



PART II – Default Rules

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Part II – Default Rules

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1. GENERAL

1.1 Scope

- 1.1.1 These Default Rules and the relevant Procedures govern the clearing and settlement services provided by Dubai Clear L.L.C.. They do not cover any services provided by any other persons, including but not limited to, exchange traded services provided by any Market or custodian services provided by the Central Securities Depository or services provided by or carried out by any other third party, whether or not related to the DFM Group.
- 1.1.2 These Default Rules are the "*Default Rules*" referred to in the General Rules (including, for the avoidance of doubt, the Settlement Finality Regulations) and, together with any amendment, supplement, variation or extension thereto, forms part of and are integral to the Clearing Membership Agreement between each Clearing Member and the Clearing House.
- 1.1.3 Unless defined to the contrary in this Default Rules, capitalised terms defined in the General Rules will have the same meaning in these Default Rules.
- 1.1.4 The provisions set out in the section titled "*Interpretation*" of the General Rules shall be incorporated by reference into these Default Rules.

1.2 Settlement Finality Regulations

Without prejudice and in addition to all rights of the Clearing House under the Clearing Membership Agreement, the Settlement Agent Participation Agreement and Applicable Law, all instructions for the transfer of payments, all payments transferred or to be transferred, all instructions for the deliveries and the deliveries made or to be made pursuant to these Default Rules are subject to the Settlement Finality Regulations.

1.3 Netting Law

Without prejudice and in addition to all rights of the Clearing House under the Clearing Membership Agreement and Applicable Law, the Clearing House and each Clearing Member hereby declare that all the transactions contemplated by these Default Rules in respect of the Clearing Member's Settlement Default Fund Contribution shall be a "*Collateral Arrangement*" under the "*Netting Agreement*" (each as defined in the Netting Law) constituted by the Clearing Membership Agreement.

1.4 Risk Management Committee

The Risk Management Committee, acting in accordance with their terms of reference and any directions of the Authority or the Executive Committee, shall have supervisory responsibility for these Default Rules, including the promulgation of any amendment, supplement, variation or extension thereto, and any Default Management Process carried out in accordance with these Default Rules.

1.5 Definitions

In these Default Rules:

"Back-up Clearing Member" means, in respect of a Client Contract, any Back-up Clearing Member designated by the Client of another Clearing Member or Settlement Agent and notified to the Clearing House prior to the date of a Default Notice in accordance with the General Rules.

"CCP SITG" means, on any day and in respect of the Settlement Default Fund, an amount denominated in Emirati Dirham which is the greater of:

- (i) no less than twenty-five per cent. (25%) of the paid-up capital of the Clearing House; and
- (ii) such other amount directed by the Authority or the Risk Management Committee,

as required pursuant to Article 13(4) (*Settlement Guarantees*) of the CCP Regulations.

"Cash Contract" means a Contract in relation to Securities which is not a Contract for Derivatives.

"Contract for Derivatives" means a Contract in relation to Derivatives.

"Contribution Balance" means, on any day, the aggregate of the Eligible Collateral Value of the:

- (i) Initial Margin and Variation Margin previously transferred by such Defaulting Clearing Member less any Relevant Ported Proportion_M

	comprising Ported Collateral in respect of any Ported Client Contracts; and
	(ii) Available Collateral Balance of such Defaulting Clearing Member <i>less</i> any Relevant Ported Proportion _C comprising Ported Collateral in respect of any Ported Client Contracts.
"Default Fund Waterfall"	means the order of application set out in Section 9.1 (<i>Default Fund Waterfall</i>) of these Default Rules.
"Default Management Process" or "DMP"	means, following the delivery of a Default Notice in accordance with Section 4 (<i>Enforcement: Default Notice</i>), the actions, orders, transfers, realisations and/or liquidations contemplated by Section 5 (<i>Default Management Actions</i>) of these Default Rules.
"Default Notice"	means, following the occurrence of an Event of Default, the notice delivered by the Clearing House in accordance with Section 4 (<i>Enforcement: Default Notice</i>) of these Default Rules.
"Defaulting Clearing Member"	means a Clearing Member to which a Default Notice relates.
"Delegate"	any delegate, agent, attorney or co-trustee appointed by the Clearing House as permitted in Section 6.1.3 (<i>Rights and discretions of the Clearing House</i>).
"Derivatives"	means financial contracts traded on the market and the value is depends on the value of securities included in such contracts.
"Derivatives Daily Obligation"	means the net obligation of a Clearing Member in relation to a Contract for Derivatives calculated as per Rule 15.3 of the General Rules.
"Determination Objectives"	has the meaning given to it in Section 6.2.2 (<i>Calculations and determinations of the Clearing House</i>).

"DMP Guarantee"	means, in respect of a Clearing Member, the guarantee granted by such Clearing Member in favour of the Clearing House upon its admission to the Clearing House in respect of the DMP Losses pursuant to the Section titled " <i>DMP Guarantee</i> " under the CM Admission Agreement.
"DMP Loss Notice"	has the meaning given to it in Section 12.2 (<i>Determination of DMP Loss</i>).
"DMP Losses"	<p>means, in respect of a Defaulting Clearing Member, the losses incurred by the Clearing House which is an amount, denominated in Emirati Dirham, equal to the aggregate of the:</p> <ul style="list-style-type: none">(i) CCP SITG applied pursuant to the Default Fund Waterfall;(ii) Settlement Default Fund Contributions of the Non-defaulting Clearing Members applied pursuant to the Default Fund Waterfall;(iii) other monies or assets applied by the Clearing House applied pursuant to the Default Fund Waterfall;(iv) amounts payable, or would be payable by such Defaulting Clearing Member pursuant to Section 10 (<i>Indemnities for Default Management Process</i>); and(v) each Undischarged Liquidated Value (if any) following the application of the Default Fund Waterfall, <p>in each case, in connection with effecting the Default Management Process as a result of the Event of Default of that Defaulting Clearing Member.</p>

"Event of Default"	has the meaning given to it in Section 3 (<i>Events of Default: Clearing Members</i>).
"Gains"	means the absolute value, denominated in Emirati Dirham, of any amount of Loss which is a negative number.
"General Rules"	the General Rules of Securities and Derivatives Clearing Services of Dubai Clear L.L.C., as amended, supplemented, varied or extended from time to time.
"Invoice Back" or "Invoicing Back"	means, in respect of the Default Management Process, the process of entry into opposite Contracts to an outstanding Contract which has been Novated to the Clearing House prior to the date of a Default Notice, as contemplated in Rules 32.2 to 32.4 (<i>Disorder, Impossibility or Force Majeure</i>) of the General Rules.
"Liquidated Client Contract"	<p>means each outstanding Client Contract which:</p> <ul style="list-style-type: none">(i) as of the date of the Default Notice, is registered to the name of a Defaulting Clearing Member;(ii) is not a Ported Client Contract; and(iii) has been terminated and liquidated in accordance with Section 8.1 (<i>Termination of Contracts</i>).
"Liquidated Exposure"	means, in respect of a Defaulting Clearing Member, an amount determined by the Clearing House in accordance with Section 8.3 (<i>Liquidation Values</i>).
"Liquidated Prop Contract"	<p>means each outstanding Prop Contract which:</p> <ul style="list-style-type: none">(i) as of the date of the Default Notice, is registered to the name of a Defaulting Clearing Member; and

- (ii) has been terminated and liquidated in accordance with Section 8.1 (*Termination of Contracts*).

"Loss"

means, in respect of a Defaulting Clearing Member and the open position of a Liquidated Prop Contract or, as applicable, a Liquidated Client Contract, an amount denominated in Emirati Dirham, that the Clearing House determines in good faith in accordance with Section 6.2 (*Calculations and determinations of the Clearing House*) to be its losses and costs in connection with the open position of that Liquidated Prop Contract or, as applicable, that Liquidated Client Contract, including any loss of bargain, cost of funding, loss or cost incurred as a result of its terminating, liquidating, obtaining or re-establishing any hedge or related trading position. "Loss" includes losses and costs in respect of any payment or delivery required to have been made (assuming satisfaction of any applicable condition precedent) on or before the date on which the relevant Contract had become a Liquidated Prop Contract or, as applicable, a Liquidated Client Contract in accordance with Section 8.1 (*Termination of Contracts*) and not made pursuant to Section 8.1.4 (*Termination of Contracts*).

"Material Adverse Effect"

means, in respect of a Clearing Member, any event or circumstance which, in the reasonable opinion of the Clearing House (acting in its sole discretion), has a material adverse effect on:

- (i) the business, operations, property, or financial condition of that Clearing Member;
- (ii) the ability of that Clearing Member to perform its obligations under the Clearing Membership Agreement; or
- (iii) the validity or enforceability of, or the effectiveness of any Collateral transferred

pursuant to the Clearing Membership Agreement; or

- (iv) the validity or enforceability or effectiveness of any of the rights of the Clearing House under the Clearing Membership Agreement.

"Net Client Liquidated Value" means in respect of a Defaulting Clearing Member and its Liquidated Client Contracts, an amount determined by the Clearing House in accordance with Section 8.3 (*Liquidation Values*).

"Net Prop Liquidated Value" means in respect of a Defaulting Clearing Member and its Liquidated Prop Contracts, an amount determined by the Clearing House in accordance with Section 8.3 (*Liquidation Values*).

"Non-Defaulting Clearing Member" means each Clearing Member other than the Defaulting Clearing Member.

"Port", "Porting" or "Ported" means the process of transferring the rights and obligations of a Defaulting Clearing Member under an outstanding Client Contract to a Back-up Clearing Member in accordance with Section 7 (*Client Porting*).

"Ported Client Contract" has the meaning given to it in Section 7.4.1 (*Procedure for Porting*).

"Ported Collateral" means, in respect of a Defaulting Clearing Member and an associated Ported Client Contract, the Equivalent Collateral with an Eligible Collateral Value equal to the aggregate of the:

- (i) the Relevant Ported Proportion_M of the Eligible Collateral Value of the aggregate of the Client Posted IM and the Client Posted VM;
- (ii) the aggregate of any Client Posted IM and the Client Posted VM which has been transferred by a Settlement Agent in respect of such Ported Client Contract pursuant to Rule 16.2.2

(*Acceptance of participation*) of the General Rules, *provided that* for the purpose of calculating the amount under this clause (ii) the Eligible Collateral Value shall be zero (0) for: (i) any Client Posted IM with respect to a Client Contract which is Ported prior to the IM Cut-off Time; and (ii) any Client Posted VM with respect to a Client Contract which is Ported prior to the VM Cut-off Time, in each case, of the Settlement Cycle of that Client Contract; and

- (iii) the Relevant Ported Proportion_C, of the Eligible Collateral Value of the Available Collateral Balance,

as determined by the Clearing House in accordance with Section 7.6 (*Ported Collateral*).

"Porting Costs"

means, in respect of a Defaulting Clearing Member, any loss, liability (including any liability as to tax), expense, demand, cost or claim suffered or incurred by the Clearing House as a result of Porting any Ported Client Contract which was registered to the name of that Defaulting Clearing Member on the date of the Default Notice and the transfer of Ported Collateral.

"Receiver"

means a receiver or receiver and manager or administrative receiver in respect of a Defaulting Clearing Member or its assets which is appointed by the Clearing House as permitted in Section 6.1.3 (*Rights and discretions of the Clearing House*).

"Recovery Limitation Period"

means, in respect of a Defaulting Clearing Member, the period commencing from the date of a DMP Loss Notice up to the date which is twelve (12) calendar months from the date of such DMP Loss Notice.

"Regulatory Body"

means, in respect of a Clearing Member, the Authority and any other regulatory body that has jurisdiction to exercise, in relation to the provision or use of clearing

services, a regulatory or supervisory function over that Clearing Member under Applicable Laws.

**"Relevant Ported
Proportion_C"**

means, in respect of Defaulting Clearing Member and a Ported Client Contract, a proportion (expressed as a percentage) of the Eligible Collateral Value of its Available Collateral Balance which the Clearing House determines in its sole discretion in accordance with Section 6.2.6 (*Calculations and determinations of the Clearing House*) to be attributable to such Ported Client Contract, *provided that* the Relevant Ported Proportion_C may be zero (0) if, in the opinion of the Clearing House, the Porting of any Available Collateral Balance of the Defaulting Clearing Member would be detrimental to the interests of the Non-defaulting Clearing Members as a whole, or if the Eligible Collateral assets comprising the Available Collateral Balance is of an asset class (such as Eligible Guarantees) which cannot be transferred or attributed by one party to another party without taking further acts or execution of documents.

**"Relevant Ported
Proportion_M"**

means, in respect of Defaulting Clearing Member and a Ported Client Contract, a proportion (expressed as a percentage) of the Eligible Collateral Value of the aggregate of its Client Posted IM and its Client Posted VM which the Clearing House determines in its sole discretion in accordance with Section 6.2.6 (*Calculations and determinations of the Clearing House*) to be attributable to such Ported Client Contract, *provided that* for the purpose of calculating the Relevant Ported Proportion_M, the Eligible Collateral Value shall be zero (0) for: (i) any Client Posted IM with respect to a Client Contract which is Ported prior to the IM Cut-off Time; and (ii) any Client Posted VM with respect to a Client Contract which is Ported prior to the VM Cut-off Time, in each case, of the Settlement Cycle of that Client Contract.

"Settlement Default Fund Contribution"

means, on any day, the Eligible Collateral Value of the portion of the CM Initial Contribution and any Additional Contribution transferred by such Clearing Member to the Clearing House in accordance with Rule 28 (*Margin and Collateral*) of the General Rules which the Clearing House has allocated as contribution to the Settlement Default Fund in accordance with the Settlement Default Fund Policy.

"Settlement Default Fund Policy"

means the guidelines and procedures designated as such in relation to, amongst other things, the allocation of Collateral for the Settlement Default Fund, the stress-testing by the Clearing House of the adequacy of size of the Settlement Default Fund and valuations of Collateral comprising the Settlement Default Fund from time to time, as published by the Clearing House on its website and which, for the purposes of these Default Rules and the General Rules, will constitute a Procedure.

"Undischarged Liquidated Value"

has the meaning given to it in Section 9.3.2 (*Discharge following application of Default Fund Waterfall*).

2. ESTABLISHMENT OF SETTLEMENT DEFAULT FUND

2.1 The Settlement Default Fund

- 2.1.1 The Clearing House shall maintain a Settlement Default Fund from the CM Initial Contributions and Additional Contributions of the Clearing Members provided in accordance with Rule 28 (*Margin and Collateral*) of the General Rules and the Settlement Default Fund Policy.
- 2.1.2 In accordance with Article 13(3) (*Settlement Guarantees*) of the CCP Regulations and the Settlement Default Fund Policy, the Clearing House shall ensure that:
- (a) the assets of the Settlement Default Fund comprise Eligible Collateral and, where applicable, are fully-financed;
 - (b) on any day, the Eligible Collateral Value of the aggregate of the Settlement Default Fund Contributions shall be equal to an amount which is adequate to cover the default of obligations of the greater of: (i) the largest Clearing Member; and (ii) the second and third largest Clearing Members, as determined by the Clearing House in accordance with its risk management policy;
 - (c) it maintains the CCP SITG allocated to the Settlement Default Fund.
- 2.1.3 Any assets of the Settlement Default Fund may only be applied by the Clearing House in accordance with the Default Fund Waterfall and the Settlement Default Fund Policy and may not be used for any other purpose.
- 2.1.4 No Clearing Member, Settlement Agent or any other party has any rights to the assets of the Settlement Default Fund other than as expressly provided in these Default Rules or the Settlement Default Fund Policy, nor to require the Clearing House to take or refrain from taking any action in respect of the assets of the Settlement Default Fund.

2.2 Settlement Default Fund Contributions

- 2.2.1 Each Clearing Member shall make contributions to the Settlement Default Fund by complying with Rule 28 (*Margin and Collateral*) of the General Rules and the Settlement Default Fund Policy.

- 2.2.2 The Clearing House shall review the financial solvency of the Settlement Default Fund by performing stress tests in accordance with the Settlement Default Fund Policy, as approved by the Risk Management Committee and the Authority.
- 2.2.3 The Clearing House shall allocate a portion of the CM Initial Contribution of each Clearing Member as its Settlement Default Fund Contribution in accordance with the determinations referred to in Section 2.2.2 above.
- 2.2.4 Any portion of CM Initial Contribution which has been allocated as Settlement Default Fund Contribution:
 - (a) will be deducted from the Available Collateral Balance of the Clearing Member; and
 - (b) may not be challenged by any Clearing Member.
- 2.2.5 If, on any Business Day, the Clearing House determines that the Available Collateral Balance of any Clearing Member is insufficient to support the amount of Settlement Default Fund Contribution required from that Clearing Member, it shall make a demand for Additional Contributions in accordance with Rule 28.7 (*Additional Contributions*) of the General Rules.
- 2.2.6 The stress tests referred to in Section 2.2.2 above shall be reviewed by the Risk Management Committee at the times specified in the terms of reference of the Risk Management Committee, and as often as may be prudent during times of stress or volatility in the markets.

2.3 Subsequent Additional Contributions to Settlement Default Fund after a Default Management Process

- 2.3.1 On any Business Day on which a Clearing Member receives a demand from the Clearing House for Additional Contributions pursuant to Section 2.2.5 (*Settlement Default Fund Contributions*) above to replenish the Settlement Default Fund after the application of the Default Fund Waterfall following the completion of a Default Management Process in respect of which such Clearing Member was a Non-Defaulting Clearing Member, it may elect to resign its membership of the Clearing House if:
 - (a) it has received a previous demand for Additional Contributions pursuant to Section 2.2.5 (*Settlement Default Fund Contributions*) and it is in compliance with such demand; and

- (b) no Event of Default has occurred and is continuing in respect of such Clearing Member, whether or not a Default Notice has been delivered.

2.3.2 If the Clearing House accepts a resignation notice delivered pursuant to Section 2.3.1 above:

- (a) the provisions of Rules 12.3 to 12.6 (*Resignation of Membership*) (inclusive) of the General Rules shall apply to such Clearing Member as a "Resigning Member"; and
- (b) such Resigning Member shall be released from its obligation to comply with the demand for Additional Contributions referred to in Section 2.3.1 above.

2.4 Records of Settlement Default Fund Contributions and deductions

2.4.1 The Clearing House shall maintain books and records in accordance with international standards acceptable to the Authority which clearly identifies (without limitation):

- (a) the Settlement Default Fund Contribution of each Clearing Member;
- (b) any deductions from the Settlement Default Fund Contributions in the case of a Default Management Process; and
- (c) the data, data sources and calculations performed by the Clearing House in determining the adequacy of the Settlement Default Fund Contributions to meet the relevant risks to which the Clearing House may be subject.

2.4.2 Such books and records will be disclosed by the Clearing House to the Authority in accordance with the CCP Regulations.

2.4.3 A Clearing Member may, upon reasonable notice to the Clearing House, request a copy of the statements of the Clearing House showing the allocation of its CM Initial Contributions and any Additional Contributions to its Settlement Default Fund Contribution, *provided that* save as expressly provided in these Default Rules, the Clearing House is under no duty to account to any Clearing Member (or, for the avoidance of doubt, any Settlement Agent or any other third party) for allocations to the Settlement Default Fund Contributions.

- 2.4.4 The books and records of the Clearing House in respect of the Settlement Default Fund shall be conclusive evidence of the matters to which it relates.

3. EVENTS OF DEFAULT: CLEARING MEMBERS

The occurrence at any time of any of the following events or circumstances in this Section 3 with respect to a Clearing Member is an "**Event of Default**" (save for Section 3.15 (*Occurrence of Event of Default*)).

3.1 Failure to pay/ deliver

Failure by the Clearing Member to make, when due, any payment or delivery which is required to be made by it to the Clearing House under the Clearing Membership Agreement including, for the avoidance of doubt, failure to transfer or deliver any Additional Contribution following demand by the Clearing House.

3.2 Breach of agreement/ repudiation of agreement

3.2.1 Failure by the Clearing Member to comply with or perform any agreement or obligation (other than an obligation to make payment or delivery under the Clearing Membership Agreement) to be complied with or performed by the Clearing Member in accordance with the Clearing Membership Agreement.

3.2.2 The Clearing Member disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of the Clearing Membership Agreement, or purports to disaffirm, disclaim, repudiate, reject or challenge the validity of the Clearing Membership Agreement.

3.3 Breach or termination of market institution membership

3.3.1 The Clearing Member is in breach of the terms of membership of, or is declared to be in default by, or is suspended or expelled from membership of, a Market or any other recognised, designated or overseas investment exchange or clearing house to which it is a member.

3.3.2 The Clearing Member is in breach of the terms of membership of, or is declared to be in default by, or is suspended or expelled from membership of the Central Securities Depository.

3.4 Regulatory Body authorisations or actions

3.4.1 The Clearing Member is:

- (a) in breach of the Applicable Laws of a Regulatory Body which, in the opinion of the Clearing House, would have a Material Adverse Effect;

- (b) refused an application for, or renewal of, authorisation by the Regulatory Body, or any authorisation which it has from such Regulatory Body is withdrawn, suspended, revoked or terminated; or
 - (c) suspended or expelled from membership of a Regulatory Body.
- 3.4.2 A Regulatory Body takes or threatens to take action against or in respect of the Clearing Member under any provision or process of Applicable Law.
- 3.4.3 The Authority has notified the Clearing House or has otherwise declared the Clearing Member to be a Defaulting Clearing Member.

3.5 Credit support default

- 3.5.1 The expiration or termination of any arrangements with respect to Collateral transferred by a Clearing Member to the Clearing House or the failing or ceasing of such Collateral arrangement or its DMP Guarantee (together, the arrangements with respect to Collateral and the DMP Guarantee, such Clearing Member's "**Credit Support**") to be in full force and effect prior to the satisfaction of all obligations of such Clearing Member to the Clearing House under the Clearing Membership Agreement.
- 3.5.2 Failure by any provider of Credit Support to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with the terms of such Credit Support.
- 3.5.3 The provider of Credit Support disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf).

3.6 Cross default

The Clearing Member fails to pay any sum due and payable, or is otherwise in default under the terms of any agreement to which it is a party or threatens to suspend payment or to default under the terms of any agreement to which it is a party, which failure or default would, in the opinion of the Clearing House, have a Material Adverse Effect.

3.7 Failure to maintain adequate resources

In the opinion of the Clearing House, the Clearing Member fails to maintain sufficient financial resources which is commensurate with that Clearing Member's level of business, operations or financial condition.

3.8 Bankruptcy and Insolvency Proceedings

Any Bankruptcy and Insolvency Proceedings, or any analogous step or action, are taken or initiated against the Clearing Member in any jurisdiction.

3.9 Unlawfulness and invalidity

3.9.1 It is or becomes unlawful for the Clearing Member to perform any of its obligations under the Clearing Membership Agreement, or any Credit Support ceases to be lawful.

3.9.2 Any obligation of the Clearing Member under the Clearing Membership Agreement is not, or cease to be legal, valid, binding, enforceable or in full force and effect and the cessation individually or cumulatively materially and adversely affects the interests of the Clearing House under the Clearing Membership Agreement.

3.9.3 The Clearing Membership Agreement is alleged by the Clearing Member to be ineffective.

3.10 Cessation of business

The Clearing Member suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business which would, in the opinion of the Clearing House, have a Material Adverse Effect.

3.11 Change of Control

There is a change to the controlling holdings (defined as the exercise or control of 20% or more of the voting power of the Clearing Member) and either:

3.11.1 the Clearing Member has failed to comply with its obligation to notify the Clearing House pursuant to Rule 9.7.4 (*Information obligations: Clearing Members*) of the General Rules;

3.11.2 an approval of the Risk Management Committee and/ or the Board of the Clearing House was required but not obtained, or the Risk Management Committee and/ or the Board declined to provide its approval; or

3.11.3 an approval of a Regulatory Body was required but not obtained, or the Regulatory Body declined to provide its approval.

3.12 **Audit qualification**

The auditors of the Clearing Member qualify the audited annual financial statements of the Clearing Member or the audited annual consolidated financial statements of the Clearing Member's group.

3.13 **Material litigation**

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Clearing Membership Agreement or the transactions contemplated in the Clearing Membership Agreement or against the Clearing Member or the Clearing Member's assets which would, in the opinion of the Clearing House, have a Material Adverse Effect.

3.14 **Expropriation**

The authority or ability of the Clearing Member to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to the Clearing Member or any of its assets, other than as a result of recovery and resolution actions in respect of the Clearing Member by a Regulatory Body under any provision or process of Applicable Law which apply to clearing members generally and which preserves the rights and obligations of the parties to the Clearing Membership Agreement.

3.15 **Occurrence of Event of Default**

Upon the occurrence of a Event of Default, the Clearing House at its sole discretion may (but is not obliged to):

3.15.1 declare that Clearing Member to be a Defaulting Clearing Member pursuant to Section 4 (*Enforcement: Default Notice*) and exercise any or all of its rights under the Default Management Process; and

- 3.15.2 if reasonably practicable to do so and having regard to the interests of the other Clearing Members as a whole, refrain from declaring such Clearing Member to be a Defaulting Clearing Member and instead treat the outstanding Contracts registered to such Clearing Member as if such Contract had been rejected for participation by a Settlement Agent in accordance with the General Rules and the relevant Procedures.

4. ENFORCEMENT: DEFAULT NOTICE

4.1 Declaration of Event of Default

If the Clearing House decides to declare an Event of Default in respect of a Clearing Member:

4.1.1 it shall deliver a notice (the "**Default Notice**") to such Clearing Member specifying:

- (a) the relevant Event(s) of Default;
- (b) declaring it to be a Defaulting Clearing Member; and
- (c) the time and date from which all unresolved open positions under the relevant outstanding Contracts will be deemed to be terminated and liquidated for the purposes of these Default Rules; and

4.1.2 at the same time that a Default Notice is delivered pursuant to Section 4.1.1 above:

- (a) it shall deliver a copy of the Default Notice to the Authority and the Central Securities Depository;
- (b) it shall deliver a copy of the Default Notice to the Settlement Agents who have accepted participation in the outstanding Contracts which are registered in the name of such Defaulting Clearing Member; and
- (c) it may (in its sole discretion and without having any liability for not doing so) publish a copy of the Default Notice on the website of the Clearing House,

in each case, in accordance with the Procedures, *provided that* the Clearing House will have no liability to any person for any failure to deliver or publish such Default Notice.

4.2 Notification to Non-defaulting Clearing Members and Settlement Agents

4.2.1 Where practicably reasonable to do so, the Clearing House may, in addition to the publication of a Default Notice on its website, notify the Non-defaulting Clearing Members and the Settlement Agents of such Default Notice through such electronic means contemplated by Rule 35 (*Electronic Communication*) of the General Rules and the Procedures, *provided that* the Clearing House will have no liability for any failure to deliver or publish such Default Notice.

4.2.2 A Settlement Agent and any other Clearing Member may (but not be obliged to) notify its Client(s) of such Default Notice if such client is also a Client or GCM Prop client of that Defaulting Clearing Member.

4.2.3 In taking any action or inaction pursuant to the Default Management Process, the Clearing House shall be entitled to assume that the Clients to any Client Contract and any GCM Prop client(s) to any Prop Contract which are subject to the Default Management Process are aware of such Default Notice and the consequences of the Default Management Process with respect to such outstanding Client Contracts or Prop Contracts.

4.3 Rights of Clearing House following Default Notice

Without prejudice and in addition to each other right of the Clearing House under Applicable Law, the delivery of a Default Notice shall entitle, but not oblige, the Clearing House to:

4.3.1 take any or all of the actions set out in these Default Rules in connection with the Default Management Process; and

4.3.2 demand payment under, or otherwise make a claim, against the guarantor under the DMP Guarantee, whereupon the obligations under the DMP Guarantee shall become immediately due, and payable on demand by the Clearing House.

5. DEFAULT MANAGEMENT ACTIONS

5.1 Default Management Process

The steps which the Clearing House may but is not obliged to (and shall, if so directed by the Risk Management Committee or the Authority) take following the delivery of a Default Notice to the Defaulting Clearing Member pursuant to Section 4.1 (*Declaration of Event of Default*) are all or any of the following:

- 5.1.1 Port any outstanding Client Contract which is registered to the Defaulting Clearing Member to a Back-up Clearing Member in accordance with Section 7 (*Client Porting*);
- 5.1.2 Invoice Back any outstanding Contract which is registered to the Defaulting Clearing Member;
- 5.1.3 in relation to Cash Contracts, effect a CCP Buy-In in respect of any outstanding Selling Contract which is registered to the Defaulting Clearing Member as if, for the purposes of Rule 27 (*CCP Buy-In*) of the General Rules:
 - (a) that outstanding Selling Contract had been deemed rejected by a Settlement Agent; and
 - (b) the relevant affected Securities thereunder are the full number of the relevant Securities of that outstanding Selling Contract (which, for the purposes of Rule 27 (*CCP Buy-In*) of the General Rules, shall be deemed to be an "affected Selling Contract");
- 5.1.4 deliver the relevant Securities under an outstanding Selling Contract or accept the delivery of the relevant Securities under an outstanding Buying Contract which, in each case, is registered to the Defaulting Clearing Member;
- 5.1.5 close-out any outstanding Contract with a deemed opposite Contract at a price determined by the Clearing House at its sole discretion in accordance with Section 6.2 (*Calculations and determinations of the Clearing House*);
- 5.1.6 liquidate, dispose of, or otherwise realise proceeds from the relevant Securities which are the subject of an outstanding Contract, *provided that* the Clearing House is under no obligation to any party to enter into any transactions on a "best execution" basis to achieve the optimal proceeds for the relevant Securities;

- 5.1.7 liquidate, dispose of, or otherwise realise proceeds from any Collateral held by the Clearing House for application in accordance with the Default Fund Waterfall or as directed by the Authority, *provided that* the Clearing House is under no obligation to any party to enter into any transactions on a "best execution" basis to achieve the optimal proceeds for the Collateral assets;
- 5.1.8 determine cash compensation amounts for any undelivered and/ or unpaid outstanding Contract (whether or not such outstanding Contract is subject to Invoicing Bank or a CCP Buy-In); and/ or
- 5.1.9 take such any other steps as may be desirable to the Clearing House to preserve as far as possible, the position under an outstanding Client Contract, including (without limitation):
 - (a) crediting or debiting accounts;
 - (b) entry into new Contracts;
 - (c) transfer of any outstanding Contract;
 - (d) reversal of any outstanding Contract; and/or
 - (e) instructing the Central Securities Depository to place restrictions on any Securities purchased by the Defaulting Clearing Member under a Buying Contract which have been credited the account of the Defaulting Clearing Member, its GCM Prop client or Client by the systems of the Central Securities Depository on or after a Default Notice was delivered under Section 4.1 (*Declaration of Event of Default*),

together with effecting the transfer of any corresponding Collateral which is deemed by the Clearing House (acting in its own discretion) to correspond to the open position of such outstanding Contract.

5.2 Immediate recourse and rights cumulative

- 5.2.1 The Clearing House may take, or refrain to take any of the actions set out in Section 5.1 (*Default Management Process*) above in any order of preference in its sole discretion, having regard to the Determination Objectives.

5.2.2 Each Clearing Member waives any right it may have to:

- (a) first requiring the Clearing House (or any person appointed by the Clearing House pursuant to Section 6.1.3 (*Rights and discretions of the Clearing House*) to proceed against or enforce any other rights, security, or claim for payment from any person before taking any action under the Default Management Process; or
- (b) require that any action under the Default Management Process be taken or enforced in any particular order or manner or at any particular time or that any amount received or recovered from any person, or by virtue of any action under the Default Management Process, which is capable of being applied in or towards discharge of any obligations of the Defaulting Clearing Member, is so applied.

5.2.3 Each Clearing Member acknowledges that the Clearing House is bound to follow any directions given by the Authority in respect of the steps taken by the Clearing House under the Default Management Process and agrees that it shall not take any steps or bring any proceedings in any forum to challenge the actions taken by the Clearing House, any other member of the DFM Group or any of their directors or other officers in complying with any such directions given by the Authority. This Section 5.2.3 is without prejudice to any other rights that a Clearing Member might have at law with respect to any other party.

5.2.4 The rights, powers and remedies of the Clearing House under any action taken in Section 5.1 (*Default Management Process*) above are cumulative and not exclusive of its other rights, powers or remedies set out in Section 5.1 (*Default Management Process*) or otherwise provided by Applicable Law.

5.3 No waiver

A failure or delay in exercising any right, power or privilege in respect of these Default Rules (including any right, power or privilege in respect of an action under the Default Management Process) will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

6. POWERS OF CLEARING HOUSE

6.1 Rights and discretions of the Clearing House

In giving effect to the actions (or inactions) taken, or to be taken, by the Clearing House in the Default Management Process, the Clearing House may (but is not obliged to):

6.1.1 co-operate with and disclose any information relating to (without limitation) the Event of Default, the Defaulting Clearing Member, the Client Contract positions in respect of that Defaulting Clearing Member, their respective financial condition, the relevant Securities or Derivatives under any outstanding Contracts affected by the Event of Default, to:

- (a) the Authority and/ or any Regulatory Body having jurisdiction over that Defaulting Clearing Member;
- (b) the relevant Market and/ or any other market infrastructure systems to which that Defaulting Clearing Member is a member of;
- (c) the Central Securities Depository; and/ or
- (d) any third parties appointed by the Clearing House in respect of the Default Management Process pursuant to Sections 6.1.2 and/or 6.1.3 below,

and each Clearing Member hereby acknowledge and agree that any such disclosure of information may include information which is otherwise regarded as confidential and/ or material non-public information about itself or the relevant Securities or Derivatives owned or held by it or any Clients or, as applicable, GCM Prop clients;

6.1.2 engage and pay for, at the expense of the Defaulting Clearing Member, the advice or services of any lawyers, professional consultants, accountants or tax advisers, as the Clearing House may deem necessary for any matter arising out of or in connection with the Event of Default, the Default Management Process or these Default Rules, and rely on such advice or services, *provided that* the Clearing House shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying;

6.1.3 appoint and pay for, at the expense of the Defaulting Clearing Member, any person to act as custodian, nominee, Receiver or Delegate in relation to any assets which are dealt with arising out of or in connection with the Default

Management Process, and on such terms as the Clearing House thinks fit, *provided that* the Clearing House shall not be: (i) responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person so appointed; nor (ii) bound to supervise the proceedings or acts of any such person;

- 6.1.4 carry out all such calculations and determinations as are necessary to give effect to the Default Management Process;
- 6.1.5 convert any sum realised or received by the Clearing House in one currency into another currency, as the rate of exchange available to the Clearing House at the time;
- 6.1.6 give, make or despatch any instructions to any party, including (without limitation) to any Settlement Bank and the Central Securities Depository as are necessary to give effect to the Default Management Process, and to authorise any person appointed pursuant to Section 6.1.3 to do the same;
- 6.1.7 take such any other actions or steps as may be desirable to the Clearing House to preserve and enforce its rights and pursue any claims and remedies arising under these Default Rules, the Clearing Membership Agreement or under Applicable Law; and
- 6.1.8 refrain from taking any actions or steps which would, or might in its reasonable opinion, constitute a breach of Applicable Law.

6.2 Calculations and determinations of the Clearing House

- 6.2.1 Any certification or determination by the Clearing House pursuant to these Default Rules is conclusive evidence of the matters to which it relates.
- 6.2.2 The Clearing House will act in good faith in making any determinations or calculation of an amount contemplated by these Default Rules, using such procedures approved by its Risk Management Committee to produce a result which has regard to:
 - (a) safeguarding the orderly function of the markets for the interests of the Clearing Members as a whole;
 - (b) in the case of any outstanding Client Contract and, so far as possible, either preserving the economic equivalent of or minimising the losses

under the position of the outstanding Client Contracts collectively had such Event of Default not occurred; and

- (c) then-prevailing market conditions (including that there may be no available market for the relevant Securities or Derivatives) at the time,

together (a) and (c) above, the "**Determination Objectives**".

6.2.3 Unless specified otherwise in the relevant Procedures, any calculation in respect of an outstanding Contract will be determined as of the date of the Default Notice or, if the Clearing House determines that would not satisfy the Determination Objectives, as of such other date (or dates) following the date of the Default Notice determined by the Clearing House.

6.2.4 In making any calculations in respect of the relevant valuations or losses in connection with an outstanding Contract, any Liquidated Client Contract or Liquidated Prop Contract, the Clearing House may (but is not obliged to consider) any relevant information including, without limitation, one or more types of the following information:

- (a) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties which would have the effect of replacing the economic equivalent of the position under the relevant outstanding Contract, taking into account the creditworthiness of the Clearing House at the time the quotation is provided and the terms of the Clearing Membership Agreement or such other relevant documentation which would otherwise have governed such replacement transaction between the Clearing House and the third party providing the quotation;
- (b) information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities (including implied volatilities), spreads, correlations or other relevant market data in the relevant market; and/ or
- (c) information of the types described in paragraphs (a) and (b) above from internal sources (including any entity of the DFM Group),

in each case, as may be adjusted by the Clearing House in its discretion to account for changes in market volatility, stock loan rates (if available) or liquidity to

account for the economic effect and credit risks, counterparty risks, market risks, liquidity risks and asset concentration risks caused to the Clearing House by such Event of Default.

- 6.2.5 The Clearing House, when making any calculations in respect of the relevant valuations or losses in connection with an outstanding Contract, any Liquidated Client Contract or Liquidated Prop Contract, will consider, taking into account the standards and procedures described in this Section 6.2, quotations pursuant to Section 6.2.4(a) above or relevant market data pursuant to Section 6.2.4(b) above (as adjusted by the Clearing House as contemplated by Section 6.2.4) unless the Clearing House reasonably believes in good faith that such quotations or relevant market data are not readily available or would produce a result that would not satisfy the Determination Objectives. When considering information described in Section 6.2.4, the Clearing House may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being utilised. Third parties supplying quotations pursuant to Section 6.2.4(a) above or market data pursuant to Section 6.2.4(b) above may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.
- 6.2.6 Notwithstanding that the Clearing House shall adopt the Determination Objectives in making any calculations or determinations in connection with Section 5.1 (*Default Management Process*), Relevant Ported Proportion_M or Relevant Ported Proportion_C, each Clearing Member hereby agrees and acknowledges (and shall procure that each of their Clients shall agree and acknowledge) that:
- (a) all Collateral provided to the Clearing House is recorded by the Clearing House on an omnibus client segregation basis and, other than as set out in these Default Rules, will be treated as commingled with all of the assets attributable by the Clearing House to the Clearing Member;
 - (b) the Clearing House is not obliged by Applicable Laws to, and does not, hold any Collateral in accordance with "client asset" rules and is not obliged by Applicable Laws to, and does not, hold any books and records which would enable the Clearing House to identify whether or not Collateral provided to it by a Clearing Member may have originated from a Client; and
 - (c) in making any calculations and determinations in respect of proportions of rights and obligations attributable to Client Contracts and/ or Prop

Contracts (including in respect of Ported Collateral), the Clearing House shall not recognise the rights or obligations of any individual Client or GCM Prop client of a Defaulting Clearing Member save that the Clearing House may prioritise: (i) the preservation of the economic equivalent of or minimisation the losses under the position of the outstanding Client Contracts collectively, over (ii) the preservation of the economic equivalent of or minimisation the losses under the position of the outstanding Prop Contracts.

6.2.7 In addition to Section 6.2.6 above, each General Clearing Member hereby agrees and acknowledges (and shall procure that each of their GCM Prop clients shall agree and acknowledge) that:

- (a) all Collateral provided to the Clearing House is recorded by the Clearing House on an omnibus basis and will be treated as commingled with all of the assets attributable by the Clearing House to the General Clearing Member;
- (b) the Clearing House is not obliged by Applicable Laws to, and does not, hold any books and records which would enable the Clearing House to identify whether or not Collateral provided to it by a General Clearing Member may have originated from a GCM Prop client or any specific GCM Prop client;
- (c) in exercising its rights under these Default Rules and making any calculations and determinations in respect of proportions of rights and obligations attributable to Prop Contracts, the Clearing House shall:
 - (i) not recognise the rights or obligations of any specific GCM Prop client; and
 - (ii) prioritise the preservation of the economic equivalent of or minimisation the losses under the position of the outstanding Client Contracts (collectively) over the preservation of the economic equivalent of or minimisation the losses under the position of the outstanding Prop Contracts.

6.3 Statements of calculations

- 6.3.1 In respect of any amounts required to be calculated or determined by the Clearing House as contemplated by Section 6.2 (*Calculations and determinations of the Clearing House*), the Clearing House will keep such books and records:
- (a) showing, in reasonable detail, such calculations (including any quotations, market data or information from internal sources used in making such calculations); and
 - (b) specifying the amounts owed by each party.
- 6.3.2 Such books and records will be disclosed by the Clearing House to the Authority in accordance with the CCP Regulations.

A Defaulting Clearing Member may, upon reasonable notice to the Clearing House following the completion of the Default Management Process, request a copy of the statements of the Clearing House showing the calculations made by the Clearing House in respect of its assets that were the subject of the Default Management Process, *provided that* save as expressly provided in these Default Rules, the Clearing House is under no duty to account to any Clearing Member any calculations and determinations made.

7. CLIENT PORTING

7.1 General

At any time following the delivery of a Default Notice to the Defaulting Clearing Member pursuant to Section 4.1 (*Declaration of Event of Default*), the Clearing House may Port any outstanding Client Contract in accordance with this Section 7, *provided that* the Clearing House may take any one or more of those other steps of the Default Management Process as set out in Section 5.1 (*Default Management Process*) in respect of any Client Contract which cannot be Ported.

7.2 Agreement to Port

Notwithstanding any provision to the contrary in the Clearing Membership Agreement, each Clearing Member agrees that:

- 7.2.1 it may transfer any of its rights and obligations under a Client Contract to another Clearing Member which is designated as the Back-up Clearing Member in respect of a Client to which a Client Contract relates, through Porting in accordance with and subject to the conditions set out in this Section 7;
- 7.2.2 other than the acceptance by the relevant Back-up Clearing Member referred to in Section 7.4 (*Procedure for Porting*), no other consent will be required from any party to Port a Client Contract;
- 7.2.3 its rights of redelivery against the Clearing House in respect of Ported Collateral from its Collateral balance in connection with any Ported Client Contract will be released and extinguished in accordance with this Section 7; and
- 7.2.4 where it is a Back-up Clearing Member who accepts the Porting of an outstanding Client Contract pursuant to this Section 7 (*Client Porting*), its entitlement to the related Ported Collateral shall be determined following the date on which an outstanding Client Contract is Ported and, accordingly, it will be required to transfer Collateral in respect of each such outstanding Client Contract on the date of Porting.

7.3 Initiation of Porting

7.3.1 If, in respect of an outstanding Client Contract which has been registered to the name of a Defaulting Clearing Member, the Clearing House:

- (a) receives a request from the Client of the Defaulting Clearing Member to which an outstanding Client Contract relates;
- (b) is directed by the Risk Management Committee or the Authority to Port one or more outstanding Client Contracts; or
- (c) decides, in its sole discretion, that the Porting of an outstanding Client Contract would not prejudice the orderly function of the markets for the interests of the Clearing Members as a whole, having regard to the then-prevailing market conditions (including that there may be no available market for the relevant Securities or Derivatives) at the time,

and a Back-up Clearing Member in respect of such Client has been provided to the Clearing House by the relevant Clearing Member prior to the date of the Default Notice pursuant to the General Rules, then the Clearing House may initiate the Porting of that Client Contract.

7.3.2 The Clearing House may, in its absolute discretion, decline to Port any outstanding Client Contract as a result of any request made by a Client of the Defaulting Clearing Member without giving any reason.

7.4 Procedure for Porting

7.4.1 The Clearing House shall promptly notify a Back-up Clearing Member in the event that it initiates the Porting of an outstanding Client Contract pursuant to Section 7.3 (*Initiation of Porting*). The notice shall contain details of:

- (a) the relevant outstanding Client Contract(s) which the Clearing House proposes to Port to such Back-up Clearing Member (the "**Ported Client Contract(s)**");
- (b) the amounts of any transfers or deliveries made or due to be made under the Ported Client Contract(s);
- (c) the amounts of additional Collateral which would be required to be transferred by such Back-up Clearing Member in respect of the Ported

Client Contract(s) by way of Initial Margin, Variation Margin and, if applicable, Additional Contribution towards that Back-up Clearing Member's Available Collateral Balance, as determined by the Clearing House, together with the relevant cut-off time for the transfer of any such additional Collateral; and

- (d) the relevant cut-off time (the "**relevant Cut-off Time**") for the Back-up Clearing Member to decline its acceptance of the proposed Porting.

7.4.2 For the avoidance of doubt, failure by a Back-up Clearing Member to accept a proposed Porting shall not constitute an Event of Default and the Clearing House may deem a Back-up Clearing Member to have declined its acceptance of the proposed Porting if the Clearing House believes that such Back-up Clearing Member does not have or will not have sufficient:

- (a) Available Collateral Balance to support the Client Contract Exposure; or
- (b) credit standing to its Cash Settlement Account to support the payment obligations,

which would result from such Porting.

7.4.3 If a Back-up Clearing Member does not respond by the relevant Cut-off Time, the Clearing House may, in its sole discretion:

- (a) extend the relevant Cut-off Time for a response by the Back-up Clearing Member; or
- (b) deem that the Back-up Clearing Member has declined to Porting of the Ported Client Contract(s) and take any one or more of those other steps of the Default Management Process as set out in Section 5.1 (*Default Management Process*) in respect of such outstanding Client Contract(s).

7.4.4 If a Back-up Clearing Member accepts Porting of the Ported Client Contract(s) by notifying the Clearing House in writing (which notice can be given by electronic communications), the Clearing House shall take such further steps as it deems necessary to register the Ported Client Contract(s) to the name of the Back-up Clearing Member.

7.5 Rights and obligations under Ported Client Contract(s)

Upon registration of a Ported Client Contract to the name of the Back-up Clearing Member:

- 7.5.1 the Defaulting Clearing Member's rights and obligations under such Ported Client Contract and its rights of redelivery against the Clearing House in respect of the related Ported Collateral from its Collateral balance (being the "**Discharged Rights and Obligations**") will be extinguished and released;
- 7.5.2 the Back-up Clearing Member and the Clearing House shall assume obligations towards one another and acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Back-up Clearing Member and the Clearing House have assumed and acquired the same in place of the Defaulting Clearing Member and the Clearing House, subject to the reconciliation of Ported Collateral with any additional Collateral transferred by the Back-up Clearing Member in accordance with Section 7.6.4 (*Ported Collateral*) below;
- 7.5.3 the Back-up Clearing Member shall be a party to such Ported Client Contract as if it were the original Clearing Member;
- 7.5.4 if the Porting occurred during the Settlement Period of the Ported Client Contract prior to the:
 - (a) IM Cut-off Time, such Back-up Clearing Member shall transfer Initial Margin as Client Posted IM; and/or
 - (b) VM Cut-off Time, such Back-up Clearing Member shall transfer Variation Margin as Client Posted VM

in respect of such Ported Client Contract in accordance with Rule 14.2 (*Transfer of Initial Margin and Variation Margin*) of the General Rules;

- 7.5.5 if the notice delivered by the Clearing House pursuant to Section 7.4.1 (*Procedure for Porting*) included a demand for additional Collateral, such Back-up Clearing Member shall transfer the Eligible Collateral Value of such additional Collateral in respect of such Ported Client Contract by the time so specified in the notice; and

- 7.5.6 the cut-off times for payments and deliveries (including transfers of Initial Margin and Variation Margin) under the Ported Client Contract shall be modified and settled at the times and in the manner prescribed by the Procedures.

7.6 Ported Collateral

- 7.6.1 As soon as reasonably practicable following the Porting of a Ported Client Contract, the Clearing House shall determine the amount of Ported Collateral in respect of such Ported Client Contract in accordance with Section 6.2.6 (*Calculations and determinations of the Clearing House*).
- 7.6.2 Where the Clearing House transfers any Ported Collateral as a result of Porting, the Clearing House shall credit to the Back-up Clearing Member an amount equal to the Eligible Collateral Value of the Equivalent Collateral previously delivered to the Clearing House as Collateral in respect of a Ported Client Contract.
- 7.6.3 In the event that the Collateral comprising all or any part of Ported Collateral is of an asset class (such as Eligible Guarantees) which cannot be transferred or attributed by one party to another party without taking further acts or execution of documents, the Clearing House shall, in its sole discretion:
- (a) decline to Port a Ported Client Contract; or
 - (b) reduce the Relevant Ported Proportion_M or, as applicable, the Relevant Ported Proportion_C which is transferred in respect of the Porting of the relevant Ported Client Contract; or
 - (c) procure such other Eligible Collateral of an equal Eligible Collateral Value as the relevant Ported Collateral (or part thereof) which can be transferred or attributed to the Back-up Clearing Member as Ported Collateral, the costs (including any costs of funding, interest thereon and transaction fees), expenses and liabilities (including in respect of tax) of which shall be added as a component of the Porting Costs, *provided that* the Clearing House is under no obligation to take any action pursuant to this paragraph (c) and shall not take any action pursuant to this paragraph (c) if it has grounds for believing the repayment or recovery of such Porting Costs or adequate indemnity against such risk or liability is not reasonably assured to it.

7.6.4 Following the discharge of the payment and/or delivery obligations by a Back-up Clearing Member under the relevant Ported Client Contract(s) and the transfer of the related Ported Collateral as contemplated by Section 7.6.2 above, the Clearing House shall determine the re-delivery of Client Posted IM, Client Posted VM and any Surplus Collateral in respect of such Back-up Clearing Member in accordance with the General Rules, taking into account the Ported Collateral.

7.7 Costs and expenses of Porting

Any Porting Costs shall be payable by the Defaulting Clearing Member as a component of the amount owed to the Clearing House for the purposes of calculating the Liquidated Exposures.

8. TERMINATION AND LIQUIDATION OF CONTRACTS

8.1 Termination of Contracts

If, by the cut-off time specified in a Default Notice, the open positions of the outstanding Contracts registered in the name of the Defaulting Clearing Member is not resolved pursuant to Sections 5.1.1 to 5.1.4 (*Default Management Process*), each such outstanding Contract shall be terminated such that:

- 8.1.1 if such outstanding Contract is a Prop Contract it shall be a "**Liquidated Prop Contract**" and if such outstanding Contract is a Client Contract it shall be a "**Liquidated Client Contract**";
- 8.1.2 no further payments of the CM Purchase Value or the CCP Sale Value, or deliveries of the relevant Securities to which such Liquidated Prop Contract or Liquidated Client Contract relates will be required to be made, but without prejudice to the parties' rights and obligations pursuant to these Default Rules for Cash Contracts;
- 8.1.3 no further payments of the Derivatives Daily Obligations or deliveries of the relevant Securities to which such Liquidated Prop Contract or Liquidated Client Contract relates will be required to be made, but without prejudice to the parties' rights and obligations pursuant to these Default Rules for Contracts for Derivatives; and
- 8.1.4 the amount payable in respect of each Liquidated Prop Contract and Liquidated Client Contract shall be determined pursuant to this Section 8.3 (*Liquidation Values*).

8.2 Effect of Termination

Following the termination of an outstanding Contract in accordance with Section 8.1 (*Termination of Contracts*) above, the Clearing House shall be entitled to continue or initiate any other actions under the Default Management Process, other than to Port any Client Contract, in order to liquidate the open position under each Liquidated Prop Contract and Liquidated Client Contract into a cash value.

8.3 Liquidation Values

- 8.3.1 The Clearing House shall determine an amount (the "**Liquidated Exposure**") denominated in Emirati Dirham in respect of the Liquidated Prop Contracts or Liquidated Client Contracts of such Defaulting Clearing Member which is equal to:

- (a) the aggregate of:
 - (i) the Loss of the Clearing House from any close-out, cash compensation or transfer of the open position of the relevant Liquidated Prop Contract or, as applicable, the relevant Liquidated Client Contract; and
 - (ii) the costs, expenses, liabilities, taxes, assessment, losses and damages of any nature whatsoever incurred or suffered by the Clearing House or the DFM Group in connection with the Default Management Process, including the Porting Costs; and
 - (iii) the fees or charges due and payable or due to be paid to the Clearing House pursuant to Rule 29 (*Fees, Charges and Expenses or Charges*) of the General Rules; *less*
 - (b) the aggregate of:
 - (i) the Gains realised by the Clearing House from any close-out or transfer of the open position of the relevant Liquidated Prop Contract or, as applicable, the relevant Liquidated Client Contract; and
 - (ii) any proceeds realised from the liquidation, disposal or realisation of the relevant Securities pursuant to Section 5.1.6 (*Default Management Process*);
- 8.3.2 The Clearing House shall determine a separate Liquidated Exposure in respect of Liquidated Prop Contracts and Liquidated Client Contracts, which may not be subject to set-off pursuant to Rule 34 (*Set-off*) of the General Rules.
- 8.3.3 If an amount of Liquidated Exposure is:
- (a) a positive number, the Liquidated Exposure shall represent the net loss of the Clearing House which is payable by the Defaulting Clearing Member to the Clearing House as a:
 - (i) **"Net Prop Liquidated Value"** where such Liquidated Exposure relates to the Liquidated Prop Contracts; and

- (ii) **"Net Client Liquidated Value"** where such Liquidated Exposure relates to the Liquidated Client Contracts,

which shall be discharged by the Defaulting Clearing Member, up to the extent set out therein, pursuant to Section 9 (*Application of Settlement Default Fund resources*); or

- (b) a negative number, the Liquidated Exposure shall represent the net gain of the Clearing House which is payable by the Clearing House to the Defaulting Clearing Member and shall be discharged by the Clearing House crediting the Eligible Collateral Value of the absolute amount of the relevant Liquidated Exposure to the Available Collateral Balance of that Defaulting Clearing Member.

8.3.4 Any amount of Net Prop Liquidated Value and Net Client Liquidated Value may not be set off pursuant to Rule 34 (*Set-off*) of the General Rules.

8.4 Evidence of loss

For the purposes of this Section 8 (*Termination and Liquidation of Contracts*), it will be sufficient for the Clearing House to demonstrate that it would have suffered any Loss or loss had an actual delivery, transfer, exchange or purchase been made.

8.5 Pre-estimate

The parties agree that an amount recoverable under Section 8.3 (*Liquidation Values*) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the risks and liabilities borne by the Clearing House in relation to the Default Management Process.

9. APPLICATION OF SETTLEMENT DEFAULT FUND RESOURCES

9.1 Default Fund Waterfall

Without prejudice and in addition to all other rights of the Clearing House under the Clearing Membership Agreement and Applicable Law, the Clearing House shall be entitled, in connection with the actions taken by it following a Default Notice (including the actions under the Default Management Process) in respect of a Defaulting Clearing Member, to apply the following assets and Collateral in the following order of priority (the "**Default Fund Waterfall**"):

9.1.1 *firstly*, the Contribution Balance of the Defaulting Clearing Member, applied towards:

- (a) discharge of the Net Client Liquidated Value; *before*
- (b) to the extent there is any unutilised portion of the Contribution Balance following the application in accordance with paragraph (a) above, discharge of the Net Prop Liquidated Value;

9.1.2 *secondly*, the Settlement Default Fund Contribution of the Defaulting Clearing Member, applied towards:

- (a) discharge of any remaining portion of the Net Client Liquidated Value; *before*
- (b) to the extent there is any unutilised portion of the Settlement Default Fund Contribution following the application in accordance with paragraph (a) above, towards discharge of any remaining portion of the Net Prop Liquidated Value;

9.1.3 *thirdly*, the CCP SITG, applied towards:

- (a) discharge of any remaining portion of the Net Client Liquidated Value; *before*
- (b) discharge of any remaining portion of the Net Prop Liquidated Value;

9.1.4 *fourthly*, the Settlement Default Fund Contributions of the Non-defaulting Clearing Members shall be applied towards discharge of any remaining portion of the Net Client Liquidated Value; and

- 9.1.5 *fifthly*, any other monies or other assets which may be available to the Clearing House at the time as additional contribution to the Settlement Default Fund shall be applied towards discharge of any remaining portion of the Net Client Liquidated Value.

9.2 Application of assets and Collateral

In making any applications of the assets and Collateral at each stage of the Default Fund Waterfall, the Clearing House shall be entitled to assume that:

- 9.2.1 on the date of such application, all representations given respectively by the Clearing Member in relation to the Collateral under Rule 28.10.3 (*Rights relating to transferred Collateral*) of the General Rules remain true, correct and accurate in all respects;
- 9.2.2 the Eligible Collateral Value of the Collateral will be zero (0) in respect of any Collateral assets which are subject to calls for payment from third parties (such as, without limitation, Eligible Guarantees or any other Eligible Collateral accepted by the Clearing House from time to time pursuant to Rule 28.2.3 (*Eligible Collateral*) of the General Rules which are in the nature of third party indemnities or obligations to pay), where funds have not been received from such third party by the cut-off time specified under the terms of such Collateral; and
- 9.2.3 the Eligible Collateral Value of the Collateral will be zero (0) in respect of any Collateral assets which have not been returned to a Clearing Member following a Collateral Ineligibility Date.

9.3 Discharge following application of Default Fund Waterfall

- 9.3.1 The application of the assets and Collateral at each stage of the Default Fund Waterfall shall discharge:
- (a) the Clearing Member's obligations with respect to the Net Client Liquidated Value or, as applicable, the Net Prop Liquidated Value, up to an amount equal to the Eligible Collateral Value of the relevant Collateral or the value of the assets applied at such stage; and
 - (b) the Clearing House's obligations unconditionally and irrevocably with respect to its rights and obligations under all Liquidated Client Contracts and Liquidated Prop Contracts.

- 9.3.2 If, following the application of the assets and Collateral of the Default Fund Waterfall, there are any remaining portions of the Net Client Liquidated Value or the Net Prop Liquidated Value (each, an "**Undischarged Liquidated Value**") which have not been discharged, then an amount equal to the aggregate of each Undischarged Liquidated Value shall be added for the account of the Defaulting Clearing Member as a component of the DMP Loss.
- 9.3.3 The Undischarged Liquidated Value in respect of Liquidated Prop Contracts and the Undischarged Liquidated Value in respect of Liquidated Client Contracts may not be subject to set-off pursuant to Rule 34 (*Set-off*) of the General Rules.

10. INDEMNITIES FOR DEFAULT MANAGEMENT PROCESS

10.1 Separate indemnities

To the extent permitted by Applicable Law, the indemnities in these Default Rules:

- 10.1.1 constitute separate and independent obligations from the other obligations in the Clearing Membership Agreement;
- 10.1.2 will be enforceable as separate and independent causes of action;
- 10.1.3 will apply notwithstanding any indulgence or waiver granted by the Clearing House; and
- 10.1.4 will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of the Clearing Membership Agreement.

10.2 Indemnity for Default Management

Each Clearing Member will, upon it becoming a Defaulting Clearing Member, on demand by the Clearing House indemnify and hold harmless the Clearing House and the DFM Group for and against all and any costs, expenses, liabilities, taxes, assessment, losses and damages of any nature whatsoever incurred or suffered by the Clearing House or the DFM Group, including (without limitation) any legal fees, execution fees, and/ or costs of collection thereof, by reason of:

- 10.2.1 the enforcement and protection of the rights of the Clearing House under these Default Rules, including in respect of any proceedings instituted by or against the Clearing House or the DFM Group as a consequence of enforcing or protecting such rights;
- 10.2.2 instructing lawyers, accountants, tax advisers, or other professional advisers or experts as permitted under these Default Rules;
- 10.2.3 appointing any custodian, nominee, Receiver or Delegate as permitted under these Default Rules; or
- 10.2.4 the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Clearing House and each Receiver and Delegate by these Default Rules or by Applicable Law.

10.3 Indemnity to Receiver or Delegate

Each Clearing Member will, upon it becoming a Defaulting Clearing Member, on demand by the Clearing House indemnify and hold harmless any Receiver or Delegate for and against all and any costs, expenses, liabilities, taxes, assessment, losses and damages of any nature whatsoever incurred or suffered by the Receiver or Delegate, by reason of:

- 10.3.1 the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Clearing House and each Receiver and Delegate by these Default Rules or by Applicable Law; or
- 10.3.2 acting as Receiver or Delegate under these Default Rules or which otherwise relates to any of the Collateral liquidated, disposed or realised as a result of these Default Rules.

10.4 Other indemnities

Each Clearing Member will, on demand by the Clearing House indemnify and hold harmless the Clearing House and the DFM Group for and against all and any costs, expenses, liabilities, taxes, assessment, losses and damages of any nature whatsoever incurred or suffered by the Clearing House or the DFM Group as a result of:

- 10.4.1 investigating any event which it reasonably believes is an Event of Default;
- 10.4.2 the occurrence of an Event of Default;
- 10.4.3 acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised:

10.5 Indemnities given in General Rules

The provisions of Rule 30 (*Indemnities*) of the General Rules shall apply to these Default Rules as if they were incorporated by reference.

11. EXCLUSION OF LIABILITY

11.1.1 The Clearing House shall not be bound to enquire:

- (a) whether or not any Event of Default has occurred;
- (b) as to the performance, default or any breach by any Clearing Member or Settlement Agent of its obligations under the Clearing Membership Agreement; or
- (c) whether any other event specified in the Clearing Membership Agreement (including any event specified in these Default Rules) has occurred.

11.1.2 Nothing in these Default Rules constitutes the Clearing House, the DFM Group or any Receiver or Delegate as a trustee or fiduciary of any other person.

11.1.3 Without prejudice to any other provision of these Default Rules or under Applicable Law which excludes or limits the liability of any of the Clearing House, the DFM Group or any Receiver or Delegate, none of the Clearing House, the DFM Group or any Receiver or Delegate will be liable for:

- (a) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with these Default Rules, the Collateral assets, the relevant Securities or the relevant Derivatives;
- (b) exercising or not exercising any right, power, authority or discretion given to it by, or in connection with, these Default Rules, the Collateral assets, the relevant Securities, the relevant Derivatives or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, these Default Rules, the Collateral assets, the relevant Securities or the relevant Derivatives;
- (c) any delay (or any related consequences) in crediting an account or ledger with an amount contemplated by these Default Rules or the relevant Procedures to be paid by the Clearing House, any Receiver or Delegate;
- (d) any determination as to whether any information provided or to be provided to any Clearing Member or disclosed or to be disclosed to any other party as contemplated by these Default Rules is non-public

information the use of which may be regulated or prohibited by Applicable Law relating to insider dealing or otherwise;

- (e) any shortfall which arises on the liquidation, disposal or realisation of the Collateral assets, the relevant Securities or the relevant Derivatives;
 - (i) any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of any act, event or circumstance not reasonably within its control, including but not limited to:
 - (ii) any devaluation or fluctuation of prices for the Collateral assets, the relevant Securities or the relevant Derivatives;
 - (iii) market conditions affecting the execution or settlement of transactions or the value of assets; or
 - (iv) the general risks of holding or owning the Collateral assets, the relevant Securities or the relevant Derivatives in any jurisdiction.

11.1.4 No person (other than the Clearing House, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Clearing House, the DFM Group, a Receiver or a Delegate in respect of any claim it might have against the Clearing House, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to these Default Rules, the Collateral assets, the relevant Securities or the relevant Derivatives, and any officer, employee or agent of the Clearing House, the DFM Group, a Receiver or a Delegate may rely on this Section 11 (*Exclusion of liability*).

11.1.5 In no event shall the Clearing House, the DFM Group, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Clearing House, the DFM Group, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

12. RECOVERIES OF DMP LOSS

12.1 Payment obligation under DMP Guarantee

A Defaulting Clearing Member shall pay the DMP Loss which has become due and payable on demand pursuant to Section 4.3.2 (*Rights of the Clearing House following Default Notice*) and the terms of the DMP Guarantee.

12.2 Determination of DMP Loss

- 12.2.1 Following the application of the Default Fund Waterfall, the Clearing House will, as soon as reasonably practicable, determine the amount of DMP Loss and notify (such notice being a "**DMP Loss Notice**") the relevant Defaulting Clearing Member of such amount.
- 12.2.2 The DMP Loss will be payable on the day on which the DMP Loss Notice is delivered.
- 12.2.3 If any component of the DMP Loss is not ascertained as of the date of the DMP Loss Notice (for example and without limitation, because such sums or amount is not payable to the Clearing House until a later date for whatever reason), the Clearing House shall be entitled to determine an estimated amount of such sum or amount in good faith.
- 12.2.4 For the purposes of determining a DMP Loss, it will be sufficient for the Clearing House to demonstrate that it would have suffered a loss had an actual delivery, transfer, exchange or purchase been made.
- 12.2.5 Each Clearing Member waives any right it may have to first requiring the Clearing House (or any person appointed by the Clearing House pursuant to Section 6.1.3 (*Rights and discretions of the Clearing House*)) to proceed against or enforce any other rights, security, or claim for payment from any person before making a claim for any sum or amount as a DMP Loss.
- 12.2.6 The books and records of the Clearing House of the amounts and calculations of each component of the DMP Loss will be conclusive evidence of the existence and accuracy of such amount or calculation.

12.3 No obligation to take legal proceedings

12.3.1 Nothing in these Default Rules will oblige the Clearing House to pursue any litigation or legal proceedings, make or file any claim against a Defaulting Clearing Member (including in the Bankruptcy and Insolvency Proceedings of such Defaulting Clearing Member) or take any other analogous action in order to recover or realise any DMP Loss payable under a DMP Guarantee.

12.3.2 No Clearing Member or Settlement Agent shall have:

- (a) any right to require the Clearing House to take any of the actions contemplated by Section 12.3.1 above; or
- (b) any independent power to enforce, or have recourse to, or to exercise any right, power, authority or discretion arising under the DMP Guarantee or these Default Rules.

12.4 Redistributions

12.4.1 The Clearing House shall apply any amounts of DMP Loss which is of an amount (individually) equal to or greater than one million Emirati Dirhams (AED 1,000,000) received or recovered by the Clearing House during the Recovery Limitation Period in reimbursement of the relevant Clearing Members in reverse order of priority to the Default Fund Waterfall and on a *pro rata* basis to the deductions made from each relevant Clearing Member at each stage of the Default Fund Waterfall.

12.4.2 Each Clearing Member acknowledges and agrees that:

- (a) pursuant to this Section 12.4 (*Redistributions*), the Clearing House will reimburse itself first in respect of any deductions made from the Settlement Default Fund as a result of Section 9.1.5 (*Default Fund Waterfall*); and
- (b) if the Clearing House receives or recovers any amounts which is less than the threshold amount specified in the foregoing of this Section 12.4 (*Redistributions*), the Clearing House shall be entitled to retain such amount as reimbursement from the relevant Defaulting Clearing Member for the risks and liabilities borne by the Clearing House in relation to the Default Management Process.

13. LIQUIDATION OF CLEARING HOUSE

13.1 Bankruptcy and Insolvency Proceedings

The Clearing House shall not be subject to any Bankruptcy and Insolvency Proceedings other than in accordance with Article 24 (*Liquidation and Bankruptcy*) of the CCP Regulation.

13.2 Liquidation subject to Authority supervision

Each Clearing Member and each Settlement Agent acknowledges that, in the event that the Clearing House is subject to Bankruptcy and Insolvency Proceedings, such proceedings will be subject to the supervision and control of the Authority.