

**(VIII) CDS PROCEDURES**

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1. **ADDITIONAL DEFINITIONS**

- 1.1 In connection with a 2003-type CDS Contract, the terms "**2005 Matrix Supplement**", "**Auction**", "**Auction Cancellation Date**", "**Auction Final Price Determination Date**", "**Auction Settlement Date**", "**Bankruptcy**", "**Calculation Agent**", "**Confirmation**", "**Credit Derivatives Determinations Committees**", "**Credit Derivative Transaction**", "**Credit Event**", "**Credit Event Backstop Date**", "**Credit Event Notice**", "**Credit Event Resolution Request Date**", "**Dealer**", "**Deliverable Obligation**", "**Delivery**", "**Delivery Date**", "**Exercise Cut-Off Date**", "**Failure to Pay**", "**Fallback Settlement Method**", "**Final List**", "**Final Price**", "**Fixed Rate**", "**Fixed Rate Payer**", "**Floating Rate Payer**", "**Floating Rate Payer Calculation Amount**", "**Highest**", "**Initial Payment Payer**", "**Loan**", "**Movement Option Cut-off Date**", "**No Auction Announcement Date**", "**NOPS Amendment Notice**", "**Notice of Physical Settlement**", "**Notice to Exercise Movement Option**", "**Obligation**", "**Physical Settlement Amount**", "**Quotation**", "**Reference Entity**", "**Reference Obligation**", "**Restructuring**", "**Scheduled Termination Date**", "**Substitute Reference Obligation**", "**Succession Event**", "**Succession Event Backstop Date**", "**Succession Event Resolution Request Date**", "**Successor**", "**Trade Date**", "**Transaction Auction Settlement Terms**", "**Transaction Type**", "**Valuation Date**" and "**Weighted Average Quotation**" each have the meanings given to those terms in the 2003 Credit Derivatives Definitions and the terms "**Relevant City Business Day**", "**Resolve**", "**Resolved**" and "**Resolves**", each have the meanings given to or used for those terms in the DC Rules.
- 1.2 In connection with a 2014-type CDS Contract, the terms "**Auction**", "**Auction Cancellation Date**", "**Auction Final Price Determination Date**", "**Auction Settlement Date**", "**Bankruptcy**", "**Calculation Agent**", "**Confirmation**", "**Credit Derivatives Determinations Committee**", "**Credit Derivative Transaction**", "**Credit Event**", "**Credit Event Backstop Date**", "**Credit Event Notice**", "**Credit Event Resolution Request Date**", "**Dealer**", "**Deliverable Obligation**", "**Delivery**", "**Delivery Date**", "**Exercise Cut-Off Date**", "**Failure to Pay**", "**Fallback Settlement Method**", "**Final List**", "**Final Price**", "**Fixed Rate**", "**Fixed Rate Payer**", "**Floating Rate Payer**", "**Floating Rate Payer Calculation Amount**", "**Governmental Intervention**", "**Highest**", "**Initial Payment Payer**", "**Loan**", "**Movement Option Cut-off Date**", "**M(M)R Restructuring**", "**No Auction Announcement Date**", "**NOPS Amendment Notice**", "**NOPS Cut-off Date**", "**Notice of Physical Settlement**", "**Notice to Exercise Movement Option**", "**Obligation**", "**Physical Settlement Amount**", "**Quotation**", "**Reference Entity**", "**Reference Obligation**", "**Relevant City Business Day**", "**Resolve**", "**Resolved**", "**Resolves**", "**Restructuring**", "**Scheduled Termination Date**", "**Substitute Reference Obligation**", "**Successor**", "**Succession Date**", "**Trade Date**", "**Transaction Auction Settlement Terms**", "**Transaction Type**", "**Valuation Date**" and "**Weighted Average Quotation**" each have the meanings given to those terms in the 2014 Credit Derivatives Definitions.
- 1.3 The term "**2014 CDD Implementation Date**" means 22 September 2014.
- 1.4 The term "**2014 CDD Protocol**" means the 2014 ISDA Credit Derivatives Definitions Protocol published by the International Swaps and Derivatives Association, Inc., as amended and/or supplemented as at 22 September 2014.
- 1.5 The term "**Acceptance Notice**" has the meaning set out in paragraph 4.4(a).
- 1.6 The term "**Acceptance Time**" means the time specified pursuant to these CDS Procedures for the acceptance of CDS Contracts, as referred to in Rules 401(a)(ix) and (xi), being:
- (a) except as set out in (b) below, the time on a Business Day at which the Acceptance Notice was given, which time will be recorded in the Acceptance Notice;
  - (b) for CDS Contracts arising pursuant to Rule 401(a)(x), the time specified by the Clearing House in the relevant notice to the affected Clearing Members.
- 1.7 The term "**Affected CDS Clearing Member**" has the meaning set out in paragraph 10.5.

- 1.8 The term "**Affected Customer**" has the meaning defined in paragraph 10.5.
- 1.9 The term "**Affected SR Contract**" has the meaning defined in paragraph 10.5.
- 1.10 The term "**Annex Date**" has the meaning set out in paragraph 9.6.
- 1.11 The term "**Automatic Early Termination Provisions**" has the meaning specified in paragraph 8.2(b)(ii).
- 1.12 The term "**CDS Committee-Eligible Clearing Member**" means a Clearing Member that has been approved by the Clearing House, following consultation with the CDS Risk Committee, for participation in the CDS Default Committee. The Clearing House may revoke (or reinstate) its approval of any Clearing Member as a CDS Committee-Eligible Clearing Member from time to time based on its determination as to whether a particular Clearing Member has been in compliance with the Rules.
- 1.13 The term "**CDS Default Committee**" means a committee established pursuant to paragraph 5.1.
- 1.14 The term "**CDS Default Committee Member**" has the meaning set out in paragraph 5.1.
- 1.15 The term "**CDS Default Committee Participant**" has the meaning set out in paragraph 5.1.
- 1.16 The term "**CDS Default Committee Participant List**" has the meaning set out in paragraph 5.2.
- 1.17 The term "**CDS Risk Committee**" means the committee of that name established by the board of the Clearing House.
- 1.18 The term "**CEN Triggering Period**" means, in relation to any CDS Contracts of a Set in respect of which a Relevant Restructuring Credit Event has occurred, the period during which a CDS Buyer or CDS Seller may deliver a Restructuring Credit Event Notice in relation to all or part of such CDS Contract in accordance with the Contract Terms. Such period will start on the earliest of:
- (a) the date and time at which the RMP Matched Table is uploaded to Deriv/SERV (as referred to in paragraph 6.3(e)(vi)); and
  - (b) the day after the RMP Deadline Time,
- and will end on the relevant Exercise Cut-off Date.
- 1.19 The term "**CH Reversioning Date**" means, if the reversioning as referred to in the definition of the term "DTCC Reversioning Date" has not been completed and notified by the Clearing House to Matched CDS Buyers and Matched CDS Sellers, prior to the opening of business on the second Business Day following the DC Restructuring Announcement Date, the later of:
- (a) such second Business Day; or
  - (b) the Business Day after the Business Day on which the relevant index publisher provides a new version of the relevant index.
- 1.20 The term "**Change in Tax Law**" means (other than for the purpose of paragraph 8.2(a)(ii)(C)) the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs after the parties enter into the relevant CDS Contract.
- 1.21 The term "**Consent**" in paragraph 8.2 means any consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

- 1.22 The term "**Contractual Currency**" has the meaning set out in paragraph 8.2.
- 1.23 The term "**Daily Aggregate MTM Interest Amount**" means, for any CDS Clearing Member or Sponsored Principal for each currency on any day, the sum of the Mark-to-Market Interest on all Mark-to-Market Margin Balances in such currency for that day in respect of that CDS Clearing Member or Sponsored Principal. The Daily Aggregate MTM Interest Amount will be determined separately in respect of each Account. Where the Daily Aggregate MTM Interest Amount is positive, it will be owed by the Clearing House to the relevant CDS Clearing Member or Sponsored Principal; where it is negative, the relevant CDS Clearing Member or Sponsored Principal will owe the absolute value of the Daily Aggregate MTM Interest Amount to the Clearing House.
- 1.24 The term "**DC Restructuring Announcement Date**" means the date on which the DC Credit Event Announcement of a Relevant Restructuring Credit Event is made, provided that where such DC Credit Event Announcement is made after 6.30 p.m. on a Business Day or on a day which is not a Business Day, the DC Restructuring Announcement Date (only) will, for the purposes of the Rules, be the first following Business Day.
- 1.25 The term "**DC Rules**" means, in relation to a 2003-type CDS Contract, the Credit Derivatives Determinations Committees Rules, as defined as the "Rules" in Section 1.22 of the 2003 Credit Derivatives Definitions. For the avoidance of doubt, the term "Rules" as defined in the Rules shall not replace, or otherwise affect the interpretation of, the term "Rules" in the 2003 Credit Derivatives Definitions.
- 1.26 The term "**DTCC**" means The Depository Trust and Clearing Corporation or any successor thereto.
- 1.27 The term "**DTCC Accounts**" means the accounts in Deriv/SERV for the recording of transaction data in relation to CDS Contracts.
- 1.28 The term "**DTCC Failure**" means any circumstances in which DTCC is unable to process all or substantially all Restructuring Credit Event Notices or Notices to Exercise Movement Option, if any, relating to a particular Relevant Restructuring Credit Event in the DTCC Accounts in a timely manner, where such failure affects all or substantially:
- (i) all Matched CDS Buyers and Matched CDS Sellers; or
  - (ii) the Clearing House.
- 1.29 The term "**DTCC Process**" means the process (if any) provided or to be provided by DTCC permitting the Clearing House alone to input to Deriv/SERV all relevant information in relation to a CDS Contract and any related Customer-CM CDS Transaction in order to establish, match and make "certain" the record of such CDS Contract and Customer-CM CDS Transaction in the relevant DTCC Account(s).
- 1.30 The term "**DTCC Reversioning Date**" means the date on which the Clearing House notifies Matched CDS Buyers and Matched CDS Sellers that it has completed the reversioning process and updated records in Deriv/SERV in respect of all Old Index CDS transactions to record them as excluding the component transaction relating to a Reference Entity in respect of which a Relevant Restructuring Credit Event has occurred.
- 1.31 The term "**Electronic Notice**" is a kind of MP Notice and means a Restructuring Credit Event Notice or Notice to Exercise Movement Option delivered pursuant to the Electronic Notice Process.
- 1.32 The term "**Electronic Notice Process**" means the process for the delivery and receipt of Restructuring Credit Event Notices and Notices to Exercise Movement Option pursuant to paragraphs 6.3(f)(i) and 6.3(f)(ii).
- 1.33 The term "**Excess Net Capital**" (i) in respect of a CDS Clearing Member or applicant that is or would become an FCM/BD Clearing Member shall equal its "excess net capital" as reported on its Form 1-

FR-FCM or FOCUS report or as otherwise reported to the CFTC under CFTC Rule 1.12 or (ii) in respect of any other CDS Clearing Member or applicant that is or would become a US CDS Clearing Member, the amount, if any, by which its Capital (determined as set forth in paragraph 2.2(a)) exceeds the capital requirement that would be applicable to it if it were an FCM/BD, as determined pursuant to a methodology acceptable to the Clearing House.

- 1.34 The term "**Manual MP Notice**" is a kind of MP Notice and means any notice delivered pursuant to the terms of a CDS Contract under the Manual Notice Process.
- 1.35 The term "**Manual Notifier**" has the meaning set out in paragraph 6.3(f)(v)(A).
- 1.36 The term "**Manual Notice Process**" means the process for the delivery, receipt and copying to the Clearing House of notices pursuant to paragraph 6.3(g).
- 1.37 The term "**Mark-to-Market Interest**" means interest calculated daily in accordance with the market convention for the relevant currency by applying the applicable overnight rate referred to in paragraph 3.1 to the Mark-to-Market Margin Balance for the relevant period.
- 1.38 The term "**Mark-to-Market Margin Balance**", in respect of CDS Contract(s) and an Account on any day, means the sum of all Mark-to-Market Margin delivered up to but excluding that day by the relevant CDS Clearing Member or Sponsored Principal in respect of such CDS Contract(s) to the Clearing House less all Mark-to-Market Margin delivered up to but excluding that day by the Clearing House in respect of such CDS Contract(s) to such CDS Clearing Member or Sponsored Principal, as determined at the close of business on such day.
- 1.39 The term "**MCA/STS Changeover Time**" means midnight on 29 November 2010.
- 1.40 The term "**NEMO Triggering Period**" means:
- (a) in relation to any 2003-type CDS Contracts of a Set in respect of which a Restructuring Credit Event has occurred and for which either "Restructuring Maturity Limitation and Fully Transferable Obligation Applicable" or "Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation Applicable" is applicable, the period starting as follows:
    - (i) where, in relation to the related CEN Triggering Period, a Restructuring Credit Event Notice was given pursuant to the Manual Notice Process at a time before the "Notify" function to be provided by Deriv/SERV has been made generally available to CDS Clearing Members, at 9 a.m. on the day falling one Business Day prior to the relevant Movement Option Cut-off Date for the Set of CDS Contracts; and
    - (ii) otherwise at 9 a.m. on the Business Day immediately following the Exercise Cut-off Date applicable to the Buyer in relation to the related CEN Triggering Period,and ending on the Movement Option Cut-off Date; and
  - (b) in relation to any 2014-type CDS Contracts of a Set in respect of which an M(M)R Restructuring has occurred, the period starting at the close of business on the Exercise Cut-off Date and ending on the Movement Option Cut-off Date.
- 1.41 The term "**New Trade**" has the meaning set out in paragraph 9.5(c)(i)(L).
- 1.42 The term "**Notification Cut-Off Time**" means
- (a)

- (i) with respect to delivery of a Restructuring Credit Event Notice in relation to a CDS Contract of a Set, 5:00 p.m. on the Exercise Cut-off Date applicable to the Buyer;
  - (ii) with respect to raising a dispute in respect of a Restructuring Credit Event Notice in relation to a CDS Contract of a Set, the later of:
    - (A) one hour after the Clearing House notifies the Matched CDS Buyers and Matched CDS Sellers of the Restructuring Credit Event Notices they have served or had served on them; or
    - (B) 7:00 p.m. on the Exercise Cut-off Date applicable to the Matched CDS Buyer;
- (b)
- (i) with respect to delivery of a Notice to Exercise Movement Option, 5:00 p.m. on the Movement Option Cut-off Date;
  - (ii) with respect to raising a dispute in respect of a Notice to Exercise Movement Option, the later of:
    - (A) one hour after the Clearing House notifies the Matched CDS Buyers and Matched CDS Sellers of the Notices to Exercise Movement Option they have served or had served on them; or
    - (B) 7:00 p.m. on the Movement Option Cut-off Date; and
- (c) with respect to delivery of a Notice of Physical Settlement or a NOPS Amendment Notice in relation to a Set of CDS Contracts, 4:30 p.m. on the second Business Day after:
- (i) in relation to a 2003-type CDS Contract, the last date on which a Notice of Physical Settlement or a NOPS Amendment Notice, as applicable, may be served in respect of the Credit Event in question, pursuant to Section 3.2(c) of the 2003 Credit Derivatives Definitions; and
  - (ii) in relation to a 2014-type CDS Contract, the NOPS Cut-off Date.
- 1.43 The term "**Office**" means a branch or office of a party, which may be such party's head or home office.
- 1.44 The term "**Old Index CDS**" means a CDS transaction based on an index where an Applicable Credit Event has occurred in relation to a component transaction.
- 1.45 The term "**Original Annex Date**" means, in respect of an iTraxx Contract, the first date of publication of the series of the Eligible iTraxx Index referred to in the relevant CDS Trade Particulars submitted for Clearing or, with respect to each iTraxx Contract arising pursuant to Rule 401(a)(vi) or (xi), determined from the data provided by the Clearing House to the Clearing Member or Sponsored Principal, as the case may be, prior to the time at which such CDS Contract arose.
- 1.46 The term "**Original Notional Amount**", in relation to any CDS Contract, has the meaning given to that term in the Contract Terms.
- 1.47 The term "**Party**", in paragraph 8.2, means a party to a CDS Contract.
- 1.48 The term "**Permitted Deliverable Obligation**" means, in respect of a 2003-type CDS Contract, a Deliverable Obligation that satisfies Section 2.32(a) or 2.33(a) of the 2003 Credit Derivatives Definitions, if applicable and, in respect of a 2014-type CDS Contract, a Deliverable Obligation that satisfies Section 3.31(a) or 3.32(a) of the 2014 Credit Derivatives Definitions, if applicable.

- 1.49 The term "**Protocol Effective Date**" means the first "Amendment Effective Date", as such term is defined in the 2014 CDD Protocol.
- 1.50 The term "**Rate of Exchange**" means the rate of exchange for the purchase of or conversion into the Contractual Currency, including any associated premiums or costs of exchange payable in connection with the same.
- 1.51 The term "**Relevant CDS Default Committee Period**" has the meaning set out in paragraph 5.3.
- 1.52 The term "**any Relevant Jurisdiction**" means, with respect to a party, each jurisdiction (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of a CDS Contract is located, (c) in or from which the party submits CDS Trade Particulars to the Clearing House for Clearing and (d) in relation to any payment, from or through which such payment is made.
- 1.53 The term "**Relevant Restructuring Credit Event**" means, in respect of a 2003-type CDS Contract, any Restructuring and, in respect of a 2014-type CDS Contract, an M(M)R Restructuring.
- 1.54 The term "**Restructured Entity**" has the meaning set out in paragraph 9.5.
- 1.55 The term "**Restructuring Credit Event Notice**" means a Credit Event Notice in respect of a Relevant Restructuring Credit Event.
- 1.56 The term "**Restructuring Matched Pair**" or "**RMP**" means a Matched Pair created pursuant to Rule 1508 in respect of a Relevant Restructuring Credit Event.
- 1.57 The term "**Revocation Right**" will apply in respect of the submission of CDS Trade Particulars for Clearing:
- (a) if one of the Clearing Members or Sponsored Principals for whose account the submission for Clearing is made is a Defaulter;
  - (b) if and to the extent that either CDS Contract which would arise at the Acceptance Time would have been void under Rule 403 (if Rule 403 applied to CDS Contracts in addition to F&O Contracts) or capable of being treated as voidable under Rule 404(a) (if Rule 404(a) applied to CDS Contracts in addition to F&O Contracts and the latter being read for purposes of this definition as if the words "in relation only to F&O Contracts" were not set out in any part of Rule 404(a) and "Energy Clearing Members" were read as "CDS Clearing Members" and including Sponsored Principals) or Rule 404(b); or
  - (c) if CDS Trade Particulars submitted by a Clearing Member or Sponsored Principal do not correspond in all material respects with the CDS Trade Particulars submitted by the other Clearing Member or Sponsored Principal.
- 1.58 The term "**RMP Deadline Time**" means:
- (a) subject to (b) below, 11.59 p.m. on the latest of:
    - (i) the third Business Day following the DC Restructuring Announcement Date;
    - (ii) the second Business Day following the DTCC Reversioning Date, if any or, if earlier, the first Business Day following the CH Reversioning Date, if any; and
    - (iii) the date of publication by ISDA of the Final List; or
  - (b) with respect to:

- (i) a Set of 2003-type CDS Contracts for which either "Restructuring Maturity Limitation and Fully Transferable Obligation Applicable" or "Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation Applicable" is applicable, if a No Auction Announcement Date has been announced pursuant to section 12.12(a) of the 2003 Credit Derivatives Definitions:
  - (ii) a Set of 2014-type CDS Contracts for which the relevant Credit Event is an M(M)R Restructuring, if a No Auction Announcement Date has been announced pursuant to section 6.11(a) of the 2014 Credit Derivatives Definitions; or
  - (iii) a Set of 2003-type CDS Contracts for which neither "Restructuring Maturity Limitation and Fully Transferable Obligation Applicable" nor "Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation Applicable" is applicable, if a No Auction Announcement Date has been announced pursuant to section 12.12 of the 2003 Credit Derivatives Definitions, the later of:
    - (A) 11.59 p.m. on the ninth calendar day following the No Auction Announcement Date; and
    - (B) the second Business Day following the DTCC Reversioning Date, if any, or, if earlier, the first Business Day following the CH Reversioning Date, if any.
- 1.59 The term "**RMP Matched Table**" means the data file, in computer-readable format, containing details of all RMPs, Matched Pairs and MP Amounts and the CDS Contracts and Matched CDS Buyers and Matched CDS Sellers to which they relate and reflecting the RMP Matching Reports, all in relation to the allocation of Matched Pairs pursuant to Rule 1508 following a Relevant Restructuring Credit Event.
- 1.60 The term "**RMP Matching Report**" means the report given by the Clearing House, as referred to in paragraph 6.3(e), to each Matched CDS Buyer and Matched CDS Seller, respectively, identifying the RMPs and allocations of Matched Pairs and the associated MP Amounts affecting the Open Contract Position of that Matched CDS Buyer and Matched CDS Seller, respectively, which report comprises Matched Pair Notices for purposes of Rule 1508 in respect of each Matched Pair.
- 1.61 The term "**Scheduled Settlement Date**" means a date on which a payment or delivery is to be made under paragraph 8.2 with respect to a CDS Contract.
- 1.62 The term "**Short Selling Regulation**" means Regulation (EU) no. 236/2012 of the European Parliament and of the Council dated 14 March 2012 on short selling and certain aspects of credit default swaps.
- 1.63 The term "**Single Name Contract**" means a CDS Contract having, as the Reference Entity, an Eligible Single Name Reference Entity.
- 1.64 The term "**Stamp Tax**" means any stamp, registration, documentation or similar tax.
- 1.65 The term "**Tax**" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under a CDS Contract other than a Stamp Tax.
- 1.66 The term "**Tax Event**" has the meaning specified in paragraph 8.2(e)(ii).
- 1.67 The term "**Tax Event Upon Merger**" has the meaning specified in paragraph 8.2(e)(ii).
- 1.68 The term "**Tier 1**" has the meaning given to that term in Banking Consolidation Directive.
- 1.69 The term "**Triggering Period**" means the CEN Triggering Period ending on the Exercise Cut-Off Date applicable to a Buyer or NEMO Triggering Period, as applicable.



- 1.70 The term “**US CDS Clearing Member**” means a CDS Clearing Member or applicant that would become a CDS Clearing Member that is (i) an FCM/BD or (ii) any other Person organised or incorporated under the laws of the United States of America or a state thereof.
- 1.71 These CDS Procedures are 'Procedures' as defined in the ICE Clear Europe rules (the "**Rules**") and are subject to the Rules, including, without limitation, Rule 102. Capitalised terms used in these CDS Procedures but not defined in this paragraph 1 shall have the meaning given to such terms in the Rules, the relevant CDS Contract (including the Applicable Credit Derivatives Definitions) or elsewhere in these CDS Procedures (in that order of priority in the event of any conflict).
- 1.72 Subject to paragraph 1.74 below, these CDS Procedures, and all non-contractual obligations arising out of or in connection with them, are governed by and shall be construed in accordance with English law and any Dispute under these CDS Procedures will be subject to arbitration under Rule 117.
- 1.73 Solely as between an FCM/BD Clearing Member and the Clearing House, paragraphs 3 and 6.7 of these CDS Procedures inasmuch as they relate solely to an issue or matter concerning:
- (a) the pledging, transfer, holding, use and segregation of Pledged Collateral provided by an FCM/BD Clearing Member (or other property, excluding for the avoidance of doubt the Contracts themselves recorded in such an Account, recorded in a Customer Account or Proprietary Account that is designated as an account in respect of which Pledged Collateral may be provided by an FCM/BD Clearing Member); and/or
  - (b) the application of any net sum owed in favour of the FCM/BD Clearing Member in respect of a Customer Account or Proprietary Account that is designated as an account in respect of which Pledged Collateral may be provided,

and, solely to the extent relevant to interpreting the foregoing provisions in such circumstances, relevant definitions and interpretative provisions in paragraph 1 of these CDS Procedures (such provisions, together or separately "Pledged Collateral Matters") shall be governed by and construed in accordance with the laws of the State of New York and, as applicable, the federal law of the United States of America.

- 1.74 For the avoidance of doubt, paragraph 1.73 is an exception to paragraph 1.72 and Rule 102(s) which provide that the CDS Procedures and Rules respectively shall be governed by and construed in accordance with the laws of England and Wales. For the avoidance of doubt, without limitation and notwithstanding paragraph 1.73, the following are governed by and shall be construed in accordance with the laws of England and Wales in their entirety without any exception and shall in no circumstances constitute a Pledged Collateral Matter:
- (a) all of the provisions of these CDS Procedures relating to the Designated System;
  - (b) any Dispute or issue arising as between a Non-FCM/BD Clearing Member or Sponsored Principal on the one hand and the Clearing House on the other hand;
  - (c) any Dispute or issue arising in respect of a Customer Account or Proprietary Account that is not designated as an account in respect of which Pledged Collateral may be provided;
  - (d) any matter relating to Pledged Collateral of a Non-FCM/BD Clearing Member or Sponsored Principal;
  - (e) any Pledged Collateral provided by an FCM/BD Clearing Member or Sponsored Principal pursuant to an English law Pledged Collateral Addendum; and
  - (f) the Contract Terms of all Contracts.

- 1.75 Where a dispute between an FCM/BD Clearing Member and the Clearing House relates to one or more Pledged Collateral Matters, notwithstanding the provisions of Rule 117, solely the allegations or claims relating to the Pledged Collateral Matters in such dispute shall be heard and determined exclusively in any New York federal court sitting in the Borough of Manhattan of the City of New York, provided, however, that if such federal court does not have jurisdiction over such allegations or claims, such allegations or claims shall be heard and determined exclusively in any New York state court sitting in the Borough of Manhattan of the City of New York (such Courts, together, "**New York Courts**"). Consistent with the preceding sentence, the Clearing House and each FCM/BD Clearing Member hereby:
- (a) submits to the exclusive jurisdiction of the New York Courts solely in respect of allegations or claims relating to Pledged Collateral Matters; and
  - (b) agrees that service of process will be validly effected by sending notice in accordance with Rule 113.
- 1.76 All allegations or claims other than those over which the New York Courts have exclusive jurisdiction pursuant to paragraph 1.75 shall be finally and exclusively determined by way of arbitration pursuant to Rule 117. It is expressly recognised that for Disputes between an FCM/BD Clearing Member and the Clearing House containing both allegations or claims over which the New York Courts have exclusive jurisdiction pursuant to paragraph 1.75 and other allegations or claims, it may be necessary to have both New York Court proceedings and arbitral proceedings. The submission of a party to the jurisdiction of a New York Court and/or the taking of a step by a party in proceedings before a New York Court, where in any such instance the New York Court has exclusive jurisdiction pursuant to paragraph 1.75 does not amount to a waiver by that party of its right to commence or participate in arbitral proceedings in accordance with Rule 117. The submission of a party to arbitration under Rule 117 or in respect of any Dispute does not amount to a waiver by that party of its right to have allegations or claims in relation to which the New York Courts have exclusive jurisdiction pursuant to paragraph 1.75 heard in the New York Courts.
- 1.77 Nothing in paragraphs 1.71 to 1.78 precludes the Clearing House from bringing an action to enforce a judgment from any New York Court or award of any arbitral tribunal in any court of competent jurisdiction.
- 1.78 EACH CLEARING MEMBER AND THE CLEARING HOUSE HEREBY IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTE ARISING OUT OF, UNDER OR IN CONNECTION WITH THESE CDS PROCEDURES OR ANY MATTER CONTEMPLATED BY THEM. EACH CLEARING MEMBER AND THE CLEARING HOUSE HEREBY:
- (a) CERTIFIES THAT NO REPRESENTATIVE OF ANY OTHER PERSON BOUND BY THESE RULES HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF ANY SUCH DISPUTE, SEEK TO ENFORCE THE FOREGOING WAIVER; AND
  - (b) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THESE RULES, ALL CONTRACTS AND ALL OTHER TRANSACTIONS CONTEMPLATED BY THESE RULES, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN PARAGRAPHS 1.71 TO 1.78.
2. **ADDITIONAL MEMBERSHIP REQUIREMENTS FOR CDS CLEARING MEMBERS**
- 2.1 Rule 201(i) provides that CDS Clearing Members must meet such additional requirements applicable to CDS Clearing Members as are specified in the Procedures.

2.2 The following additional requirements are specified for the purposes of Rule 201(i) as requirements that a CDS Clearing Member must satisfy in order to attain or maintain such status:

- (a) It must have a minimum of \$50 million of Capital, such requirement being satisfied in accordance with Rule 206 and the Finance Procedures (which allow Capital requirements, at the discretion of the Clearing House, to be met by a Controller which has executed a Controller Guarantee). For purposes of the application of this paragraph 2.2(a) to a US CDS Clearing Member that is not an FCM/BD, Capital shall be its net capital as determined pursuant to a risk adjusted capital calculation methodology acceptable to the Clearing House.
- (b) If it is or would be a US CDS Clearing Member, it is regulated for capital adequacy (the "**Regulatory Capital Requirement**") by a competent authority such as the FCA, PRA, CFTC, SEC, Banque de France, Bundesbank, Bundesanstalt für Finanzdienstleistungsaufsicht, Swiss Federal Banking Commission, U.S. Federal Reserve Board, U.S. Office of the Comptroller of the Currency, or any other Regulatory Authority the Clearing House designates from time to time for this purpose, or it is an Affiliate of an entity that satisfies the Regulatory Capital Requirement and is subject to consolidated holding company group supervision.
- (c) A CDS Clearing Member must have executed an agreement concerning Intellectual Property (as referred to in Rule 406(g)) in a form acceptable to the Clearing House.
- (d) A CDS Clearing Member must be a user of Deriv/SERV or such other service as is specified by the Clearing House.
- (e) If any CDS Trade Particulars are submitted for Clearing which relate to a Bilateral CDS Transaction registered at Deriv/SERV in the name of an Affiliate of a CDS Clearing Member, the CDS Clearing Member must have provided an executed authority, in a form acceptable to the Clearing House, from the relevant Affiliate, pursuant to which the Clearing House is authorised to terminate the records in Deriv/SERV in respect of Bilateral CDS Transactions to which the Affiliate is party.
- (f) A CDS Clearing Member must be a member of, or have access to, at least one physical settlement system, other than any settlement system only required for Asset Package Delivery, that is customary for the settlement of all potentially applicable Deliverable Obligations under all CDS Contracts of all Sets which it is authorised to enter into, where such a physical settlement system exists.

2.3 In the case of a US CDS Clearing Member, if at any time and for so long as it has a required contribution to the CDS Guaranty Fund that exceeds 25% of its Excess Net Capital, the Clearing House may (in addition to imposing any other applicable restrictions under Part 2 of the Rules or otherwise under the Rules or Procedures) require such US CDS Clearing Member to provide additional Margin under Rule 502(g) and/or prepay and maintain with the Clearing House an additional contribution (the "**Prepaid Contribution**") to the CDS Guaranty Fund equal to the maximum CDS Assessment Contribution under Rule 1106 that would be applicable to it at such time if it were terminating its membership of the Clearing House following an Event of Default or Events of Default where CDS Guaranty Fund Contributions have been applied. Payment of the Prepaid Contribution shall not limit such US CDS Clearing Member's obligations to make additional contributions to the CDS Guaranty Fund as otherwise required by the Rules, provided that if such a US CDS Clearing Member terminates its membership of the Clearing House it may apply the Prepaid Contribution to its obligation to make CDS Assessment Contributions up to its maximum contribution under Rule 1106. Notwithstanding anything to the contrary herein, except in the case of an Event of Default with respect to such a US CDS Clearing Member, the Prepaid Contribution will not be deemed to be part of the CDS Guaranty Fund for purposes of the application of funds therefrom until such time as it is applied to the US CDS Clearing Member's obligations to make additional contributions to the CDS Guaranty Fund as provided in the preceding sentence.

2.4 For purposes of Rule 205(a)(iii), a US CDS Clearing Member that is not an FCM/BD Clearing Member shall provide to the Clearing House a copy of such forms as the Clearing House may determine to be necessary on a comparable schedule to that which an FCM/BD Clearing Member would be required to follow in filing such forms with its Regulatory Authorities.

### 3. **CERTAIN PROVISIONS RELATING TO MARGIN AND OTHER PROCEDURES**

3.1 Mark-to-Market Interest will be calculated daily, including in respect of weekends and currency holidays, based upon the applicable overnight rate notified by the Clearing House from time to time to CDS Clearing Members for each of the currencies in which Mark-to-Market Margin is paid.

3.2 Mark-to-Market Interest will be calculated by the Clearing House in respect of Mark-to-Market Margin Balance relating to CDS Contracts as recorded by the Clearing House (on a 'trade by trade', 'gross' or 'net' basis) as referred to in Rule 406(d).

3.3 The Daily Aggregate MTM Interest Amount, if any, in any currency will be payable by the Clearing House (if positive) or the Clearing Member (as to the absolute value thereof if negative), as the case may be, in accordance with Part 3 of the Rules and the Finance Procedures.

3.4 The Finance Procedures, Membership Procedures, Business Continuity Procedures and Complaint Resolution Procedures and (to the extent specified in paragraph 3 of the General Contract Terms) the General Contract Terms also apply in relation to CDS Contracts and to CDS Clearing Members.

### 4. **SUBMISSION AND ACCEPTANCE OF CDS CONTRACTS**

4.1 Any CDS Trade Particulars which are submitted to the Clearing House by a CDS Clearing Member (or, in respect of an Individually Segregated Sponsored Account, a Sponsored Principal with authorisation to clear CDS) via a CDS Trade Execution/Processing Platform or other Representative on behalf of a Clearing Member (or such a Sponsored Principal) (or its Affiliate as described in paragraph 4.5) shall be capable of giving rise to a CDS Contract under Rule 401(a)(ix). Deriv/SERV shall be treated as a Representative of the CDS Clearing Member (or Sponsored Principal) (and any Affiliate, if applicable) solely for the purposes of the submission of CDS Trade Particulars for Clearing. Pursuant to Rule 401(a)(ix) and Rule 1502, if CDS Trade Particulars are so submitted to the Clearing House by the relevant CDS Clearing Members (or, in respect of an Individually Segregated Sponsored Account, Sponsored Principals with authorisation to clear CDS), being respectively protection buyer and protection seller under such CDS Trade Particulars, and are accepted by the Clearing House pursuant to an Acceptance Notice: (i) such protection buyer will be deemed to have entered into a CDS Contract with the Clearing House as its counterparty in place of such protection seller; and (ii) such protection seller will be deemed to have entered into a CDS Contract with the Clearing House as its counterparty in place of such protection buyer. In each case, the CDS Contract will be on the Contract Terms specified in the Rules and Procedures. Rule 402(b) makes provision for the effect of this process on rights, liabilities and obligations under any CDS Trade Particulars.

4.2 Only CDS Clearing Members (including their duly appointed Representatives) or Sponsored Principals with authorisation to clear CDS may submit CDS Trade Particulars to the Clearing House.

4.3 CDS Trade Particulars submitted for Clearing must include:

- (a) the identity of both Clearing Members (or, in respect of an Individually Segregated Sponsored Account, a Sponsored Principal) (or, in the case of CDS Trade Particulars submitted pursuant to paragraph 4.4(h), the single Clearing Member);
- (b) the position of each Clearing Member or Sponsored Principal as protection seller or protection buyer (or in the case of CDS Trade Particulars submitted pursuant to paragraph 4.4(h), whether a Clearing Member is to act as protection seller or protection buyer in respect of the CDS Contract to be recorded in one of its Customer Position Accounts and whether it is to act

as protection seller or protection buyer in respect of the CDS Contract to be recorded in its Proprietary Position Account);

- (c) the relevant Set involved, including:
  - (i) in the case of CDS Trade Particulars relating to an Eligible Single Name Reference Entity that is a Standard European Corporate (as defined in the Relevant Physical Settlement Matrix, but excluding any Protocol Excluded Reference Entity):
    - (A) submitted for Clearing prior to the Protocol Effective Date, that the 2003 Credit Derivatives Definitions apply;
    - (B) submitted for Clearing on or after the Protocol Effective Date, that the 2014 Credit Derivatives Definitions apply; and
  - (ii) in the case of CDS Trade Particulars relating to an Eligible Single Name Reference Entity that is a Standard European Financial Corporate, Standard Western European Sovereign (each as defined in the Relevant Physical Settlement Matrix) or Protocol Excluded Reference Entity:
    - (A) submitted for Clearing prior to the 2014 CDD Implementation Date, that the 2003 Credit Derivatives Definitions apply,
    - (B) submitted for Clearing on or after the 2014 CDD Implementation Date, whether the 2003 Credit Derivatives Definitions apply, failing which the 2014 Credit Derivatives Definitions will apply;
- (d) the quantity or notional and other economic terms involved;
- (e) the Customer Position Account, if any, in which a resulting CDS Contract is to be recorded, failing which it will be recorded in the Proprietary Position Account;
- (f) the relevant CDS Sub-Account;
- (g) the amount of the Initial Payment (if any) payable, the identity of the Clearing Member or Sponsored Principal obliged to make such payment and the date for payment; and
- (h) such other information as may reasonably be required by the Clearing House (such requirement to have been notified previously by the Clearing House).

4.4 In relation to any CDS Trade Particulars submitted for Clearing:

- (a) The Clearing House shall, subject to paragraphs 4.17 and 4.18, if such CDS Trade Particulars are submitted in accordance with and meet the requirements established by the Rules and these CDS Procedures, give notice the sooner of (i) on a real-time basis and (ii) as soon as reasonably practicable (in a final trade status report or other report identified for the purpose) in accordance with this paragraph 4.4 (an "**Acceptance Notice**") to the relevant Clearing Members or Sponsored Principals (including by notice to a CDS Trade Execution/Processing Platform which submitted the relevant CDS Trade Particulars) specifying that the Clearing House has accepted such CDS Trade Particulars for Clearing, provided that the Clearing House may decline to accept or may reject CDS Trade Particulars for Clearing if it determines in good faith that, based on the exercise of prudent risk management standards or in accordance with paragraph 4.4(d), it should not accept or should reject such CDS Trade Particulars for Clearing or if it determines that a Revocation Right would apply in respect of such submission for Clearing. Subject to Part 4 of the Rules and this paragraph 4, an Acceptance Notice will result in the relevant Clearing Member or Sponsored Principal and the Clearing House entering into a CDS Contract at the Acceptance Time. The Acceptance Notice

shall be definitive as to any CDS Contracts entered into between the Clearing House and any Clearing Member or Sponsored Principal, regardless of any error. Acceptance Notices will be given by electronic message.

This sub-paragraph applies only in respect of CDS Trade Particulars relating to a Bilateral CDS Transaction already recorded in Deriv/SERV at the time of submission. Clearing Members shall only submit CDS Trade Particulars in relation to such Bilateral CDS Transactions provided that, at the time the Bilateral CDS Transaction was entered into it was not agreed by the parties that the Bilateral CDS Transaction would be submitted for clearing. The Clearing House shall, subject to paragraph 4.17, if such CDS Trade Particulars are submitted in accordance with and meet the requirements established by the Rules and these CDS Procedures, give notice as soon as reasonably practicable (in a final trade status report or other report identified for the purpose) in accordance with this paragraph 4.4 (a "**Preliminary Notice**") to the relevant Clearing Members or Sponsored Principals (including by notice to a CDS Trade Execution/Processing Platform which submitted the relevant CDS Trade Particulars) specifying that the Clearing House is minded to accept such CDS Trade Particulars for Clearing, provided that the Clearing House may decline to issue such a notice if it determines in good faith that, based on the exercise of prudent risk management standards, it should not accept such CDS Trade Particulars for Clearing or if it determines that a Revocation Right would apply in respect of such submission for Clearing. CDS Trade Particulars will be subject to such pre-submission review and processing by the relevant CDS Trade Execution/Processing Platform as the Clearing House shall designate, and shall not be deemed to be formally submitted, received or accepted until such time as is designated for the completion of such pre-submission review and processing, to the extent permitted under Applicable Laws. Acceptance of CDS Trade Particulars for Clearing shall, in addition to the other criteria set forth herein, be subject to receipt by the Clearing House of any advance funding of Margin as may be required by the Clearing House in connection with the CDS Trade Particulars. Each Clearing Member or Sponsored Principal shall check each Preliminary Notice that concerns CDS Contracts that it is proposed to enter into at the Acceptance Time and shall promptly notify the Clearing House of any error of which it is aware. The parties' agreement to submit the Bilateral CDS Transaction for clearing shall be effective as of the Acceptance Time and at no time prior to that. An Acceptance Notice in respect of CDS Trade Particulars to which this sub-paragraph applies shall not be issued until after the completion of any applicable pre-submission review and processing and receipt of such Margin.

CDS Trade Particulars may be submitted between 8:00 a.m. and 6:00 p.m. on a Business Day and will be accepted or rejected by the Clearing House by 6:30 p.m. on the day submitted. CDS Trade Particulars submitted after 6:00 p.m. on a Business Day or on a day that is not a Business Day shall, unless withdrawn prior to 8:00 a.m. on the following Business Day by the CDS Trade Execution/Processing Platform which submitted it or unless otherwise notified by the Clearing House to the Clearing Member or Sponsored Principal or otherwise stated in a Circular, be deemed to have been submitted at 8:00 a.m. on such following Business Day.

Following the issuance of an Acceptance Notice, the Clearing House will, using the DTCC Process, promptly (i) submit to Deriv/SERV or another service specified by the Clearing House (for itself, for the relevant Clearing Members or Sponsored Principals and for any relevant Customer) the terms of each new CDS Contract arising at the Acceptance Time (and any related Customer-CM CDS Transaction), adjusted to take into account netting, aggregation, terminations and replacements of CDS Contracts pursuant to Rule 406, where applicable and (ii) terminate, if applicable, the record in Deriv/SERV of any relevant Bilateral CDS Transaction. Each Clearing Member, Sponsor, Sponsored Principal and Customer will suppress its own processes (and procure that its Representatives suppress their processes) for such submission and termination.

- (b) After the Acceptance Time, any CDS Contract may only be terminated (other than in accordance with its terms), rescinded or cancelled by the Clearing House:

- (i) pursuant to Rule 104, Rule 209, Rule 404, Rule 406 or Part 9 of the Rules;
  - (ii) if the Clearing House is presented with an agreement in writing to terminate between a CDS Buyer and CDS Seller with equally offsetting positions in the same Set and the Clearing House also agrees (in which case such equally offsetting CDS Contracts of the CDS Buyer and CDS Seller will be terminated); or
  - (iii) pursuant to CADP under Rule 1514.
- (c) Each Clearing Member and Sponsored Principal acknowledges and agrees that the Clearing House may rely, without additional investigation, on the data in CDS Trade Particulars submitted by a CDS Trade Execution/Processing Platform for Clearing that has been designated by such CDS Trade Execution/Processing Platform as having been affirmed or confirmed by the relevant parties thereto (including as to the identity of the Clearing Members or Sponsored Principals specified therein), and that the relevant Clearing Member or Sponsored Principal shall be party to any CDS Contract arising as a result of such submission. A Clearing Member or Sponsored Principal may give not less than one Business Day's written notice to the Clearing House, in accordance with the Procedures, that a CDS Trade Execution/Processing Platform is no longer authorised to submit CDS Trade Particulars on its behalf, and following expiry of that notice period, the Clearing House will not accept for Clearing any CDS Trade Particulars submitted by such CDS Trade Execution/Processing Platform that identify such Clearing Member or Sponsored Principal (but without limiting the provisions of this paragraph with respect to any CDS Trade Particulars submitted before the expiry of that notice period).
- (d) The Clearing House may establish limits for CDS Trade Particulars of various types which may be submitted by a CDS Clearing Member or Sponsored Principal for Clearing based on the impact on the Margin requirements and may require advance funding by a CDS Clearing Member or Sponsored Principal of all or part of the estimated Margin which would be applicable as a result of the acceptance for Clearing of such CDS Trade Particulars. Such limits or requirements will be set in accordance with the established risk procedures applicable to all Clearing Members or Sponsored Principals (such procedures as determined in consultation with the CDS Risk Committee). Any material change to the factors by reference to which the limits and/or requirements are set will be subject to consultation with the CDS Risk Committee. Such limits and/or requirements may be amended from time to time by the Clearing House (provided that they are set in accordance with such procedures) and need not be identical for, or apply to, all CDS Clearing Members or Sponsored Principals. The Clearing House will give notice from time to time to each CDS Clearing Member and Sponsored Principal of the limits and requirements, if any, applying to that CDS Clearing Member or Sponsored Principal. The Clearing House may, without other reason, reject or refuse to accept for Clearing any CDS Trade Particulars for which a submitting CDS Clearing Member or Sponsored Principal is not in compliance with such limits and requirements, if any, applying to it. The provisions of this paragraph 4.4(d) are without prejudice and in addition to the Clearing House's powers under Part 6 of the Rules.
- (e) If a CDS Contract and/or a Customer-CM CDS Transaction do not reflect, subject to the provisions of the Rules and Procedures, the data in the CDS Trade Particulars which were submitted or were intended to be submitted for Clearing, then:
- (i) where either the details in the Acceptance Notice did not so reflect the data in the CDS Trade Particulars actually submitted for Clearing or the details of the resulting CDS Contract(s) or Customer-CM CDS Transaction(s) as recorded in Deriv/SERV do not reflect the Acceptance Notice, the Clearing House will, as appropriate, reissue a corrected Acceptance Notice and/or amend (and thereby correct) the records in Deriv/SERV (including, where appropriate, any records in Deriv/SERV of any Customer-CM CDS Transaction) and may require the affected Clearing Member(s),

Sponsor(s), Sponsored Principal(s) and any Customer(s) to make or confirm matching amendments to such records; and

- (ii) other than in circumstances falling in (i), the affected CDS Buyer and CDS Seller may agree among themselves (or the affected Clearing Member, if there is only one Clearing Member that has become party to two CDS Contracts) (in either case, without reference to or consent from the Clearing House) to submit for Clearing, pursuant to the "Misclear" function made available by the Clearing House, further CDS Trade Particulars for the purpose of cancelling (by netting) the continuing rights and obligations resulting from the error, but unless and until they do so, such CDS Buyer and CDS Seller and, where applicable, Customers, shall be bound by the terms of the relevant CDS Contracts and Customer-CM CDS Transactions notwithstanding such error.
- (f) This paragraph 4.4(f) applies only to CDS Contracts arising pursuant to Rule 401(a)(xi). The Clearing House will provide affected Clearing Members and Sponsored Principals with CDS Trade Particulars which will give rise to CDS Contracts pursuant to Rule 401(a)(xi) on the Business Day of price submission. Provided that the Clearing House is not notified of any error or dispute relating to the CDS Trade Particulars prior to the Acceptance Time, such CDS Trade Particulars will be used by the Clearing House for the purposes of booking new CDS Contracts. The Clearing House will be deemed to have issued an Acceptance Notice specifying the time of deemed issue as the Acceptance Time when it gives notice to the affected Clearing Member or Sponsored Principal that it has recorded the new CDS Contract in its systems.
- (g) Where a Clearing Member submits CDS Trade Particulars for one of its Customer Accounts, the CDS Contract, if any, arising at the Acceptance Time will be recorded in the CDS Sub-Account and DTCC Account specified by the relevant Clearing Member, in accordance with Rule 401(g). Pursuant to Rule 401(m), in the case of Non-FCM/BD CDS Clearing Members, a Customer-CM CDS Transaction shall be established (or any pre-existing transaction between the Customer and Clearing Member shall be replaced or amended and restated as a Customer-CM CDS Transaction) at the Acceptance Time in respect of the related CDS Contract, such Customer-CM CDS Transaction being on the terms provided in the Rules and the CDS Standard Terms. The relevant Clearing Member shall also specify the relevant corresponding DTCC Account.
- (h) A single Clearing Member may submit CDS Trade Particulars which would, on acceptance for Clearing, give rise to a CDS Contract for one of its Customer Accounts and a CDS Contract for its Proprietary Account and, for the purposes of this paragraph 4, will be treated as two Clearing Members in relation to such submission, one as protection buyer and one as protection seller.

#### 4.5

- (a) The Clearing House may accept the submission of CDS Trade Particulars for Clearing for the account of a Clearing Member or Sponsored Principal from a Representative of such Clearing Member or Sponsored Principal that is an Affiliate of such Clearing Member or Sponsored Principal or from a CDS Trade Execution/Processing Platform as the Representative of such Affiliate, provided that such Affiliate is then designated for this purpose as an authorised Representative of the Clearing Member or Sponsored Principal in accordance with the Membership Procedures and such CDS Trade Execution/Processing Platform is then designated as a Representative of the Clearing Member or Sponsored Principal.
- (b) Where CDS Trade Particulars relate to an Affiliate of a CDS Clearing Member or Sponsored Principal and are submitted for Clearing for the account of that CDS Clearing Member or Sponsored Principal:



- (i) the Clearing House is, in addition to other rights, authorised by such Clearing Member (on behalf of its Affiliate) to provide a termination notice to Deriv/SERV in respect of any related Bilateral CDS Transaction;
- (ii) the Clearing Member or Sponsored Principal is responsible for ensuring that any give-up or novation agreements, other back-to-back CDS transactions or agency relationships between it and its Affiliate come in to effect and are properly documented at the appropriate time;
- (iii) unless the Affiliate is a Sponsored Principal the Clearing House is not party to such Contract with the Affiliate and the provisions of Rule 111 concerning exclusions of liability shall apply;
- (iv) Rules 402(b) and 404 shall apply as though the Affiliate was the Clearing Member or Sponsored Principal referred to therein;
- (v) the Affiliate shall be deemed to have agreed to provide the CDS Clearing Member or Sponsored Principal and Clearing House with such authority as would have been provided (if such Affiliate were a Customer pursuant to the CDS Standard Terms or the Rules) to amend the records of Deriv/SERV; and
- (vi) the Affiliate shall (in the absence of evidence of a contrary intention under any relevant Bilateral CDS Transaction) be deemed to be on notice of this provision and to have agreed to the application of this provision by virtue of the Affiliate's conduct in having the relevant CDS Trade Particulars submitted for Clearing.

4.6 The Clearing House will be entitled to assume and will assume that no Credit Event Notice relating to a Credit Event under a Bilateral CDS Transaction for which CDS Trade Particulars are submitted for Clearing has been delivered by either party to the other prior to the relevant Acceptance Time (other than, in relation to any CDS Trade Particulars which would give rise to 2003-type CDS Contracts, any deemed delivery of a Credit Event Notice pursuant to a DC Credit Event Announcement). Each CDS Buyer and CDS Seller upon submitting CDS Trade Particulars for Clearing acknowledges and agrees that any Credit Event Notice (other than, in relation to any CDS Trade Particulars which would give rise to 2003-type CDS Contracts, any deemed delivery of a Credit Event Notice pursuant to a DC Credit Event Announcement) delivered in relation to the relevant Bilateral CDS Transaction for which CDS Trade Particulars are accepted for Clearing shall be deemed, at the Acceptance Time, never to have been delivered. This paragraph shall have no effect on any Bilateral CDS Transaction for which CDS Trade Particulars are not accepted for Clearing.

4.7 The Clearing House will be entitled to assume and will assume that no Notice of Physical Settlement under a Bilateral CDS Transaction for which CDS Trade Particulars are submitted for Clearing has been delivered by one party to the other prior to the relevant Acceptance Time. Each CDS Buyer and CDS Seller upon submitting CDS Trade Particulars relating to a Bilateral CDS Transaction for Clearing acknowledges and agrees that any Notice of Physical Settlement delivered in relation to such a Bilateral CDS Transaction shall be deemed, at the Acceptance Time, never to have been delivered. This paragraph shall have no effect on any Bilateral CDS Transaction for which CDS Trade Particulars are not accepted for Clearing.

4.8 Any CDS Trade Particulars which would give rise to two Single Name Contracts at the Acceptance Time shall not be eligible for Clearing where the Reference Entity is one of the CDS Clearing Members or Sponsored Principals submitting the CDS Trade Particulars for Clearing or a Group Company thereof (or is the Customer in respect of the CDS Sub-Account in which a CDS Contract would be recorded or a Group Company thereof). Neither CDS Clearing Members nor Sponsored Principals shall submit for Clearing any CDS Trade Particulars which are not, at the time of submission for Clearing, eligible for Clearing pursuant to this paragraph 4.8. Customers shall not take any action which would lead to the submission for Clearing of any CDS Trade Particulars which are not, at the

time of submission for Clearing, eligible for Clearing pursuant to this paragraph 4.8 as a result of the Reference Entity being such Customer or one of its Group Companies. If, but only for so long as, it is not prevented from doing so by Applicable Law, a CDS Clearing Member or Sponsored Principal shall notify the Clearing House as soon as reasonably practicable if any CDS Trade Particulars submitted by it for Clearing (but in respect of which no Acceptance Notice has become effective) are or become ineligible for Clearing pursuant to this paragraph 4.8. If, but only for so long as, it is not prevented from doing so by Applicable Law, a Customer shall notify its CDS Clearing Member as soon as reasonably practicable if it becomes aware that any CDS Trade Particulars submitted for Clearing (but in respect of which no Acceptance Notice has become effective) are or become ineligible for Clearing pursuant to this paragraph 4.8 as a result of the Reference Entity being such Customer or one of its Group Companies. Any CDS Trade Particulars which are submitted for Clearing but which are, or become before the relevant Acceptance Time, ineligible for Clearing may be rejected by the Clearing House before the relevant Acceptance Time (whether or not paragraph 4.8 applied at the time that the CDS Trade Particulars were submitted for Clearing). This restriction shall not apply where the CDS Trade Particulars are submitted to close out an Affected SR Contract.

4.9 CDS Trade Particulars for Old Index CDS shall cease to be eligible to be submitted for Clearing:

- (a) in the case of a Relevant Restructuring Credit Event occurring in relation to a component transaction, upon the earlier of:
  - (i) close of business on the DC Restructuring Announcement Date; and
  - (ii) the close of business on the day on which a No Auction Announcement Date relevant to the Set in question occurs;
- (b) in the case of any other Applicable Credit Event occurring in relation to a component transaction, if the Acceptance Notice would fall after the earlier of:
  - (i) the close of business on the calendar day following the Auction Final Price Determination Date with respect to the Component Transaction; and
  - (ii) the close of business of the day on which an Auction Cancellation Date or a No Auction Announcement Date relevant to the Set in question occurs; or
- (c) in any such case, at such other time as is notified by the Clearing House in a Circular following consultation with the CDS Risk Committee.

In such circumstances, CDS Trade Particulars similar to the Old Index CDS but excluding the Component Transaction affected by the Credit Event will become available for Clearing when, following consultation with the CDS Risk Committee, the relevant Set is notified as available for Clearing by the Clearing House by Circular, which notification will be given as soon as reasonably practicable. For the avoidance of doubt, CDS Trade Particulars submitted for Clearing prior to the time specified in paragraph 4.9(a) will be capable of being accepted for Clearing, notwithstanding any occurrence of an event referred to in paragraph 4.9(a) prior to the time of the relevant Acceptance Notice, subject always to paragraph 4.9(c) and the rest of this paragraph 4.

4.10 CDS Trade Particulars which would give rise to two Single Name Contracts at the Acceptance Time in respect of which an Applicable Credit Event occurs in relation to the relevant Reference Entity shall cease to be eligible to be submitted for Clearing:

- (a) in the case of a Relevant Restructuring Credit Event, upon the earliest of:
  - (i) close of business on the DC Restructuring Announcement Date, provided that the Clearing House may, in consultation with the CDS Risk Committee, designate by Circular any later date; and

- (ii) the close of business of the day on which a No Auction Announcement Date relevant to the Set in question occurs;
- (b) in the case of any other Applicable Credit Event, if the Acceptance Notice would fall after the earlier of:
  - (i) the close of business on the calendar day following the Auction Final Price Determination Date; and
  - (ii) the close of business of the day on which an Auction Cancellation Date or a No Auction Announcement Date relevant to the Set in question occurs; or
- (c) in any such case, at such other time as is notified by the Clearing House in a Circular following consultation with the CDS Risk Committee.

In the case only of a Relevant Restructuring Credit Event, such CDS Trade Particulars will again become eligible for Clearing if the Acceptance Notice would fall after:

- (i) close of business on the calendar day following the Business Day following the latest possible Exercise Cut-off Date for the Restructuring Credit Event; or
- (ii) such other time as is notified by the Clearing House in a Circular following consultation with the CDS Risk Committee.

For the avoidance of doubt, CDS Trade Particulars submitted for Clearing prior to the time specified in paragraph 4.10(a) will be capable of being accepted for Clearing, notwithstanding any occurrence of an event referred to in any of paragraph 4.10(a) prior to the time of the relevant Acceptance Notice, subject always to paragraph 4.10(c) and the rest of this paragraph 4.

- 4.11 In relation to a Succession Event, in respect of a 2003-type CDS Contract, or circumstances giving rise to a Successor and a Succession Date, in respect of a 2014-type CDS Contract, if the Clearing House determines that any actual, hypothetical or potential transaction reflected in CDS Trade Particulars submitted for Clearing would have been subject to a Succession Event or such circumstances, as the case may be, but will no longer be subject to such Succession Event or circumstances after the Acceptance Time because of the Trade Date that would be specified with respect to the related CDS Contract, the Clearing House shall take such action as it deems necessary to ensure that such Succession Event is given effect or such circumstances are given effect, as the case may be, with respect to such CDS Contracts arising at the Acceptance Time, including, without limitation, declining to accept such CDS Trade Particulars for Clearing or specifying an alternate Trade Date for purposes of Section 2.1 of the Applicable Credit Derivatives Definitions with respect to the relevant CDS Contract or portion thereof.
- 4.12 CDS Clearing Members, Sponsors, Sponsored Principals and Customers shall use reasonable endeavours not to submit any CDS Trade Particulars which are not eligible for Clearing pursuant to paragraph 4.9, 4.10, 7.2 or 7.3 as at the time such CDS Trade Particulars are submitted for Clearing. Each CDS Clearing Member, Sponsor and Sponsored Principal shall notify the Clearing House as soon as reasonably practicable if it is or becomes aware that any CDS Trade Particulars submitted by it for Clearing (but in respect of which no Acceptance Notice has become effective) are or become ineligible for Clearing pursuant to paragraph 4.9, 4.10, 7.2 or 7.3. Any CDS Trade Particulars which are submitted for Clearing but which are, or become before the relevant Acceptance Time, ineligible for Clearing may be rejected by the Clearing House before the relevant Acceptance Time (whether or not the relevant provision of paragraph 4.9, 4.10, 7.2 or 7.3 applied at the time that the CDS Trade Particulars were submitted for Clearing). If CDS Trade Particulars were eligible for Clearing at the time they were submitted for Clearing but become ineligible for Clearing pursuant to paragraph 4.9, 4.10, 7.2 or 7.3 after the time that they were submitted for Clearing, then the Clearing House will use reasonable endeavours not to issue an Acceptance Notice in respect of those CDS Trade Particulars.

- 4.13 If any CDS Trade Particulars have been submitted for Clearing, are or become, pursuant to paragraph 4.9 or 4.10, ineligible for Clearing before the relevant Acceptance Time and are not rejected by the Clearing House before the relevant Acceptance Time, then:
- (a) in the case of an Old Index CDS where a Relevant Restructuring Credit Event has occurred in relation to a Component Transaction and the Exercise Cut-Off Date applicable to the CDS Buyer has not occurred at the time that the Clearing House becomes aware of the situation, the Clearing House will endeavour:
    - (i) to allocate the CDS Buyer and CDS Seller (the "**Late Buyer and Seller**") under the resulting Cleared CDS Contracts (the "**Late Cleared CDS Contracts**") into a single Matched Pair for the relevant Component Transaction in respect of an MP Amount equal to the Floating Rate Payer Calculation Amount relating to such Component Transaction; and
    - (ii) to treat the remainder of the Late Cleared CDS Contracts in the same way as other equivalent CDS Contracts of the relevant Set which had already been Cleared;
  - (b) in the case of an Old Index CDS where an Applicable Credit Event other than a Relevant Restructuring Credit Event has occurred in relation to a Component Transaction, the Clearing House will:
    - (i) where an Auction is held in respect of the relevant Reference Entity which would have applied to the relevant Component Transaction, (x) notify the Late Buyer and Seller under the Late Cleared CDS Contracts that they will be obliged to settle the rights and obligations arising in respect of the relevant Component Transaction as a result of such Credit Event at the auction price that would have been applicable to the relevant Component Transaction and (y) endeavour to treat the remainder of the Late Cleared CDS Contracts in the same way as other equivalent CDS Contracts of the relevant Set which had already been Cleared; and
    - (ii) where (i) does not apply and, in relation to a 2003-type CDS Contract, the relevant deadline in section 3.2(c) of the 2003 Credit Derivatives Definitions for the delivery of a Notice of Physical Settlement has not passed or, in relation to a 2014-type CDS Contract, the NOPS Cut-off Date has not passed, in either case at the time that the Clearing House becomes aware of the situation, endeavour (x) to allocate the Late Buyer and Seller under the Late Cleared CDS Contracts into a single Matched Pair for the relevant Component Transaction in respect of an MP Amount equal to the Floating Rate Payer Calculation Amount relating to such Component Transaction and (y) to treat the remainder of the Late Cleared CDS Contracts in the same way as other equivalent CDS Contracts of the relevant Set which had already been Cleared;
  - (c) in the case of CDS Trade Particulars to which paragraph 4.10 applies, where a Relevant Restructuring Credit Event has occurred and the Exercise Cut-off Date applicable to the CDS Buyer has not occurred at the time that the Clearing House becomes aware of the situation, the Clearing House will endeavour to allocate the Late Buyer and Seller under the Late Cleared CDS Contracts into a single Matched Pair in respect of an MP Amount equal to the Floating Rate Payer Calculation Amount of such CDS Trade Particulars; and
  - (d) in the case of CDS Trade Particulars to which paragraph 4.10 applies, where an Applicable Credit Event other than a Relevant Restructuring Credit Event has occurred, the Clearing House will:
    - (i) where an Auction is held in respect of the relevant Reference Entity which would have applied to the Late Cleared CDS Contracts, notify the Late Buyer and Seller under the Late Cleared CDS Contracts that they will be obliged to settle the rights

and obligations arising in respect of the Late Cleared CDS Contracts as a result of such Credit Event at the auction price that would have been applicable; and

- (ii) where (i) does not apply and, in relation to a 2003-type CDS Contract, the relevant deadline in section 3.2(c) of the 2003 Credit Derivatives Definitions for the delivery of a Notice of Physical Settlement has not passed or, in relation to a 2014-type CDS Contract, the NOPS Cut-off Date has not passed, in either case at the time that the Clearing House becomes aware of the situation, endeavour to allocate the Late Buyer and Seller under the Late Cleared CDS Contracts into a single Matched Pair in respect of an MP Amount equal to the Floating Rate Payer Calculation Amount of such CDS Trade Particulars.

For the avoidance of doubt, if notwithstanding the use of reasonable endeavours to follow the process set out in this paragraph 4.13, the outcome described in this paragraph 4.13 has not resulted, the Clearing House may deal with the situation in other ways in accordance with the Rules or these CDS Procedures.

- 4.14 The Clearing House will, where required in order to give effect to the election of each CDS Clearing Member or Sponsored Principal made pursuant to Rule 406(d), aggregate and net those CDS Contracts of the same Set in the same CDS Sub-Account of such CDS Clearing Member or Sponsored Principal which are eligible for netting: (a) on a weekly basis as part of its process for Clearing Bilateral CDS Transactions already recorded in Deriv/SERV; and (b) on such other dates as the Clearing House may determine. In addition, the Clearing House will aggregate and net relevant CDS Contracts in a CDS Sub-Account which are eligible for netting: (i) when a CDS Contract for such CDS Sub-Account arises pursuant to Rule 401(a)(vi), (x) or (xi); and (ii) when a CDS Contract recorded in such CDS Sub-Account is voided (and such voiding is duly notified by the Clearing House pursuant to Rule 404(e)) or, to the extent that termination and replacement is necessary in the circumstances, Rule 404(c)(i).
- 4.15 Where, in connection with Clearing, the Clearing House is to use the DTCC Process to submit, amend or terminate the records in Deriv/SERV of any CDS Contract or Customer-CM CDS Transaction so far as those records relate to a Customer of a Clearing Member (in relation to any Customer, the "relevant Clearing Member"), the Clearing House will submit, amend or terminate such records on behalf of the relevant Clearing Member and Customer.
- 4.16 Where, in connection with Clearing, the Clearing House is to use the DTCC Process to submit, amend or terminate the records in Deriv/SERV of any CDS Contract or Customer-CM CDS Transaction recorded in an Individually Segregated Sponsored Account, the Clearing House will submit, amend or terminate such records on behalf of the relevant Sponsored Principal (and, if it is a Non-FCM/BD Clearing Member, the Sponsor).
- 4.17 The Clearing House will accept or reject CDS Trade Particulars submitted for Clearing within the following timeframes:
  - (a) for transactions that are executed competitively on or subject to the rules of a CDS Trade Execution/Processing Platform or Market and transactions executed on an EEA CDS Trade Execution/Processing Platform or Market within the sooner of: (i) 10 seconds from receiving the CDS Trade Particulars from the CDS Trade Execution/Processing Platform or Market; and (ii) as quickly after execution as would be technologically practicable if fully automated systems were used.
  - (b) for transactions not executed on or subject to the rules of a CDS Trade Execution/Processing Platform or Market within the sooner of (i) 60 seconds from receiving the information on the cleared derivative transaction from the counterparties and (ii) as quickly after submission to the Clearing House as would be technologically practicable if fully automated systems were used.

- (c) for transactions executed non-competitively on or subject to the rules of a designated contract market, swap execution facility or other similar CDS Trade Execution/Processing Platform or Market in a non-EEA jurisdiction as quickly after submission to the Clearing House as would be technologically practicable if fully automated systems were used.

The Clearing House will accept all such CDS Trade Particulars within such timeframes: (i) that are submitted to the Clearing House by the parties in accordance with Applicable Laws, (ii) for which the executing parties are both either CDS Clearing Members or Sponsored Principals with authorisation to clear CDS or have clearing arrangements in place with a CDS Clearing Member (iii) for which the executing parties identify the Clearing House as the intended clearing house, and (iv) that satisfy the criteria of the Clearing House as set out herein and in the Rules (which criteria shall be non-discriminatory across trading venues).

- 4.18 Each FCM/BD CDS Clearing Member and Sponsored Principal that is an FCM/BD must accept or reject each CDS Trade Particulars submitted by or for it as quickly as would be technologically practicable if fully automated systems were used and (to the extent such CDS Trade Particulars have not already been submitted to the Clearing House at the time of acceptance by such Clearing Member or Sponsored Principal) must submit such CDS Trade Particulars to the Clearing House as quickly following such acceptance (or execution, if executed directly by such Clearing Member or Sponsored Principal) as would be technologically practicable if fully automated systems were used. For the avoidance of doubt, acceptance or rejection of any CDS Trade Particulars by a Clearing Member or Sponsored Principal does not constitute acceptance or the issuance of an Acceptance Notice by the Clearing House. For the avoidance of doubt, this paragraph 4.18 shall apply in addition to paragraph 4.17.

## 5. **CDS DEFAULT COMMITTEE**

- 5.1 The CDS Default Committee shall be comprised of not more than three CDS Committee-Eligible Clearing Members designated in accordance with paragraph 5.2 (each, a "**CDS Default Committee Participant**"). The CDS Default Committee shall act as a committee of the Clearing House with powers under the Rules pursuant to Rule 114. Each CDS Default Committee Participant shall designate an employee of it or one of its Affiliates with CDS trading experience by notice in writing to the Clearing House (an "**Eligible Employee**") to serve as its representative on the CDS Default Committee, along with one or more alternates in the event such person is not available on a timely basis (the designated employee or alternate, as applicable, a "**CDS Default Committee Member**"). A CDS Default Committee Participant may replace its designated CDS Default Committee Member or alternate(s) with an Eligible Employee from time to time by notice in writing to the Clearing House.
- 5.2 The Clearing House shall randomly order all CDS Committee-Eligible Clearing Members into a list (the "**CDS Default Committee Participant List**"). The procedure for any random ordering for the purposes of this paragraph 5.2 shall be determined by the Clearing House at its discretion. For this purpose, if two or more CDS Committee-Eligible Clearing Members are or become Affiliates, as determined by the Clearing House, they shall be treated as one on the CDS Default Committee Participant List; provided that, notwithstanding the foregoing, CDS Committee-Eligible Clearing Members that are Affiliates but that make separate contributions to the CDS Guaranty Fund shall be treated as separate on the CDS Default Committee Participant List, but a maximum of one CDS Default Committee Participant representing all CDS Committee-Eligible Clearing Members that are Affiliates shall be entitled to sit on any CDS Default Committee established in accordance with these CDS Procedures at a particular time.
- 5.3 The CDS Default Committee for the initial Relevant CDS Default Committee Period shall be comprised of the first three CDS Committee-Eligible Clearing Members on the CDS Default Committee Participant List. For each Relevant CDS Default Committee Period thereafter, the then current CDS Default Committee Participants shall cease to be CDS Default Committee Participants and shall be moved to the end of the CDS Default Committee Participant List, and the next three CDS Committee-Eligible Clearing Members on the CDS Default Committee Participant List shall be CDS

Default Committee Participants. If at any time there are fewer than three CDS Committee-Eligible Clearing Members on the CDS Default Committee Participant List, all such CDS Committee-Eligible Clearing Members shall be CDS Default Committee Participants. The "**Relevant CDS Default Committee Period**" will be six calendar months (i.e., January through June and July through December), unless otherwise specified by the Clearing House.

- 5.4 Any CDS Clearing Member that ceases being a CDS Committee-Eligible Clearing Member shall be removed from the CDS Default Committee Participant List and, if such Clearing Member is serving on the CDS Default Committee at the time of removal, shall be replaced on the CDS Default Committee by the next CDS Committee-Eligible Clearing Member on the CDS Default Committee Participant List. Any Clearing Member that becomes (or resumes being) a CDS Committee-Eligible Clearing Member shall be added to the end of the CDS Default Committee Participant List.
- 5.5 If the Clearing House determines, whether upon the request of such CDS Default Committee Participant or upon the Clearing House's own initiative, that any CDS Default Committee Participant has a conflict or lacks impartiality with regard to an action to be undertaken by the CDS Default Committee (e.g., it or its Affiliate is the subject of the Event of Default), is not available to participate with regard to such actions in a timely manner, or should for any other reason be removed from or not participate in actions to be undertaken by the CDS Default Committee, the Clearing House shall remove such CDS Default Committee Participant and, as promptly as practicable under the circumstances, replace it with the next CDS Committee-Eligible Clearing Member on the CDS Default Committee Participant List and, pending such replacement, the remaining CDS Default Committee Members shall continue to perform the responsibilities of the CDS Default Committee.
- 5.6 To the extent permitted by Applicable Laws, no CDS Default Committee Member or CDS Default Committee Participant shall be liable to the Clearing House, any Defaulter, any other Clearing Member or any other person for any actions taken or not taken in good faith in its role as CDS Default Committee Member or CDS Default Committee Participant.
- 5.7 The CDS Default Committee shall be entitled to:
  - (a) assist and advise the Clearing House in determining and executing any transactions under Part 9 of the Rules in CDS only;
  - (b) assist the Clearing House in determining (and thereafter adjusting) any sale or transfer prices, target prices or minimum target prices for such CDS;
  - (c) assist the Clearing House in relation to the unwinding of any CDS Contracts which fall within paragraphs 4.8 or 10.5, and otherwise as provided in the Rules and Procedures in relation thereto;
  - (d) provide the Clearing House with recommendations as to (i) how prudently to unwind the Open Contract Positions in CDS Contracts of a Defaulter that was a CDS Clearing Member or Sponsored Principal that was authorised to clear CDS (relating to any Customer Account Positions and Proprietary Account Positions); (ii) how to implement the Default Portability Rules, if applicable; and (iii) the related close out of CDS and other hedging transactions, if any; and
  - (e) without prejudice to the generality of the foregoing, assist and advise the Clearing House in determining whether or not the entry into of any hedging transactions under Part 9 of the Rules would achieve, or would be likely to achieve, the purpose of an orderly unwind of any Contracts to which a Defaulter is party or a reduction of the risk specified in Part 9 of the Rules.

The minimum target price shall be established by the Clearing House in consultation with the CDS Default Committee (taking into account the results of any prior auctions) as the price, as determined in

the reasonable discretion of the Clearing House (taking into account the interests of non-defaulting Clearing Members), at which it would be reasonable for the Clearing House to enter into relevant Contracts or hedging contracts under Part 9 of the Rules. Any minimum target price so determined by the Clearing House may be adjusted by the Clearing House in consultation with the CDS Default Committee for market changes, and to take into account the result of any sales or auctions under Part 9 of the Rules, from the time of the initial determination of the minimum target price to the time any new Contracts are entered into.

- 5.8 Each CDS Default Committee Participant and CDS Default Committee Member (each, for purposes of this paragraph 5.8, a "**Covered Party**") shall be subject to the provisions of Rule 106 as if it were the Clearing House. Each Covered Party further agrees not to use any information subject to Rule 106 ("**Confidential Material**") for its own benefit or the benefit of any of its Affiliates. In the event that a Covered Party is served with or otherwise subject to legal process (including subpoena or discovery notice) requiring it to testify about, to produce, or otherwise to divulge Confidential Material, to the extent permitted by law the Covered Party subject to such process will as soon as practicable inform the Clearing House so that the Clearing House may seek a protective order, injunction or other remedy. In the event that such protective order, injunction or other remedy has not been obtained and the Covered Party is advised, in the opinion of counsel, that it is legally compelled to disclose any of the Confidential Material, the Covered Party may disclose only such Confidential Material so advised to be disclosed and shall not otherwise disclose Confidential Material.
- 5.9 Each CDS Default Committee Participant and CDS Default Committee Member shall be responsible for its own costs associated with its service in such position.
- 5.10 The Clearing House acknowledges and agrees that it will consider in good faith the recommendations of any CDS Default Committee in relation to matters over which the CDS Default Committee has competence.

## 6. **CREDIT EVENTS AND PHYSICAL SETTLEMENT**

### 6.1 **Old Index CDS and Restructuring**

In relation to each CDS Contract which is an Old Index CDS where a Relevant Restructuring Credit Event has occurred in relation to a component transaction, the Clearing House (for itself and on behalf of each relevant CDS Clearing Member, Sponsor, Sponsored Principal and Customer) will submit relevant data to Deriv/SERV as soon as practicable after the DTCC Reversioning Date in order to record the relevant New Trades and any related Customer-CM CDS Transactions.

### 6.2 **Notices**

- (a) MP Notices delivered between a Matched CDS Buyer, the Clearing House and a Matched CDS Seller shall be delivered in accordance with the terms of the relevant CDS Contract, Part 15 of the Rules and these CDS Procedures. Subject to this paragraph 6.2 and paragraph 6.3, Section 1.10 of the 2003 Credit Derivatives Definitions in respect of 2003-type CDS Contracts and Section 1.38 of the 2014 Credit Derivatives Definitions in respect of 2014-type CDS Contracts will apply to MP Notices and all other Credit Event Notices, Notices to Exercise Movement Option, Notices of Physical Settlement, NOPS Amendment Notices, Asset Package Delivery Notices and other notices provided for by the Applicable Credit Derivatives Definitions delivered under a CDS Contract (and, pursuant to Rule 113, the provisions of Section 1.10 of the 2003 Credit Derivatives Definitions and Section 1.38 of the 2014 Credit Derivatives Definitions, as the case may be, prevail over the general timings and processes for notices set out in Rule 113). Any Manual MP Notices (including memoranda of telephone notices) and all other Credit Event Notices, Notices to Exercise Movement Option, Notices of Physical Settlement, NOPS Amendment Notices, Asset Package Delivery Notices and other notices provided for by the Applicable Credit Derivatives Definitions under a CDS Contract shall be copied or sent to the following e-mail address of the Clearing House:



[cdscen@theice.com](mailto:cdscen@theice.com) or the following fax number: +44 (0) 207 979 0119. The Clearing House shall have no responsibility to any CDS Buyer or CDS Seller to verify in any manner the contents of any MP Notice received by it.

- (b) The Clearing House will circulate, by e-mail to all relevant CDS Clearing Members and Sponsored Principals prior to the start of the CEN Triggering Period or, where Physical Settlement applies (other than following a Relevant Restructuring Credit Event) in accordance with Rule 1507, prior to 4:30 p.m. on the tenth calendar day following the No Auction Announcement Date or Auction Cancellation Date, as applicable:
  - (i) such details as it has received of CDS Clearing Members' and Sponsored Principals' address, fax number, telephone number, e-mail address and any other applicable notice details for the delivery of notices through the Manual Notice Process; and
  - (ii) the fax number and e-mail address of the Clearing House for the delivery of notices or copies or memoranda of notices through the Manual Notice Process or otherwise in connection with the Credit Event in question (if different from those specified in paragraph 6.2(a)).

Manual MP Notices delivered to CDS Buyers or CDS Sellers or to or copied to the Clearing House and any other notices, notifications or communications (other than Electronic Notices) delivered to the Clearing House or any CDS Buyers or CDS Sellers in connection with the Credit Event in question must be made to the contact details specified in paragraph 6.2(a) or otherwise in such manner as is specified by the Clearing House in the e-mail circulated pursuant to this 6.2(b).

### 6.3 Matched Pairs

- (a) Matched Pairs will not be allocated in respect of any CDS Contracts for which the applicable Settlement Method is "Auction Settlement" following the occurrence of any Applicable Credit Event other than a Relevant Restructuring Credit Event.
- (b)
  - (i) For any CDS Sub-Account where CDS Contracts are recorded on a "trade by trade" basis or a "gross" basis (as referred to in Rule 406(d)), CDS Contracts will be netted and/or aggregated (as if the CDS Sub-Account were held on a "net" basis) prior to the processing of any Relevant Restructuring Credit Event so as to reflect the equivalent of an Open Contract Position in the relevant Set in respect of such CDS Sub-Account.
  - (ii) The Clearing House will, as soon as reasonably practicable following the completion of the process in paragraph 6.3(b)(i), use an algorithm for purposes of allocating Matched Pairs under Rules 1507 and 1508. This algorithm shall minimise, to the extent reasonably practicable, each of the following:
    - (A) the number of Matched Pairs in respect of which the MP Amount is less than EUR 1,000,000 (or in the case of Sovereign Contracts USD 1,000,000) (or such other amount as may be notified by the Clearing House by Circular, after consultation with the CDS Risk Committee) or not an integral multiple of such amount;
    - (B) the number of Matched Pairs into which an individual CDS Buyer or CDS Seller is matched, provided that the MP Amount for any Matched Pair shall not exceed EUR 50,000,000 (or in the case of Sovereign Contracts USD10,000,000) (or such other amount as may be notified by the Clearing

House by Circular, after consultation with the CDS Risk Committee) and further provided that this shall not preclude the same CDS Seller and CDS Buyer being matched with each other in respect of more than one Matched Pair;

- (C) the overall number of Matched Pairs; and
  - (D) the number of, and notional amounts in Matched Pairs where the CDS Buyer and CDS Seller are different Persons.
- (c) For purposes of Rule 1507 and 1508, the Clearing House will allocate to each Matched Pair an MP Amount such that: (i) the sum of all MP Amounts of each CDS Buyer is equal to the aggregate Floating Rate Payer Calculation Amounts of such CDS Buyer in respect of all its CDS Contracts of the same Set or Component Transactions of CDS Contracts of the same Set (as applicable); and (ii) the sum of all MP Amounts of each CDS Seller is equal to the aggregate of the Floating Rate Payer Calculation Amounts of such CDS Seller in respect of all its CDS Contracts of the same Set or Component Transactions of CDS Contracts of the same Set (as applicable).
- (d) In the case of the allocation of Matched Pairs under Rule 1508, the Clearing House will, as soon as reasonably practicable, provide each CDS Clearing Member and Sponsored Principal with an Open Contract Position in the relevant Set with an RMP Matching Report. Each CDS Clearing Member or Sponsored Principal to whom an RMP Matching Report is delivered shall check that the RMP Matching Report reflects their netted Contracts for each CDS Sub-Account with the Clearing House in respect of each Set that is subject to the Relevant Restructuring Credit Event. Any CDS Clearing Member or Sponsored Principal which believes that the RMP Matching Report does not so reflect its net Open Contract Position shall notify the Clearing House of the same as soon as possible. If an error is notified to or noticed by the Clearing House, the Clearing House will: (i) provided that it has the time to do so, issue a replacement RMP Matching Report to any affected CDS Clearing Member or Sponsored Principal; or (ii) take any other such steps as may be required to correct the error.
- (e) Matched Pair Notices.
- (i) If the Clearing House is obliged to issue Matched Pair Notices pursuant to Rule 1507 or 1508, it will endeavour to do so as soon as reasonably practicable after the latest date on which an Acceptance Notice would, in the ordinary course, be issued in respect of any CDS Trade Particulars relating to the relevant Set which had been submitted for Clearing before the relevant Set became ineligible for Clearing under paragraph 4.9 or 4.10 (as applicable).
  - (ii) Matched Pair Notices may be delivered by the Clearing House by e-mail or fax or by posting to a secure section of the Clearing House's website which only the Clearing House and the relevant CDS Clearing Member or Sponsored Principal may view, such that confidentiality (to the extent required under the Rules) is maintained. The Clearing House will give each CDS Buyer and CDS Seller reasonable notice of any method of delivery to be used other than the Clearing House's secure website, unless a particular CDS Buyer and CDS Seller and the Clearing House mutually agree upon an alternative form of notice being used. The Matched Pair Notice will be effective when received by, or available on the secure section of the Clearing House's website for inspection by, the relevant CDS Clearing Members and Sponsored Principals, as applicable.
  - (iii) The Clearing House shall issue Matched Pair Notices pursuant to Rule 1507 following an Applicable Credit Event other than a Relevant Restructuring Credit

Event prior to 4:30 p.m. on the tenth calendar day following the No Auction Announcement Date or Auction Cancellation Date, as applicable.

- (iv) The Clearing House shall issue Matched Pair Notices to CDS Buyers and CDS Sellers pursuant to Rule 1508 following a Relevant Restructuring Credit Event prior to the RMP Deadline Time, in the form of the RMP Matching Report for each CDS Buyer and CDS Seller. Where there is a CH Reversioning Date, the Clearing House will, in its own systems, reversion Old Index CDS to exclude the relevant component transaction in respect of which a Relevant Restructuring Credit Event has occurred and record such Component Transaction in the form of a New Trade, in each case on the CH Reversioning Date.
- (v) As soon as practicable after the issue of the RMP Matching Reports, the Clearing House will for itself, for Matched CDS Buyers and Matched CDS Sellers and for any Customers, terminate the records in the DTCC Accounts of all CDS Contracts and any related Customer-CM CDS Transactions which are the subject of the relevant RMP Matching Report and, using the DTCC Process, input matching records of CDS Contracts and any related Customer-CM CDS Transactions in the DTCC Accounts to reflect the creation of the RMPs shown by the RMP Matching Reports. Each relevant CDS Clearing Member, Sponsor, Sponsored Principal and Customer shall cease to take any action which would result in any of the records of relevant CDS Contracts and any related Customer-CM CDS Transactions in the DTCC Accounts being amended after 12 noon on the day of the RMP Deadline Time, unless otherwise agreed with the Clearing House. The Clearing House and each relevant CDS Clearing Member, Sponsor and Sponsored Principal shall use their best endeavours to rename trade identifiers in the DTCC Accounts appropriately and to ensure that the records of each affected CDS Contract to which it is party and any related Customer-CM CDS Transactions are "confirmed and certain" within the DTCC Accounts prior to that time. If the records of CDS Contracts and any related Customer-CM CDS Transactions which are so input into the DTCC Accounts by the Clearing House using the DTCC Process do not reflect the RMPs shown by the RMP Matching Reports, the Clearing House will amend (and thereby correct) such records in the DTCC Accounts and may require the affected Clearing Members, Sponsor, Sponsored Principals or Customers to make or confirm matching amendments to such records. Clearing Members, Sponsor, Sponsored Principals and their Customers will be bound by the records originally so input unless and until they are so amended.
- (vi) The Clearing House shall, in the case of the allocation of Matched Pairs pursuant to Rule 1508, upload the RMP Matched Table to Deriv/SERV and issue confirmed RMP Matching Reports to CDS Buyers and CDS Sellers setting out the details of the Matched Pairs that have been recorded in the DTCC Accounts, as soon as reasonably practicable but in any event not later than the RMP Deadline Time (provided that the Clearing House shall not be treated as being in breach of any obligation to any CDS Buyer or CDS Seller if it is not able to do so as a result of a failure of DTCC). The Clearing House, CDS Clearing Members, Sponsored Principals and Customers recognise and acknowledge that in certain circumstances outside the control of the Clearing House, the CEN Triggering Period applicable to the CDS Seller and the CDS Buyer may be a period of fewer than two and five Business Days, respectively.
- (vii) In accordance with and to the extent permitted under Rule 1505(b), if the Clearing House fails to issue Matched Pair Notices or the RMP Matching Reports and to upload the RMP Matched Table by the relevant time, being the RMP Deadline Time or the time specified in paragraph 6.3(e)(iii), as applicable, CDS Buyers and CDS Sellers may deliver Credit Event Notices, Notices to Exercise Movement Option, Notices of Physical Settlement, NOPS Amendment Notices and Asset Package Delivery Notices (as applicable) directly to the Clearing House until such time as the

Matched Pair Notices or RMP Matching Reports, as applicable, have been issued or the RMP Matched Table, as applicable, has been uploaded. Such notices must be made by fax or e-mail to the contact details specified in accordance with paragraph 6.2(a).

- (f) Electronic Notice Process for Restructuring Matched Pairs.
  - (i) Subject to paragraphs 6.3(e)(vii), 6.3(f)(v), 6.3(f)(vi) and Rule 1505(b):
    - (A) a CDS Clearing Member, Sponsor, Sponsored Principal or Customer (if any) may deliver Restructuring Credit Event Notices and Notices to Exercise Movement Option, but only in the form of an Electronic Notice through Deriv/SERV in accordance with the specific procedures of DTCC which are provided for the delivery of such notices through the DTCC Accounts; and
    - (B) any Restructuring Credit Event Notice or Notice to Exercise Movement Option delivered otherwise than in accordance with such procedures as an Electronic Notice will be invalid and ineffective.
  - (ii) The Clearing House, each CDS Clearing Member, Sponsor, Sponsored Principal and Customer acknowledges that, subject to paragraph 6.3(f)(vi): (x) an Electronic Notice delivered to the Clearing House in relation to a Matched CDS Buyer Contract or a Matched CDS Seller Contract recorded in such CDS Clearing Member's, Sponsor's or Sponsored Principal's DTCC Account, or (y) an electronic notice delivered by a Customer in respect of a Customer-CM CDS Transaction, provided that it is delivered within the time limits set for such delivery by the Contract Terms and otherwise satisfies the requirements of the Contract Terms and is submitted properly in accordance with the applicable regulations, rules and procedures of Deriv/SERV, is intended to result (1) where (x) applies, in a corresponding Electronic Notice being created by Deriv/SERV and delivered (or if such corresponding Electronic Notice is not created and delivered, it shall be deemed to have been created and delivered) on behalf of the Clearing House to the other party in the Matched Pair in respect of the Matched CDS Seller Contract or Matched CDS Buyer Contract, as applicable, and (2) where (y) applies, in an Electronic Notice being simultaneously delivered also to the Clearing House, through the DTCC Process, in respect of the related CDS Contract and in a corresponding Electronic Notice being created by Deriv/SERV and delivered (or if such corresponding Electronic Notice is not created and delivered, it shall be deemed to have been created and delivered) on behalf of the Clearing House to the other party in the Matched Pair in respect of the Matched CDS Seller Contract or Matched CDS Buyer Contract, as applicable. Where a CDS Clearing Member or Sponsor receives (or has been deemed to receive) such an Electronic Notice from the Clearing House in respect of a CDS Contract recorded in a Customer Account, the relevant Customer will be deemed to have received the same Electronic Notice in respect of the relevant CDS Contract, where it is a Customer of an FCM/BD Clearing Member or is a Sponsored Principal, or an equivalent Electronic Notice from the relevant CDS Clearing Member in respect of the related Customer-CM CDS Transaction where it is a Customer (other than a Sponsored Principal) of a Non-FCM/BD Clearing Member. Where a Non-FCM/BD CDS Clearing Member delivers such an Electronic Notice to the Clearing House in respect of a CDS Contract recorded in its Customer Account, an equivalent Electronic Notice will be deemed to have been delivered at the same time by the relevant Customer to such CDS Clearing Member in respect of the related Customer-CM CDS Transaction or by the relevant Sponsored Principal to the Clearing House in respect of such CDS Contract.

The time of delivery of both such Electronic Notices in respect of both the Matched CDS Buyer Contract and Matched CDS Seller Contract which are the subject of the same Matched Pair shall be deemed to be the same and shall be the time that DTCC records as being the time at which the first Electronic Notice was processed. An Electronic Notice which is or is deemed to be validly delivered in accordance with these CDS Procedures shall be treated as valid delivery of a Restructuring Credit Event Notice or Notice to Exercise Movement Option for purposes of the Applicable Credit Derivatives Definitions and Contract Terms of the relevant CDS Contract and any related Customer-CM CDS Transaction.

- (iii) If, but only if, the Clearing House has received, before the end of the relevant Triggering Period, either (A) the notice required under paragraph 6.3(f)(v)(B)(2) from any CDS Clearing Member or (B) a notification of a DTCC Failure, as referred to in paragraph 6.3(f)(vi), then, by 6:00 p.m. on the day of such notice or notification and each subsequent day of the relevant Triggering Period, the Clearing House will provide Matched CDS Buyers and Matched CDS Sellers with a report containing details of Electronic Notices that have been delivered by or to it, with a separate report or combined report also including details of any Manual MP Notices that have been delivered by or to it and notified to the Clearing House. Without prejudice to the generality of paragraph 6.3(f)(x), if the contents of any such report are disputed, paragraph 6.3(g)(iv) applies.
- (iv) At the end of each Triggering Period, the Clearing House will, where such records have not already been adjusted to the following effect by DTCC, adjust the records in the DTCC Accounts of the Matched CDS Contracts (and any related Customer-CM CDS Transactions) to which the RMPs relate to reflect any Restructuring Credit Event Notices and Notices to Exercise Movement Option (and the consequences of such notices) delivered during the relevant Triggering Period, including: (A) where appropriate, sub-dividing such Matched CDS Contracts (and any related Customer-CM CDS Transactions) to reflect Triggered Restructuring CDS Contract Portions; and (B) taking such steps as are necessary for Triggered Restructuring CDS Contract Portions for which the relevant Restructuring Credit Event Notices and Notices to Exercise Movement Option (if any) that were delivered through the Manual Notice Process or Electronic Notice Process settle through the same processes. To the extent that the Clearing House adjusts any records in the DTCC Accounts at the end of the CEN Triggering Period applicable to the CDS Buyer, the Clearing House will update the RMP Matched Table to reflect such adjustments.
- (v) Rights and obligations to use the Manual Notice Process.
  - (A) In addition to the circumstances set out in paragraph 6.3(f)(vi), a CDS Clearing Member or Sponsored Principal who gives notice under this paragraph 6.3(f)(v) (a "**Manual Notifier**") (but not, for the avoidance of doubt, any Customer other than a Sponsored Principal in respect of an Individually Segregated Sponsored Account) shall be entitled to deliver Restructuring Credit Event Notices and Notices to Exercise Movement Option pursuant to the Manual Notice Process only if it is affected by a significant communications or information technology failure resulting in it being impossible or impractical for such CDS Clearing Member or Sponsored Principal to deliver all or substantially all Restructuring Credit Event Notices or Notices to Exercise Movement Option (as applicable) in accordance with the Electronic Notice Process on the last day of the relevant NEMO Triggering Period or CEN Triggering Period applicable to it as protection buyer or protection seller.

As between a CDS Clearing Member and its Customer (if any), the delivery or receipt by that CDS Clearing Member to or from the Clearing House of a Restructuring Credit Event Notice or a Notice to Exercise Movement Option in respect of a CDS Contract recorded in its Customer Account shall have the same effect as though such CDS Clearing Member had delivered or received, to or from the Clearing House, an Electronic Notice of the same under paragraph 6.3(f)(ii).

- (B) If a Manual Notifier delivers any Restructuring Credit Event Notice or Notice to Exercise Movement Option (as applicable) in accordance with the Manual Notice Process, then:
- (1) it will be deemed to represent to the Clearing House that it is affected by a significant communications or information technology failure resulting in it being impossible or impractical for such Manual Notifier to deliver all or substantially all Restructuring Credit Event Notices or Notices to Exercise Movement Option (as applicable) in accordance with the Electronic Notice Process;
  - (2) it must deliver a notice, in or substantially in the form provided by the Clearing House on the Clearing Member-accessible section of its website for such purpose, signed by a senior officer (such as managing director or equivalent) of such Manual Notifier to the Clearing House, certifying only that it is affected by a significant communications or information technology failure resulting in it being impossible or impractical for it to deliver all or substantially all Restructuring Credit Event Notices or Notices to Exercise Movement Option (as applicable) in accordance with the Electronic Notice Process and that it has delivered one or more Restructuring Credit Event Notices or Notices to Exercise Movement Option (as applicable) in accordance with the Manual Notice Process, such notice to be delivered promptly and, in any event, within 1 hour of such Manual Notifier first so delivering a Restructuring Credit Event Notice or Notice to Exercise Movement Option in respect of any Relevant Restructuring Credit Event (but the Manual Notifier shall not be required to provide a copy of any Restructuring Credit Event Notices or Notices to Exercise Movement Option (as applicable) until the time specified in paragraph 6.3(g));
  - (3) the Clearing House will (x) publish a Circular as soon as reasonably practicable after receiving a notice pursuant to paragraph 6.3(f)(v)(B)(2) which will name the Manual Notifier involved, refer to such Manual Notifier as having been subject to a significant communications or information technology failure and specify any amended timelines applicable for the processing of the Relevant Restructuring Credit Event in question and (y) notify all CDS Clearing Members and Sponsored Principals with Open Contract Positions in the relevant Set of the name of the Manual Notifier by fax or e-mail within 1 hour;
  - (4) the Manual Notifier must use reasonable endeavours to mitigate the effects on other CDS Clearing Members and Customers and the Clearing House of it using the Manual Notice Process, with reference to the principle that it is operationally simpler for all CDS Clearing Members and Customers to use the Electronic Notice Process and shall use reasonable endeavours to minimise the

number of notices it delivers pursuant to the Manual Notice Process;

- (5) the Manual Notifier must revert to using the Electronic Notice Process (and cease using the Manual Notice Process) as soon as reasonably practicable;
  - (6) the Manual Notifier must take reasonable endeavours to ensure that the communications or information technology issue does not recur; and
  - (7) if a separate significant communications or information technology failure occurs affecting the same or another CDS Clearing Member or Sponsored Principal in respect of the same Relevant Restructuring Credit Event, this paragraph 6.3(f)(v) shall apply in full in respect of that separate failure.
- (C) Where, as a consequence of a Restructuring Credit Event Notice being delivered pursuant to the Manual Notice Process, the records of the relevant Triggered Restructuring CDS Contract Portion(s) in the DTCC Accounts are not the same as the records thereof held by the Clearing House: (1) the Clearing House and Matched CDS Buyer and Matched CDS Seller or, if applicable, the relevant CDS Clearing Member and the relevant Customer or, if applicable, the relevant Sponsor and Sponsored Principal will use all reasonable endeavours to reconcile the records as soon as possible; and (2) if agreement as to such reconciliation has not been reached within two Business Days of the Clearing House first notifying the Matched CDS Buyers and Matched CDS Seller involved of the inconsistency between the two sets of records, the matters will be resolved as disputes between the Clearing House and each of the Matched CDS Buyer and Matched CDS Seller in accordance with paragraph 6.3(g)(ix) to 6.3(g)(xii).
- (D) Any CDS Clearing Member (and any relevant Sponsored Principal, Sponsor or Customer) in a Restructuring Matched Pair with a Manual Notifier must continue to use the Electronic Notice Process unless this paragraph 6.3(f)(v) separately applies to it. For the avoidance of doubt, and without prejudice to the Clearing House's rights under Part 10 of the Rules or for breach of contract or misrepresentation, any breach by a CDS Clearing Member, Sponsored Principal, Sponsor or Customer of the provisions of this paragraph 6.3(f)(v) shall not cause any Restructuring Credit Event Notice or Notice to Exercise Movement Option delivered otherwise in accordance with the Contract Terms to be invalid or ineffective.
- (vi) If DTCC notifies the Clearing House that there has been a DTCC Failure:
- (A) the Clearing House will (1) publish a Circular as soon as reasonably practicable after receiving such notice stating that a DTCC Failure has occurred, specifying a time (the "**DTCC Failure Time**") at which such DTCC Failure occurred and which may specify any amended timelines applicable for the processing of the Relevant Restructuring Credit Event in question and (2) notify all Matched CDS Buyers and Matched CDS Sellers of the DTCC Failure by fax or e-mail within 1 hour;
  - (B) from and including the DTCC Failure Time to but excluding the DTCC Resolution Time (as defined below), the Electronic Notice Process shall cease to be applicable and Matched CDS Buyers and Matched CDS Sellers

may only deliver and receive Restructuring Credit Event Notices and Notices to Exercise Movement Option (as applicable) in respect of a Matched CDS Contract in accordance with the Manual Notice Process;

- (C) the validity of any Restructuring Credit Event Notices and Notices to Exercise Movement Option (as applicable) delivered in accordance with the Electronic Notice Process prior to the DTCC Failure Time will not be affected by the DTCC Failure; and
- (D) all Restructuring Credit Event Notices and Notices to Exercise Movement Option (as applicable) delivered or purported to be delivered in accordance with the Electronic Notice Process at or after the DTCC Failure Time to but excluding the DTCC Resolution Time will not be valid.

If, subsequent to a DTCC Failure, DTCC notifies the Clearing House that the DTCC Failure is no longer in effect:

- (1) the Clearing House will (x) publish a Circular as soon as reasonably practicable after receiving such notice stating the DTCC Failure is no longer in effect and specifying the time at which the Electronic Notice Process is to become available (the "**DTCC Resolution Time**") which time must be at least 30 minutes following the time of publication of the Circular but may be as late as 9 a.m. on a Business Day following the date of the Circular and (y) notify all Matched CDS Buyers and Matched CDS Sellers of the same by fax or e-mail within 1 hour; and
  - (2) subject to paragraph 6.3(f)(v), as from the DTCC Resolution Time, Matched CDS Buyers and Matched CDS Sellers must cease delivering Restructuring Credit Event Notices and Notices to Exercise Movement Option (as applicable) pursuant to the Manual Notice Process and must instead deliver Restructuring Credit Event Notices and Notices to Exercise Movement Option (as applicable) in accordance with the Electronic Notice Process.
- (vii) If a Restructuring Credit Event Notice or Notice to Exercise Movement Option is delivered between a Matched Pair in accordance with the Electronic Notice Process and a separate Restructuring Credit Event Notice or Notice to Exercise Movement Option is delivered as between the same Matched Pair in accordance with the Manual Notice Process, then, subject to paragraph 6.3(f)(viii), the validity or priority of any such Restructuring Credit Event Notice or Notice to Exercise Movement Option in the event of any conflict will be determined in accordance with the Contract Terms.
  - (viii) If the Manual Notice Process is applicable, and a Matched CDS Buyer or Matched CDS Seller is uncertain as to whether or not a Restructuring Credit Event Notice or Notice to Exercise Movement Option (as applicable) that it or its Customer (if any) attempted to deliver under the Electronic Notice Process has actually been delivered, or was delivered prior to the DTCC Failure Time, the Matched CDS Buyer or Matched CDS Seller shall be entitled to deliver a Restructuring Credit Event Notice or Notice to Exercise Movement Option (as applicable) pursuant to the Manual Notice Process to its Restructuring Matched Pair (copied to the Clearing House) specifying that such Restructuring Credit Event Notice or Notice to Exercise Movement Option (as applicable) is only to be effective to the extent that the other purported notice was not effective, provided that sufficient details are included of the notice attempted to be made under the Electronic Notice Process to allow the other party to the Restructuring Matched Pair and the Clearing House to identify the



communications concerned. If the first Restructuring Credit Event Notice or Notice to Exercise Movement Option (as applicable) to which the attempted delivery related was actually delivered, then any subsequent Restructuring Credit Event Notice or Notice to Exercise Movement Option delivered in accordance with the requirements of this paragraph 6.3(f)(viii) shall be treated as not having been delivered.

- (ix) If any Restructuring Credit Event Notice or Notice to Exercise Movement Option (as applicable) is delivered pursuant to the Manual Notice Process, neither CDS Clearing Members, Sponsors, Sponsored Principals nor Customers shall re-enter details of that Restructuring Credit Event Notice or Notice to Exercise Movement Option (as applicable) pursuant to the Electronic Notice Process (without prejudice to the obligation of Matched CDS Buyers and Matched CDS Sellers to reflect such notices pursuant to the "Notify" function made available by Deriv/SERV). Any delivery of a second Restructuring Credit Event Notice in such a manner shall be treated as delivery of an additional and separate Restructuring Credit Event Notice pursuant to the Electronic Notice Process. Any delivery of a second Notice to Exercise Movement Option for the same Triggered Restructuring CDS Contract Portion in such a manner shall be disregarded.
- (x) Paragraphs 6.3(g)(iv), (ix), (x), (xi), (xii) and (xiii) (in the latter case in relation to disputes falling under paragraph 6.3(g)(viii)(B) only) shall apply to notices delivered pursuant to the Electronic Notice Process in the same way as such paragraphs apply to notices under the Manual Notice Process.
- (xi) For the avoidance of doubt, the Electronic Notice Process does not apply to Notices of Physical Settlement, NOPS Amendment Notices or Asset Package Delivery Notices.

(g) Manual Notice Process.

Matched CDS Buyers and Matched CDS Sellers must only use the Manual Notice Process to deliver (1) MP Notices that are Restructuring Credit Event Notices and Notices to Exercise Movement Option where permitted by paragraphs 6.3(f)(v) or 6.3(f)(vi); (2) Notices to Exercise Movement Option where permitted by paragraph 6.3(g)(xi); and (3) Notices of Physical Settlement, NOPS Amendment Notices and Asset Package Delivery Notices. A Restructuring Credit Event Notice or Notice to Exercise Movement Option delivered other than by the Electronic Notice Process will only be valid and effective if (x) it is, or is substantially, in the form (or in the case of a telephone notice, contains the information required by the form) provided by the Clearing House on the section of its website accessible to Clearing Members for such purpose and (y) it is delivered by fax, e-mail or telephone to the relevant contact address or number specified in accordance with paragraph 6.2(b). Notices of Physical Settlement, NOPS Amendment Notices and any Asset Package Delivery Notice between a Matched CDS Buyer and Matched CDS Seller in a Matched Pair pursuant to Rule 1509 may be delivered in any manner permitted for delivery of such notice in accordance with the terms of the CDS Contract and will only be valid and effective if delivered to the relevant contact address, fax number, telephone number or e-mail address provided in accordance with paragraph 6.2(b) (or as otherwise agreed between the parties in the Matched Pair and the Clearing House). Notwithstanding any provision of the terms of the CDS Contract, any notice under a Matched CDS Contract which is required to be copied or given to the Clearing House in accordance with the Rules must be copied or given to the Clearing House in writing or in any other manner permitted by the Clearing House. Only a Matched CDS Buyer or Matched CDS Seller may deliver a Manual MP Notice to the Clearing House.

On each day on which a Manual MP Notice is served:

- (i) Each Manual MP Notice shall be effective, subject to this paragraph 6.3(g) and, in respect of a 2003-type CDS Contract, Section 1.10 of the 2003 Credit Derivatives Definitions or, in respect of a 2014-type CDS Contract, Section 1.38 of the 2014 Credit Derivatives Definitions. Rule 1509 applies in full in respect of each Manual MP Notice.
- (ii) Each Matched CDS Buyer or Matched CDS Seller in receipt of a Manual MP Notice or which has served a Manual MP Notice shall deliver a copy of such Manual MP Notice (if it was a written notice) or a written memorandum of such Manual MP Notice (if it was oral) to the Clearing House at or prior to 5:00 p.m. on the day on which the Manual MP Notice was served or purported to be served. Any memorandum of a notice given by telephone must be in the same form as a written notice.
- (iii) The Clearing House shall deliver copies of each copy or memorandum of a Manual MP Notice received by it under and in accordance with paragraph 6.3(g)(ii) to both Matched CDS Buyer and Matched CDS Seller in each relevant Matched Pair at or prior to 6:00 p.m. on the day on which the copy or memorandum was delivered to it.
- (iv) If a Matched CDS Buyer or Matched CDS Seller wishes to dispute any Manual MP Notice of which a copy or a memorandum was delivered to it by the Clearing House under paragraph 6.3(g)(iii), or, to the extent that this paragraph 6.3(g)(iv) is applicable pursuant to paragraph 6.3(f)(x), wishes to dispute a Restructuring Credit Event Notice or Notice to Exercise Movement Option referred to in a report under paragraph 6.3(f)(ii), that Matched CDS Buyer or Matched CDS Seller must inform the Clearing House of the existence of the dispute prior to the Notification Cut-off Time, and will use reasonable endeavours to inform the Clearing House within 1 hour of the time at which the report, copy or memorandum (in which the disputed notice is referred to) is first delivered to it by the Clearing House.
- (v) Subject to paragraph 6.3(g)(ix) below, neither the failure of any CDS Clearing Member to deliver a copy or memorandum of a Manual MP Notice to the Clearing House nor the failure of the Clearing House to deliver a copy or memorandum of a Manual MP Notice to any Matched CDS Buyer or Matched CDS Seller of itself shall result in any notice under a CDS Contract being invalid.
- (vi) Notwithstanding any breach of paragraph 6.3(g)(ii) and without prejudice to any liabilities resulting from such breach, a Matched CDS Buyer or Matched CDS Seller shall inform the Clearing House as soon as practicable upon becoming aware that a copy or memorandum of any Manual MP Notice was not delivered to the Clearing House on time, providing a copy or memorandum of such Manual MP Notice.
- (vii) To the extent that they are able to do so, the Matched CDS Buyer and Matched CDS Seller in a Restructuring Matched Pair where one has delivered to the other a Restructuring Credit Event Notice or a Notice to Exercise Movement Option pursuant to the Manual Notice Process shall reflect the delivery and receipt of such notices using the "Notify" function provided by Deriv/SERV.
- (viii) Where neither the Matched CDS Buyer nor the Matched CDS Seller in a Matched Pair delivers a copy or memorandum of a Manual MP Notice to the Clearing House until after the Notification Cut-off Time;
  - (A) if such Matched CDS Buyer and Matched CDS Seller do not dispute that such notice was delivered between themselves correctly in accordance with the Contract Terms (excluding this paragraph 6.3(g)), the Matched CDS Buyer and Matched CDS Seller may either agree to settle directly with each

other under Rule 1514 (CDS Alternative Delivery or Settlement Procedure, read for purposes of this paragraph 6.3(g)(viii)(A) only as if Rule 1514 applied to auction and cash settlement in addition to physical settlement) or, without such agreement, pursue a claim against each other in accordance with paragraphs 6.3(g)(ix) to 6.3(g)(xiii); and

- (B) if such Matched CDS Buyer and Matched CDS Seller do dispute that such notice was delivered between themselves correctly in accordance with the Contract Terms (excluding this paragraph 6.3(g)), paragraphs 6.3(g)(ix) to 6.3(g)(xiii) shall apply.
- (ix) Any dispute between any Matched CDS Buyer and Matched CDS Seller or between any Matched CDS Buyer or Matched CDS Seller and the Clearing House in relation to the effectiveness of any MP Notice or the issue of whether any MP Notice was served shall be resolved by arbitration under Rule 117. The Matched CDS Buyer and Matched CDS Seller and the Clearing House shall each be deemed to agree to joinder of any separate arbitrations under Rule 117 between either of Matched CDS Buyer or Matched CDS Seller in the Matched Pair and the Clearing House.
- (x) Until such time as any dispute concerning an MP Notice is resolved, the Clearing House shall be entitled to calculate Margin requirements for each of the Matched CDS Buyer or Matched CDS Seller based on the maximum Margin requirement for each of the Matched CDS Buyer or Matched CDS Seller that could result, in the opinion of the Clearing House, from any reasonably foreseeable outcome of any such dispute.
- (xi) Unless and until such time as any dispute concerning an MP Notice is resolved, neither the Clearing House nor any Clearing Member, Sponsor or Sponsored Principal in respect of a Customer-CM CDS Transaction shall be obliged to take any step that would have been required of it were the MP Notice to have been validly served. If any matter relating to a Restructuring Credit Event Notice (or alleged Restructuring Credit Event Notice) is disputed, then any Notice to Exercise Movement Option or purported Notice to Exercise Movement Option in relation to the CDS Contract under dispute may only be delivered pursuant to the Manual Notice Process. In such instances, the preconditions to using the Manual Notice Process (other than those set out in this paragraph 6.3(g)(xi)) and other requirements set out in paragraph 6.3(f)(v) shall not apply.
- (xii) Upon the rendering of a final decision pursuant to such arbitration, the Clearing House and the relevant Matched CDS Buyer and Matched CDS Seller shall take such actions with respect to the disputed CDS Contract as the Clearing House determines appropriate to give effect to such decision, which may include, without limitation, effecting settlement pursuant to the Transaction Auction Settlement Terms or relevant Parallel Auction Settlement Terms (if any) and termination of the related CDS Contract, creating, decreasing or increasing the parties' Open Contract Positions, paying any accrued but unpaid Fixed Amounts and/or recalculating the parties' Margin requirements, and the Matched CDS Buyer and Matched CDS Seller shall perform their respective obligations in accordance with the Clearing House's determinations. Notwithstanding anything to the contrary herein or in any decision pursuant to such arbitration, the Clearing House shall not be obligated to take any other action nor shall the Clearing House be liable for any other damages, including, without limitation, punitive damages, consequential damages, incidental damages, lost profits, attorney's fees or other costs or pre- or post-judgment interest. Any other action or damages required by any such decision shall be the direct obligation of the relevant Matched CDS Buyer and Matched CDS Seller to each other, and such Matched CDS Buyer and Matched CDS Seller shall be entitled to pursue directly

against each other whatever legal remedies may be available. For the avoidance of doubt, the Clearing House shall have no liability with respect to any such legal remedies between such Matched CDS Buyer and Matched CDS Seller and the Clearing House shall have no obligation to participate in any related proceeding.

- (xiii) If the Clearing House receives notice, from either the Matched CDS Seller or Matched CDS Buyer in a Matched Pair, after the Notification Cut-Off Time, in respect of an MP Notice that:
- (A) Such MP Notice, being a Manual MP Notice, was allegedly timely delivered between the parties in such Matched Pair but a copy or memorandum thereof was not delivered to the Clearing House before the Notification Cut-Off Time; or
  - (B) Such MP Notice is under dispute as to whether it was timely delivered between the Matched CDS Buyer and Matched CDS Seller in such Matched Pair,

then the Clearing House will notify the other party in such Matched Pair as soon as reasonably practicable. Upon such notification by the Clearing House, the Matched CDS Buyer and Matched CDS Seller shall be directly liable to each other, and shall be entitled to pursue directly against each other whatever legal remedies may be available, for the difference between (x) their respective Open Contract Positions (or proceeds thereof) in the relevant CDS Contract at the Clearing House by virtue of such notice being invalid against the Clearing House (in the case of (A) above) or by virtue of the Clearing House acting based on its interpretation of the notice it received that was not timely delivered (in the case of (B) above) and (y) what such Open Contract Positions (or proceeds thereof) would have been if a copy of such allegedly valid MP Notice was validly provided to and given effect by the Clearing House at the time, if any, such MP Notice was validly delivered between the parties to the Matched Pair. For the purpose only of pursuing any such legal remedies for the difference between (x) and (y), the Matched CDS Buyer and the Matched CDS Seller shall be entitled to enforce the terms of their respective CDS Contracts against each other as if each of them were the counterparty to the other in place of the Clearing House, including the right to have the dispute settled pursuant to arbitration under Rule 117. With respect to the determination of such legal remedies, the validity of any allegedly valid MP Notice as between the relevant Matched CDS Buyer and Matched CDS Seller shall be unaffected by whether or not such notice is valid against the Clearing House. For the avoidance of doubt, but without prejudice to any liability or obligation of the Clearing House, the Clearing House shall have no liability with respect to any such MP Notice a copy of which was not timely and properly delivered to the Clearing House or a dispute with respect to which was not timely and properly notified to the Clearing House, including, without limitation, with respect to any such legal remedies between the Matched CDS Buyer and Matched CDS Seller, and the Clearing House shall have no obligation to participate in any related proceeding.

#### 6.4 **Delivery of Non DVP Obligations and Physical Settlement Amounts:**

The following deadlines apply for the delivery of Non DVP Obligations and Physical Settlement Amounts for purposes of Rule 1510:

- (a) The Matched CDS Buyer shall notify the Clearing House under Rule 1510(a)(i) of readiness to deliver at or prior to 4:30 p.m. on the Business Day prior to the date on which Delivery is

scheduled to occur. In such notice, the Matched CDS Buyer shall also specify the amount of any expenses to be payable to the Matched CDS Buyer under Section 9.2(c)(vi) of the 2003 Credit Derivatives Definitions or Section 11.2(c)(vi) of the 2014 Credit Derivatives Definitions, as applicable.

- (b) The Clearing House shall notify the Matched CDS Seller under Rule 1510(a)(ii) of its obligation to pay the Clearing House the Physical Settlement Amount in respect of the relevant Non DVP MP Amount and any amounts in respect of expenses notified by the CDS Buyer pursuant to a request for payment through "ECS" as defined in and in accordance with the Finance Procedures. Pursuant to the Finance Procedures, such a request for payment would standardly occur during the evening of the Business Day, or before 8 a.m. on the Business Day following the Business Day, after receipt of the notice referred to in Rule 1510(a)(i) and paragraph 6.4(a).
- (c) The Matched CDS Seller shall pay the Clearing House under Rule 1510(a)(iii) such amounts as are due pursuant to the payment requested through ECS pursuant to the Finance Procedures. Pursuant to the Finance Procedures, payment would standardly be due and payable at 9:00 a.m. on the Business Day immediately following the date on which the Matched CDS Buyer notified the Clearing House of its readiness to deliver under Rule 1510(a)(i) and paragraph 6.4(a), provided that the request for payment through ECS had occurred in a timely manner in accordance with paragraph 6.4(b).
- (d) The Clearing House shall notify the Matched CDS Buyer under Rule 1510(a)(iv) that it has received payment at or prior to 4:30 p.m. on the same Business Day as the Clearing House receives payment under Rule 1510(a)(iii), provided that payment is received by the Clearing House at or prior to 9:00 a.m. on the same Business Day as described in paragraph 6.4(c).
- (e) The Delivery Period shall be three Business Days starting on the date following receipt by the CDS Buyer of the notice referred to in Rule 1510(a)(iv) and paragraph 6.4(d) (exclusive of the date of receipt of such notice).
- (f) The Matched CDS Seller shall notify the Clearing House under Rule 1510(a)(vi) that Delivery has occurred by 4:30 p.m. on the same Business Day on which the Matched CDS Seller receives Delivery of the relevant Deliverable Obligations. Notices received after 4:30 p.m. will be deemed received on the next following Business Day, unless the Clearing House agrees otherwise.
- (g) The Clearing House shall be obliged to pay the Physical Settlement Amount (or, where the Matched CDS Seller notified the Clearing House of Delivery in part only, an amount equal to the Delivered Percentage of the Physical Settlement Amount) in respect of the relevant Non DVP MP Amount and any expenses due to the CDS Buyer under Section 9.2(c)(vi) of the 2003 Credit Derivatives Definitions or Section 11.2(c)(vi) of the 2014 Credit Derivatives Definitions, as applicable, through payments or transfers through ECS in accordance with the Finance Procedures. Pursuant to the Finance Procedures, payment would standardly be due and payable at 9:00 a.m. on the Business Day following the Business Day on which the Clearing House receives the notice referred to in Rule 1510(a)(vi) and paragraph 6.4(f).
- (h) The first date on which the Matched CDS Seller may serve notice on the Clearing House under Rule 1510(a)(viii) requesting the Clearing House to repay the Physical Settlement Amount in respect of the Non DVP MP Amount, less the Delivered Percentage of such Physical Settlement Amount, is the first Business Day following the end of the Delivery Period.

## 6.5 Disputes Relating to Deliverable Obligations

- (a) Prior to accepting Delivery of a particular obligation pursuant to a Notice of Physical Settlement or NOPS Amendment Notice or, pursuant to an Asset Package Delivery Notice, of a particular Asset Package in lieu of any Prior Deliverable Obligation or Package Observable Bond specified in the Notice of Physical Settlement or NOPS Amendment Notice, a CDS Seller may challenge whether the obligation, Prior Deliverable Obligation or Package Observable Bond, as the case may be, is a Deliverable Obligation or, as applicable, a Permitted Deliverable Obligation under the terms of a Matched CDS Contract, unless the obligation, Prior Deliverable Obligation or Package Observable Bond is listed and remains listed as a Deliverable Obligation or, as applicable, a Permitted Deliverable Obligation in the Final List of Deliverable Obligations which is applicable to that Matched CDS Contract as of the applicable Delivery Date for such Deliverable Obligation. A challenge may only be made to the relevant Credit Derivatives Determinations Committee pursuant to paragraph 3.3(d) of the DC Rules.
- (b) Subject to paragraph 6.5(c), any CDS Seller may refuse to accept Delivery of a particular obligation or Asset Package pursuant to a Notice of Physical Settlement or NOPS Amendment Notice or Asset Package Delivery Notice, as the case may be, if any challenge (as referred to in paragraph 6.5(a)) has been made by that CDS Seller (or any other Person that is a CDS Seller in relation to CDS Contracts of the same Set) as to whether the obligation or relevant Prior Deliverable Obligation or Package Observable Bond, as the case may be, is a Deliverable Obligation or, as applicable, a Permitted Deliverable Obligation under the terms of the CDS Contract, until such time as the relevant Credit Derivatives Determinations Committee Resolves and announces that such obligation, Prior Deliverable Obligation or Package Observable Bond, as the case may be, is a Deliverable Obligation or, as applicable, a Permitted Deliverable Obligation under the terms of the CDS Contract, provided that if the obligation, Prior Deliverable Obligation or Package Observable Bond, as the case may be, is listed and remains listed as a Deliverable Obligation or, as applicable, a Permitted Deliverable Obligation in the Final List of Deliverable Obligations which is applicable to that CDS Contract as of the applicable Delivery Date for such Deliverable Obligation or, as applicable, Permitted Deliverable Obligation, no such challenge may delay the acceptance by the CDS Seller of Delivery of such obligation or Asset Package, as the case may be.
- (c) Any Matched CDS Seller proposing to refuse to accept Delivery as referred to in paragraph 6.5(b) must give notice forthwith to the Clearing House and to the Matched CDS Buyer in the relevant Matched Pair, specifying the Matched CDS Contracts to which the refusal relates. Delivery of such notice by the Matched CDS Buyer to the Matched CDS Seller shall constitute notice from the Clearing House to the Matched CDS Buyer of the Clearing House's refusal to accept Delivery of the relevant obligation.
- (d) As they relate to an obligation for which a challenge has been presented (as referred to in paragraph 6.5(a)) as to whether the obligation is (i) a Deliverable Obligation or, as applicable, a Permitted Deliverable Obligation under the terms of a CDS Contract, unless the obligation is listed and remains listed as a Deliverable Obligation or, as applicable, a Permitted Deliverable Obligation in the Final List of Deliverable Obligations or (ii) as applicable, a Permitted Deliverable Obligation which is applicable to that CDS Contract as of the applicable Delivery Date for such Deliverable Obligation or, as applicable, Permitted Deliverable Obligation, time periods and related rights and remedies relating to settlement, for example, under Sections 9.9 and 9.10 of the 2003 Credit Derivatives Definitions or Sections 9.7 and 9.8 of the 2014 Credit Derivatives Definitions and any applicable cap on settlement, shall be suspended for the period commencing on the date the challenge is first presented until the date of the relevant actual decision to Resolve (which shall be the date on which such decision is announced and determined without regard to any time of effectiveness specified in a "Presented Position", as defined in the DC Rules) or, if later, the date on which ISDA publicly announces the resolution of the relevant Credit Derivatives Determinations Committee as to whether or not such obligation is a Deliverable Obligation or, as applicable, a Permitted Deliverable Obligation under the terms of a physically settled CDS Contract.

- (e) This provision does not prevent a party from exercising any of its rights under Rule 117.

## 6.6 Physical Settlement Costs

- (a) Any payments required in relation to any costs or expenses of settlement of a Matched CDS Contract in accordance with the Fallback Settlement Method (other than the expenses referred to in paragraph 6.4) shall be made in the following manner:
- (i) where, but for this paragraph 6.6(a), any such payment would fall to be made by the Clearing House to the Matched CDS Buyer or Matched CDS Seller, as though the Matched CDS Seller or the Matched CDS Buyer in the Matched Pair (as applicable, being in any case the person in the Matched Pair to whom payment would not be due from the Clearing House) were designated by the Clearing House to make such payment on its behalf;
  - (ii) where, but for this paragraph 6.6(a), any such payment would fall to be made to the Clearing House by the Matched CDS Buyer or Matched CDS Seller, as though the Matched CDS Seller or the Matched CDS Buyer in the Matched Pair (as applicable, being in any case the person in the Matched Pair from whom payment would be due to the Clearing House) were designated by the Clearing House to receive such payment on its behalf;
  - (iii) where a Matched CDS Seller or Matched CDS Buyer is designated to make payment pursuant to Rule 1509 and this paragraph 6.6(a) and makes a relevant payment direct to the other party in the Matched Pair, the party that made payment shall not be entitled to any reimbursement from the Clearing House in respect of the payment (without prejudice to any rights of any Matched CDS Seller to Matched CDS Buyer where there is a failure to Deliver); and
  - (iv) where a Matched CDS Seller or Matched CDS Buyer is designated to receive a payment pursuant to Rule 1509 and this paragraph 6.6(a) and receives a payment direct from the other party in the Matched Pair, the party that received payment shall not be obliged to remit any amount in respect of such payment to the Clearing House (without prejudice to any rights of the Clearing House where there is a failure to Deliver).
- (b) In relation to Non DVP Obligations, the Matched CDS Seller shall be liable to pay to the Clearing House, as referred to in paragraph 6.4(b), the amount of any expenses due to the Matched CDS Buyer pursuant to Section 9.2(c)(vi) of the 2003 Credit Derivatives Definitions, or Section 11.2(c)(vi) of the 2014 Credit Derivatives Definitions, as applicable as notified to the Clearing House by the Matched CDS Buyer as referred to in paragraph 6.4(a).
- (c) For the avoidance of doubt, the Clearing House shall not be liable to a CDS Buyer or CDS Seller for any of the costs and expenses of settlement of the CDS Buyer or CDS Seller, other than as set out in paragraphs 6.4(g) and 6.6(b).
- (d) If the Clearing House incurs actual costs or expenses of settlement in respect of a Matched CDS Contract, the Matched CDS Seller or the Matched CDS Buyer in the Matched Pair (as applicable, being in any case the person in the Matched Pair that would incur or be liable for such costs or expenses were the Matched Pair to have been a CDS transaction between the Matched CDS Seller and the Matched CDS Buyer) shall be liable to reimburse the Clearing House in respect of such costs or expenses.

## 6.7 Margin in relation to Physical Settlement

- (a) Initial Margin, Mark-to-Market Margin and Physical Settlement Margin shall continue to be called and payable in relation to any CDS Contract or Component Transaction which is to be settled in accordance with the Fallback Settlement Method except to the extent that: (i) the Physical Settlement Amount has been paid to the Clearing House in accordance with Rule 301(f) and the Finance Procedures and not returned to the CDS Seller as referred to in Rule 1510 and paragraph 6.4; or (ii) the Physical Settlement Amount has been paid to the relevant CDS Buyer or CDS Seller as designee of the Clearing House and such designee has notified the Clearing House that physical settlement is complete in accordance with Rule 1511.
- (b) Where any Physical Settlement Amount is payable to the Clearing House by a CDS Seller, the Clearing House acknowledges and agrees that, in accordance with Rules 302 and 303, it will apply any Margin or other available funds on account in order to satisfy the obligation to pay the Physical Settlement Amount and shall only call the CDS Seller for additional cash to the extent that relevant Margin is less than the Physical Settlement Amount.
- (c) Margin transferred to the Clearing House by a Matched CDS Buyer or Matched CDS Seller shall cease to be payable by a Matched CDS Buyer or Matched CDS Seller (and shall be released by the Clearing House) in respect of any CDS Contract after the time at which the Matched CDS Buyer or Matched CDS Seller has notified the Clearing House in accordance with Rule 1511 that settlement has, so far as it is aware, occurred successfully.

#### 6.8 CDS Alternative Delivery or Settlement Procedure

- (a) CADP Notices received by the Clearing House after 15:00 hours will be deemed to have been received on the next Business Day.
- (b) CADP Notices must be submitted in the form published by the Clearing House from time to time.

#### 7. CLEARED CDS PRODUCTS: ELIGIBLE SETS

- 7.1 The index series in respect of which CDS Contracts are eligible for Clearing are as notified from time to time by the Clearing House by Circular. Each index series with an identical maturity and name will initially form a Set.
- 7.2 The Clearing House may add to, amend or make deletions from the list of index series for CDS Contracts eligible for Clearing by issuing a Circular. Any such addition, amendment or deletion, other than the updating of any index series following the occurrence of an Applicable Credit Event or Succession Event, shall be made following consultation with the CDS Risk Committee, by issuing a further Circular, provided that the Clearing House shall not be required to consult in advance with the CDS Risk Committee for a deletion or suspension of a Set from such list in circumstances in which issuance of an Acceptance Notice in respect of CDS Trade Particulars or Clearing of CDS Contracts referring to such Set would be in breach of a restriction made under the Short Selling Regulation or of any other Applicable Law.
- 7.3 CDS Contracts on certain single names are eligible for Clearing, as set out in Circulars published by the Clearing House from time to time, each item mentioned as eligible in any such Circular initially forming a Set. The Clearing House may add to, amend or make deletions from such list, following consultation with the CDS Risk Committee, by issuing a further Circular, provided that the Clearing House shall not be required to consult in advance with the CDS Risk Committee for a deletion or suspension of a Set from such list in circumstances in which issuance of an Acceptance Notice in respect of CDS Trade Particulars or Clearing of CDS Contracts referring to such Set would be in breach of a restriction made under the Short Selling Regulation or of any other Applicable Law.
- 7.4 CDS Contracts in relation to an index series comprise a number of separate Component Transactions, each of which may, subject to the Rules and Procedures, be a 2003-type CDS Contract or a 2014-type



CDS Contract. Where there is a distinction in the application of the Rules and Procedures or the Applicable Credit Derivatives Definitions as between a 2003-type CDS Contract and a 2014-type CDS Contract, the Rules and Procedures shall apply separately to each such Component Transaction that is a 2003-type CDS Contract or a 2014-type CDS Contract, respectively.

## 8. CONTRACT TERMS FOR ALL CDS CONTRACTS

8.1 This paragraph 8 specifies additional Contract Terms applicable to all CDS Contracts cleared by the Clearing House to which the Applicable Credit Derivatives Definitions apply by virtue of the Contract Terms:

- (a) Subject to Rule 109, if a Convened DC (as defined in the DC Rules) resolves, pursuant to Section 3.8(a) of the DC Rules: (i) a question of interpretation regarding the provisions of the “**July 2009 Protocol**” (as defined in the DC Rules); or (ii) to make any amendments to Schedule 1 of the July 2009 Protocol, in each case that affects a 2003-type CDS Contract, the Clearing House shall, as promptly as practicable, make conforming changes to these CDS Procedures in order to implement such resolutions in respect of 2003-type CDS Contracts.
- (b) Any reference in a 2003-type CDS Contract to the 2003 ISDA Credit Derivatives Definitions (including any reference to the 2003 ISDA Credit Derivatives Definitions as supplemented or otherwise modified, including by incorporation of any additional provisions thereto (howsoever described) shall be deemed to be a reference to the 2003 ISDA Credit Derivatives Definitions as so supplemented and as further supplemented by the July 2009 Supplement.
- (c) With respect to:
  - (i) any 2003-type CDS Contract, Section 1.8(a)(ii)(A)(I)(3)(y) of the 2003 Credit Derivatives Definitions is hereby modified by replacing the term "Auction Final Price Determination Date" with the phrase "date that is one Relevant City Business Day prior to the Auction Settlement Date"; and
  - (ii) any 2014-type CDS Contract, for the purposes only of Section 1.16(a)(ii)(A)(II) of the 2014 Credit Derivatives Definitions, Section 1.17 of the 2014 Credit Derivatives Definitions is hereby modified by replacing the term "Auction Final Price Determination Date" with the phrase "date that is one Relevant City Business Day prior to the Auction Settlement Date".
- (d) Section 1.30 of the 2003 Credit Derivatives Definitions is hereby modified by replacing the term "Auction Final Price Determination Date" in clause (ii) of the last sentence thereof with the phrase "date that is one Relevant City Business Day prior to the Auction Settlement Date".
- (e) Section 4.6(d) of the Applicable Credit Derivatives Definitions is hereby modified by the deletion of "(i)" and by the deletion of the entirety of sub-section (ii) thereof.
- (f) The Settlement Method will be "Auction Settlement" and the Fallback Settlement Method will be "Physical Settlement" in accordance with paragraph 6 and the Rules.
- (g) Where a DC Credit Event Announcement has occurred in respect of a CDS Contract, neither the CDS Buyer nor any relevant Customer (if any) of the CDS Buyer may deliver a Notice of Physical Settlement, and delivery of any Notice of Physical Settlement will not be effective, until such time as the method of settlement for a particular Credit Event becomes the Fallback Settlement Method due to the occurrence of one of the events set out in, with respect to 2003-type CDS Contracts, Section 12.1 of the 2003 Credit Derivatives Definitions or, with respect to 2014-type CDS Contracts, Section 6.1 of the 2014 Credit Derivatives Definitions and, as referred to in Rule 1505(b), the Clearing House has (or, pursuant to Rule 1508, should have) notified CDS Buyers and CDS Sellers of their Matched Pairs and associated MP Amounts.

For the avoidance of doubt, the effectiveness of any Notice of Physical Settlement and obligations relating thereto is subject to the suspension and finality provisions of, in respect of any 2003-type CDS Contract, Sections 6.5 and 9.1(c)(iii) of the 2003 Credit Derivatives Definitions and, in respect of any 2014-type CDS Contract, Sections 10.1 and 10.2 of the 2014 Credit Derivatives Definitions. This is in addition to the restrictions on the delivery of a Notice of Physical Settlement set out in paragraph 6.

- (h) For the purposes of Rules 1509 and 1510 and without prejudice to the representations given by the Clearing House and Clearing Members or Sponsored Principals to one another pursuant to the Contract Terms and the Rules, with respect to any 2003-type CDS Contract, Sections 9.2(a), 9.2(b), 9.2(c)(i) and 9.2(c)(iv) of the 2003 Credit Derivatives Definitions and, with respect to any 2014-type CDS Contract, Sections 11.2(a), 11.2(b), 11.2(c)(i) and 11.2(c)(iv) of the 2014 Credit Derivatives Definitions shall apply as between the Matched CDS Buyer and the Matched CDS Seller in a Matched Pair, such Matched CDS Buyer and Matched CDS Seller thereby having rights in respect of such provisions for the purposes of the Contracts (Rights of Third Parties) Act 1999, as though they were the Buyer and Seller respectively and Section 9.2(c)(iv) of the 2003 Credit Derivatives Definitions as incorporated in any 2003-type CDS Contract and Section 11.2(c)(iv) of the 2014 Credit Derivatives Definitions as incorporated in any 2014-type CDS Contract shall be amended such that:
  - (i) where the Clearing House is the designator, it is permitted to designate any CDS Clearing Member or Sponsored Principal specified in Rule 1509 as its designee, notwithstanding that it is not an Affiliate (as defined therein);
  - (ii) the phrase "deliver or receive any Notice of Physical Settlement (or NOPS Amendment Notice or Asset Package Delivery Notice), Credit Event Notice, or Notice to Exercise Movement Option, or Deliver or take Delivery or pay or receive payment of the Physical Settlement Amount" were written in place of the phrase "Deliver or take Delivery"; and
  - (iii) the phrase "such delivery, receipt, Delivery or payment" were written in place of the phrase "such Delivery".
- (i) In respect of:
  - (i) any 2003-type CDS Contract, Sections 9.3, 9.4, 9.5 and 9.6 of the 2003 Credit Derivatives Definitions shall apply as between the relevant CDS Clearing Member or Sponsored Principal and the Clearing House; and
  - (ii) any 2014-type CDS Contract, Sections 9.1, 9.2, 9.3 and 9.4 of the 2014 Credit Derivatives Definitions shall apply as between the relevant CDS Clearing Member or Sponsored Principal and the Clearing House.
- (j) Solely for the purposes of Rules 1512 and 1513, Section 9.8(k) of the 2003 Credit Derivatives Definitions and Section 9.6(k) of the 2014 Credit Derivatives Definitions (each, for the purposes of, and as amended by, the amendment below, the "**Amended Section**") is amended by inserting the following at the beginning thereof:
  - (i) "For the purposes hereof, in addition to the requirements of Section 7.10, each firm Quotation shall:
    - (A) be for a transaction with the CDS Buyer (or its designee) (the "**Relevant Buyer**") in which the Relevant Buyer agrees to Deliver the Deliverable Obligations to the Dealer submitting the firm quotation (the "**Quoting Dealer**"), which transaction shall be governed by documentation that is consistent with market practice applicable to the sale and purchase of

Deliverable Obligations on the Valuation Date (which may be determined by the relevant Credit Derivatives Determinations Committee), including without limitation a representation that the Quoting Dealer has completed all "know your customer" or similar requirements under all applicable laws, regulations and internal compliance procedures relating to a transaction with the Relevant Buyer and on the Reference Entity;

- (B) be capable of acceptance by the Relevant Buyer (for such purposes, each firm Quotation must, inter alia, be obtained from a Dealer with whom the Relevant Buyer in its sole and absolute discretion determines that it is able in accordance with all its internal compliance and policy requirements to transact and to Deliver the Deliverable Obligations) and be open for acceptance to the relevant party for at least 30 minutes; and
- (C) be obtained on the basis that if the Relevant Buyer agrees to Deliver the Deliverable Obligations to such Quoting Dealer on the terms set forth herein, such Quoting Dealer agrees to pay the settlement amount (calculated and payable for this purpose in accordance with the relevant market standard documentation and based on the price so quoted) that would be payable for such Deliverable Obligations to the Relevant Buyer,

provided that:

- (D) if Rule 1512 applies: (I) on the same Business Day that the CDS Buyer (as if it were Calculation Agent) has attempted to obtain all Quotations that the Calculation Agent is required to attempt to obtain in accordance with the Amended Section, the CDS Buyer shall offer the Clearing House the opportunity to provide a Quotation as if the Clearing House were a Dealer in accordance with the Amended Section; and (II) if the Quotation provided by the Clearing House is higher than any Quotation obtained by the CDS Buyer (as if it were Calculation Agent) from the Dealers in accordance with the Amended Section (including, for the avoidance of doubt any Weighted Average Quotation) such Quotation shall be deemed to be the Highest Quotation and the CDS Buyer (as if it were Calculation Agent) shall use such Quotation to determine the Final Price; and
- (E) if Rule 1513(a)(ii) applies: (I) on the same Business Day that the Matched CDS Buyer (as if it were Calculation Agent) has attempted to obtain all Quotations that the Calculation Agent is required to attempt to obtain in accordance with the Amended Section, the Matched CDS Buyer shall offer the Clearing House the opportunity to provide a Quotation as if the Clearing House were a Dealer in accordance with the Amended Section; and (II) if the Quotation provided by the Clearing House is higher than any Quotation obtained by the Matched CDS Buyer (as if it were Calculation Agent) from the Dealers in accordance with the Amended Section (including, for the avoidance of doubt any Weighted Average Quotation) such Quotation shall be deemed be the Highest Quotation and the Matched CDS Buyer (as if it were Calculation Agent) shall use such Quotation to determine the Final Price.

(ii) Otherwise,".

## 8.2 The following additional provisions shall apply to all CDS Contracts:

### (a) Part 1: Obligations

- (i) General Conditions.
  - (A) Each Party will make each payment or delivery specified in each CDS Contract to be made by it, subject to the other provisions of the Rules and the provisions of the Clearing Membership Agreement or, in the case of a Sponsored Principal, the Sponsored Principal Clearing Agreement or, in the case of a Sponsor, the Sponsor Agreement.
  - (B) Each obligation of the Clearing House to a CDS Clearing Member (or Sponsored Principal) under paragraph 8.2(a)(i)(A) above is subject to the condition precedent that no Event of Default has been declared in respect of that CDS Clearing Member (or Sponsored Principal or its Sponsor).
  - (C) Each obligation of the Clearing Member or Sponsored Principal under paragraph 8.2(a)(i)(A) above is subject to the condition precedent that no Insolvency in respect of the Clearing House or Failure to Pay in respect of the Clearing House has occurred.
- (ii) Deduction or Withholding for Tax.
  - (A) *Deduction.* All payments pursuant to a CDS Contract will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any Applicable Law, as modified by the practice of any relevant governmental revenue authority, then in effect.
  - (B) *Gross-Up by the Clearing Member or Sponsored Principal.* If the Clearing Member or Sponsored Principal is so required to deduct or withhold, then the Clearing Member or Sponsored Principal will:
    - (1) promptly notify the Clearing House of such requirement;
    - (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by the Clearing Member or Sponsored Principal to the Clearing House pursuant to this paragraph 8.2(a)(ii)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against the Clearing House;
    - (3) promptly forward to the Clearing House an official receipt (or a certified copy), or other documentation reasonably acceptable to the Clearing House, evidencing such payment to such authorities; and
    - (4) subject to paragraph 8.2(a)(ii)(C), pay to the Clearing House, in addition to the payment to which the Clearing House is otherwise entitled pursuant to the relevant CDS Contract, such additional amount as is necessary to ensure that the net amount actually received by the Clearing House (free and clear of any Tax, whether assessed against the Clearing Member or Sponsored Principal or the Clearing House) will equal the full amount the Clearing House would have received had no such deduction or withholding been required.

- (C) *Gross-Up by the Clearing Member or Sponsored Principal; exception.* A Clearing Member or Sponsored Principal will not be required to pay any additional amount to the Clearing House pursuant to paragraph 8.2(a)(ii)(B) to the extent that it would not be required to be paid but for (1) a present or former connection between the jurisdiction of the taxing authority imposing such Tax and the Clearing House, (2) any failure by the Clearing House to provide to the relevant Clearing Member or Sponsored Principal such forms and documents as are required to be provided under paragraph 8.2(d)(i), provided this sub-paragraph (2) shall only apply if the relevant Clearing Member or Sponsored Principal has notified the Clearing House in writing of such failure and the Clearing House has failed to provide such forms or documents within 5 Business Days after the receipt of such notice or (3) the failure of a representation made by the Clearing House pursuant to paragraph 8.2(c)(ii) to be accurate and true (unless the failure under this sub-paragraph (3) would not have occurred but for (a) any action taken by a taxing authority, or brought in a court of competent jurisdiction (regardless of whether such action is taken or brought with respect to a Party to the relevant CDS Contract) or (b) a Change in Tax Law, that in each case occurs after the Clearing House and the Clearing Member or Sponsored Principal enter into the relevant CDS Contract (or, if applicable, the date that the Clearing House amends the relevant CDS Contract in accordance with the Rules to account for such Change in Tax Law).

In the event that the failure under sub-paragraph (3) of the preceding paragraph would not have occurred but for the reasons described under subclause (a) or (b) thereof, the Clearing House shall use reasonable endeavours to provide to the Clearing Member or Sponsored Principal a new representation (to the extent that it is appropriate) for the purpose of paragraph 8.2(c)(ii), promptly after learning of such failure (so long as the provision of such representation would not, in the Clearing House's judgment, materially prejudice the legal or commercial position of the Clearing House).

Notwithstanding any other provision under the Rules or these Procedures, a Clearing Member or Sponsored Principal will be required to pay additional amounts to (or otherwise indemnify) the Clearing House pursuant to paragraph 8.2 for any Tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code ("**FATCA**"), except to the extent that such Tax would not have been imposed on the payment to the Clearing House but for the failure of the Clearing House to satisfy the applicable requirements to establish that such payment is exempt from withholding under FATCA.

For the purpose of this paragraph 8.2(a)(ii)(C) only, Change in Tax Law shall have the following meaning:

**"Change in Tax Law"** means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law).

(D) *No Gross-Up by the Clearing House.* If the Clearing House is so required to deduct or withhold, then the Clearing House will, in each case to the extent that it is reasonably able to do so:

- (1) promptly notify the Clearing Member or Sponsored Principal of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against the Clearing Member or Sponsored Principal; and
- (3) promptly forward to the Clearing Member or Sponsored Principal an official receipt (or a certified copy) evidencing such payment to such authorities.

In no circumstances shall the Clearing House be required to pay any amount in addition to the payment to which the Clearing Member or Sponsored Principal is otherwise entitled pursuant to the CDS Contract in respect of any such deduction or withholding. However, the Clearing House will, at the Clearing Member's or Sponsored Principal's expense, use reasonable endeavours to cooperate with the Clearing Member or Sponsored Principal to seek any credit or remission or other relief available with respect to any such Tax so deducted or withheld (so long as such cooperation would not, in the Clearing House's judgment, materially prejudice the legal or commercial position of the Clearing House).

(E) *Liability of the Clearing House.* If:

- (1) the Clearing House is required by any Applicable Law, as modified by the practice of any relevant governmental revenue authority, to make any such deduction or withholding;
- (2) the Clearing House does not so deduct or withhold; and
- (3) a liability resulting from such Tax is assessed directly against the Clearing House,

then, except to the extent the Clearing Member or Sponsored Principal has satisfied or then satisfies the liability resulting from such Tax, the Clearing Member or Sponsored Principal will promptly pay to the Clearing House the amount of such liability (including any related liability for interest or penalties).

(F) *Liability of the Clearing Member or Sponsored Principal.* If:

- (1) the Clearing Member or Sponsored Principal is required by any Applicable Law, as modified by the practice of any relevant governmental revenue authority, to make any such deduction or withholding in respect of which the Clearing Member or Sponsored Principal would be required to pay an additional amount pursuant to paragraph 8.2(a)(ii);
- (2) the Clearing Member or Sponsored Principal does not so deduct or withhold; and

- (3) a liability resulting from such Tax is assessed directly against the Clearing House,

then, except to the extent the Clearing Member or Sponsored Principal has satisfied or then satisfies the liability resulting from such Tax, the Clearing Member or Sponsored Principal will promptly pay to the Clearing House the amount of such liability (including any related liability for interest or penalties).

(b) **Part 2: Termination Provisions**

- (i) The Automatic Early Termination Provisions of this paragraph 8.2(b)(i) will not apply to the Clearing House and will apply to the Clearing Member or Sponsored Principal only if it (or in the case of a Sponsored Principal, its Sponsor) is incorporated in Switzerland or any other jurisdiction as the Clearing House may by notice or Circular specify (the entity incorporated in Switzerland or such other jurisdiction being the "**Swiss or Other Entity**"), provided, however, that with respect to an event of Bankruptcy described in part (v) of the definition of Bankruptcy in the Rules or, to the extent analogous thereto, part (ix) of that definition of Bankruptcy, the Automatic Early Termination Provisions (as defined below) will only apply if the relevant proceeding is instituted in or petition is presented to, a competent court or authority in the jurisdiction in which the Swiss or Other Entity is incorporated or organised or has its head or home office or has the offices through which it enters into, or acts as Sponsor in respect of, CDS Contracts.
- (ii) All open CDS Contracts of a CDS Clearing Member or Sponsored Principal to which these Automatic Early Termination Provisions apply shall be immediately terminated upon the occurrence, with respect to that CDS Clearing Member or Sponsored Principal (or, in the case of a Sponsored Principal, its Sponsor) which is the Swiss or Other Entity, of an event of Bankruptcy described in parts (i), (iii), (vi), (vii) of the definition of Bankruptcy in the Rules or, to the extent analogous thereto, part (ix) of that definition of Bankruptcy and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence of an event of Bankruptcy described in parts (iv) or (v) of the definition of Bankruptcy in the Rules or, to the extent analogous thereto, part (ix) of that definition of Bankruptcy (the "**Automatic Early Termination Provisions**").
- (iii) The occurrence of any event of Bankruptcy specified in paragraph 8.2(b)(ii) above resulting in the termination of CDS Contracts pursuant to paragraph 8.2(b)(ii) above shall automatically and without the need for any action by the Clearing House constitute an Event of Default with respect to the relevant CDS Clearing Member or Sponsored Principal. The Clearing House shall be deemed to have declared such Event of Default immediately upon the occurrence of such Event of Default but shall nonetheless be obliged to issue a Default Notice to the Defaulter and provide any copies of such Default Notice required pursuant to Rule 902 upon becoming aware of any such Event of Default.

(c) **Part 3: Representations and Warranties**

- (i) *Payer Tax Representation.* On each date on which a CDS Contract is entered into, the Clearing Member or Sponsored Principal will represent to the Clearing House that it is not required by any Applicable Law, as modified by the practice of any relevant governmental revenue authority of any Relevant Jurisdiction, to make any deduction or withholding for or on account of any Tax from any payment (other than

interest payable pursuant to Rule 301(g)) to be made by it to the Clearing House pursuant to any CDS Contract. In making this representation, it may rely on:

- (A) the accuracy of any representations made by the Clearing House pursuant to paragraph 8.2(c)(ii);
- (B) the satisfaction of the agreement contained in paragraph 8.2(d)(i)(A)(1) or paragraph 8.2(d)(i)(A)(2) and the accuracy and effectiveness of any document provided by the Clearing House pursuant to paragraph 8.2(d)(i)(A)(1) or paragraph 8.2(d)(i)(A)(2); and
- (C) the satisfaction of the agreement of the Clearing House contained in paragraph 8.2(d)(ii),

except that it will not be a breach of this representation where reliance is placed on sub-paragraph (B) above and the Clearing House does not deliver a form or document under paragraph 8.2(d)(i)(A)(2) by reason of material prejudice to its legal or commercial position.

(ii) *Payee Tax Representations.* On each date on which a CDS Contract is entered into, but only where the Clearing Member or Sponsored Principal (or any entity into which the Clearing Member or Sponsored Principal is disregarded for U.S. federal income tax purposes) is a US entity or branch, the Clearing House will represent (and such representation will be deemed to be repeated at all times until the termination of all CDS Contracts between the Clearing House and that Clearing Member or Sponsored Principal) to such Clearing Member or Sponsored Principal that:

- (A) it is a duly formed limited company as defined in the Companies Acts of 1985 and 2006 with its registered office for the purposes of the Companies Acts of 1985 and 2006 situated in England and Wales; and
- (B) it is a (1) "non-US branch of a foreign person" as that term is used in Section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations and (2) "foreign person" as that term is used in Section 1.6041-4(a)(4) of the United States Treasury Regulations.

(iii) *Clearing House Warranties.* On each date on which a CDS Contract is entered into, the Clearing House will warrant to the CDS Clearing Member (or Sponsored Principal) that is party to such CDS Contract that:

- (A) *Status.* The Clearing House is duly organised and validly existing under the laws of England and Wales.
- (B) *Powers.* The Clearing House has the power to enter into the CDS Contract and to deliver and to perform its obligations under the CDS Contract and has taken all necessary action to authorise such execution, delivery and performance.
- (C) *No Violation or Conflict.* Such entry into, delivery and performance do not violate or conflict with any Applicable Law applicable to the Clearing House, any provision of its articles or memorandum of association or any order or judgment of any court or other Governmental Authority applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.
- (D) *Consents.* All governmental and other consents that are required to have been obtained by the Clearing House with respect to the CDS Contract have



been obtained and are in full force and effect and all conditions of any such consents have been complied with.

- (E) *Obligations Binding.* The Clearing House's obligations under the CDS Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application and to other matters which are standardly excluded, restricted or qualified in legal opinions (regardless of whether enforcement is sought in a proceeding in equity or at law)).
- (F) *Absence of Certain Events.* No Insolvency or Failure To Pay has occurred and is continuing in respect of the Clearing House and no such circumstance or event would occur as a result of the Clearing House's entering into or performing its obligations under the Rules or any CDS Contract.
- (G) *No Agency.* The Clearing House is entering into each CDS Contract as principal and not as agent of any person or entity.
- (H) *Relationship between the parties.*
  - (1) The Clearing House has made its own independent decisions to enter into CDS Contracts and as to whether the entry into of CDS Contracts is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary;
  - (2) The Clearing House is not relying on any communication (written or oral) of the Clearing Member or Sponsored Principal (or its Sponsor) which is party to a CDS Contract as investment advice or as a recommendation to enter into the CDS Contract, it being understood that information and explanations related to the terms and conditions of a CDS Contract will not be considered investment advice or a recommendation to enter into a CDS Contract;
  - (3) No communication (written or oral) received from such Clearing Member or Sponsored Principal (or its Sponsor) will be deemed to be an assurance or guarantee as to the expected results of that CDS Contract;
  - (4) The Clearing House is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the CDS Contract and it is also capable of assuming, and assumes, the risks of the CDS Contract; and
  - (5) The Clearing House is not acting as a fiduciary for or an adviser to such CDS Clearing Member or Sponsored Principal (or its Sponsor) in respect of the CDS Contract.
- (I) *Absence of Litigation.* There is not pending or, to the knowledge of the Clearing House, threatened against it any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of any CDS Contract or its ability to perform its obligations under any CDS Contract.

The remedies of rescission and termination are hereby disclaimed and waived by each Clearing Member, Sponsor and Sponsored Principal in respect of any breach by the Clearing House of any of the above warranties.

(d) **Part 4: Agreements**

Each Party agrees with the other (or in the case of (ii) below, the Clearing House agrees with the Clearing Member or Sponsored Principal) that, so long as either Party has or may have any obligation under any CDS Contract with the other Party or under any related Credit Support Document to which it is a Party:

(i) *Furnish Specified Information.*

(A) It will deliver to the other Party or, in certain cases under paragraph (2) below, to such government or taxing authority as the other Party reasonably directs:

(1) any forms, documents or certificates relating to taxation specified in paragraph 8.2(d)(i)(B) below; and

(2) upon reasonable demand by such other Party (or, in the case of the Clearing Member or Sponsored Principal, upon reasonable request in writing by the Clearing Member or Sponsored Principal), any form or document that may reasonably be required or reasonably requested in writing (and, in the case of a Clearing Member, any such form or document must be reasonably requested in writing) in order to allow such other Party or its Credit Support Provider to make payment pursuant to any CDS Contract or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the Party in receipt of such demand or request (or, in the case of the Clearing House, so long as the Clearing House reasonably believes that the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the Clearing House)), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other Party and to be executed and to be delivered with any reasonably required certification (or, in the case of any such form or document to be furnished by the Clearing House, with any such form or document to be as accurate as the Clearing House is reasonably able to make it and to be executed in a manner reasonably satisfactory to the Clearing House and to be delivered with any reasonably required certification which the Clearing House is reasonably able to deliver),

in each case by the date specified in paragraph 8.2(d)(i)(A)(2) or 8.2(d)(i)(B) or, if none is specified or in the case of any form, document or certificate to be furnished by the Clearing House, as soon as reasonably practicable.

(B) For the purposes of paragraph 8.2(d)(i)(A) above, where the Clearing Member or Sponsored Principal is a US entity or branch, the Clearing House agrees to deliver an executed United States Internal Revenue Service Form W-8BEN (or successor thereto) promptly after the date on which that

Clearing Member or Sponsored Principal first becomes a CDS Clearing Member or Sponsored Principal with authorisation to clear CDS and promptly upon learning that any form previously provided by the Clearing House has become obsolete or incorrect.

- (ii) *Maintain Authorisations.* The Clearing House will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to the Clearing of any CDS Contracts.
- (iii) *Tax Agreement.* It will give notice of any failure of a representation made by it under paragraph 8.2(c)(ii) to be accurate and true promptly upon learning of such failure.
- (iv) *Payment of Stamp Tax.* The Clearing Member or Sponsored Principal will pay any Stamp Tax and any excise, sales, or value added Tax and any other similar Tax levied or imposed upon it or in respect of its execution or performance of any CDS Contract to which it is a Party by any jurisdiction, and will indemnify the Clearing House against any Stamp Tax and any excise, sales, or value added Tax and any other similar Tax (to the extent, in the case of any value added Tax, that the Clearing House is not able, in the Clearing House's opinion (acting reasonably) to obtain credit for, reclaim or recover such value added Tax) levied or imposed upon the Clearing House or in respect of the Clearing House's execution or performance of any CDS Contract to which that Clearing Member or Sponsored Principal is a Party by any jurisdiction.

(e) **Part 5: Transfer**

- (i) The Clearing House may transfer any rights or obligations of the Clearing House in or under any CDS Contract where such transfer is effected by the Clearing House in accordance with the Rules.
- (ii) If a Tax Event, a Tax Event Upon Merger or a Merger Without Assumption occurs, then the Clearing House will not unreasonably withhold or delay its Consent to, or stipulate unreasonable conditions on a transfer under Rule 408(a)(i). The Clearing House acknowledges its obligations under Applicable Laws and the Rules to have transparent and non-discriminatory rules, based on objective criteria, governing access and to process applications for membership expeditiously and fairly based on objective criteria. The Clearing House acknowledges that any applicant for membership following a Tax Event that is an Affiliate of the Clearing Member or Sponsored Principal will be deemed to have satisfied those of the membership criteria relating to the group of the applicant, to the extent that the Clearing Member or Sponsored Principal has already demonstrated satisfaction of such requirements and these requirements continue to be met on an ongoing basis. As a result, the membership application process for such applicant will be subject to slightly reduced due diligence (given the knowledge already in possession of the Clearing House in relation to the relevant group) and, consequently, such application, if complete, is likely to be subject to a quicker approval process compared with an application by a person that is not an Affiliate of a Clearing Member or Sponsored Principal. For the purposes of this paragraph 8.2(e)(ii) only, Tax Event, Tax Event Upon Merger and Merger Without Assumption shall have the following meanings:

**"Tax Event."** Due to (A) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a CDS Contract is entered into (regardless of whether such action is taken or brought with respect to a Party to the relevant CDS Contract) or (B) a Change in Tax Law, the Clearing Member or Sponsored Principal will, or there is a substantial likelihood that it will, on the next succeeding Scheduled

Settlement Date be required to pay to the other Party an additional amount pursuant to paragraph 8.2(a)(ii)(B)(4) (except in respect of interest payable pursuant to Rule 301(g)).

**"Tax Event Upon Merger."** The Clearing Member or Sponsored Principal on the next succeeding Scheduled Settlement Date will be required to pay an additional amount pursuant to paragraph 8.2(a)(ii)(B)(4) (except in respect of interest payable pursuant to Rule 301(g)) as a result of a Party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets (or any substantial part of the assets comprising the business conducted by it as of the date on which that Clearing Member or Sponsored Principal first becomes a CDS Clearing Member or Sponsored Principal) to, or reorganising, reincorporating or reconstituting into or as, another entity where such action does not constitute a Merger Without Assumption.

**"Merger Without Assumption."** The Clearing Member or Sponsored Principal 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 Member or such Sponsored Principal under the CDS Contract to which it or its predecessor was a party.

(f) **Part 6: Contractual Currency**

- (i) *Payment in the Contractual Currency.* Each payment under any CDS Contract will be made in the relevant currency specified in the Contract Terms for that CDS Contract for that payment (the "**Contractual Currency**").
- (ii) *Judgments.* To the extent permitted by Applicable Law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (A) for the payment of any amount owing in respect of that CDS Contract, (B) for the payment of any amount relating to any early termination in respect of that CDS Contract or (C) in respect of a judgment or order of another court for the payment of any amount described in sub-paragraph (A) or (B) above, the Party seeking recovery, after recovery in full of the aggregate amount to which such Party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other Party the amount of any shortfall of the Contractual Currency received by such Party as a consequence of sums paid in such other currency and will refund promptly to the other Party any excess of the Contractual Currency received by such Party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the Rate of Exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purpose of such judgment or order and the Rate of Exchange at which such Party is able, acting in good faith and using commercially reasonable procedures in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such Party.
- (iii) *Separate Indemnity.* To the extent permitted by Applicable Law, the indemnity in this paragraph 8.2(f) constitutes a separate and independent obligation from the other obligations in the Rules, will be enforceable as a separate and independent cause of action, will apply notwithstanding any indulgence granted by the Party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of any CDS Contract.

- (iv) *Evidence of Loss.* For the purpose of this paragraph 8.2(f), it will be sufficient for a Party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

(g) **Part 7: Miscellaneous**

*Characterisation Notice.* If, subject always to the representations given by each Party in relation to any CDS Contract (including without limitation those in Section 9.1(b)(i) of the 2003 Credit Derivatives Definitions and in Section 11.1(b)(i) of the 2014 Credit Derivatives Definitions), as applicable and to the legal, tax, financial accounting and regulatory treatment of any CDS Contract as a derivative as a matter of English law or regulation, either Party elects to treat a CDS Contract for any other tax, financial accounting or regulatory purpose as other than a derivative financial instrument or loan, such Party shall use reasonable efforts promptly to notify the other Party in writing of such election. For this purpose, a notice that contains information that identifies which types of CDS Contracts between the parties are subject to such election shall be sufficient.

(h) **Part 8: General Terms**

Each CDS Contract shall include the following terms and conditions set out in the General Contract Terms Procedures as part of its Contract Terms as if the same were set out herein and applied to CDS Contracts, *mutatis mutandis*: paragraphs 3.3, 3.4(d), 3.5, 3.9, 3.10, 3.15 and 3.16. In the event of any conflict or inconsistency between any two provisions of the terms set out or referred to herein, the following order of priority shall apply:

- (i) first, these CDS Procedures other than the portion of these CDS Procedures referred to in (ii) below; and
- (ii) second, the relevant section of the General Contract Terms Procedures.

9. **CONTRACT TERMS FOR ITRAXX EUROPE CONTRACTS**

9.1 This paragraph 9.1 specifies the additional Contract Terms applicable to all CDS Contracts cleared by the Clearing House of a nature described in paragraph 7.1:

- (a) The provisions of paragraph 9.2 will apply in respect of all such CDS Contracts for which the Original Annex Date falls on or after the Protocol Effective Date.
- (b) The provisions of paragraph 9.3 will apply in respect of all such CDS Contracts for which the Acceptance Time falls on or after the Protocol Effective Date but for which the Original Annex Date falls before the Protocol Effective Date.
- (c) The provisions of paragraph 9.4 will apply in respect of all such CDS Contracts for which the Acceptance Time falls on or after the MCA/STS Changeover Time and before the Protocol Effective Date, for the period up to the Protocol Effective Date.
- (d) The provisions of paragraph 9.5 will apply in respect of all such CDS Contracts for which the Acceptance Time falls before the MCA/STS Changeover Time, for the period up to the MCS/STS Changeover Time.
- (e) The provisions of paragraph 9.6 will apply in respect of all such CDS Contracts for which the Acceptance Time falls before the MCA/STS Changeover Time, for the period on and after the MCA/STS Changeover Time up to the Protocol Effective Date.
- (f) The provisions of paragraph 9.7 will apply in respect of all such CDS Contracts for which the Acceptance Time falls before the Protocol Effective Date, for the period on and after the Protocol Effective Date.

- (g) The provisions of paragraph 9.8 will apply to all such CDS Contracts, irrespective of the date of the related Acceptance Time.

## 9.2 **iTraxx Europe (CDS Contracts with Original Annex Date on or after the Protocol Effective Date)**

- (a) Definitions specific to this paragraph 9.2:
- (i) "**iTraxx Contract**" means a CDS Contract in respect of any Eligible iTraxx Index and governed by any iTraxx Terms Supplement. Subject to the other requirements of these CDS Procedures, a CDS Contract will be an iTraxx Contract where the related CDS Trade Particulars submitted for Clearing specify, as the relevant index, any Eligible iTraxx Index, whether or not those CDS Trade Particulars themselves incorporated or are governed by an iTraxx Terms Supplement.
  - (ii) "**iTraxx Publisher**" means Markit Group Limited or one of its subsidiaries, or any successor sponsor of the Eligible iTraxx Indices it publishes.
  - (iii) "**iTraxx Terms Supplement**" means each of the following: (a) a confirmation in the form of the confirmation (the "**iTraxx 2014 Confirmation**") published on or about 20 September 2014 incorporating the iTraxx Europe Untranching Standard Terms Supplement as published on the same date (the "**Standard iTraxx 2014 CDS Supplement**") or such electronic equivalent thereto as is used by Deriv/SERV and (b) such other document or supplement as may be specified in relation to any Eligible iTraxx Index by the Clearing House including any successor to any of the documents listed in sub-paragraphs (a) or (b) of this definition. For the purpose of each iTraxx Contract, reference in the iTraxx Terms Supplement and the 2014 Credit Derivatives Definitions to a "Credit Derivative Transaction" shall be deemed to be references to a CDS Contract and references to an "iTraxx® Master Transaction" shall be deemed references to an iTraxx Contract.
  - (iv) "**Eligible iTraxx Index**" means each particular series and version (of a Set which is eligible for Clearing) of an iTraxx index or sub-index, as published by the iTraxx Publisher, included from time to time in the List of Eligible iTraxx Indices.
  - (v) "**List of Eligible iTraxx Indices**" means the list of Eligible iTraxx Indices, maintained, updated and published from time to time by the Clearing House, specifying the following information with respect to each index: (a) the name and series, including any applicable sub-index designation; (b) the "Effective Date"; (c) one or more eligible "Scheduled Termination Dates" and the applicable "Fixed Rate" for each such date; (d) the Relevant iTraxx Terms Supplement; (e) the versions (and related annex dates) eligible for Clearing; and (f) any inactive versions (and related annex dates), i.e., those that have been determined to be fungible with later versions.
  - (vi) "**Relevant iTraxx Terms Supplement**" means, with respect to an Eligible iTraxx Index, the iTraxx Terms Supplement specified for such Eligible iTraxx Index in the List of Eligible iTraxx Indices.
- (b) **Terms of the Cleared iTraxx Contract**
- (i) Any capitalised term used in paragraph 9.2 but not defined in paragraph 9.2 or elsewhere in the Rules or Procedures shall have the meaning provided in the Relevant iTraxx Terms Supplement.
  - (ii) Each iTraxx Contract will be governed by the Relevant iTraxx Terms Supplement, as modified by this paragraph 9.2, whether or not the relevant CDS Trade Particulars were in a form comprising the Relevant iTraxx Terms Supplement. In the event of

any inconsistency between the Relevant iTraxx Terms Supplement or the Confirmation (including in electronic form) for an iTraxx Contract and this paragraph 9.2, this paragraph 9.2 will govern.

(c) **Terms of iTraxx Contracts Governed by Standard iTraxx 2014 CDS Supplement**

With respect to each iTraxx Contract for which the iTraxx 2014 Confirmation and the Standard iTraxx 2014 CDS Supplement forms the Relevant iTraxx Terms Supplement, the following terms will apply:

- (i) The terms of the Standard iTraxx 2014 CDS Supplement are hereby amended as follows:
  - (A) by the deletion of paragraph 2 thereof in relation to CDS Contracts arising pursuant to the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV;
  - (B) the provisions of paragraph 5.2 (a) thereof relating to the transfer of Component Transactions shall be subject to any transfers of or other dealings with the relevant iTraxx Contract (including in particular the provisions of paragraph 6 hereof) by the Clearing House permitted or authorised by the Rules; and
  - (C) by the deletion of paragraph 5 (*De Minimis Cash Settlement*) thereof.
- (ii) The terms of the iTraxx 2014 Confirmation are hereby amended as follows:
  - (A) Deleting the words "ISDA Master Agreement" in the fourth line of the first paragraph and replacing it with "Rules and Procedures of ICE Clear Europe";
  - (B) Deleting the fourth paragraph thereof and replacing it with the following: "This Confirmation supplements, forms a part of and is subject to the Rules and Procedures of ICE Clear Europe (the "**Agreement**"). All provisions contained in, or incorporated by reference in, the Agreement shall govern this Confirmation except as expressly modified below.";
  - (C) The "Calculation Agent" is the Clearing House, except as expressly provided otherwise in the Rules or the CDS Procedures;
  - (D) There are no "Omitted Reference Entities";
  - (E) There are no "Additional terms"; and
  - (F) Deleting the contact details for notices and the account details.
- (iii) The following terms will be determined from the relevant CDS Trade Particulars submitted for Clearing or, with respect to each iTraxx Contract arising pursuant to Rule 401(a)(vi) or (xi), determined from the data provided by the Clearing House to the Clearing Member or Sponsored Principal, as the case may be, prior to the time at which such CDS Contract arose:
  - (A) Which of the Eligible iTraxx Indices is the "Index", including its version and series number;
  - (B) Which of the eligible Scheduled Termination Dates specified for the Index in the List of Eligible iTraxx Indices is the "Scheduled Termination Date";

- (C) The "Original Notional Amount";
- (D) The "Floating Rate Payer";
- (E) The "Fixed Rate Payer";
- (F) The "Annex Date";
- (G) The "Initial Payment Payer", other than in relation to CDS Contracts arising pursuant to the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV; and
- (H) The "Initial Payment Amount", other than in relation to CDS Contracts arising pursuant to the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV.

9.3 **iTraxx Europe (CDS Contracts for which the Acceptance Time falls on or after the Protocol Effective Date but with Original Annex Date before the Protocol Effective Date).**

- (a) Definitions specific to this paragraph 9.3:
  - (i) **"iTraxx Contract"** means a CDS Contract in respect of any Eligible iTraxx Index and governed by any iTraxx Legacy Terms Supplement. Subject to the other requirements of these CDS Procedures, a CDS Contract will be an iTraxx Contract where the related CDS Trade Particulars submitted for Clearing specify, as the relevant index, any Eligible iTraxx Index, whether or not those CDS Trade Particulars themselves incorporated or are governed by an iTraxx Legacy Terms Supplement.
  - (ii) **"iTraxx Publisher"** means Markit Group Limited or one of its subsidiaries, or any successor sponsor of the Eligible iTraxx Indices it publishes.
  - (iii) **"iTraxx Legacy Terms Supplement"** means each of the following: (a) a confirmation in the form of the confirmation (the **"iTraxx Legacy Confirmation"**) published on or about 20 September 2014 incorporating the iTraxx Europe Legacy Untranch Standard Terms Supplement as published on the same date (the **"Standard iTraxx Legacy CDS Supplement"**) or such electronic equivalent thereto as is used by Deriv/SERV and (b) such other document or supplement as may be specified in relation to any Eligible iTraxx Index by the Clearing House including any successor to any of the documents listed in sub-paragraphs (a) or (b) of this definition. For the purpose of each iTraxx Contract, reference in the iTraxx Legacy Terms Supplement and the Applicable Credit Derivatives Definitions to a "Credit Derivative Transaction" shall be deemed to be references to a CDS Contract and references to an "iTraxx® Master Transaction" shall be deemed references to an iTraxx Contract.
  - (iv) **"Eligible iTraxx Index"** means each particular series and version (of a Set which is eligible for Clearing) of an iTraxx index or sub-index, as published by the iTraxx Publisher, included from time to time in the List of Eligible iTraxx Indices.
  - (v) **"List of Eligible iTraxx Indices"** means the list of Eligible iTraxx Indices, maintained, updated and published from time to time by the Clearing House, specifying the following information with respect to each index: (a) the name and series, including any applicable sub-index designation; (b) the "Effective Date"; (c) one or more eligible "Scheduled Termination Dates" and the applicable "Fixed Rate" for each such date; (d) the Relevant iTraxx Legacy Terms Supplement; (e) the versions (and related annex dates) eligible for Clearing; and (f) any inactive versions



(and related annex dates), i.e., those that have been determined to be fungible with later versions.

(vi) **"Relevant iTraxx Legacy Terms Supplement"** means, with respect to an Eligible iTraxx Index, the iTraxx Legacy Terms Supplement specified for such Eligible iTraxx Index in the List of Eligible iTraxx Indices.

(b) Terms of the Cleared iTraxx Contract

(i) Any capitalised term used in paragraph 9.3 but not defined in paragraph 9.3 or elsewhere in the Rules or Procedures shall have the meaning provided in the Relevant iTraxx Legacy Terms Supplement.

(ii) Each iTraxx Contract will be governed by the Relevant iTraxx Legacy Terms Supplement, as modified by this paragraph 9.3, whether or not the relevant CDS Trade Particulars were in a form comprising the Relevant iTraxx Legacy Terms Supplement. In the event of any inconsistency between the Relevant iTraxx Legacy Terms Supplement or the Confirmation (including in electronic form) for an iTraxx Contract and this paragraph 9.3, this paragraph 9.3 will govern.

(c) Terms of iTraxx Contracts Governed by Standard iTraxx Legacy CDS Supplement

With respect to each iTraxx Contract for which the iTraxx Legacy Confirmation and the Standard iTraxx Legacy CDS Supplement forms the Relevant iTraxx Legacy Terms Supplement, the following terms will apply:

(i) The terms of the Standard iTraxx Legacy CDS Supplement are hereby amended as follows:

(A) by the deletion of paragraph 2 in both Section A and Section B thereof in relation to CDS Contracts arising pursuant to the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV;

(B) the provisions of paragraph 5.2 (a) in both Section A and Section B thereof relating to the transfer of Component Transactions shall be subject to any transfers of or other dealings with the relevant iTraxx Contract (including in particular the provisions of paragraph 6 hereof) by the Clearing House permitted or authorised by the Rules;

(C) the provisions of paragraph 5.2(b)(ii) in Section A thereof shall be amended by adding at the end, immediately after "(such new Transaction, a New Trade)" the following: "and except that the Reference Obligation for the purposes of the New Trade will be the preferred Single Name Contract Reference Obligation for the Restructured Entity in question, if so specified by the Clearing House following consultation with the CDS Risk Committee."; and

(D) by the deletion of paragraph 5.4 (*De Minimis Cash Settlement*) in both Section A and Section B thereof.

(ii) The terms of the iTraxx Legacy Confirmation are hereby amended as follows:

(A) Deleting the words "ISDA Master Agreement" in the fourth line of the first paragraph and replacing it with "Rules and Procedures of ICE Clear Europe";

- (B) Treating the 2003 Credit Derivatives Definitions and the 2014 Credit Derivatives Definitions (each as defined therein) as though they had the meanings ascribed to those terms in the Rules and Procedures of the Clearing House;
  - (C) Deleting the fifth paragraph thereof and replacing it with the following: "This Confirmation supplements, forms a part of and is subject to the Rules and Procedures of ICE Clear Europe (the "**Agreement**"). All provisions contained in, or incorporated by reference in, the Agreement shall govern this Confirmation except as expressly modified below.";
  - (D) The "Calculation Agent" is the Clearing House, except as expressly provided otherwise in the Rules or the CDS Procedures;
  - (E) There are no "Omitted Reference Entities";
  - (F) There are no "Additional terms"; and
  - (G) Deleting the contact details for notices and the account details.
- (iii) The following terms will be determined from the relevant CDS Trade Particulars submitted for Clearing or, with respect to each iTraxx Contract arising pursuant to Rule 401(a)(vi) or (xi), determined from the data provided by the Clearing House to the Clearing Member or Sponsored Principal, as the case may be, prior to the time at which such CDS Contract arose:
- (A) Which of the Eligible iTraxx Indices is the "Index", including its version and series number;
  - (B) Which of the eligible Scheduled Termination Dates specified for the Index in the List of Eligible iTraxx Indices is the "Scheduled Termination Date";
  - (C) The "Original Notional Amount";
  - (D) The "Floating Rate Payer";
  - (E) The "Fixed Rate Payer";
  - (F) The "Annex Date";
  - (G) The "Initial Payment Payer", other than in relation to CDS Contracts arising pursuant to the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV; and
  - (H) The "Initial Payment Amount", other than in relation to CDS Contracts arising pursuant to the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV.

9.4 **iTraxx Europe (CDS Contracts with Acceptance Time on or after the MCA/STS Changeover Time and before the Protocol Effective Date: provisions applying until the Protocol Effective Date).**

- (a) Definitions specific to this paragraph 9.4:
  - (i) "**iTraxx Contract**" means a CDS Contract in respect of any Eligible iTraxx Index and governed by any iTraxx Terms 2009 Supplement. Subject to the other requirements of these CDS Procedures, a CDS Contract will be an iTraxx Contract

where the related CDS Trade Particulars submitted for Clearing specify, as the relevant index, any Eligible iTraxx Index, whether or not those CDS Trade Particulars themselves incorporated or are governed by an iTraxx Terms 2009 Supplement.

- (ii) **"iTraxx Publisher"** means Markit Group Limited or one of its subsidiaries, or any successor sponsor of the Eligible iTraxx Indices it publishes.
  - (iii) **"iTraxx Terms 2009 Supplement"** means each of the following: (a) a confirmation in the form of the confirmation (the **"iTraxx 2009 Confirmation"**) published on 23 November 2009 incorporating the iTraxx Europe Untranching Standard Terms Supplement as published on 23 November 2009 (the **"Standard iTraxx 2009 CDS Supplement"**) or such electronic equivalent thereto as is used by Deriv/SERV and (b) such other document or supplement as may be specified in relation to any Eligible iTraxx Index by the Clearing House including any successor to any of the documents listed in sub-paragraphs (a) or (b) of this definition. For the purpose of each iTraxx Contract, reference in the iTraxx Terms 2009 Supplement and the Credit Derivatives Definitions to a "Credit Derivative Transaction" shall be deemed to be references to a CDS Contract and references to an "iTraxx® Master Transaction" shall be deemed references to an iTraxx Contract.
  - (iv) **"Eligible iTraxx Index"** means each particular series and version (of a Set which is eligible for Clearing) of an iTraxx index or sub-index, as published by the iTraxx Publisher, included from time to time in the List of Eligible iTraxx Indices.
  - (v) **"List of Eligible iTraxx Indices"** means the list of Eligible iTraxx Indices, maintained, updated and published from time to time by the Clearing House, specifying the following information with respect to each index: (a) the name and series, including any applicable sub-index designation; (b) the "Effective Date"; (c) one or more eligible "Scheduled Termination Dates" and the applicable "Fixed Rate" for each such date; (d) the Relevant iTraxx Terms 2009 Supplement; (e) the versions (and related annex dates) eligible for Clearing; and (f) any inactive versions (and related annex dates), i.e., those that have been determined to be fungible with later versions.
  - (vi) **"Relevant iTraxx Terms 2009 Supplement"** means, with respect to an Eligible iTraxx Index, the iTraxx Terms 2009 Supplement specified for such Eligible iTraxx Index in the List of Eligible iTraxx Indices.
- (b) Terms of the Cleared iTraxx Contract
- (i) Any capitalised term used in paragraph 9.4 but not defined in paragraph 9.4 or elsewhere in the Rules or Procedures shall have the meaning provided in the Relevant iTraxx Terms 2009 Supplement.
  - (ii) Each iTraxx Contract will be governed by the Relevant iTraxx Terms 2009 Supplement, as modified by this paragraph 9.4, whether or not the relevant CDS Trade Particulars were in a form comprising the Relevant iTraxx Terms 2009 Supplement. In the event of any inconsistency between the Relevant iTraxx Terms 2009 Supplement or the Confirmation (including in electronic form) for an iTraxx Contract and this paragraph 9.4, this paragraph 9.4 will govern.
  - (iii) For the purposes of any determination as to whether an Applicable Credit Event has occurred in respect of a Reference Entity or an Obligation thereof:
    - (A) at any time up to but excluding June 20, 2009; or

- (B) if a Credit Event Resolution Request Date occurs before June 20, 2009, the Credit Event Backstop Date with respect to such determination shall be deemed to be the Effective Date.
- (iv) For the purposes of any determination as to whether a Succession Event has occurred in respect of a Reference Entity:
  - (A) at any time up to but excluding June 20, 2009; or
  - (B) if a Succession Event Resolution Request Date occurs before June 20, 2009, the Succession Event Backstop Date with respect to such Reference Entity shall be deemed to be the Effective Date.
- (c) Terms of iTraxx Contracts Governed by Standard iTraxx 2009 CDS Supplement
 

With respect to each iTraxx Contract for which the iTraxx 2009 Confirmation and the Standard iTraxx 2009 CDS Supplement forms the Relevant iTraxx Terms 2009 Supplement, the following terms will apply:

  - (i) The terms of the Standard iTraxx 2009 CDS Supplement are hereby amended as follows:
    - (A) by the deletion of paragraph 2 thereof in relation to CDS Contracts arising pursuant to the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV;
    - (B) the provisions of paragraph 7.3(a) thereof relating to the transfer of Component Transactions shall be subject to any transfers of or other dealings with the relevant iTraxx Contract (including in particular the provisions of paragraph 6 hereof) by the Clearing House permitted or authorised by the Rules;
    - (C) the provisions of paragraph 7.3(b)(ii) thereof shall be amended by adding at the end, immediately after "(such new Transaction, a New Trade)" the following: "and except that the Reference Obligation for the purposes of the New Trade will be the preferred Single Name Contract Reference Obligation, as applicable, for the Restructured Entity in question, if so specified by the Clearing House following consultation with the CDS Risk Committee."; and
    - (D) by the deletion of paragraph 7.7 (*De Minimis Cash Settlement*).
  - (ii) The terms of the iTraxx 2009 Confirmation are hereby amended as follows:
    - (A) Deleting the words "ISDA Master Agreement" in the fourth line of the first paragraph and replacing it with "Rules and Procedures of ICE Clear Europe";
    - (B) Deleting the fourth paragraph thereof and replacing it with the following: "This Confirmation supplements, forms a part of and is subject to the Rules and Procedures of ICE Clear Europe (the "**Agreement**"). All provisions contained in, or incorporated by reference in, the Agreement shall govern this Confirmation except as expressly modified below.";

- (C) The "Calculation Agent" is the Clearing House, except as expressly provided otherwise in the Rules or the CDS Procedures;
  - (D) The "Source of Relevant Annex" is "Publisher";
  - (E) There are no "Excluded Reference Entities";
  - (F) There are no "Additional terms"; and
  - (G) Deleting the contact details for notices and the account details.
- (iii) The following terms will be determined from the relevant CDS Trade Particulars submitted for Clearing or, with respect to each iTraxx Contract arising pursuant to Rule 401(a)(vi) or (xi), determined from the data provided by the Clearing House to the Clearing Member or Sponsored Principal, as the case may be, prior to the time at which such CDS Contract arose:
- (A) Which of the Eligible iTraxx Indices is the "Index", including its version and series number;
  - (B) Which of the eligible Scheduled Termination Dates specified for the Index in the List of Eligible iTraxx Indices is the "Scheduled Termination Date";
  - (C) The "Original Notional Amount";
  - (D) The "Floating Rate Payer";
  - (E) The "Fixed Rate Payer";
  - (F) The "Annex Date";
  - (G) The "Initial Payment Payer", other than in relation to CDS Contracts arising pursuant to the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV; and
  - (H) The "Initial Payment Amount", other than in relation to CDS Contracts arising pursuant to the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV.

**9.5 iTraxx Europe (CDS Contracts with Acceptance Time before the MCA/STS Changeover Time; provisions applying until the MCA/STS Changeover Time)**

- (a) Definitions specific to this paragraph 9.5:
  - (i) **"iTraxx Contract"** means a CDS Contract in respect of any Eligible iTraxx Index and governed by a Master Confirmations Agreement. Subject to the other requirements of these CDS Procedures, a CDS Contract will be an iTraxx Contract where the CDS Trade Particulars submitted for Clearing specify, as the relevant Index, any Eligible iTraxx Index, whether or not those CDS Trade Particulars themselves incorporate or are governed by a Master Confirmations Agreement.
  - (ii) **"iTraxx Publisher"** means Markit Group Limited or one of its subsidiaries, or any successor sponsor of the Eligible iTraxx Indices it publishes.
  - (iii) **"Master Confirmations Agreement"** means each of the following: (a) an iTraxx Master Credit Derivatives Confirmation Agreement including the General Terms Confirmation (the **"General Terms Confirmation"**) as supplemented by the trade

details applicable to the relevant iTraxx Master Transaction (the "**Master Confirmation**") as set forth in the relevant Transaction Supplement (the "**Transaction Supplement**"), all in the form published by Markit Group Limited (formerly Mark-it Partners Ltd.) as the "Consolidated version dated 18 March 2005 incorporating the changes set out in the Series 2 Amendment Agreement" as amended as set out in the form of the amendment agreement published by Markit Group Limited (formerly Mark-it Partners Ltd.) as the "Series 4 Amendment to the iTraxx Master Credit Derivatives Confirmation Agreement dated as of 20 September 2005" or, in the case of the Transaction Supplement, such electronic equivalent thereto as is used by Deriv/SERV (together the "**Standard Master Confirmations Agreement**") or (b) such other document or supplement as may be specified in relation to any Eligible iTraxx Index by the Clearing House including any successor to any of the documents listed in sub-paragraph (a) of this definition. For the purpose of each iTraxx Contract, reference in the Master Confirmations Agreement and the Credit Derivatives Definitions to a "**Credit Derivative Transaction**" shall be deemed to be references to a CDS Contract and references to an "iTraxx® Master Transaction" shall be deemed references to an iTraxx Contract.

- (iv) "**Eligible iTraxx Index**" means each particular series and version (of a Set which is eligible for Clearing) of an iTraxx index or sub-index, as published by the iTraxx Publisher, included from time to time in the List of Eligible iTraxx Indices.
  - (v) "**List of Eligible iTraxx Indices**" means the list of Eligible iTraxx Indices, maintained, updated and published from time to time by the Clearing House, specifying the following information with respect to each index: (a) the name and series, including any applicable sub-index designation; (b) the "Effective Date"; (c) one or more eligible "Scheduled Termination Dates" and the applicable "Fixed Rate" for each such date; (d) the Relevant Master Confirmations Agreement; (e) the versions (and related annex dates) eligible for Clearing; and (f) any inactive versions (and related annex dates), i.e., those that have been determined to be fungible with later versions.
  - (vi) "**Relevant Master Confirmations Agreement**" means, with respect to an Eligible iTraxx Index, the Master Confirmations Agreement specified for such Eligible iTraxx Index in the List of Eligible iTraxx Indices.
- (b) Terms of the Cleared iTraxx Contract
- (i) Any capitalised term used in paragraph 9.5 but not defined in paragraph 9.5 or elsewhere in the Rules or Procedures shall have the meaning provided in the Relevant Master Confirmations Agreement.
  - (ii) Each iTraxx Contract will be governed by the Relevant Master Confirmations Agreement, as modified by this paragraph 9.5, as though the Clearing House and the relevant CDS Clearing Member or Sponsored Principal had entered into the Relevant Master Confirmations Agreement, whether or not the relevant CDS Trade Particulars were in a form comprising the Relevant Master Confirmations Agreement. In the event of any inconsistency between the Relevant Master Confirmations Agreement or the Confirmation (including in electronic form) for an iTraxx Contract and this paragraph 9.5, this paragraph 9.5 will govern.
  - (iii) For the purposes of any determination as to whether an Applicable Credit Event has occurred in respect of a Reference Entity or an Obligation thereof:
    - (A) at any time up to but excluding June 20, 2009; or

(B) if a Credit Event Resolution Request Date occurs before June 20, 2009,

the Credit Event Backstop Date with respect to such determination shall be deemed to be the Effective Date.

(iv) For the purposes of any determination as to whether a Succession Event has occurred in respect of a Reference Entity:

(A) at any time up to but excluding June 20, 2009; or

(B) if a Succession Event Resolution Request Date occurs before June 20, 2009,

the Succession Event Backstop Date with respect to such Reference Entity shall be deemed to be the Effective Date.

(c) **Terms of iTraxx Contracts Governed by Standard Master Confirmations Agreement**

With respect to each iTraxx Contract for which the Standard Master Confirmations Agreement forms the Relevant Master Confirmations Agreement, the following terms will apply:

(i) The terms of the Standard Master Confirmations Agreement are hereby amended as follows:

(A) Adding, immediately before the words "each as published by" in the third line of the paragraph numbered 1 of the Master Confirmations Agreement and in the third line of the second paragraph of the General Terms Confirmation, the following: "and the 2009 ISDA Credit Derivatives Determinations Committees, Auction Settlement and Restructuring Supplement to the 2003 ISDA Credit Derivatives Definitions (published on July 14, 2009)";

(B) Deleting, in the paragraph numbered 2 of the Master Confirmations Agreement, the phrase "[1992/2002] ISDA Master Agreement ....dated as of [ ]" and replacing it with "Rules and Procedures of ICE Clear Europe";

(C) Deleting paragraphs numbered 5, 6.1, 6.2 and 6.3 of the Master Confirmations Agreement in their entirety;

(D) Deleting in its entirety the last paragraph of the definition of "Reference Obligation" in the General Terms Confirmation that begins: "If the Index Sponsor publishes a replacement Reference Obligation";

(E) Deleting the words "Effective Date" from the final sentence of the first paragraph of the General Terms Confirmation and replacing them with the words "Succession Event Backstop Date";

(F) Providing in the General Terms Confirmation that the Calculation Agent is the Clearing House, except as expressly provided otherwise in the Rules, the Credit Derivatives Definitions or the CDS Procedures;

(G) Providing in the General Terms Confirmation and Transaction Supplement that there are no Excluded Reference Entities;

(H) Adding in paragraph 5 of the General Terms Confirmation, immediately after "Applicable Convention Terms" the phrase "and the Fallback Settlement Method applies in accordance with Section 12.1 of the Credit Derivatives Definitions";

- (I) Deleting paragraph 6 of the General Terms Confirmation in its entirety;
- (J) Deleting the square brackets at the beginning and end of paragraph 7.1 of the General Terms Confirmation;
- (K) The provisions of paragraph 7.3(a) of the General Terms Confirmation relating to the transfer of Component Transactions shall be subject to any transfers of or other dealings with the relevant iTraxx Contract (including in particular the provisions of paragraph 6 hereof) by the Clearing House permitted or authorised by the Rules;
- (L) adding the following as new sub-paragraph (c) at the end of Paragraph 7.3 (*Transfer and Termination of Component Transactions*):
  - "(c) If a Credit Event Announcement is made in respect of a Restructuring Credit Event with respect to a Reference Entity (such Reference Entity, a "**Restructured Entity**"), from and including the calendar day immediately following the date of such Credit Event Announcement:
    - (i) the Restructured Entity shall be deemed to have been removed from the Index and the Relevant Annex;
    - (ii) the Component Transaction relating thereto shall continue in full force and effect between the parties as an independent Credit Derivative Transaction referencing the Restructured Entity with the same economic terms and conditions as the Component Transaction immediately before such Credit Event Announcement, except that this Paragraph 7.3 shall be deemed not to apply (such new Transaction, a "**New Trade**"); and
    - (iii) as soon as reasonably practicable after the Credit Event Announcement, the parties shall confirm the terms of the New Trade in their respective booking systems. Unless Resolved otherwise by a relevant Determining Body, such New Trade shall be recorded as a Credit Derivative Transaction referencing solely the Restructured Entity evidenced by a Confirmation for use with the Credit Derivatives Physical Settlement Matrix (as defined in the 2005 Matrix Supplement to the 2003 ISDA Credit Derivatives Definitions published on March 7, 2005) and incorporating the Credit Derivatives Physical Settlement Matrix terms applicable to the relevant Transaction Type for the Restructured Entity; provided that the appropriate version of the Credit Derivatives Physical Settlement Matrix and the relevant Transaction Type shall be selected by the Calculation Agent, acting in good faith and in a commercially reasonable manner, such that the economic terms of the New Trade as closely as possible preserve the economic equivalent of the Component Transaction immediately before the Credit Event Announcement.";
- (M) Deleting paragraph 7.4 of the General Terms Confirmation in its entirety; and
- (N) The provisions in the Transaction Supplement relating to Additional Amounts shall be deemed deleted in their entirety for CDS Contracts arising pursuant to the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV.



- (ii) The following terms will be determined from the Transaction Supplement which relates to the particular iTraxx Contract submitted for Clearing:
  - (A) Which of the Eligible iTraxx Indices is the "Index", including its version and series number;
  - (B) Which of the eligible Scheduled Termination Dates specified for the Index in the List of Eligible iTraxx Indices is the "Scheduled Termination Date";
  - (C) The "Original Notional Amount";
  - (D) The "Floating Rate Payer";
  - (E) The "Fixed Rate Payer";
  - (F) The "Additional Amount Payer", other than in relation to CDS Contracts arising pursuant to the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV; and
  - (G) The "Additional Amount", other than in relation to CDS Contracts arising pursuant to the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV.

**9.6 iTraxx Europe (CDS Contracts with Acceptance Time before the MCA/STS Changeover Time; provisions applying on and after the MCA/STS Changeover Time up to the Protocol Effective Date)**

- (a) All CDS Contracts to which paragraph 9.5 applies and which form part of the Open Contract Position of a Clearing Member as at the MCA/STS Changeover Time will be deemed thereafter up to the Protocol Effective Date to be CDS Contracts on the terms set out in paragraph 9.4 and to which such paragraph applies, as modified below. The "Annex Date" will be the date of publication of the version of the index referred to in the Relevant Master Confirmations Agreement.
- (b) For the purposes of paragraph 9.6(a), the information in respect of each CDS Contract which would be determined (had the CDS Contract been one falling within paragraph 9.1(c)) for the purposes of the iTraxx 2009 Confirmation by reference to the CDS Trade Particulars submitted for Clearing (as referred to in paragraph 9.4(c)) will instead be determined by reference to the CDS Contracts forming the relevant Open Contract Position of the relevant Clearing Member as at the MCA/STS Changeover Time.
- (c) From the MCA/STS Changeover Time up to the Protocol Effective Date, all CDS Contracts of a Set referencing a particular version and series of a particular Eligible iTraxx Index and having a particular Scheduled Termination Date and fixed rate and to which paragraph 9.5 had, up to that moment applied, shall be, and shall be treated as, fully fungible with all CDS Contracts of a Set referencing the same version and series of the same Eligible iTraxx Index having the same Scheduled Termination Date and fixed rate to which paragraph 9.4 applies.

**9.7 iTraxx Europe (CDS Contracts with Acceptance Time before the Protocol Effective Date; provisions applying after the Protocol Effective Date).**

- (a) All CDS Contracts to which paragraph 9.4 or paragraph 9.6 applies and which form part of the Open Contract Position of a Clearing Member as at the Protocol Effective Date will be deemed thereafter to be CDS Contracts on the terms set out in paragraph 9.3, as modified below.

- (b) For the purposes of paragraph 9.7(a), the information in respect of each CDS Contract which would be determined (had the CDS Contract been one falling within paragraph 9.1(b)) for the purposes of the iTraxx 2014 Confirmation by reference to the CDS Trade Particulars submitted for Clearing (as referred to in paragraph 9.3(c)) will instead be determined by reference to the CDS Contracts forming the relevant Open Contract Position of the relevant Clearing Member or Sponsored Principal, as the case may be, as at the Protocol Effective Date.
- (c) From the Protocol Effective Date, all CDS Contracts of a Set referencing a particular version and series of a particular Eligible iTraxx Index and having a particular Scheduled Termination Date and fixed rate and to which paragraph 9.4 or paragraph 9.6 had, up to that moment, applied shall be, and shall be treated as, fully fungible with all CDS Contracts of a Set referencing the same version and series of the same Eligible iTraxx Index and having the same Scheduled Termination Date and fixed rate to which paragraph 9.3 applies.

#### 9.8 **Updating Index Version of Fungible Contracts After a Credit Event or a Succession Event**

- (a) Where the iTraxx Publisher of an Eligible iTraxx Index publishes one or more subsequent versions or annexes of the relevant series following a Credit Event or, in respect of a component transaction which is a 2003-type CDS Contract, a Succession Event or, in respect of a component transaction which is a 2014-type CDS Contract, the determination of a Successor with respect to a Reference Entity included in such series, and the Clearing House determines that iTraxx Contracts referencing the earlier version or annex of such series are fungible with iTraxx Contracts referencing a later version or annex of such series that is an Eligible iTraxx Index and so notifies CDS Clearing Members and Sponsored Principals by Circular, iTraxx Contracts referencing the earlier version or annex of such series shall become iTraxx Contracts referencing such later version or annex of such series on the date determined by the Clearing House (the "**Fungibility Date**"). Any iTraxx Contracts referencing the earlier version or annex of such series submitted for clearing after the related Fungibility Date shall, upon acceptance for clearing, become an iTraxx Contract referencing the latest version or annex of such series, as the case may be, that the Clearing House has determined is fungible with such earlier version or annex.
- (b) The Clearing House may determine a different Fungibility Date applicable to individual iTraxx Contracts or groups of iTraxx Contracts or may determine a Fungibility Date applicable to all iTraxx Contracts referencing the earlier version or annex of a series described in paragraph 9.8(a), as it deems appropriate.

### 10. **CONTRACT TERMS FOR SINGLE NAME CDS CONTRACTS**

10.1 This paragraph 10.1 specifies the additional Contract Terms applicable to all Single Name Contracts cleared by the Clearing House:

- (a) The provisions of paragraph 10.6 will apply in respect of all Single Name CDS Contracts.
- (b) The provisions of paragraph 10.7 will apply in respect of STEC Contracts that are 2003-type CDS Contracts immediately prior to the Protocol Effective Date.

And for these purposes:

- (c) All STEC Contracts with Acceptance Time prior to the Protocol Effective Date will be 2003-type CDS Contracts prior to Protocol Effective Date.
- (d) All STEC Contracts with Acceptance Time on or following the Protocol Effective Date will be 2014-type CDS Contracts.

- (e) All Non-STECC Contracts with Acceptance Time prior to the 2014 CDD Implementation Date will be 2003-type CDS Contracts and will remain 2003-type CDS Contracts on and following the 2014 CDD Implementation Date.
- (f) All Non-STECC Contracts with Acceptance Time on or following the 2014 CDD Implementation Date will be 2014-type CDS Contracts, unless the 2003 Credit Derivatives Definitions are specified as applying in the CDS Trade Particulars, in which case they will be 2003-type CDS Contracts.

The provisions of paragraphs 10.2, 10.3, 10.4 and 10.5 will apply to all Single Name Contracts, irrespective of the date of the related Acceptance Time.

10.2 In the event of any inconsistency between the relevant data in CDS Trade Particulars submitted for Clearing and this paragraph 10, this paragraph 10 will govern.

10.3 **Definitions specific to this paragraph 10.**

- (a) **"Eligible Single Name Reference Entities"** means each particular Reference Entity included from time to time in the List of Eligible Single Name Reference Entities by reference to a RED Code. Each RED Code shall be treated as referring to a separate Eligible Single Name Reference Entity.
- (b) **"Eligible Single Name Reference Obligations"** means, with respect to any Single Name Contract Reference Obligation for any Eligible Single Name Reference Entity, the Reference Obligations listed under the heading "Eligible Reference Obligations" (which may include "No Reference Obligation" or "NoRefOb", indicating that no obligation is specified as a Reference Obligation) for such Single Name Contract Reference Obligation and Eligible Single Name Reference Entity in the List of Eligible Single Name Reference Entities.
- (c) **"List of Eligible Single Name Reference Entities"** means the list of Eligible Single Name Reference Entities, maintained, updated and published from time to time by the Clearing House, specifying the following information with respect to each Eligible Single Name Reference Entity:
  - (i) the name of such Eligible Single Name Reference Entity and the RED Code therefor;
  - (ii) the Relevant Physical Settlement Matrix distinguishing, where applicable, between 2003-type CDS Contracts and 2014-type CDS Contracts;
  - (iii) the Standard Single Name Confirmation distinguishing, where applicable, between 2003-type CDS Contracts and 2014-type CDS Contracts;
  - (iv) the Single Name Contract Reference Obligation distinguishing, where applicable, between 2003-type CDS Contracts and 2014-type CDS Contracts and each Eligible Single Name Reference Obligation therefor;
  - (v) the Relevant Transaction Type distinguishing, where applicable, between 2003-type CDS Contracts and 2014-type CDS Contracts; and
  - (vi) each eligible "Scheduled Termination Date" distinguishing, where applicable, between 2003-type CDS Contracts and 2014-type CDS Contracts.
- (d) **"Permitted Single Name Fixed Rates"** means the Fixed Rates permitted for a Single Name Contract, as determined from time to time by the Clearing House and notified to CDS Clearing Members and Sponsored Principals.

- (e) **"Protocol Excluded Reference Entity"** means each Eligible Single Name Reference Entity that is an Excluded Reference Entity (as defined in accordance with the 2014 CDD Protocol).
- (f) **"RED Code"** means each of the Reference Entity Database codes (as published by Markit Group Limited or any successor thereto).
- (g) **"Relevant Physical Settlement Matrix"** means, with respect to a Single Name Contract, the "Credit Derivatives Physical Settlement Matrix" applicable to such Single Name Contract, as specified in respect of the relevant Eligible Single Name Reference Entity in the List of Eligible Single Name Reference Entities.
- (h) **"Relevant Transaction Type"** means with respect to an Eligible Single Name Reference Entity, the "Transaction Type" applicable to Single Name Contracts in respect of such Eligible Single Name Reference Entity, as specified in respect of the relevant Eligible Single Name Reference Entity in the List of Eligible Single Name Reference Entities;
- (i) **"STEC Contract"** means a CDS Contract in the form of the relevant Standard Single Name Confirmation having as the Reference Entity a Standard European Corporate (as defined in the Relevant Physical Settlement Matrix, but excluding any Protocol Excluded Reference Entity) resulting from CDS Trade Particulars specifying as a Reference Entity an Eligible Single Name Reference Entity and having a combination of characteristics listed as eligible for such Eligible Single Name Reference Entity in, and permitted by, the List of Eligible Single Name Reference Entities.
- (j) **"Non-STEC Single Name Contract"** means a CDS Contract in the form of the relevant Standard Single Name Confirmation having as the Reference Entity a Standard European Financial Corporate, Standard Western European Sovereign, (each as defined in the Relevant Physical Settlement Matrix) or Protocol Excluded Reference Entity resulting from CDS Trade Particulars specifying as a Reference Entity an Eligible Single Name Reference Entity and having a combination of characteristics listed as eligible for such Eligible Single Name Reference Entity in, and permitted by, the List of Eligible Single Name Reference Entities.
- (k) **"Single Name Contract Reference Obligations"** means, with respect to any Eligible Single Name Reference Entity, the Senior Level Standard Reference Obligation of such Reference Entity which is specified from time to time on the SRO List (in the case of 2014-type CDS Contracts) or (in the case of 2003-type CDS Contracts or where no such Standard Reference Obligation is so specified), the Reference Obligation(s) therefor (which may indicate "No Reference Obligation" or "NoRefOb", indicating that no obligation is specified as a Reference Obligation) which are listed under the heading "Single Name Contract Reference Obligations" in the List of Eligible Single Name Reference Entities.
- (l) **"Standard Single Name Confirmation"** means the Credit Derivatives Confirmation for use with the Relevant Physical Settlement Matrix, as specified in respect of the relevant Eligible Single Name Reference Entity in the List of Eligible Single Name Reference Entities, as amended as set out below.

#### 10.4 **Modifications to List of Eligible Single Name Reference Entities**

The Clearing House shall be entitled at any time subject to consultation with the CDS Risk Committee to determine that it will do the following (such changes only affecting CDS Contracts entered into after the time of such determination):

- (a) add and/or modify Permitted Single Name Fixed Rates,
- (b) add new Eligible Single Name Reference Entities, and add and/or modify any other entries in any of the fields in the List of Eligible Single Name Reference Entities, or

- (c) update the List of Eligible Single Name Reference Entities to give effect to determinations by the Credit Derivatives Determinations Committee, including, without limitation, determinations of Succession Events, Successors or Substitute Reference Obligations.

The Clearing House will give notice by Circular of any such action.

#### 10.5 Self-referencing CDS

In addition to the notice requirements contained in Rule 204 and the Membership Procedures, a CDS Clearing Member (including in its capacity as Sponsor) or Sponsored Principal shall, subject to the following sentence, provide notice to the Clearing House if (i) such CDS Clearing Member or Sponsored Principal or an Eligible Single Name Reference Entity consolidates or amalgamates with, or merges into, or transfers all or substantially all of its assets to, the Eligible Single Name Reference Entity or such CDS Clearing Member or Sponsored Principal, as applicable, or such CDS Clearing Member or Sponsored Principal and an Eligible Single Name Reference Entity are the same entity or are or become Group Companies in respect of one another, or such CDS Clearing Member or Sponsored Principal is subject to an agreement pursuant to which any of the foregoing is reasonably likely to occur or (ii) any of the foregoing occurs in respect of an Eligible Single Name Reference Entity and one of the CDS Clearing Member's Customers (including any Sponsored Principal) in respect of which a CDS Contract exists with the Eligible Single Name Reference Entity as the reference entity (any such Customer, for the purposes of this paragraph 10.5, an "**Affected Customer**"). Such notification may be delayed for so long as the CDS Clearing Member or Sponsored Principal is prevented by Applicable Laws from disclosing the information on the basis of which the notification is required. A Customer, including a Sponsored Principal, shall notify its Clearing Member if it becomes an Affected Customer with respect to any CDS Contract or Customer-CM CDS Transaction, provided that such notification may be delayed for so long as the Customer is prevented by Applicable Laws from disclosing the information on the basis of which the notification is required. If a CDS Clearing Member (including in its capacity as Sponsor) or its Affected Customer or a Sponsored Principal is subject to an event or agreement described in this paragraph 10.5 or is party to any CDS Contract (or related Customer-CM CDS Transaction) resulting from the Clearing of CDS Trade Particulars which, as at the relevant Acceptance Time, were ineligible for Clearing pursuant to paragraph 4.8 regardless of whether or not the Clearing House receives any notification required under this paragraph 10.5, the Clearing House may conduct an auction process to terminate all the CDS Contracts of such Clearing Member or Sponsored Principal referencing such Eligible Single Name Reference Entity where (i) above applies or all CDS Contracts of such Clearing Member, or in respect of which such Clearing Member is a Sponsor, referencing such Eligible Single Name Reference Entity which are recorded in one of its Customer Accounts for which the Customer (including any Sponsored Principal) is the Affected Customer where (ii) above applies (all such CDS Contracts being the "**Affected SR Contracts**") (for the purposes of this paragraph 10.5, such Clearing Member or Sponsored Principal being the "**Affected CDS Clearing Member**") (and any related Customer-CM CDS Transactions) and enter into equivalent CDS Contracts with other CDS Clearing Members by requesting firm quotations from all such CDS Clearing Members (each auction in such process, an "**SR Auction**"). Prior to determining the CDS Contracts to be subject to any such auction, where the Affected CDS Clearing Member acts as Buying Counterparty and Selling Counterparty in respect of Affected SR Contracts of the same Set, the Clearing House shall, in consultation with the CDS Default Committee as to the transaction sizes of resulting CDS Contracts to be auctioned (as below), net, offset, close out or terminate such Affected SR Contracts to the extent appropriate for the purposes of the SR Auction and permitted by the Rules. For these purposes, the Clearing House will provide the Affected CDS Clearing Member with a report detailing the CDS Contracts to be subject to netting, offsetting, closing out or termination. Thereafter, the Clearing House (and the Affected CDS Clearing Member and any Affected Customer) to the extent that they have all necessary information, will adjust the records in Deriv/SERV to reflect such netting, offsetting, closing out or termination. The Clearing House will hold an auction unless the Clearing House, in its discretion and after consultation with the CDS Risk Committee, believes that the circumstances are such that an auction may be inappropriate, in which case the Clearing House may take such other action in consultation with the CDS Risk Committee as it considers reasonably necessary to achieve its primary aim in these circumstances of addressing the risks resulting from a CDS Clearing Member or Sponsored Principal being party to a CDS Contract where the reference entity is that CDS Clearing Member or Sponsored Principal or one of its Affected Customers or one of their Group Companies, while endeavouring, as far as is reasonably practicable in the circumstances without prejudicing the achievement of the primary aim, to avoid

materially and adversely affecting the Affected CDS Clearing Member or any of its Customers. The Clearing House shall determine the timing and other particular characteristics of each SR Auction in consultation with the CDS Default Committee, including determining the size of the bid/offer spread and/or of the CDS Contracts to be auctioned, whether one or more SR Auctions are to be held and the timing and structure of such auctions (including the frequency at which firm bid and firm offer Quotations will be requested and the transaction size (that is, the Floating Rate Payer Calculation Amount)) and whether CDS Clearing Members (excluding the Affected CDS Clearing Member) will be required (as opposed to requested) to submit actionable quotations in an SR Auction, provided that CDS Clearing Members will not be notified of whether the CDS Contract(s) to be terminated pursuant to such process is for an Affected CDS Clearing Member as CDS Buyer or CDS Seller.

The Clearing House will enter into CDS Contracts with the CDS Clearing Member(s) and in the amount and at the prices determined pursuant to the SR Auction, at which time the corresponding CDS Contracts of the Affected CDS Clearing Member and any related Customer-CM CDS Transactions shall be terminated by reference to the prices at which the Clearing House enters into such new CDS Contracts. The Clearing House, for itself and on behalf of the relevant Clearing Members and any Customers, using the DTCC Process, shall submit to Deriv/SERV the terms of such reduction, termination or new CDS Contracts, as applicable. As between the Clearing House and the Affected CDS Clearing Member, the Affected CDS Clearing Member will bear the cost of the associated bid/offer spread and any reasonable, out-of-pocket costs and expenses of the Clearing House in connection with such SR Auction(s) and its entering into such new CDS Contracts. Amounts owed by the Affected CDS Clearing Member to (or receivable by it from) the Clearing House in connection with any such reduction or termination shall be determined by the Clearing House by reference to the SR Auction(s). In addition, any Initial Payments, Margin, or other payments or deliveries owed (including the dates of settlement with respect thereto) relating to the Open Contract Positions increased, created, reduced or terminated pursuant to this paragraph 10.5 shall be as determined by the Clearing House with reference to the SR Auction(s) in accordance with the Procedures and, notwithstanding any other provision of the Rules, Initial Payments may be owed in respect to CDS Contracts entered into by the Clearing House pursuant to an SR Auction.

If an Affected CDS Clearing Member is a Defaulter, this paragraph 10.5 shall not restrict the rights of the Clearing House to close out, terminate or liquidate any Contract in any other manner in accordance with Part 9 of the Rules.

## 10.6 **Single Name CDS Contracts.**

- (a) Terms of the cleared Single Name Contracts
  - (i) The Standard Single Name Confirmation for each Single Name Contract shall be amended as follows:
    - (A) In respect of a 2003-type CDS Contract, by deleting, in the second paragraph, the phrase "as supplemented by each of the May 2003 Supplement and the 2005 Matrix Supplement to the 2003 ISDA Credit Derivatives Definitions" and replacing it with the phrase "as supplemented by each of the 2005 Matrix Supplement to the 2003 ISDA Credit Derivatives Definitions and the 2009 ISDA Credit Derivatives Determinations Committees, Auction Settlement and Restructuring Supplement to the 2003 ISDA Credit Derivatives Definitions (published on July 14, 2009)";
    - (B) by deleting, in the third paragraph, the square brackets and deleting, in the third paragraph, the phrase "the ISDA Master Agreement dated as of [date]" and replacing it with the phrase "Rules and Procedures of ICE Clear Europe";
    - (C) in part numbered 2, by deleting references to the Initial Payment Payer and the Initial Payment Amount in relation to CDS Contracts arising pursuant to the Clearing of CDS Trade Particulars in respect of Bilateral CDS

Transactions already recorded in Deriv/SERV and by deleting the square brackets in such part;

- (D)
    - (1) In respect of a 2014-type CDS contract by deleting parts numbered 4, 5, 6, 7, 8 and 9 in their entirety;
    - (2) In respect of a 2003-type CDS Contract by deleting parts numbered 4, 5, 6 and 7 in their entirety;
  - (E)
    - (1) In respect of a 2014-type CDS contract, by including a new part 4 as follows:
      - "4. Additional Term: Section 11.4 (*Merger of Reference Entity and Seller*) of the 2014 Credit Derivatives Definitions shall not apply."; and
    - (2) In respect of a 2003-type CDS Contract, by including a new part 4 as follows:
      - "4. Additional Term: Section 2.31 (*Merger of Reference Entity and Seller*) of the 2003 Credit Derivatives Definitions shall not apply."
- (ii) The provisions specified below of the Standard Single Name Confirmation for each Single Name Contract shall be completed as follows:
- (A) The "Transaction Type" is the Relevant Transaction Type.
  - (B) The "Matrix Publication Date" is the date of publication of the Relevant Physical Settlement Matrix.
  - (C)
    - (1) In respect of a 2014-type CDS Contract, "Standard Reference Obligation" is specified as applicable.
    - (2) In respect of a 2003-type CDS Contract, the "Reference Obligation(s)" are the Single Name Contract Reference Obligation(s) specified in the List of Eligible Single Name Reference Entities with respect to the relevant Eligible Single Name Reference Entity.
  - (D) The "Calculation Agent" is the Clearing House, except as provided in the Rules.
  - (E) The "Fixed Rate Payer Payment Dates" are March 20, June 20, September 20 and December 20.
- (iii) For each Single Name Contract, the following terms will be determined according to the particular CDS Trade Particulars submitted for Clearing, subject to paragraph 10.7 or, with respect to each Single Name Contract arising pursuant to Rule 401(a)(vi) or (xi), according to the CDS Trade Particulars provided by the Clearing House to the Clearing Member or Sponsored Principal, as the case may be, prior to the time at which such CDS Contract arose:
- (A) Which of the Eligible Single Name Reference Entities is the "Reference Entity".

- (B) Which of the eligible Scheduled Termination Dates specified for the Reference Entity in the List of Eligible Single Name Reference Entities is the "Scheduled Termination Date".
  - (C) The "Floating Rate Payer Calculation Amount".
  - (D) The "Floating Rate Payer".
  - (E) The "Fixed Rate Payer".
  - (F) The "Fixed Rate".
  - (G) The "Initial Payment Payer", other than in relation to CDS Contracts arising pursuant to the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV; and
  - (H) The "Initial Payment Amount", other than in relation to CDS Contracts arising pursuant to the Clearing of CDS Trade Particulars in respect of Bilateral CDS Transactions already recorded in Deriv/SERV.
- (iv) Each Single Name Contract will be governed by the terms set out in paragraph 8 and this paragraph 10, whether or not the relevant CDS Trade Particulars were in an equivalent form.

**10.7 STEC Contracts that are 2003-type CDS Contracts; provisions applying on and after the Protocol Effective Date.**

- (a) All STEC Contracts that are 2003-type CDS Contracts and which form part of the Open Contract Position of a Clearing Member as at the Protocol Effective Date will be deemed thereafter to be STEC Contracts that are 2014-type CDS Contracts, and the Standard Single Name Confirmation for each such STEC Contract shall be the Credit Derivatives Confirmation for use with the Relevant Physical Settlement Matrix as specified in respect of the relevant Eligible Single Reference Entity in the List of Eligible Single Name Reference Entities immediately following the Protocol Effective Date, as modified below.
- (b) For the purposes of paragraph 10.7(a), the information in respect of each STEC Contract which would be determined (had the STEC Contract been one falling within paragraph 10.1(d)) for the purposes of the Standard Single Name Confirmation by reference to the CDS Trade Particulars submitted for Clearing (as referred to in paragraph 10.6(a)) will instead be determined by reference to the STEC Contracts forming the relevant Open Contract Position of the relevant Clearing Member or Sponsored Principal, as the case may be, as at the Protocol Effective Date.
- (c) From the Protocol Effective Date, all STEC Contracts of a Set referencing a particular Single Name Reference Entity and particular Single Name Contract Reference Obligation(s) and having a particular Scheduled Termination Date and fixed rate and to which paragraph 10.1(c) had, up to that moment applied, shall be, and shall be treated as, fully fungible with all STEC Contracts of a Set referencing the same Single Name Reference Entity and particular Single Name Contract Reference Obligation(s) and having the same Scheduled Termination Date and fixed rate to which paragraph 10.1(d) applies.

**10.8 Relevant Physical Settlement Matrix Updates**

- (a) Where ISDA publishes a version of the Credit Derivatives Physical Settlement Matrix (a "**New Matrix**") and/or a new version of a Credit Derivatives Confirmation for use with a version of a Credit Derivatives Physical Settlement Matrix (a "**New Confirmation**") that is subsequent to the version that is specified as a Relevant Physical Settlement Matrix and/or



Standard Single Name Confirmation, respectively for any Single Name Contract(s) (the "Existing Matrix" and "Existing Confirmation", respectively), and the Clearing House determines, subject to consultation with the CDS Risk Committee, that a Single Name Contract referring to the New Matrix and/or New Confirmation would be fungible with a Single Name Contract referring to the Existing Matrix and/or Existing Confirmation respectively (the date of such determination, the "Matrix Update Date" and "Confirmation Update Date", respectively and each prior Credit Derivatives Physical Settlement Matrix and/or Credit Derivatives Confirmation subject to such determination, a "Superseded Matrix" and "Superseded Confirmation", respectively) and so notifies CDS Clearing Members and Sponsored Principals by Circular, such Single Name Contracts shall, as of the close of business on the Matrix Update Date and/or Confirmation Update Date, respectively, become Single Name Contracts referencing the New Matrix as the Relevant Physical Settlement Matrix and/or the New Confirmation as the Standard Single Name Confirmation, respectively, and the List of Eligible Single Name Reference Entities shall be updated accordingly, provided that the Clearing House shall not make any such determination where the New Matrix and/or New Confirmation, when compared with the Existing Matrix and/or Existing Confirmation, respectively, contains any change to a term that would apply to such Single Name Contract. Any CDS Trade Particulars referencing a Superseded Matrix and/or Superseded Confirmation submitted for Clearing as a Single Name Contract shall, upon acceptance for Clearing, give rise to a Single Name Contract referencing the New Matrix and/or New Confirmation, respectively.

- (b) The Clearing House may determine a different Matrix Update Date and/or Confirmation Update Date applicable to individual Single Name Contracts or groups of Single Name Contracts or may determine a Matrix Update Date and/or Confirmation Update Date applicable to all Single Name Contracts referencing a Superseded Matrix and/or Superseded Confirmation, respectively, as it deems appropriate.

#### 10.9 Amendments

- (a) Where CDS Trade Particulars, after the Acceptance Time, would give rise to two CDS Contracts which would be Single Name Contracts but for the specification of an Eligible Single Name Reference Obligation as the "Reference Obligation", then the Clearing House shall be entitled at its discretion to treat such CDS Trade Particulars, at the Acceptance Time, as though they had specified the Single Name Contract Reference Obligation specified for such Eligible Single Name Reference Obligation in the List of Eligible Single Name Reference Entities.
- (b) In addition to the acceptance process described in paragraph 4, the Clearing House's Acceptance Notice to the relevant CDS Clearing Member(s) or Sponsored Principal(s) in relation to the relevant CDS Trade Particulars shall include details of any adjustment that will be made by the Clearing House pursuant to this paragraph. Submission of data in relation to CDS Contracts to Deriv/SERV under paragraph 4.4 shall take account of any such adjustments set out by the Clearing House in the Acceptance Notice.