Appendix 29

1.9C Supplemental default rules for Contracts Recorded on Segregated Accounts

Application

1.9C.1 Where a Clearing Member that is a party to one or more Contracts Recorded on an Individual Client Segregated Account or an Omnibus 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 1.9C in respect of each such Contract.

Interpretation

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

“Back-up Client Clearing Member” A Clearing Member that has agreed to act in such capacity on behalf of one or more Clients of another Clearing Member.

“Client Balance” In respect of a Client, an amount equal to (i) the Segregated Account Balance or, in the case of an Omnibus Client, the Client Share plus (ii) if an amount is determined to be owing to such Client following the termination of all such Client’s Contracts, such amount, less (iii) if an amount is determined to be owing from such Client following the termination of all such Client’s Contracts, such amount, less (iv) the costs of any hedging undertaken and any other costs attributable to such Client’s Contracts, less (v), in the case of an Omnibus Client, such amount as is required to discharge all obligations owed to the Clearing House in respect of Contracts Recorded in such Omnibus Client Account, distributed pro rata (in the Clearing House’s sole discretion) to all Clients in respect of whom Contracts are Recorded in such Omnibus Client Account.

“Client Share” Has the meaning ascribed to it in section 1.9C.7(i)(c).

“Individual Client” Has the meaning ascribed to it in section 1.9C.4.

“Omnibus Clients” Has the meaning ascribed to it in section 1.9C.5.

“Segregated Account Balance” In respect of a Segregated Account, the liquidation proceeds of all collateral provided to the Clearing House in respect of such Segregated Account less any costs incurred by the Clearing House in connection with such liquidation.

Steps to be taken by the Clearing House

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

(i) realise all Collateral provided in respect of the Segregated Accounts and calculate the Segregated Account Balance in respect of each Segregated Account;
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(ii) take any action permitted or required by applicable law as it shall deem necessary in respect of the Segregated Accounts of the defaulting Clearing Member;

(iii) (a) ascertain whether each Client of the defaulting Clearing Member has appointed a Back-up Client Clearing Member; and

(b) ascertain whether each such Client consents to having all Contracts entered into by the defaulting Clearing Member relating to that Client and Recorded on an Individual Client Segregated Account or an Omnibus Account be transferred to any such Back-up Client Clearing Member pursuant to sections 1.9C.4 or 1.9C.5; and

(c) once satisfied as to (a) and (b), and subject to the request by the Back-up Client Clearing Member, send details of such Contracts and the Segregated Account Balance relating to such Client to such Back-up Client Clearing Member and, subject to obtaining the Back-up Client Clearing Member’s consent, transfer such Contracts pursuant to sections 1.9C.4 or 1.9C.5.

Individual Client Segregated Account Porting

1.9C.4 Where the Clearing House has determined that a Client of a defaulting Clearing Member in respect of an Individual Client Segregated Account (the “Individual Client”) and its Back-up Client Clearing Member have agreed that all Contracts entered into by the defaulting Clearing Member relating to that Client and the Segregated Account Balance be transferred to such Back-up Client Clearing Member:

(i) the Clearing House shall (x) transfer all such Contracts to such Back-up Client Clearing Member; 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 with such Back-up Client Clearing Member in respect of such Client;

(ii) the Clearing House shall transfer the related Segregated Account Balance in respect of that Client’s Individual Client Segregated Account to the Individual Client Segregated Account in respect of such Client held by such Back-up Client Clearing Member; and

(iii) the amount due to be returned to the defaulting Clearing Member in respect of such Individual Client Segregated Account shall be reduced by an amount equivalent to the amount of the Segregated Account Balance so transferred.

Omnibus Account Porting

1.9C.5 Where the Clearing House has determined that all Clients of a defaulting Clearing Member in respect of an Omnibus Account (the “Omnibus Clients”) have appointed the same single Back-up Client Clearing Member and all such Clients and that Back-up Client Clearing Member have agreed that all Contracts entered into by the defaulting Clearing Member relating to those Clients and the Segregated Account Balance be transferred to such Back-up Client Clearing Member:

(i) the Clearing House shall (x) transfer all such Contracts to such Back-up Client Clearing Member; 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 with such Back-up Client Clearing Member in respect of such Clients;

(ii) the Clearing House shall transfer the related Segregated Account Balance in respect of those Clients’ Omnibus Account to the Omnibus Account in respect of all such Clients held by such Back-up Client Clearing Member; and
(iii) the amount due to be returned to the defaulting Clearing Member in respect of such Omnibus Account shall be reduced by an amount equivalent to the amount of the Segregated Account Balance so transferred.

Consents and Conditions

1.9C.6 For the purposes of section 1.9C.3(iii), the relevant Individual Client, Omnibus Clients and Back-up Client 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, then neither section 1.9C.4 nor section 1.9C.5 shall apply, and the Clearing House shall instead act in accordance with section 1.9C.7.

For the purposes of sections 1.9C.4 and 1.9C.5, no transfer of the Contracts or Segregated Account Balance with respect to a particular Client, or Clients in the case of an Omnibus Client Account, shall be effected by the Clearing House, until such time as the Clearing House is satisfied that all applicable margin requirements (if any) have been met by the Back-up Client Clearing Member in anticipation of such transfer.

Allocation and Return of Client Balance

1.9C.7 In relation to those Clients of a defaulting Clearing Member whose open Contracts are not dealt with pursuant to section 1.9C.4 or 1.9C.5 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 Client and at the defaulting Clearing Member’s or Client’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 Segregated Account Balance following the deduction of any costs, fees or expenses incurred by the Clearing House which are associated with the taking of any such action; and

(c) in the case of Omnibus Clients, determine each such Omnibus Client’s pro rata share of such Segregated Account Balance (the Segregated Account Balance in respect of an Individual Client and an Omnibus Client’s pro rata portion of the Segregated Account Balance in respect of its Omnibus Account, each a “Client Share”), such pro rata share being determined by reference to the positive value of the Segregated Account Balance credited to the Clients’ Omnibus Account or, if negative, shall be treated as having zero value; and

(ii) pay an amount equal to its Client Balance to each such Client or, failing which to the relevant Clearing Member for the account of its 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 the relevant Client.