Appendix 21

1.9E Supplemental default rules for Contracts Recorded on an Indirect Pledge Account

Application

1.9E.1 Where a Clearing Member that acts as a Trading Account Administrator and Clearing Account Administrator in respect of an Indirect Pledge Account is in default under section 1.8.1 or 1.8.2, the Clearing House shall take the steps set out in this section 1.9E in respect of the Contracts Recorded on such Indirect Pledge Account.

Interpretation

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

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

“Customer Balance” In respect of an Indirect Pledging Customer, an amount equal to (i) each Indirect Pledging Customer’s pro rata share of the Collateral Balance as calculated pursuant to section 1.9E.7(i)(c) plus (ii) if an amount is determined to be owing to such Indirect Pledging Customer following the termination of all such Indirect Pledging Customer’s Contracts, such amount, less (iii) if an amount is determined to be owing from such Indirect Pledging Customer following the termination of all such Indirect Pledging Customer’s Contracts, such amount, less (iv) the costs incurred by the Clearing House of any hedging undertaken by it and any other costs incurred by it attributable to such Indirect Pledging Customer’s Contracts.
“Liabilities”

All present and future obligations, moneys, debts and liabilities due, owing or incurred by the Clearing Member to the Customer under or in connection with the Customer Agreement.

“Collateral Balance”

In respect of all Indirect Pledge Accounts which the defaulting Clearing Member administers, the value ascribed by the Clearing House to all Collateral that has been provided to the Clearing House in respect of those Indirect Pledge Accounts, such value to be taken, where relevant, by reference to the liquidation proceeds for all such Collateral so liquidated, and if the Clearing House in its own discretion chose to appropriate or liquidate the Collateral, less any costs incurred by the Clearing House in connection with such appropriation or liquidation.

Entitlement of Indirect Pledging Customer

1.9E.3 Where a Clearing Member to which this section 1.9E applies is in default under section 1.8.1 or 1.8.2, each Indirect Pledging Customer of such Clearing Member is entitled to request that the Clearing House takes the steps necessary to seek to facilitate the transfer of the Contracts and Collateral pursuant to sections 1.9E.4 and 1.9E.5, and if such transfer is not dealt with pursuant to these sections, the Indirect Pledging Customer is entitled to require that the Clearing House pay the Customer Balance directly to the Indirect Pledging Customer in accordance with section 1.9E.7 (i)(d).

Steps to be taken by the Clearing House

1.9E.4 Where a Clearing Member to which this section 1.9E 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 Indirect Pledge Accounts administered by the defaulting Clearing Member, including appropriating or liquidating some or all of the Collateral provided in respect of the Indirect Pledge Accounts;
(ii) for each Indirect Pledging Customer of the defaulting Clearing Member:

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

(b) ascertain whether such Indirect Pledging Customer consents to having all Contracts Recorded on its Indirect Pledge Account administered by the defaulting Clearing Member be transferred to an Indirect Pledge Account administrated by such Back-up Customer Clearing Member pursuant to section 1.9E.5;

(c) ascertain whether each Indirect Pledging Customer consents to having its pro rata share of the Collateral Balance transferred to such Back-up Customer Clearing Member pursuant to section 1.9E.5;

(d) once satisfied as to (a), (b) and (c), and subject to the request by the Back-up Customer Clearing Member, send details of such Contracts Recorded and, where appropriate, Collateral and the Collateral Balance to such Back-up Customer Clearing Member and ascertain whether such Back-up Customer Clearing Member provides its consent to open an Indirect Pledge Account on behalf of such Indirect Pledging Customer and transfer such Contracts and such pro rata share of the Collateral Balance pursuant to sections 1.9E.5; and

(e) 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 an Indirect Pledge Account on behalf of the Indirect Pledging Customer.

Indirect Pledge Account Porting

1.9E.5 Where the Clearing House has determined that the requirements set out in section 1.9E.4 have been met in respect of all Indirect Pledging Customers of a defaulting Clearing Member and all such Indirect Pledging Customers have appointed the same single Back-up Customer Clearing Member, the Clearing House shall, subject to the execution by each Indirect Pledging Customer of a Customer Agreement in respect of the new Indirect Pledge Account administered by the Back-up Customer Clearing Member:

(i) (x) transfer all such Contracts to the Indirect Pledge Accounts administered by such Back-up Customer Clearing Member for and on behalf of the Indirect Pledging Customers; 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
Indirect Pledge Accounts administered by such Back-up Customer Clearing Member;

(ii) transfer the related Collateral Balance in respect of those Indirect Pledging Customers’ Indirect Pledge Accounts, having first appropriated all Collateral (other than cash collateral) that has not been liquidated, to the Indirect Pledge Accounts in respect of such Indirect Pledging Customers administered by such Back-up Customer Clearing Member;

(iii) 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 Indirect Pledge Account administered by the defaulting Clearing Member on behalf of the Indirect Pledging Customer or any such other Indirect Pledge Account; and

(iv) the Collateral due to be returned to the defaulting Clearing Member in respect of such Indirect Pledge Accounts shall be reduced by an amount equivalent to the Collateral Balance, notwithstanding the limitation of such Clearing Member’s liability set out in section 2.12.5.

Upon transfer to a Back-up Customer Clearing Member in accordance with this section 1.9E.5, the Clearing Member shall be deemed to have waived any general pledge provided in the Customer Agreement in favour of the Clearing Member or any pledge documentation or other security agreement in favour of the Clearing Member and entered into pursuant to the Indirect Pledge Account administered by the defaulting Clearing Member on behalf of the Indirect Pledging Customer or any such other Indirect Pledge Account.

Consents and Conditions

1.9E.6 For the purposes of section 1.9E.4 (ii), the relevant Indirect 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 1.9E.4 not being met, then section 1.9E.5 shall not apply, and the Clearing House shall instead act in accordance with section 1.9E.7.
For the purposes of section 1.9E.5, no transfer of the Contracts or Collateral Balance with respect to Indirect Pledging Customers 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 Customer Clearing Member in anticipation of such transfer.

Allocation and Return of Customer Balance

1.9E.7 In relation to Indirect Pledging Customers of a defaulting Clearing Member whose open Contracts are not dealt with pursuant to section 1.9E.5 within 24 hours from calling the default of such defaulting Clearing Member or by such later time as the Clearing House may determine in its discretion:

(i) the Clearing House shall have the right to elect, without consulting the defaulting Clearing Member or the Indirect Pledging Customer and at the defaulting Clearing Member’s or Indirect Pledging Customer’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 Indirect Pledging Customer of a defaulting Clearing Member;

(b) following the taking of any such measures, calculate the Collateral Balance following the deductions of any costs, fees or expenses incurred by the Clearing House which are associated with the taking of any such action;

(c) determine each such Indirect Pledging Customer’s pro rata share of such Collateral Balance, such pro rata share being equal to the Margin Requirement as calculated for such Indirect Pledging Customer’s Indirect Pledge Account divided by the total Margin Requirement as calculated for all Indirect Pledging Customers of the defaulting Clearing Member;

(ii) the Clearing House shall determine each such Indirect Pledging Customer’s Customer Balance and pay an amount and/or return Collateral, that together constitute the value of such Customer Balance, having first appropriated all Collateral (other than cash collateral) that has not been liquidated, to each Indirect Pledging Customer or, failing which to the relevant Clearing Member (or any applicable insolvency official of such Clearing Member) for the account of its Indirect Pledging Customer on terms, to the extent possible under insolvency laws applicable to the Clearing Member, that creditors of the Clearing Member other than such Indirect Pledging Customer (whether directly or indirectly by virtue of being general creditors of the Clearing Member’s estate) shall not have recourse to such assets so delivered, 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 Indirect Pledging Customer; and
(iii) the Collateral due to be returned to the defaulting Clearing Member in respect of such Indirect Pledge Accounts shall be reduced by an amount equivalent to the Collateral Balance, notwithstanding the limitation of such Clearing Member’s liability set out in section 2.12.5.

Indemnity

1.9E.8 Notwithstanding the limitation of such Clearing Member’s liability set out in section 2.12.5, the relevant defaulting Clearing Member consents to the measures described in section 1.9E.5 or, in case no such measure is taken, the measures described in section 1.9E.7 and agrees to indemnify the Clearing House for any cost or loss suffered or payment made as a result of the application of any of these sections.

Customer’s covenants, etc.

1.9E.9 Following a Clearing Member’s default under section 1.8.1 or 1.8.2, to the extent an Indirect Pledging Customer receives (including the relevant Clearing Member (or any applicable insolvency official of such Clearing Member) receiving for the account of its Indirect Pledging Customer in accordance with section 1.9E.7(d) above) payment, delivery or credit from the Clearing House of an amount in respect of its pro rata share of the Collateral Balance, if such amount received is greater than the value of all Liabilities, Customer covenants to pay to Clearing Member, as soon as reasonably practicable, upon written demand therefor, an amount equal to the excess, if any, of (x) the amount so paid, delivered or credited to it, over (y) the value of all such Liabilities.

1.9E.10 Following a Clearing Member’s default under section 1.8.1 or 1.8.2, to the extent the Collateral Balance in respect of an Indirect Pledging Customer is transferred to a Back-up Customer Clearing Member pursuant to section 1.9E.5, if the value of the amount so transferred is greater than the value of all Liabilities, Customer covenants to pay to Clearing Member, as soon as reasonably practicable, upon written demand therefor, an amount equal to the excess, if any, of (x) the value of the amount so transferred, over (y) the value of all such Liabilities.

1.9E.11 Where the Clearing House transfers to a Back-up Customer Clearing Member the Collateral Balance in respect of an Indirect Pledging Customer’s Indirect Pledge Account to the Indirect Pledge Account in respect of such Indirect Pledging Customer administered by such Back-up Customer Clearing Member pursuant to section 1.9E.5, such Collateral Balance shall thereupon constitute Collateral that has been transferred to such Back-up Customer Clearing Member by such Indirect Pledging Customer under the relevant Customer Agreement and the amount due to be returned to the Indirect Pledging Customer
in respect of such Indirect Pledge Account shall be increased by an amount equivalent to the amount of the Collateral Balance so transferred.

Termination of Customer Agreement

1.9E.12 Where

a. the requirements set out in section 1.9E.4 have been met in respect of an Indirect Pledging Customer and the Clearing House has taken the steps set out in section 1.9E.5 above; or

b. the Clearing Member’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 Indirect Pledge Accounts; and (ii) there is no amount owing to the Clearing House by the Indirect Pledging Customer;

the Indirect Pledging Customer may terminate its Customer Agreement with the defaulting Clearing Member.