggregated, set off and applied in the order set out in the calculation above and in such order as is further required, restricted or limited by Rules Section A-103 m., subpart b. to this Rule and Section D-908 and provided further that any amount is only included in respect of the relevant net sum to the extent allowed pursuant to subpart b. to this Rule.

- b. Where the Defaulter has one or more Customer Accounts the process set out in subpart a. to this Rule shall be completed separately, and separate net sums shall be determined, in respect of:
- (i) each of the Defaulter's Customer Accounts, including, in respect of each such Account, the Contracts, rights, obligations and liabilities relating to each such Account in respect of Contracts;
  - (ii) each of the Defaulter's House Accounts, including, in respect of each such Account, the Contracts, rights, obligations and liabilities relating to each such Account not falling under subpart b.(i) to this Rule.

The Defaulter's Guaranty Fund Contributions may be used for the purpose of calculating any net sum on any Account relating to that Defaulter (provided that any such amounts are not double counted), in accordance with subpart a. to this Rule and subject to the restrictions in subpart c. to this Rule, Section D-908, Section A-103 m. and this subpart b. as determined by the Corporation. The aggregate sums finally payable shall be separately certified under subpart e. to this Rule.

- c. The Corporation may aggregate, set off or apply any Margin, Surplus Collateral or other surplus assets available to it in relation to a Defaulter's House Account to meet a shortfall on any one or more of that Defaulter's Customer Accounts provided that if any amounts are so aggregated, set off or applied, the amount *A*, *D*, *C*, *M*, *SC* or *OA* (as applicable) and consequently the net sum payable by the Corporation in relation to the Defaulter's House Account shall be reduced by the same amount as is so included within the net sum for the relevant Customer Account. The Corporation may not aggregate, set off or apply any Margin, Surplus Collateral or other surplus

available to it in relation to one of the Defaulter's Customer Accounts to meet a shortfall on another of that Defaulter's Customer Accounts. The Corporation may not aggregate, set off or apply any Margin, Surplus Collateral or other surplus available to it in relation to one of the Defaulter's Customer Accounts to meet a shortfall on the Defaulter's House Account. Where and to the extent that the Corporation determines to apply House Account assets of a Defaulter to any Customer Account, such amounts must first be applied to reduce any losses on Customer Accounts, on a *pro rata* basis among Customer Accounts which would otherwise have a net sum representing a shortfall or loss.

- d. Where  $N$  is a positive number, the net sum equal to  $N$  shall be payable by the Defaulter to the Corporation. Where  $N$  is a negative number, the net sum equal to the absolute value of  $N$  shall be payable by the Corporation to the Defaulter.

If the Corporation makes payment in respect of amounts which would have otherwise been included any net sum to or to the account of a Person other than the Defaulter in accordance with these Rules, the Defaulter's claim against the Corporation shall be accordingly reduced by the amount paid to such Person and the amount of any net sum  $N$  payable to the Defaulter shall be accordingly reduced. Where  $N$  is equal to zero, no amount shall be payable as between the Corporation and the Defaulter pursuant to this Section D-906. Where there is more than one separately certified amount  $N$  certified under subpart e. to this Rule as a result of subpart b. to this Rule, each amount so certified shall be treated as a separate obligation which cannot be netted off against another certified amount  $N$  in respect of a different account of the Defaulter.

- e. Each amount  $N$  shall be certified by the Corporation promptly upon its determination. Such determination may be delayed or withheld until such time as all relevant sums and components have been evaluated, all Transfers have been completed and the value or sale proceeds of any non-cash Margin, Surplus Collateral, Guaranty Fund Contributions or other assets are determined, received or available. A certificate of the Corporation made pursuant to this subpart e. shall be conclusive as to the amount required to be paid by or to any Defaulter or other Person in discharge of rights and liabilities in respect of the Contracts, property and Account to which such certificate relates.

#### **Section D-907 Administrative matters concerning an Event of Default**

- a. The Corporation may co-operate, by the sharing of information and otherwise, with any Governmental Authority, Clearing Agency, Exchange or Insolvency Practitioner having responsibility for any matter arising out of, or connected with, an Event of Default or the default of a recognized exchange or another recognized clearing agency.
- b. The Corporation will report, in due course, to the Defaulter or any relevant Insolvency Practitioner, on steps taken pursuant to this Part D.
- c. In accordance with Section D-905 f., any failure to meet any of its obligations under these Rules or in respect of any Contract remains a liability of the Defaulter to the Corporation regardless of any steps taken by the Corporation under these Rules. The Corporation may recover such sums due by exercising its right of set off (to the extent permitted to be used under these Rules) or by legal process.

To the extent that the Event of Default in question has resulted in application of any Guaranty Fund Contributions of Clearing Participants that are not Defaulters:

- (i) to the extent necessary for this purpose, each Clearing Participant authorises and appoints the Corporation to pursue any such collections or recoveries on behalf of the Corporation and Clearing Participants; and

- (ii) without prejudice to Section D-905 f., the Corporation shall be obliged to such Clearing Participants to exercise the same degree of care in the administration, enforcement and collection of any claims against a Defaulter or its insolvency estate with respect to any remaining liability of a Defaulter to the Corporation as it exercises with respect to its own assets that are not subject to allocation pursuant to Section D-914 k., Section D-916 n. or Section D-909 f. The Corporation may determine, in its reasonable discretion, whether or not to commence, continue, maintain, sell, dispose of or settle or compromise any litigation, arbitration or other action with respect to any liability of a Defaulter, without the consent of any Clearing Participant or other person. The Corporation may, in its discretion, assign to Clearing Participants any claims relating to collections or recoveries from Defaulters, in whole or in part, and such assignment shall satisfy in full the Corporation's obligations under Sections D-914 k., D-916 n. and D-909 f. with respect to any such claim (or portion thereof) or recoveries therefrom.

For the avoidance of doubt, nothing in these Rules shall otherwise oblige the Corporation to take any step to recover any asset or amount in the possession of a Defaulter or one of its Customers in connection with an Event of Default.

- d. Without prejudice to the Corporation relying on any other information provided to it by a Clearing Participant or any other Person, the Corporation shall be entitled to rely on the most recent information provided to it in relation to Default Portability Preferences and Non-Transfer Positions and Margin provided to the Corporation by a Defaulter prior to declaration of an Event of Default, notwithstanding any notice or purported notice to the contrary from a Defaulter, its Insolvency Practitioner or any other Person received by the Corporation after declaration of an Event of Default. The Corporation shall have no obligation to enquire of any Customer, or other Person as to any Default Portability Preference or Non-Transfer Positions. The rights of the Corporation to deal with Margin and other Permitted Cover under the default rules shall not be restricted as a consequence of a Defaulter having either entered into any indebtedness with a Customer or having provided different forms of collateral to the Corporation from that which it had received from its Customer, in either case in order to facilitate the provision of Permitted Cover to the Corporation.
- e. A Defaulter shall immediately disclose the names, addresses and contact details of each of its Customers or any Customer upon receiving notice to do so from the Corporation.
- f. [reserved]
- g. The Corporation (including any Insolvency Practitioner with powers over the Corporation or other Representative) and all Clearing Participants, Customers and their Representatives (including any Insolvency Practitioner with powers over any Clearing Participant, Customer or other Representative) shall, to the extent permitted by Applicable Laws:
  - (i) refrain from taking any action or seeking any order of any Governmental Authority that would result in or facilitate any asset or liability being applied contrary to the requirements of this Part D; and
  - (ii) take all reasonable steps possible including, without limitation, the application for and procurement of such orders from such Governmental Authorities as are necessary, to ensure that assets of the Corporation are applied only pursuant to this Part D.
- h. Any amount payable to or from the Corporation following the declaration of a net sum in accordance with this Part D may be paid to or from an account other than with an Approved Financial Institution that has previously been designated as such by the Corporation, provided that:

- (i) the account is an account of the Defaulter or an account operated by an Insolvency Practitioner on behalf of the Defaulter;
  - (ii) in the case of payments to the Defaulter, details of the account to be used and such other information relating to the account as is reasonably requested by the Corporation are provided in writing to the Corporation by the Defaulter or its Insolvency Practitioner; and
  - (iii) the bank of the account to which such payment is made shall be treated as if it were an Approved Financial Institution without the need for any further action on the part of the Corporation.
- i. [reserved]
  - j. Without prejudice to the status of any other provision of the Rules that is potentially applicable following an Event of Default as a default rule for purposes of Applicable Laws, where any defined term is used in a default rule or where any general interpretative provision of these Rules is relevant to the interpretation of a default rule, the definition of that term or that interpretative provision is itself also a default rule.
  - k. [reserved]
  - l. [reserved]
  - m. The Corporation will, if so requested by a Clearing Participant that is not a Defaulter, Transfer (to the extent this is not prohibited under any Applicable Laws) any Contracts, Margin or other Permitted Cover recorded in a Customer Account of that Clearing Participant to a House Account of the same Clearing Participant, in order to facilitate the management by the Clearing Participant of a breach by a Customer of, or default of a Customer. This subpart m. applies equally in the absence of declaration of any Event of Default by the Corporation.

#### **Section D-908 Application of Assets upon an Event of Default**

- a. Notwithstanding any other provision of these Rules:
  - (i) [reserved]
  - (ii) [reserved]
  - (iii) any Guaranty Fund Contributions (including additional Guaranty Fund Contributions) invoiced to or transferred by Clearing Participants that are not Defaulters, or accrued in each case after the declaration of an Event of Default but prior to the completion of the relevant default proceedings for the Event of Default, shall not be applied to meet any obligations or liabilities of the Defaulter or any shortfall, loss or liability to the Corporation arising in connection with that prior Event of Default; and
  - (iv) [reserved]
  - (v) without limitation to the generality of Section A-103 m. this Section D-908 is subject to Section A-103 m.
- b. The Corporation shall be entitled to apply assets to meet the obligations and liabilities of the Defaulter and any shortfall, loss or liability to the Corporation upon or following any Event of Default of that Defaulter (including in connection with any net sum calculated under Section D-906), in the following order of recourse:

- (i) first, any amounts falling under *N* in Section D-906 a. in the order and in respect of the Accounts specified in Section D-906 a. subject to the restrictions set out in Section D-906 c. (provided that the Corporation shall not be required to assert or pursue any such claim or bring any such action as a precondition to applying assets referred to in this subpart b. (ii) to (iii) and (v) but shall be required to account for any subsequent proceeds not included in the amount determined, less the costs of realizing any such claim or action or obtaining such amount or asset);
  - (ii) second, the Corporation Priority Contribution funds;
  - (iii) third, the Guaranty Fund Contributions of Clearing Participants other than the Defaulter in question (including, where relevant, any surplus Guaranty Fund Contributions of other Defaulters, if two or more Default proceedings take place concurrently and any such surplus is available) on a basis *pro rata* to the sum of the total of all Guaranty Fund Contributions (excluding the Guaranty Fund Contributions of the Defaulter and the Guaranty Fund Contributions of other Defaulters that have been or are to be applied in connection with separate Default proceedings); and
  - (iv) [reserved];
  - (v) fourth, Assessment Contributions received by the Corporation pursuant to Section D-909.
- c. [reserved]
  - d. [reserved]
  - e. [reserved]
  - f. [reserved]
  - g. [reserved]
  - h. The requirements of this Section D-908 shall apply and be binding upon the Corporation and all Clearing Participants including upon the event of any Insolvency affecting the Corporation or any Clearing Participant. The Corporation (including any Insolvency Practitioner with powers over the Corporation or other Representative) and all Clearing Participants (including any Insolvency Practitioner with powers over any Clearing Participant or its Representatives) shall, to the extent permitted by Applicable Laws:
    - (i) refrain from taking any action or seeking any order of any Governmental Authority that would result in or facilitate any asset or liability being applied contrary to the requirements of this Part D; and
    - (ii) take all reasonable steps possible including, without limitation, the application for and procurement of such orders from such Governmental Authorities as are necessary, to ensure that assets of the Corporation are applied only pursuant to this Part D.

**Section D-909 Powers of Assessment**

- a. Powers of assessment under this Section D-909 may be exercised by the Corporation following an Event of Default occurring in respect of a Clearing Participant if a shortfall, loss or liability to the Corporation has arisen, or is considered by the Corporation to be likely to arise as a result of a shortfall, loss or liability relating to any House Account or Customer Account of a Defaulter



where such shortfall, loss or liability is not met pursuant to Section ~~D-908 b. (i) to (iv)~~ ~~D-908 a. (iii)~~, or upon the determination by the Corporation that such liabilities are unlikely to be so met. Immediately upon the Corporation certifying the Assessment Amount in a Notice, all Clearing Participants (other than Defaulters) shall indemnify the Corporation and become liable to pay Assessment Contributions to the Corporation in accordance with subpart b. to this Rule. The exercise of any right to call Assessment Contributions under this Section D-909 is subject to any contrary requirement arising pursuant to Section D-917 or D-918 a.(ii).

- b. The Assessment Contribution payable by each Clearing Participant shall be the amount:

$$AA \times \frac{GF(CP)}{GF(all)}$$

where:

AA is the Assessment Amount certified by the Corporation in a Notice as the total shortfall following an Event of Default occurring, or expected by the Corporation to occur, after funds referred to in subpart a. to this Rule have been applied, provided that the total Assessment Amount shall be no greater than the amount equal to twice the total required Guaranty Fund Contributions of all Clearing Participants immediately prior to the relevant Event of Default (less Guaranty Fund Contributions of the Defaulters);

GF(CP) is the required Guaranty Fund Contribution of the relevant Clearing Participant immediately preceding the relevant Event of Default; and

GF(all) is the total required Guaranty Fund Contributions of all Clearing Participants immediately preceding the relevant Event of Default (less Guaranty Fund Contributions of Defaulters).

- c. No Clearing Participant shall be liable for more than an amount equal to twice their required Guaranty Fund Contribution immediately preceding the relevant Event of Default in total Assessment Contributions in respect of a single Event of Default.

A Person that is or was a Clearing Participant and that has served a Termination Request shall be subject to obligations to pay Assessment Contributions only in respect of Events of Default declared occurring prior to the Termination Date. ;

~~(i) — Events of Default declared occurring prior to the Termination Date; and~~

~~(ii) — any Events of Default occurring after the Termination Request Time but prior to the Termination Date.~~

~~Provided that Assessment Contributions made by a Person terminating its Clearing Participant status in the Corporation pursuant to subpart h. to this Rule shall be included for the purpose of calculating such a cap.~~

- d. If the Assessment Amount is not met by Assessment Contribution receipts from Clearing Participants due to non-payment by a Clearing Participant or Clearing Participants, Default of a Clearing Participant or Clearing Participants or otherwise, the Corporation shall at its discretion determine what, if any, further action to take. Unless, or unless to the extent that, the Corporation directs otherwise in a Notice, any shortfall shall be re-assessed against all Clearing Participants (other than Defaulters and Persons that have defaulted in making an Assessment Contribution) in accordance with subpart a. to this Rule, as if such shortfall were the Assessment Amount, provided that no Clearing Participant shall be liable to pay Assessment Contributions in respect of a single Default for an amount greater than twice its Guaranty Fund Contribution immediately prior to the relevant Default. Subject to subpart c. to this Rule, ~~and to Section D-917 if applicable,~~ further Assessment Contributions may be levied and repeated in this manner at the discretion of the Corporation until the entire Assessment Amount has been met in full by Assessment Contributions.

- e. All Assessment Contributions shall become due and payable at such time as the Corporation notifies to Clearing Participants (which may be by Notice) and may be collected by the Corporation pursuant to these Rules.
- f. If, after any Assessment Contribution has been paid in relation to an Event of Default, the Corporation collects amounts in respect of a defaulted obligation or unpaid Assessment Contribution in whole or in part from the Defaulter in question or a Person liable to pay an unpaid Assessment Contribution, the Corporation shall apply the amount so collected (less any expenses of the Corporation, including without limitation any legal fees and expenses incurred in connection therewith) in reverse order to that set out in Rule D-908 b.
- g. Amounts transferred to the Corporation by Clearing Participants in respect of Guaranty Fund Contributions, including without limitation amounts transferred to restore a deficiency in any Guaranty Fund following an Event of Default, do not constitute Assessment Contributions. Neither the exercise of powers of assessment by the Corporation nor the payment of Assessment Contributions shall reduce or otherwise affect the liability of a Clearing Participant to make Guaranty Fund Contributions or to replenish any Guaranty Fund Contribution pursuant to these Rules. Assessment Contributions do not constitute Guaranty Fund Contributions.

4. h. Where the Corporation calls Assessment Contributions in excess of that required or actually applied against a loss, shortfall, or liability, it shall treat any excess provided by a particular Clearing Participant as special Surplus Collateral on the House Account of such Clearing Participant. Such special Surplus Collateral shall be available to be applied at any time as an Assessment Contribution but unavailable for withdrawal until such time as any such amount of Assessment Contributions are determined by the Corporation not to be required, at which point the Surplus Collateral shall become available for withdrawal in the same way as other Surplus Collateral.

~~Upon an Event of Default or Events of Default being declared and either Assessment Contributions becoming due or there being a Sequential Guaranty Fund Depletion, a Clearing Participant liable either to pay an Assessment Contribution or to have its Guaranty Fund Contribution applied (as applicable) shall be entitled to terminate its Clearing Participant status in the Corporation in accordance with and subject to the provisions of this subpart h. A Clearing Participant that terminates its Clearing Participant status in such circumstances shall have no further obligation to replenish the Guaranty Fund as from the Termination Request Time. Such a Clearing Participant shall nonetheless remain liable for further application of its Guaranty Fund and further Assessment Contribution payments pursuant to subparts c.(i) and d. to this Rule, in either case in connection with any Event of Default declared by the Corporation prior to the Termination Date. For the avoidance of doubt, Section D-912 shall apply in relation to any such termination. To be valid, a Termination Request under this subpart h. must be delivered to the Corporation:~~

- ~~(i) between the first date on which a call for Assessment Contributions was made in respect of the relevant Event of Default and the date falling ten (10) Business Days after such date; or, as applicable,~~
- ~~(ii) between the first date on which the Corporation gave notice that Guaranty Fund Contributions have been applied in circumstances which constitute a Sequential Guaranty Fund Depletion and the date falling ten (10) Business Days after such date.~~

**Section D-910 [reserved]**

**Section D-911 [reserved]**

**Section D-912 Default procedure for termination due to Corporation Event**

- a. In the event of any termination pursuant to a Corporation Event, the rights and liabilities of each Clearing Participant under all Contracts will be deemed to be terminated without need for any further step on the part of any party and discharged for the purposes of Section D-906 and a net sum or net sums payable by or to the Clearing Participant or to or from the Corporation shall be determined as if each Clearing Participant were a Defaulter, in accordance with Section D-906 *mutatis mutandis* and without need for the prior occurrence or declaration of an Event of Default in relation to such Clearing Participant.
- b. In circumstances in which this Section D-912 applies:
- (i) Section D-909 shall only apply where necessary to meet a shortfall resulting from an Event of Default or Events of Default actually declared by the Corporation pursuant to Section D-901 (rather than any Event of Default effectively deemed to occur pursuant to this Section D-912);
  - (ii) Sections D-901, D-902, D-903, D-904 and D-905 shall apply only to Clearing Participants that are actually declared subject to an Event of Default (rather than effectively deemed subject to an Event of Default pursuant to this Section D-912);
  - (iii) [reserved]
  - (iv) [reserved]
  - (v) otherwise, this Part D shall apply *mutatis mutandis* in relation to terminated Contracts and rights, obligations and liabilities relating thereto.
- c. If the Corporation becomes aware of a Corporation Event occurring, the Corporation will promptly issue a Notice specifying that the same has occurred.

**Section D-913 Definitions used in the remainder of this Part D**

- a. The following additional definitions apply to the following sections of this Part D:
- (i) The term "**Adjustment Amount**" means, in respect of all the Margin Account(s) of any Contributor and any Reduced Gains Distribution Day, an amount equal to the sum of the Cumulative Unadjusted Gains, Losses and Realized Cash Flows in respect of such Margin Account(s) of such Contributor less the sum of the Cumulative Actual Gains, Losses and Realized Cash Flows in respect of such Margin Account(s) of such Contributor, in each case in respect of the Reduced Gains Distribution Period in which such Reduced Gains Distribution Day falls.
  - (ii) The term "**Aggregate Cash Gains**" or "**ACG**" means, in respect of any Business Day, the sum of the Cash Gain in respect of all Cash Gainers on such Business Day.
  - (iii) The term "**Available Defaulter Resources**" means, following a particular Event of Default, all the quantifiable and certain resources on any particular date to the extent that the same: (1) are available to the Corporation to meet losses and liabilities resulting from the Event of Default; (2) were posted as collateral in respect of an Account referred to in Section D-914 a.(ii)(2) or are otherwise available to be applied by the Corporation in

accordance with the Rules against losses or liabilities resulting from the Event of Default on such an Account; and (3) represent the cash proceeds or equivalent cash value (as calculated by the Corporation) of Permitted Cover provided to the Corporation by the Defaulter or other amounts, credits or assets that would otherwise be due to the Defaulter in the calculation of a net sum under Section D-906 and which have been evaluated as cash obligations (as calculated by the Corporation). Available Defaulter Resources exclude, for the avoidance of doubt, all Available Non-Defaulter Resources, the Corporation's own assets and capital, the Corporation Priority Contribution and any assets or rights representing the proceeds of Permitted Cover, Margin, cover for Margin or Guaranty Fund Contributions provided by Clearing Participants that are not Defaulters.

- (iv) The term "**Available Funds**" means the amount of resources available to the Corporation as calculated in accordance with Rule D-916 f.
- (v) The term "**Available Non-Defaulter Resources**" means, following a particular Event of Default, the cash proceeds or equivalent cash value (as calculated by the Corporation) of those Guaranty Fund Contributions, the Corporation Priority Contribution and Assessment Contributions which are available to be applied pursuant to Section D-908, provided that Assessment Contributions shall only count as Available Non-Defaulter Resources if they have been received by the Corporation in cleared funds at the time the Corporation performs a calculation of Available Non-Defaulter Resources.
- (vi) The term "**Available Resources**" or "**AR**" means the Available Defaulter Resources plus the Available Non-Defaulter Resources.
- (vii) The term "**Cash Gain**" means, in respect of any Cash Gainer and any Reduced Gains Distribution Day, the amount of Cumulative Unadjusted Gains, Losses and Realized Cash Flows in respect of such Cash Gainer in respect of such Reduced Gains Distribution Day, if positive.
- (viii) The term "**Cash Gainer**" means, in respect of each Contributor and any Reduced Gains Distribution Date, each Margin Account in respect of which the Cumulative Unadjusted Gains, Losses and Realized Cash Flows in respect of such Reduced Gains Distribution Day is greater than zero.
- (ix) The term "**Cash Gainer Adjustment**" has the meaning set out in Section D-914 c.
- (x) The term "**Cash Loser**" means, in respect of each Contributor and any Reduced Gains Distribution Date, each Margin Account in respect of which the Cumulative Unadjusted Gains, Losses and Realized Cash Flows in respect of such Reduced Gains Distribution Day is equal to or less than zero.
- (xi) The term "**Cash Loser Adjustment**" has the meaning set out in Section D-914 d.
- (xii) The term "**Contractual Payments**" means, in respect of each Margin Account and any Business Day, any of the following connected to such Margin Account on such Business Day: any Exchange Settlement Price, Option premium or other settlement amount, strike price, exercise price, settlement price or delivery price, or any other payment pursuant to the terms of a Contract, ~~excluding any amounts to be paid or collected relating to Delivery of Underlying Interest of Futures Where physical delivery of any Deliverable is due to be made by way of final settlement under a Contract from the Corporation to any Clearing Participant, and the Corporation (including any non-defaulting Clearing Participant or its Transferee acting as agent for the Corporation) has not received delivery from the Defaulter, the Corporation may attribute a reasonable value to its delivery obligations and treat such amount as a Contractual Payment for purposes of this definition.~~

- (xiii) The term "**Contributor**" means a Clearing Participant that is not a Defaulter.
- (xiv) The term "**Cooling-off Period**" means the period commencing on and including the date of the Cooling-off Period Trigger Event and terminating thirty (30) Business Days thereafter. A Cooling-off Period shall be automatically extended if a subsequent Cooling-off Period Trigger Event occurs thirty (30) or fewer Business Days after the previous Cooling-off Period Trigger Event, in which case the Cooling-off Period will be extended until the date falling thirty (30) Business Days after the second such Cooling-off Period Trigger Event.
- (xv) The term "**Cooling-off Period Trigger Event**" means: (i) any call for Assessment Contributions being made; and/or (ii) the occurrence of a Sequential Guaranty Fund Depletion.
- (xvi) The term "**Cooling-off Termination Period**" means the period commencing on the date of each Cooling-off Period Trigger Event and terminating ten (10) Business Days thereafter. A Cooling-off Termination Period shall be automatically extended if a subsequent Cooling-off Period Trigger Event occurs ten (10) or fewer Business Days since the previous Cooling-off Period Trigger Event, until the date falling ten (10) Business Days after the second such Cooling-off Period Trigger Event.
- (xvii) The term "**Corporation Event**" means a Failure to Pay or Insolvency occurring in respect of the Corporation.
- (xviii) The term "**Cumulative Actual Gains, Losses and Realized Cash Flows**" means, in respect of the Margin Account of each Contributor and any Business Day, the aggregate amount, if any, actually paid by the Corporation to such Contributor (expressed as a positive number) or by such Contributor to the Corporation (expressed as a negative number) in respect of such Margin Account by way of Contractual Payments and VM, taking into account each Margin Account Adjustment from but excluding the relevant Last Call Prior To Default to and including such Business Day such that, to the extent that any payment of VM or Contractual Payment is netted or offset against any Margin Account Adjustment on any Reduced Gains Distribution Day, the amount actually paid for the purposes of this definition shall be used in calculating such aggregated amount.
- (xix) The term "**Cumulative Transfer Cost**" means, on any Business Day during any Reduced Gains Distribution Period, the sum of any Transfer Cost for each Business Day from but excluding the relevant Last Call Prior To Default to and including such Business Day.
- (xx) The term "**Cumulative Unadjusted Gains, Losses and Realized Cash Flows**" means, in respect of each Margin Account of each Contributor and any Business Day, the sum of the Pre-Haircut Daily Unadjusted Gains, Losses and Realized Cash Flows for such Margin Account for each Business Day from but excluding the relevant Last Call Prior To Default to and including such Business Day.
- (xxi) The term "**Pre-Distribution Gains Daily Unadjusted Gains, Losses and Realized Cash Flows**" means, in respect of each Margin Account of each Contributor and any Business Day, the amount which would be paid by the Corporation to such Contributor (expressed as a positive number) or by such Contributor to the Corporation (expressed as a negative number) by way of Contractual Payments or VM in respect of such Margin Account on such Business Day in the absence of the application of ~~the~~ Reduced Gains Distribution ~~Haircut~~.

- (xxii) The term "~~Reduced Gains Distribution~~Distribution Haircut" or "**RGDDH**" means, on each Reduced Gains Distribution Day, the fraction determined by the Corporation in accordance with the following formula:

$$\text{RGDDH}_{(t)} = UL_{(t)} / ACG_{(t)}$$

where:

DH is expressed as a decimal provided that it shall be no greater than 1; and

UL means the Uncovered Loss; and

ACG means the Aggregate Cash Gains,

- (xxiii) The term "**Estimated Payable Net Sum**" means, following a particular Event of Default, an estimate by the Corporation of the total of those net sums calculated using the methodology set out in Section D-906 which represent an amount payable by a Defaulter in respect of a particular Account, based on the cash or estimated value of items considered by the Corporation to be sufficiently certain to be estimated as at the date of the estimation (including, in respect of Contracts, latest available VM Prices), without any netting or offsetting in respect of any other Estimated Payable Net Sum or actual net sum payable to a Defaulter in respect of a different Account of a Defaulter.
- (xxiv) The term "**Initial Margin**" means Original Margin (including buyer's security and seller's security).
- (xxv) The term "**Last Call Prior To Default**" means the most recent Business Day on which payments of VM required to be made by Clearing Participants were paid in full.
- (xxvi) The term "**Margin Account**" means each House Margin Account and Customer Margin Account of a Contributor.
- (xxvii) The term "**Margin Account Adjustment**" means, in respect of each Margin Account and any Business Day, any Cash Gainer Adjustment or Cash Loser Adjustment as the case may be payable in connection with such Margin Account on such Business Day.
- (xxviii) The term "**Negative Repayment Amounts**" means the negative single net sum determined in respect of a Clearing Participant's Margin Account that is subject to a termination in accordance with Section D-916 e.
- (xxix) The term "**Outward VM Payments**", on any Business Day, means amounts in respect of VM that the Corporation has calculated which would, but for Section D-914, be paid in full by the Corporation to Contributors (whether relating to any House Account or any Customer Account).
- (xxx) The term "**Positive Repayment Amounts**" means the positive single net sum determined in respect of a Clearing Participant's Margin Account that is subject to a termination in accordance with Section D-916 e.
- (xxxi) The term "**Received VM**", on a particular Business Day following an Event of Default, means the amount that the Corporation has actually received in cleared funds from Clearing Participants (other than Defaulters) in respect of VM.
- (xxxii) The term "**Reduced Gains Determination**" has the meaning set out in Section D-914 a.

- (xxxiii) The term "**Reduced Gains Distribution Day**" means a Business Day in the Reduced Gains Distribution Period.
- (xxxiv) The term "**Reduced Gains Distribution Period**" means the period commencing from and including the date specified by the Corporation in a Notice following a Reduced Gains Determination and ending on a date specified by the Corporation in the same or any subsequent Notice, as the same may be extended under Section D-914. A Reduced Gains Distribution Period shall end with immediate effect and without the need for any action on the part of any Clearing Participant or the Corporation upon any Corporation Event.
- (xxxv) The term "**Relevant Assessment Contributions**" means those Assessment Contributions which may be applied to losses.
- (xxxvi) The term "**Relevant Post Default Period**" means the period starting at the time of declaration of an Event of Default of a Clearing Participant and ending at the time of declaration of net sums in respect of any House Account and each Customer Account of the Defaulter.
- (xxxvii) The term "**Sequential Guaranty Fund Depletion**" in respect of a particular Clearing Participant that is not a Defaulter, means circumstances in which:
- (1) there have been two (2) or more Events of Default relating to different Clearing Participants within a period of thirty (30) or fewer Business Days; and
  - (2) Guaranty Fund Contributions have been applied in respect of at least two (2) such Events of Default; and
  - (3) the total amount that the Clearing Participant has as a result paid to the Corporation to replenish its Guaranty Fund Contributions exceeds the total amount of Guaranty Fund Contributions standing to the credit of that Clearing Participant in the Corporation's accounts prior to the first Event of Default.
- (xxxviii) The term "**t**" means, in respect of any determination made in relation to a Business Day, such Business Day.
- (xxxix) The term "**t-1**" means, in respect of any determination made in relation to a Business Day, the Business Day immediately prior to such Business Day.
- (xl) The term "**Termination**" in respect of a Contract means termination, close-out, exercise, abandonment, or expiry pursuant to its terms and under the Rules.
- (xli) The term "**Termination Notice**" has the meaning set out in Section D-916 a.
- (xlii) The term "**Termination Price**" in respect of a Contract means the price determined by the Corporation, which shall be applicable upon the termination, close-out, exercise, abandonment, or expiry of the Contract upon any termination pursuant to Section D-916.
- (xliii) The term "**Total Cumulative Pre-Distribution Amount**" or "**TCPD**" means, in respect of any Business Day, the sum of the Total Pre-Distribution Amount for each Business Day from but excluding the relevant Last Call Prior To Default to and including such Business Day.
- (xliv) The term "**Total Pre-Distribution Amount**" or "**TPDA**" means, in respect of any Business Day, the sum of the [Pre-Distribution Daily Unadjusted](#) Gains, Losses and

Realized Cash Flows in respect of all Margin Accounts of all Contributors on such Business Day.

- (xiv) The term "**Transfer Cost**", on any Business Day, means the total amount payable by the Corporation to Clearing Participants that are not Defaulters as consideration for the entry into of replacement Contracts to those to which a Defaulter was party (or otherwise Transferred Contracts), whether as a result of a sale or otherwise pursuant to Part D plus any associated costs or expenses of the Corporation.
- (xlv) The term "**Uncovered Loss**" or "**UL**" means in respect of the Corporation on any Reduced Gains Distribution Day:

- (1) where Section D-914 a.(ii)(1) applies, an amount calculated in accordance with the following formula:

$$\text{Uncovered Loss}_{(t)} = \text{TPDA} \text{TCPD}_{(t)} + \text{CTC}_{(t)} - \text{AR}$$

where:

TPDA TCPD means the Total Cumulative Pre-Distribution Amount;

CTC means the Cumulative Transfer Cost;

AR means the Available Resources; and

the Uncovered Loss as at the Last Call prior to Default shall be zero, provided that if the Uncovered Loss would be greater than zero, it shall be deemed to be equal to be zero.

- (2) where Section D-914 a.(ii)(2)(A) applies, the Estimated Payable Net Sum minus Available Non-Defaulter Resources; or
- (3) where Section D-914 a.(ii)(2)(B) applies, the total of relevant net sums payable by but not received from the Defaulter minus Available Non-Defaulter Resources;

provided that, where there is more than one Event of Default with overlapping Relevant Post Default Periods, the Uncovered Loss may be calculated with regard to Cumulative Transfer Cost and Available Resources for all relevant Defaulters and Events of Default at that time.

- (xlvii) The term "**VM**" stands for Variation Margin. References to the payment of VM shall be construed as including obligations to transfer cash or other Permitted Cover as a result of changes to VM Prices (as the difference between VM Prices on different Business Days) following a recalculation of VM Price and not to the total amount of VM held by any Clearing Participant or the Corporation at any time.

- (xlviii) The term "**VM Price**" means the Exchange Settlement Price.

#### **Section D-914 Reduced Gains Distribution**

- a. This Section D-914 shall only apply if the Corporation has published its determination (any such determination, a "**Reduced Gains Determination**") that the following four conditions are all satisfied:



- (i) an Event of Default has been declared but the Corporation has not yet declared (and either paid or submitted a claim in respect of) all net sums due to or from the Defaulter in respect of all of its different House Accounts and all of its different Customer Accounts; and
- (ii) the Corporation determines that one or more of the following circumstances has arisen:
  - (1) the sum of Outward VM Payments and Transfer Cost (if any) would, in its view, exceed Available Resources plus Received VM;
  - (2) Available Resources are insufficient to meet the shortfalls, losses or liabilities of the Corporation on relevant Accounts of the Defaulter, which may be determined if, in its view:
    - (A) any Estimated Payable Net Sum would exceed the Available Non-Defaulter Resources which, pursuant to Section D-908, would be available to meet the losses of the Corporation represented by any net sum payable by the Defaulter were such net sum to be of an amount equal to the Estimated Payable Net Sum; or
    - (B) any net sums payable by the Defaulter that are calculated and declared by the Corporation under Section D-906 (to the extent that the same have not been received by the Corporation in cleared funds from the Defaulter) in total would exceed the Available Non-Defaulter Resources which, pursuant to Section D-908, are to be applied to meet the losses of the Corporation represented by such net sums;

provided that, where there is more than one Event of Default with overlapping Relevant Post Default Periods, such determinations may be made with regard to the Available Resources, Transfer Cost, Estimated Payable Net Sums and net sums relating to all relevant Defaulters and Events of Default at that time; and

- (iii) [reserved]
- (iv) no Termination Notice has been issued; and
- (v) there has been no Corporation Event.

b. If there is a Reduced Gains Determination, then:

(i) the Corporation shall issue a Notice to that effect specifying:

(i) ~~the affected Contract Set or Sets~~

(A) the date of commencement of any Reduced Gains Distribution Period; and

(B) such other matters as the Corporation considers are relevant, which may (but are not required to) include ~~a~~ the date on which the Reduced Gains Distribution Period ~~is expected to~~ must end.

(ii) At the close of business on each Business Day following a Reduced Gains Distribution Day, the Corporation shall determine in accordance with subpart a. to this Rule where any of the conditions under which a Reduced Gains Determination could be made persists. If the Corporation determines that none of the situations under which a

Reduced Gains Determination could be made persists or is likely to persist or otherwise wishes to end any Reduced Gains Distribution Period, then:

(A) that day shall not be a Reduced Gains Distribution Day and the Reduced Gains Distribution Period shall have ended as of the last Reduced Gains Distribution Day; and

(B) the Corporation shall issue a Notice specifying the final date of the Reduced Gains Distribution Period.

(iii) The end of a Reduced Gains Distribution Period shall not preclude there being any additional Reduced Gains Distribution Period at a later stage arising as a result of the same Event or Events of Default, to the extent that any open Contracts of the Defaulter(s) have not been closed out; and

(iv) The total number of Reduced Gains Distribution Days in all Reduced Gains Distribution Periods for any Event of Default (or multiple Events of Default subject to a Cooling-off Period) shall not exceed five Business Days.

~~If any expected end date for the Reduced Gains Distribution Period is specified in the Notice, the Reduced Gains Distribution Period may nonetheless be extended by the publication of a further Notice and any expiry of a Reduced Gains Distribution Period arising as a result of a particular Event of Default shall not preclude there being any additional Reduced gains Loss Distribution Period at a later stage arising as a result of the same Event of Default. At the close of business on each Business Day following a Reduced Gains Distribution Day, the Corporation shall determine in accordance with subpart a. to this Rule where any of the situations under this a Reduced Gains Distribution Determination could be made persists.~~

- c. ~~Adjustment of *VAM* payments for Cash Gainers.~~ On each Reduced Gains Distribution Day for each Margin Account of each Contributor that is deemed to be a Cash Gainer, the relevant Contributor shall be required to pay the Corporation an amount equal to any positive amount determined in accordance with the following formula separately for each of its Accounts or, as applicable, the Corporation shall be required to pay the relevant Contributor the absolute value of any negative amount determined in accordance with the following formula (in each case, such amount the "**Cash Gainer Adjustment**"):

$$\frac{\text{Cash Gainer Adjustment}_{(t)}}{\text{Cash Gainer Adjustment}_{(t)}} = \frac{PDG_{(t)} - ((CUG_{(t)} \times (1 - RGD_{(t)})) - CAG_{(t-1)})}{CAG_{(t-1)} + DUG_{(t)} - (CUG_{(t)} \times (1 - DH_{(t)}))}$$

where:

CAG<sub>(t-1)</sub> means the Cumulative Actual Gains, Losses and Realized Cash Flows as at the Business Day immediately prior to the Reduced Gains Distribution Day, and where CAG as at the Last Call prior to Default shall be zero.

PDGDUG means the Daily Unadjusted Pre-Distribution Gains, Losses and Realized Cash Flows;

CUG means the Cumulative Unadjusted Gains, Losses and Realized Cash Flows; and

RGD-DH means the Reduced Gains Distribution Distribution Haircut, expressed as a decimal provided that it shall be no greater than 1; and

CAG means the Cumulative Actual Gains, Losses and Realized Cash Flows and where CAG as at the Last Call prior to Default shall be zero.

For the avoidance of doubt, any Transfer Cost due to a Contributor that has entered into replacement Contracts shall be paid in full and not be subject to any Cash Gainer Adjustment or included in amounts. ~~PDG, CUG, or CAG~~ CAG, DUG, or CUG.

- d. ~~Adjustment of VM~~ Adjustment of VM Payments for Cash Losers. On each Reduced Gains Distribution Day for each Margin Account of each Contributor that is deemed to be a Cash Loser, the Corporation shall be required to pay the absolute value of an amount (the "**Cash Loser Adjustment**") determined in accordance with the following formula separately for each of its Accounts:

$$\frac{\text{Cash Loser Adjustment}_{(t)}}{\text{Cash Loser Adjustment}_{(t)}} = \frac{PDG_{(t)} - (CHG_{(t)} - CAG_{(t-1)})}{CAG_{(t-1)} + DUG_{(t)} - CUG_{(t)}}$$

where: CAG, DUG and CUG have the same meanings as in subpart c. to this Rule.

~~PDG means the Pre-Distribution Gains, Losses and Realized Cash Flows;~~

~~CHG means the Cumulative Unadjusted Gains, Losses and Realized Cash Flows; and~~

~~CAG means the Cumulative Actual Gains, Losses and Realized Cash Flows and where CAG as at the Last Call prior to Default shall be zero.~~

Nothing in this Section D-914 shall reduce or offset the obligation of a Cash Loser to pay any VM or Contractual Payments owed by it in respect of a Reduced Gains Distribution Day.

- e. On each Reduced Gains Distribution Day, the Corporation shall apply the payment or receipt of any Margin Account Adjustment as an offset against any payments from or receivable by the relevant Contributor or aggregate it with any required payment to the Corporation. VM obligations and related adjustments pursuant to this Section D-914 of Contributors that are not Defaulters shall then be paid and collected following such netting with other payment obligations.

- ~~f. [reserved] Where obligations relating to physical delivery in respect of any Contract are to be performed following expiry or the end of trading in the relevant Set, on any Business Day during a Reduced Gains Distribution Period, the Corporation may make such adjustments as are necessary to the calculation of Cash Gainer Adjustment or Cash Loser Adjustment to reflect the payment flow arising from the delivery, based on the principle that the calculation of Cash Gainer Adjustment and Cash Loser Adjustment is designed to capture all profits and/or losses on Open Contract Positions during the relevant Reduced Gains Distribution Period.~~

- g. Notwithstanding the effects of this Section D-914 during a Reduced Gains Distribution Period:

- (i) Clearing Participants shall remain liable to pay, and shall continue to make timely payment of, all amounts falling due to, and shall remain liable to deliver, and shall continue to make timely delivery of, all property falling due for delivery to, the Corporation in accordance with the Rules, including obligations to pay Original Margin, Guaranty Fund Contributions and Assessment Contributions (in the latter case, subject always to the relevant caps set out in these Rules); and
- (ii) the Corporation will remain liable to pay or release Margin and Permitted Cover to Clearing Participants in the usual way, subject to netting to take account of any Cash Loser Margin Account Adjustment; ~~and~~
- ~~(iii) the Corporation's obligation to pay or release Original margin shall not be subject to reduction under this Section D-914 as a result of any Reduced Gains Distribution Haircut~~

- h. All such payments shall be made without regard to whether any payment which would have fallen due (were it not for the Reduced Gains Determination) has been made and without any offsetting or withholding of amounts under any other right of or to netting, set-off, lien, recouping, property, combination of accounts or other basis.
- i. Any rebate, incentive scheme or fee discount arrangements that would otherwise result in amounts being payable by the Corporation (whether for itself or on behalf of the Exchange) in respect of Contracts affected by the arrangements during the Reduced Gains Distribution Period shall not be applicable during any Reduced Gains Distribution Period. Action by the Corporation under this Section D-914 shall not constitute any kind of Corporation Event.
- ~~j. Where the Corporation determines that none of the situations under which a Reduced Gains Determination could be made persists or is likely to persist or otherwise wishes to end any Reduced Gains Distribution Period, it shall issue a Notice specifying the final date of the Reduced Gains Distribution Period. After the end of the a Reduced Gains Distribution Period, the adjustments, modifications and limited recourse provisions specified in this Section D-914 shall no longer apply and the Corporation shall resume calculating, collecting and paying VM payments in the ordinary course, without adjustment to take into account any Cash Gainer/Loser Adjustments during the Reduced Gains Distribution Period except as provided for in subpart k. to this Rule. The end of the Reduced Gains Distribution Period shall not preclude the Corporation from making a further Reduced Gains Determination in respect of the same Event of Default to the extent that any open Contracts of the Defaulter have not been closed out, sold or liquidated and the other conditions of the Reduced Gains Determination are satisfied.~~
- k. Notwithstanding any other provisions of these Rules, this subpart k. shall apply where the Corporation:
- (1) receives amounts from a Defaulter or another Clearing Participant that would, had it been paid on time, have increased the Corporation's Available Resources or Received VM on a Business Day on which any Margin Account Adjustment was made pursuant to this Section D-914 during a Reduced Gains Distribution Period;
  - (2) recalculates any Estimated Payable Net Sum in circumstances in which the previously Estimated Payable Net Sum was higher; or
  - (3) declares an actual net sum under Section D-906 in circumstances in which an Estimated Payable Net Sum had previously been used as a basis for invoking its rights under this Section D-914 where the actual net sum is greater than the last Estimated Payable Net Sum. Where this subpart k. applies, the Corporation shall distribute such amounts as it has received or estimates are now available (as applicable) (after deducting any administration and other costs of the Corporation, including, without limitation, the costs of recovering or recalculating any such amounts):
    - (A) first to Contributors who are not then Defaulters (irrespective of whether they remain Clearing Participants at the time of the recovery) who became liable to pay Cash Gainer Adjustments during the Reduced Gains Distribution Period with the payments determined on a *pro rata* basis based on each Contributor's Adjustment Amount;
    - (B) secondly, in accordance with Section A-608 e.
- l. This Section D-914 is without prejudice to the Corporation's rights to set off or net any sum owed by a Clearing Participant to the Corporation against any sum payable by the Corporation to a Clearing Participant or to any other powers of the Corporation under these Rules, but the

Corporation may not take any action under those provisions to the extent inconsistent with the provisions of this Section D-914.

- m. [reserved]
- n. [reserved]
- o. The Corporation shall apply all Received VM and Available Resources solely to meet Outward VM Payments and Transfer Costs, to make reimbursement to Clearing Participants under subpart k. to this Rule, and to fund its obligations to meet any shortfall, loss, or liability incurred by it under Contracts or these Rules, as permitted under the Rules.

**Section D-915 [reserved]**

**Section D-916 Contract Termination following Certain Conditions**

- a. If:
  - (i) [reserved]
  - (ii) the following conditions are satisfied:
    - (1) an Event of Default has been declared but the Corporation has not yet declared (and either paid or submitted a claim in respect of) all net sums due to or from the Defaulter in respect of its House Account and all of its Customer Accounts;
    - (2) the Corporation determines that one or more of the following circumstances has arisen:
      - (A) its obligations to meet Outward VM Payments or the Transfer Cost, in its view, may not be satisfied by applying Available Resources and the provisions set out in Section D-914; or
      - (B) following either the declaration of all net sums in respect of a particular Event of Default or, where any net sum has not been declared, based on the calculation of an Estimated Payable Net Sum, the Corporation, in its view, may either:
        - (aa) become unable to pay its debts as they fall due; or
        - (bb) have total liabilities which exceed its total assets,
    - In either case if it does not invoke the provisions set out in this Section D-916;
    - (3) all of the Contracts of the Defaulter have been terminated; and
    - (4) there has been no Corporation Event; or
  - (iii) following the service of notices by Clearing Participants under Section D-917 or otherwise, the Corporation determines that there are insufficient Clearing Participants interested in continuing to clear Contracts to remain viable, or otherwise that the Corporation's clearing services should be terminated,

and there has been no Corporation Event, then the Corporation may issue a Termination Notice.

- b. If the Corporation is to terminate Contracts under this Section D-916, it must issue a Notice (a "**Termination Notice**") stating:
- (i) the Contracts to be terminated;
  - (ii) the Corporation's intention to rely upon and apply Section D-916;
  - (iii) the applicable Termination Price for each Contract Set that are to be terminated;
  - (iv) the date and time on which termination will take place "**Termination Time**"; and
  - (v) such other matters as the Corporation considers are relevant.
- c. Upon and with effect immediately as from the Termination Time, every open Contract shall be automatically terminated at the Termination Price, without the need for any further step by any party to such Contract. Neither the Corporation nor any Clearing Participant that is not a Defaulter shall be obliged to make any further payments or deliveries under any Contract which would, but for this subpart c., have fallen due for performance on or after the Termination Time, and any obligations to make further payments or deliveries which would otherwise have fallen due shall be satisfied by settlement (whether by payment, set off or otherwise) of the Termination Amount and other payment and delivery obligations in relation to any Contracts and any other obligations pursuant to the Rules (including the repayment or redelivery of any Original Margin or Guaranty Fund Contribution) that shall be payable or deliverable on the Business Day after the Termination Time and in accordance with the provisions of this Section D-916 in full discharge of the Corporation's obligations in respect of Contracts.
- d. The Termination Price for Contracts in the same Set shall be the equal for all such Contracts and shall be the same for all Clearing Participants that are party to Contracts of the same Set. Termination Prices shall be based upon the value of Contracts as at the Termination Time in accordance with the principles set out in this subpart d. but without reference to the Loss Distribution Process in Section D-914. Such Termination Prices shall be calculated as the relevant loss or gain that would be calculated for purposes of items L and A in Section D-906 a. were a net sum to be required to be calculated, but based on:
- (i) for a Set of Contracts, the Exchange Settlement Price (excluding any such price determined or over-ridden by the Corporation) for the relevant Contract Set prior to the Termination Date;
  - (ii) if no price described in subpart d.(i) to this Rule exists or is determined, the last market quotation or settlement price established or published by another Exchange or Clearing Agency (that is not subject to an Insolvency) selected by the Corporation for an economically similar contract to the Set immediately prior to the Termination Time; or
  - (iii) if no price described in subpart d.(i) or (ii) to this Rule exists or is determined, at a commercially reasonable price as reasonably determined by the Corporation by reference to objective and observable market prices at the relevant Termination Time, the mean settlement price for the Termination Time based on a survey of market participants active in Contracts similar to the Set or otherwise on such basis as the Corporation determines with a view to obtaining a fair valuation.
- e. The maximum amount that may be paid or repaid and related liabilities and rights shall be calculated separately in respect of each Margin Account for each Clearing Participant that is not a Defaulter, by way of a net sum calculation using the calculation under Section D-906 *mutatis mutandis*, as if the Clearing Participant were a Defaulter, bringing into account the Termination

Price for purposes of calculating amounts  $L$  and  $A$  and all net Cash Gainer Adjustments but otherwise solely bringing into account any amount for purposes of such calculation (the "**Termination Amount**"). To the extent that any Original Margin, Surplus Collateral or other assets are held by the Corporation for the account of a Clearing Participant in respect of any Contract (or any such asset becomes Surplus Collateral as a result of Termination), the amount of such Original Margin, assets or Surplus Collateral shall be included in the Termination Amount.

- f. Following its determination of the Termination Amount in relation to each Margin Account for each Clearing Participant that is not a Defaulter, the Corporation shall calculate the Available Funds as the sum equal to the aggregate of the Negative Repayment Amounts in respect of each affected Clearing Participant. Where the Available Funds are less than the aggregate amount of Positive Repayment Amounts, the Corporation shall calculate the Discounted Repayment Amount for each Positive Repayment Amount payable to the Clearing Participant by multiplying each such Positive Repayment Amount by the fraction determined by dividing  $A$  by  $B$ , where  $A$  is the Available Funds and  $B$  is the aggregate amount of Positive Repayment Amounts.
- g. Prior to any amount being paid or collected pursuant to subpart h. to this Rule, the Corporation shall notify each Clearing Participant that is due to receive a Positive Repayment Amount of such amount and any Discounted Repayment Amount and the extent to which this differs from the Termination Amount. This notification shall show in reasonable detail how any Discounted Repayment Amount has been calculated by the Corporation. Where a Discounted Repayment Amount is notified to a Clearing Participant, such amount shall be payable by the Corporation and the Corporation shall have no obligation (other than pursuant to subpart i. to this Rule) to pay either the Termination Amount or the Termination Price or any difference between any such amount or price and the Discounted Repayment Amount.
- h. The Corporation will issue payment instructions to collect (and each Clearing Participant shall, immediately upon receipt of any such instructions, pay) each Negative Repayment Amount prior to the Corporation making payment to Clearing Participants of Positive Repayment Amounts or Discounted Repayment Amounts. All payments in respect of Negative Repayment Amounts shall be made by Clearing Participants without any offsetting or withholding of amounts under any other right of or to netting, set-off, lien, recouping, property, combination of accounts or other basis. If any Clearing Participant fails to pay any Negative Repayment Amount due to the Corporation, the Discounted Repayment Amount may be recalculated for each Margin Account and Contributing Clearing Participant and, if so recalculated, will be notified to affected Contributing Clearing Participants. Payment of any Discounted Repayment Amount shall constitute full satisfaction of the Corporation's obligations and liabilities relating to the Contracts.
- i. Notwithstanding the termination process under this Section D-916, Clearing Participants, (including each Defaulter) and the Corporation, shall each remain liable to pay, and shall continue to make timely payment of, all amounts falling due, and shall remain liable to deliver, and shall continue to make timely delivery of, all property falling due for delivery, in accordance with the Rules and Policies, including:
- (1) pursuant to Contracts which are not terminated;
  - (2) Original Margin in relation to Contracts that are not terminated; and
  - (3) Assessment Contributions and/or Replenishment requirements subject always to the relevant caps set out in these Rules.
- j. Any rebate, incentive scheme or fee discount arrangements that would otherwise result in amounts being payable by the Corporation (whether for itself or on behalf of the Exchange) in respect of Contracts to be terminated under this Section D-916 shall not be applicable in respect of such Contracts.

- k. No action or omission by the Corporation pursuant to this Section D-916 shall constitute any kind of Corporation Event.
- l. If the Corporation terminates Contracts of a particular Set, this shall not preclude it from terminating Contracts of a different Set of the same Contract in respect of the same Event of Default.
- m. In carrying out any calculations or making any determinations pursuant to this Section D-916, the Corporation may convert any amounts denominated in one currency into another currency chosen by the Corporation in its discretion and at a rate of exchange chosen by the Corporation in its discretion, provided the Corporation shall act in a commercially reasonable manner when choosing a currency or a rate of exchange for the aforesaid purposes.
- n. This subpart n. shall apply where the Corporation:
  - (i) receives amounts from a Defaulter or another Clearing Participant that would, had it been paid on time, have meant that a Negative Termination Amount being lower or eliminated or a Positive Termination Amount being higher;
  - (ii) recalculates any Estimated Payable Net Sum in circumstances in which the previously Estimated Payable Net Sum was higher in circumstances in which any resulting Negative Termination Amount would have been lower or eliminated or a Positive Termination Amount would have been higher based on the later Estimated Payable Net Sum; or
  - (iii) an actual net sum is declared by the Corporation under Section D-906 in circumstances in which any resulting Negative Termination Amount would have been lower or eliminated or a Positive Termination Amount would have been higher based on the actual net sum.

Where this subpart n. applies, the Corporation shall distribute such amounts as it has received or estimates are now available (as applicable) (after deducting any administration and other costs of the Corporation, including, without limitation, the costs of recovering or recalculating any such amounts):

- (1) first to Clearing Participants that are not Defaulters who would, but for this Section D-916, have received a Termination Price in full, with the payments determined on a *pro rata* basis based on the difference between the Discounted Repayment Amount and the Repayment Amount in respect of each Clearing Participant;
  - (2) secondly, in accordance with Section D-914 k.; and
  - (3) for the avoidance of doubt, thirdly, under Section A-608 e. (as modified by Section D-914 k.).
- o. [reserved].
  - p. Payments of Negative Repayment Amounts, Positive Repayment Amounts and Discounted Repayment Amounts may be made following such netting with other payment obligations as are provided for in these Rules.

#### **Section D-917 Cooling-off period and Clearing Participant termination rights**

- a. Upon the occurrence of any Cooling-off Period Trigger Event, the Corporation shall issue a Notice notifying Clearing Participants of the commencement of the Cooling-off Period, setting out the



date on which such period is scheduled to end (and the date on which the Cooling-off Termination Period is scheduled to end), ~~and specifying the Contract.~~

b. From the commencement of, and solely for the duration of, the Cooling-off Period:

~~(i) Clearing Participants remain liable to make replenishments of Guaranty Fund Contributions under Rule A -608 c., or Rule A-608 d.; and the second sentence of Section D-909 c. shall not apply to a Clearing Participant until the end of the Cooling-off Period;~~

~~(i)(ii) the aggregate of all Relevant Assessment Contributions of a Clearing Participant under Section D-909 for all Events of Default occurring or declared during the Cooling-off Period and all amounts payable by the Clearing Participant to replenish Guaranty Fund Contributions shall not exceed three (3) times the amount of the Clearing Participant's required Relevant Guaranty Fund Contribution immediately prior to the commencement of the Cooling-off Period (with any Assessment Contributions or Replenishment Contributions payable in respect of the Event or Events of Default which occurred prior to the start of as a result of which the Cooling-Off Period commenced being counted towards reducing such maximum amount); and a Clearing Participant in a Cooling-off Period that has made-paid the total required amount shall not be liable for any further replenishments of its Guaranty Fund Contribution or additional Assessment Contributions, regardless of how many additional Events of Default take place;~~

~~(ii)(iii) for the avoidance of doubt, the required Guaranty Fund Contribution-based caps on the amount of Assessment Contributions for a Clearing Participant shall apply on a per Event of Default basis, in the same way as set out in the first sentence of each of Section D-909 c. in respect of each Event of Default occurring or declared during the Cooling-off Period; for the avoidance of doubt, the per Event of Default cap on Assessment Contributions set forth in the first sentence of Section D-909 c. shall also apply in respect of each Event of Default occurring or declared during the Cooling-off Period, such that no Clearing Participant shall be liable for more than an amount equal to twice their required Guaranty Fund Contribution immediately preceding the relevant Event of Default in total Assessment Contributions in respect of a single Event of Default.~~

~~(iii) Clearing Participants remain liable to make replenishments of Guaranty Fund Contributions; and~~

~~(iv) there shall be no The Corporation may rebalancing, re-setting or recalculation of Guaranty Fund Contribution requirements or the total required amount in the Guaranty Fund for purposes of determining liability for replenishment of Guaranty Fund Contributions or Relevant Assessment Contributions provided that the limits set out in , but such adjustments will not affect the limits provided for in subpart b. (ii) to this Rule D-917 b., shall only apply if the Clearing Participant continues during the Cooling-off Period to pay the Corporation all amounts when due (subject to the caps and limits set out in this Rule D-917 b.; and~~

~~(v) the second sentence of Section D-909 c. shall not apply to a Clearing Participant until the end of the Cooling-off Period.~~

~~provided that the limits set out in this subpart b. shall only apply if the Clearing Participant continues during the Cooling-off Period to pay the Corporation all amounts when due (subject to the caps and limits set out in this subpart b.).~~

c. At any time during the Cooling-off Termination Period, a Clearing Participant may give written notice of termination of its Clearing Participant status to the Corporation.

- ~~d. At the end of the Cooling-off Period, the restrictions and requirements of subpart b. to this Rule shall cease to apply, subject to Section D-918 a.(ii), going forward, to each Clearing Participant that has not served a Termination Request during the Cooling-off Termination Period. At the end of the Cooling-off Period (but subject to Rule D-918 for Clearing Participants that have served a Termination Notice during or prior to the Cooling-off Termination Period), the restrictions and requirements of Rule D-917 b. shall cease to apply to each Clearing Participant (other than the limits on Assessment Contributions for Events of Default occurring or declared during the Cooling-off Period).~~
- e. (i) Nothing in this Section D-917 shall limit the Corporation's right to call for Margin from any Clearing Participant.
- (ii) In addition to any Margin otherwise required by the Corporation under the Rules, if:
- (A) during the Cooling-off Period a Clearing Participant has provided Guaranty Fund Contributions and/or Assessment Contribution in the aggregate equal to the maximum amount specified under subpart b.(ii) to this Rule; and
- (B) if such Clearing Participant would, but for the provisions of this Section D-917, at any time be required to provide a Guaranty Fund Contribution, such Clearing Participant shall transfer to the Corporation, by the opening of business on the Business Day following a request by the Corporation and maintain with the Corporation during the Cooling-off Period, additional Original Margin needed for the Corporation to maintain compliance with applicable minimum regulatory financial resources requirements during the remainder of the Cooling-off Period. Such additional Original Margin may be calculated separately with respect to each House Account and Customer Account, on a net basis in each case, but in both cases shall be charged to one of the Clearing Participant's House Accounts.

#### **Section D-918 Termination of Clearing Participant status**

- a. A Clearing Participant that has served a Termination Request under Section D-917 c., is subject to the following requirements, obligations and provisions (and certain of these provisions are also applicable pursuant to other sorts of termination or withdrawal under these Rules):
- (i) it must use all reasonable endeavours, until such time (if any) as there is a subsequent Corporation Event, to close out all of its open Contracts prior to the Termination Close-Out Deadline Date;
- (ii) if it closes out all of its open Contracts prior to the Termination Close-Out Deadline Date and complies with the other requirements of this Section D-918, it shall maintain the benefit of the protections set out in Section D-917 b. and such provision shall not apply solely during the Cooling-off Period;
- (iii) after the Termination Request Time, it shall only be entitled to submit Transactions for clearing or become party to Contracts which it can demonstrate have the overall effect of reducing Open Contract Positions in any Set of Contracts or risks to the Corporation associated with Contracts, whether by hedging, novating, Transferring, terminating, liquidating or otherwise closing out such Contracts;
- (iv) if it is a Clearing Participant and has any open Contracts with the Corporation (whether recorded in a House Account or Customer Account) after the Termination Close-Out Deadline Date (and notwithstanding any provision of Section D-909 to the contrary) the Clearing Participant shall, as from the Termination Close-Out Deadline Date:

- (1) become liable to replenish any Guaranty Fund Contribution that would have fallen due for replenishment but has not been paid, become liable to have applied any Guaranty Fund Contribution that would have been applied but was not so applied and become liable to pay any Relevant Assessment Contribution that would have fallen due but has not been paid, in each case to the extent that the same would have been payable or applied but for its service of a Termination Request and in each case in respect of any Event of Default affecting a Clearing Participant that has occurred subsequent to the Termination Request Time;
  - (2) become liable for further obligations to replenish any Guaranty Fund Contribution, have any Guaranty Fund Contribution applied or pay Relevant Assessment Contributions in the same way as any other Clearing Participant in respect of any Event of Default occurring prior to the Termination Date; and
  - (3) be subject to the Corporation exercising rights in Part D to liquidate or Transfer the Open Contract Positions of the Clearing Participant and otherwise deal with the Clearing Participant's Contracts and property in the same way as if the Clearing Participant were a Defaulter.
- (v) the Corporation may call for additional Original Margin until such time as all of its open Contracts have been terminated, and such Clearing Participant shall pay such additional Original Margin to the Corporation as is requested on time;
- (vi) [reserved];
- (vii) [reserved]
- (viii) following termination of all open Contracts to which a terminating Clearing Participant (the "**Terminating Participant**") was party in relation to a particular Customer Account or House Account, the Corporation shall then declare a net sum (which may be declared in parts, as envisaged below) as due to or from the Terminating Participant in accordance with Sections D-904 and D-906, in the same way as if the Terminating Participant were a Defaulter but with the following modifications:
- (1) references in this Section D to "Default" or "Event of Default" shall be read as references to a Terminating Participant terminating its Clearing Participant status;
  - (2) any net sum calculated in relation to the Terminating Participant under Section D-906 shall not be paid by the Corporation to such Terminating Participant until the later of:
    - (A) ten (10) Business Days after the date on which the termination of the Terminating Participant's open Contracts and the realization or return of any Original Margin provided in respect of such Contracts, Guaranty Fund Contributions or other assets remaining credited to the Terminating Participant's relevant House Account or Customer Account in the Corporation's possession is completed (subject always to Section A-103 m.); or
    - (B) if the Terminating Participant has any unapplied Guaranty Fund Contributions, the date of expiry of the Guaranty Fund Period for the Guaranty Fund immediately following the Guaranty Fund Period current on the Termination Date;
  - (3) notwithstanding anything in Part D or elsewhere in these Rules:

- (A) the Corporation may at its discretion return amounts due to the Terminating Participant in different currencies or by way of transfer or return of non-cash Permitted Cover to the Terminating Participant;
- (B) the Corporation may further pay any net sum calculated under Section D-906 and payable to the Terminating Participant in different amounts denominated in different currencies and is not required to pay a single sum in one currency; and
- (C) the Corporation may make part payment of any amounts due excluding the Guaranty Fund Contribution prior to the time specified in subpart a.(viii)(2) to this Rule.

(4) [reserved];

(5) a Clearing Participant subject to these provisions is not a Defaulter and no Default Notice will be issued or required to be issued in respect of such Clearing Participant in order for the Corporation to exercise its rights under this provision or for the Clearing Participant in question to receive any payment or return of assets; and

(6) references to Part D in any other Rules or in the Procedures, Notices or Guidance shall be construed in accordance with this Section D-918 when they fall to be applied in relation to the termination of a Clearing Participant's Clearing Participant status under this Section D-918 and any action taken by the Corporation following such termination taking effect.

If:

(ix) a Clearing Participant has served a Termination Request under Section D-917 c.; or

(x) there is an Event of Default, or there are Events of Default, before the relevant Termination Date,

then the Clearing Participant in question shall remain liable for the application of any then unapplied Guaranty Fund Contributions and unapplied Relevant Assessment Contributions (including those paid or which the Clearing Participant is liable to pay) for all such Events of Default (as if all such Events of Default had been declared by the Corporation prior to the Termination Request Time), subject to the general limits relating to particular Events of Default and all Events of Default referred to in this Section D-918.

b. Any Termination Request issued by a Clearing Participant shall be irrevocable by the Clearing Participant and Clearing Participant status may only be reinstated pursuant to a new application for Clearing Participant status following the close-out of all its open Contracts.

c. A Clearing Participant whose Clearing Participant status has terminated shall, following the Termination Date, cease to be liable for Guaranty Fund Contribution replenishments in respect of Events of Default that occur after the Termination Date.

#### **Section D-919 Non-Default Loss, Pledged Asset Loss, Cash Loss, Custodial Loss**

a. This Section D-919 shall only apply if:

- (i) there has been a Non-Default Loss, a Cash Loss, a Pledged Asset Loss or a Custodial Loss; and
- (ii) there has been no Corporation Event.

For the avoidance of doubt, the provisions of this Rule D-919 may operate with or without the necessity of an Event of Default having been declared by the Corporation.

- b. Non-Default Loss is the responsibility of the Corporation. The Corporation will apply any Loss Assets that were available at the time of the event giving rise to the Non-Default Loss and after that, only by applying any other available capital or assets of the Corporation. Non-Default Losses are not the responsibility of Clearing Participants and there will be no assessment calls by the Corporation to Clearing Participants for Non-Default Losses.
- c. [reserved]
- d. Cash Losses and Pledged Asset Losses, (or both; “Custodial Loss”) are the responsibility of Clearing Participants, after the application of Loss Assets by the Corporation. Upon the Corporation declaring a Cash Loss, a Pledged Asset Loss, or a Custodial Loss, in a Notice, all affected Clearing Participants shall become liable to pay Collateral Offset Obligations to the Corporation in accordance with the formula set out in subpart e. to this Rule. Cash Losses, Pledged Asset Losses and Custodial Losses are subject to the caps set out in subparts e. and f. to this Rule. Any Notice under this subpart d. shall specify:
  - (i) the nature and extent of the Cash Loss, Pledged Asset Loss or Custodial Loss;
  - (ii) the date and time on which Collateral Offset Obligations will become due and which Approved Financial Institution and/or Custodian such payment is to be made to; and
  - (iii) such other matters as the Corporation considers are relevant.
- e. The Collateral Offset Obligation for a Cash Loss, Pledged Asset Loss, or Custodial Loss, payable by each Clearing Participant shall be the amount:

$$(CL-LA) \quad \times \quad \frac{GF\&M(CP)}{GF\&M(all)}$$

subject to the caps in subparts e. and f. to this Rule

where:

*CL* is the affected asset loss amount, either Cash Loss, or Pledged Asset Loss or both, “Custodial Loss”, certified by the Corporation in a Notice;

*LA* is the total amount of the available Loss Assets at the time of the event giving rise to the Cash Loss, Pledged Asset Loss or Custodial Loss and which have been, or are to be, attributed to meet the relevant loss;

*GF&M(CP)* is the total of all affected assets in relevant accounts provided for Margin Deposits by the specific Clearing Participant at the time of the event giving rise to the relevant loss (provided that for a Defaulter, *GF&M(CP)* shall only equal the amount of its deposits provided for Margin Deposits that are not otherwise used to offset amounts representing losses in the net sum calculation as a result of the Default). and

*GF&M(all)* is the total of all affected assets in relevant accounts provided for Margin Deposits by all Clearing Participants at the time of the event giving rise to the relevant loss (less all deposits provided for Margin Deposits by Defaulters that are used to offset amounts representing losses in the net sum calculation pursuant to these Rules as a result of the Default(s)).

For greater clarity, affected assets in relevant accounts means;

If a Cash Loss - all deposits provided in cash which the Corporation has, at its discretion placed in one or more settlement banks.

If a Pledged Asset Loss - all deposits provided in pledged assets to the Corporation and held at the Custodian.

If a Custodial Loss (both a Cash Loss in one or more settlement banks and a Pledged Assets Loss at the Custodian) - all deposits, whether provided by cash or pledged assets.

- f. The Collateral Offset Obligation of any Clearing Participant shall at no time exceed the total of the Margin Deposits that it has provided to the Corporation at the time of the event giving rise to the Cash Loss, Pledged Asset Loss or Custodial Loss across all of the Clearing Participants' accounts.
- g. All Collateral Offset Obligations shall arise on the date and time specified in a Notice under subpart d. to this Rule. Any Collateral Offset Obligations falling due may, at the election of the Corporation, be offset against the obligation of the Corporation to return or pay any Margin Deposits to a Clearing Participant under these Rules. In the case of a Defaulter, Collateral Offset Obligations may, at the election of the Corporation, be included in any net sum calculation or offset against any obligation to return or pay outside of the net sum calculation that has not been included in the net sum calculation pursuant to these Rules as a result of the Default. Collection from a House Account is not intended to prevent the Clearing Participant from passing on the cost of a Collateral Offset Obligation to any of its Customers, to the extent that the Collateral Offset Obligation relates to Margin on a Customer Account or is otherwise attributable to a Customer and to the extent permitted by Applicable Laws.
- h. The Corporation shall apply the Collateral Offset Obligations solely to meet the relevant losses for which the Corporation has issued a Notice under subpart d. to this Rule.
- i. If, after any Collateral Offset Obligations have fallen due, the Corporation collects amounts from an issuer, depository, Custodian, Approved Financial Institution, counterparty or other third party so as to reduce a loss amount, the Corporation shall be obliged to pay the amount or value so collected (less any expenses of the Corporation, including without limitation any expenses incurred in connection with recovery) to the Clearing Participants that provided such Collateral Offset Obligations *pro rata* in respect of satisfied Collateral Offset Obligations relating to the loss in question, subject to the Corporation first retaining or repaying amounts up to the amount of any assets of the Corporation (other than Loss Assets) or other Persons that had been applied to meet the relevant loss following exhaustion of the assets specified in this Section D-919 or in substitution of any such assets.
- j. No Collateral Offset Obligation shall reduce or otherwise affect the liability of a Clearing Participant to make Guaranty Fund Contributions, to replenish any Guaranty Fund Contribution, or to pay Assessment Contributions all pursuant to these Rules. Notwithstanding any Collateral Offset Obligations, Clearing Participants shall remain liable to pay, and shall continue to make timely payment of, all amounts falling due to, and shall remain liable to deliver, and shall continue to make timely delivery of, all property falling due for delivery to, the Corporation in accordance with the Rules, including obligations to pay Original Margin, Guaranty Fund Contributions and

Assessment Contributions and the Corporation will remain liable to pay or release Margin and Permitted Cover to Clearing Participants in the usual way, subject to netting to take into account the effect of any Collateral Offset Obligation. All such payments shall be made without regard to whether any payment which would have fallen due (were it not for the Collateral Offset Obligations) and without any offsetting or withholding of amounts under any other right of or to netting, set-off, lien, recouping, property, combination of accounts or other basis.

- k. If the Corporation determines that it has provided for Collateral Offset Obligations in excess of that required or actually applied against a relevant loss or makes a recovery that is due to Clearing Participants, it shall credit any excess or recovered amounts due to the Clearing Participant's House Account. Credit to a House Account is not intended to prevent the Clearing Participant from passing on the credit related to a Collateral Offset Obligation to any of its Customers to the extent that the Collateral Offset Obligation relates to Margin or Permitted Cover on a Customer Account or is otherwise attributable to a Customer. If a House Account becomes over-collateralised as a result of any such credit, any resulting Surplus Collateral will be available for withdrawal in the normal way.
- l. Liabilities of Clearing Participants in respect of Collateral Offset Obligations under this Section D-919 shall apply independently from any powers of assessment under Sections D-909 and give rise to a separate and additional payment obligation for Clearing Participants. For the avoidance of doubt, none of the caps on powers of assessment liabilities arising pursuant to Sections D-917 or D-918 shall restrict or limit any liability of a Clearing Participant in respect of Collateral Offset Obligations under this Section D-919. The conditions in Section D-916 a.(ii)(2)(B) shall not be considered satisfied to the extent that they are only satisfied as a result of any Non-Default Loss or Cash Loss, Pledged Asset Loss or Custodial Loss.
- m. Any right being exercised or circumstances occurring that are governed by this Section D-919 shall not constitute any kind of Corporation Event.
- n. This Section D-919 is without prejudice to the Corporation's rights to set off or net any sum owed by a Clearing Participant to the Corporation against any sum payable by the Corporation to a Clearing Participant or to any other powers of the Corporation under these Rules, but the Corporation may not take any action under those provisions to the extent inconsistent with the provisions of this Section D-919.
- o. [reserved]
- p. In carrying out any calculations or making any determinations pursuant to this Section D-919, the Corporation may convert any amounts denominated in one currency into another currency chosen by the Corporation in its discretion and at a rate of exchange chosen by the Corporation in its discretion, provided the Corporation shall act in a commercially reasonable manner when choosing a currency or a rate of exchange for the aforesaid purposes.
- q. The Corporation will notify Clearing Participants from time to time, by Notice, of the total amount of the Loss Assets, which will be set at a level of CAD one (1) million dollars as at the date of introduction of this Rule.
- u. The Corporation may replenish any regulatory capital, using its or its Affiliates' resources or otherwise, as is required to bring it in compliance with Applicable Laws at any time, including following a Loss event. However, no such recapitalization shall result in any obligation of any Clearing Participant to pay Collateral Offset Obligations being reduced or the size of any Loss being reduced.
- r. Without limiting the application of any of these Rules, but subject to any contrary requirements of law, the Corporation shall not be liable to any Clearing Participant, Customer or other Person for

any losses, liabilities, damages, costs, claims, shortfalls or expenses arising out of or relating to any failure, in whole or in part, of any payment or securities services provider, including without limitation any Custodian, depository, Approved Financial Institution, central securities depository, central bank or other third party.