Appendix 20A
1.9F Supplemental default rules for Contracts Recorded on a Direct Clearing Account

Application

1.9F.1 Where a Clearing Member that acts as a Direct Clearing Agent that has one or more Direct Clearing Accounts is in default under section 1.8.1 or 1.8.2, the Clearing House shall take the steps set out in this section 1.9F in respect of the Contracts Recorded on such Direct Clearing Account.

Interpretation

1.9F.2 Capitalized terms herein shall have the meanings assigned to them below and in the definition list to the Clearing Rules.

"Back-up Direct Clearing Agent" In respect of a Direct Clearing Client, a Clearing Member that has agreed to act in such capacity on behalf of such Direct Clearing Client

"Direct Clearing Account Assets" In respect of a Direct Clearing Account, all Collateral in the Collateral Custody Account in the name of the Direct Clearing Client pledged to, or otherwise provided to, the Clearing House in respect of such Direct Clearing Account.

Steps to be taken by the Clearing House

1.9F.3 Where a Direct Clearing Agent to which this section 1.9F applies is in default under section 1.8.1 or 1.8.2, the Clearing House shall:

(i) take any action permitted or required by applicable law as it shall deem necessary in respect of the Direct Clearing Account administered by the defaulting Direct Clearing Agent;

(ii) satisfy itself that the Direct Clearing Client is not in default under its obligations to provide Collateral to the Clearing House;

(iii) for each Direct Clearing Client of the defaulting Direct Clearing Agent:

(a) ascertain whether such Direct Clearing Client has appointed a Back-up Direct Clearing Agent to act as its Direct Clearing Agent in respect of the Direct Clearing Account;

(b) ascertain whether such Direct Clearing Client consents to having all Contracts Recorded on its Direct Clearing Account administered by the defaulting Direct Clearing Agent being administered by such Back-up Direct Clearing Agent pursuant to section 1.9F.4;

(c) once satisfied as to (a) and (b), send details of such Contracts Recorded to such Back-up Direct Clearing Agent and ascertain whether such Back-up Direct Clearing Agent provides its consent to administer a Direct Clearing Account on behalf of such Direct Clearing Client; and

(d) if such Back-up Direct Clearing Agent provides its consent, ensure that such Back-up Direct Clearing Agent has entered into a Direct Clearing Client Agreement with the Direct Clearing Client and the Clearing House in order for such Back-up Direct Clearing Agent to operate a Direct Clearing Account on behalf of the Direct Clearing Client.
Direct Clearing Account Porting

1.9F.4 Where the Clearing House has determined that the requirements set out in section 1.9F.3 have been met in respect of a Direct Clearing Client, the Clearing House shall, subject to (a) satisfaction of any requirements to post Collateral and/or make payments in respect of the aggregate of all Daily Cash Settlement instructions since the last Daily Cash Settlement instruction was satisfied in respect of the Direct Clearing Account administered by the defaulting Direct Clearing Agent; and (b) execution by the Direct Clearing Client of a Direct Clearing Client Agreement in respect of the Direct Clearing Account administered by the Back-up Direct Clearing Agent:

(i) waive any such prior pledge or general pledge provided in a Direct Clearing Client Agreement or any pledge documentation or other security agreement entered into pursuant to the Direct Clearing Account administered by the defaulting Direct Clearing Agent on behalf of the Direct Clearing Client or any such other Direct Clearing Account;

(ii) treat the related Direct Clearing Account Assets in respect of that Direct Clearing Client as being provided in relation to the Direct Clearing Account administered by such Back-up Direct Clearing Agent for such Direct Clearing Client.

Consents

1.9F.5 For the purposes of section 1.9F.3 (iii), the relevant Direct Clearing Client and Back-up Direct Clearing Agent may provide their consent to the Clearing House orally or in writing (including by facsimile and email) and such consent, once received by the Clearing House, shall be irrevocable. If the Clearing House has not received all necessary consents within such time period as it determines in its sole discretion, or any other requirement in section 1.9F.3 not being met, then section 1.9F.4 shall not apply, and the Clearing House shall instead act in accordance with section 1.9F.6.

Allocation and Return of Direct Clearing Account Balance

1.9F.6 In relation to a Direct Clearing Client of a defaulting Direct Clearing Agent, the Clearing House shall:

(i) have the right to elect, without consulting the defaulting Direct Clearing Agent or the Direct Clearing Client and at the defaulting Direct Clearing Agent’s or Direct Clearing Client’s expense,

   (a) to take one or more of the measures stated in section 1.8.6, which in such case shall be equally applicable to such Direct Clearing Client of a defaulting Direct Clearing Agent;

   (b) following the taking of any such measures, calculate the amount due to the Clearing House or from the Clearing House in respect of such Direct Clearing Account (including where appropriate any such fees, costs or expenses of the Clearing House in taking such action or making such determination); and

   (c) (x) where an amount is owed to the Clearing House, apply such of the Direct Clearing Account Assets as are required to meet such amount or (y) where an amount is owed by the Clearing House, pay such amount to the Direct Clearing Client subject to the execution of appropriate documentation (which may, without limitation, include an indemnity (secured or otherwise) and a release of the Clearing House from any liability) between the Clearing House and such Direct Clearing Client.

Termination of Customer Agreement

1.9F.7 Where
a. the requirements set out in section 1.9F.3 have been met in respect of a Direct Clearing Client and the Clearing House has taken the steps set out in section 1.9F.4 above; or

b. the Direct Clearing Agent’s membership agreement with the Clearing House has been terminated by the Clearing House; or

c. (i) there are no outstanding Contracts Recorded in the relevant Direct Clearing Accounts; and (ii) there is no amount owing to the Clearing House by the Direct Clearing Client;

the Direct Clearing Client may terminate its Direct Clearing Client Agreement with the defaulting Direct Clearing Agent.

Additional rights of the Clearing House

1.9F.8 Where the requirements set out in section 1.9F.3 have not been met in respect of a Direct Clearing Client, the Clearing House may (i) designate another Direct Clearing Agent for affected Direct Clearing Clients on a temporary basis, on such terms as the Clearinghouse may reasonably determine, (ii) act as an interim Direct Clearing Agent in accordance with the Clearing Rules, or (iii) during an interim period, Register Transactions for an on behalf of the Direct Clearing Client.

Where a Direct Clearing Agent is designated in accordance with subparagraph (i) above, a corresponding Direct Clearing Client Agreement shall be deemed to have been entered into between the Clearing House, the Direct Clearing Client and the new Direct Clearing Agent.

Additional rights of the Direct Clearing Client

1.9F.9 Where the requirements set out in section 1.9F.3 have not been met in respect of a Direct Clearing Client, the Direct Clearing Client may (i) ask the Clearing House to close out any Open Positions registered to it, (ii) retain any Open Positions subject to the approval of the Clearing House, not to be unreasonably withheld, or (iii) with the Clearing House’s consent during an interim period, submit Transactions for clearing to the Clearing House.