Appendix 30

1.9D Supplemental default rules for Contracts Recorded on a Direct Pledge Account

Application

1.9D.1 Where a Clearing Member that acts as a Clearing Account Administrator in respect of a Direct Pledge Account is in default under section 1.9.1 or 1.9.2 above, the Clearing House shall take the steps set out in this section 1.9D in respect of the Contracts Recorded on such Direct Pledge Account.

Interpretation

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

“Back-up Customer Clearing Member” In respect of a Direct Pledging Customer, a Clearing Member that has agreed to act in such capacity on behalf of such Direct Pledging Customer of another Clearing Member.

“Direct Pledge Account Assets” In respect of a Direct Pledge Account, all Collateral in the Collateral Custody Account in the name of the Direct Pledging Customer pledged to, or otherwise provided to, the Clearing House in respect of such Direct Pledge Account.

Steps to be taken by the Clearing House

1.9D.3 Where a Clearing Member to which this section 1.9D applies is in default under section 1.9.1 or 1.9.2 above, the Clearing House shall:

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

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

(iii) for each Direct Pledging Customer of the defaulting Clearing Member:

(a) ascertain whether such Direct Pledging Customer has appointed a Back-up Customer Clearing Member to act as its Clearing Account Administrator in respect of the Direct Pledge Account; and

(b) ascertain whether such Direct Pledging Customer consents to having all Contracts Recorded on its Direct Pledge Account administered by the defaulting Clearing Member be transferred to any such Back-up Customer Clearing Member pursuant to section 1.9D.4; and

(c) once satisfied as to (a) and (b), send details of such Contracts Recorded to such Back-up Customer Clearing Member and ascertain whether such Back-up Customer Clearing Member provides its consent to open a Direct Pledge Account on behalf of such Direct Pledging Customer; and

(d) if such Back-up Customer Clearing Member provides its consent, ensure that such Back-up Customer Clearing Member has entered into such agreements as are required in order for such Back-up Customer Clearing Member to operate a Direct Pledge Account on behalf of the Direct Pledging Customer.
Direct Pledge Account Porting

1.9D.4 Where the Clearing House has determined that the requirements set out in 1.9D.3 have been met in respect of a Direct Pledging Customer, 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 Pledge Account administered by the defaulting Clearing Member; and (b) execution by the Direct Pledging Customer of a Customer Agreement in respect of the new Direct Pledge Account administered by the Back-up Customer Clearing Member:

(i) transfer all such Contracts to the Direct Pledge Account administered by such Back-up Customer Clearing Member for and on behalf of the Direct Pledging Customer; or (y) terminate and close out such Contracts at their market value (as determined by the Clearing House in its discretion) and enter into new contracts on equivalent terms to such Contracts and have such new contracts Recorded on the Direct Pledge Account administered by such Back-up Customer Clearing Member;

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

(iii) treat the related Direct Pledge Account Assets in respect of that Direct Pledging Customer as being provided in relation to the Direct Pledge Account held by such Back-up Customer Clearing Member for such Direct Pledging Customer.

Consents

1.9D.5 For the purposes of section 1.9D.3(iii), the relevant Direct Pledging Customer and Back-up Customer Clearing Member 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 1.9D.3 not being met, then section 1.9D.4 shall not apply, and the Clearing House shall instead act in accordance with section 1.9D.6.

Allocation and Return of Direct Pledge Account Balance

1.9D.6 In relation to a Direct Pledging Customer of a defaulting Clearing Member whose open Contracts are not dealt with pursuant to section 1.9D.4 above, by such time as the Clearing House may determine in its discretion, the Clearing House shall:

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

(a) to take one or more of the measures stated in sections 1.9.12(i) to (ix); and

(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 Pledge 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 Pledge 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 Pledging Customer 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 Pledging Customer.