Appendix 19

1.9C Supplemental default rules for Contracts Recorded on Client 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 1.8.1 or 1.8.2, 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 Clearing Rules.

“Associated Client Transaction” The transaction entered into between the Clearing Member and the Client on registration of a Contract in the name of the Clearing Member but in respect of that Client and whose contractual terms are economically equivalent to such Contract.

“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.

“Collateral Balance” In respect of a Client Account, the value ascribed by the Clearing House to all Collateral provided to the Clearing House in respect of such Client Account, such value to be taken, where relevant, by reference to the liquidation proceeds for all 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.

“Client Balance” In respect of an Individual Client or in respect of an Omnibus Account, an amount equal to (i) the Collateral Balance for the relevant Client Account plus (ii) if an amount is determined to be owing to the relevant Client Account following the termination of all Contracts thereon, such amount, less (iii) if an amount is determined to be owing from the Client Account following the termination of all Contracts thereon, such amount, less (iv) the costs of any hedging undertaken and any other costs attributable to such Client Account.

“Client Clearing Agreement” The contractual arrangement between the Clearing Member and its Client in respect of the Associated Client Transaction(s) and the clearing thereof.

“Individual Client” Has the meaning ascribed to it in section 1.9C.5.

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

“Omnibus Clients” Has the meaning ascribed to it in section 1.9C.6.
Entitlement of the Client

1.9C.3 Where a Clearing Member to which this section 1.9C applies is in default under section 1.8.1 or 1.8.2, each Client 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 1.9C.4 – 1.9C.6, and if such transfer is not dealt with pursuant to these sections, the Client is entitled to request that the Clearing House pay the Client Balance directly to the Client, in the case of an Individual Client in accordance with section 1.9C.8(ii), and where such Client is an Omnibus Client, directly to the Clearing Member to be held for the benefit of the Omnibus Clients in accordance with section 1.9C.8(ii) and Article 48(7) of EMIR.

Steps to be taken by the Clearing House

1.9C.4 Where a Clearing Member to which this section 1.9C 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 Client Accounts of the defaulting Clearing Member, including appropriating or liquidating some or all of the Collateral provided in respect of the Client Accounts;

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

(b) ascertain whether each such Client consents to having all Contracts to which the defaulting Clearing Member is a party relating to that Client and Recorded on an Individual Client Segregated Account or an Omnibus Account be transferred to such Back-up Client Clearing Member pursuant to section 1.9C.5 or 1.9C.6;

(c) ascertain whether each such Client consents to having all Collateral provided by the defaulting Clearing Member relating to that Client transferred to such Back-up Client Clearing Member pursuant to section 1.9C.5 or 1.9C.6; and

(d) once satisfied as to (a), (b) and (c), and subject to the request by the Back-up Client Clearing Member, send details of such Contracts and, where appropriate, Collateral and the Collateral Balance relating to such Client Account to such Back-up Client Clearing Member and, subject to obtaining the Back-up Client Clearing Member’s consent, transfer such Contracts and the Collateral Balance pursuant to section 1.9C.5 or 1.9C.6.

Individual Client Segregated Account Porting

1.9C.5 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 to which the defaulting Clearing Member is a party relating to that Client and the Collateral 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 Collateral Balance in respect of that Client’s Individual Client Segregated Account, having first appropriated all Collateral (other than cash collateral) that has not been liquidated, 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 transferred under (i) and (ii) above.

Omnibus Account Porting

1.9C.6 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 Omnibus Clients and that Back-up Client Clearing Member have agreed that all Contracts to which the defaulting Clearing Member is a party relating to those Omnibus Clients and the Collateral 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 Omnibus Clients;

(ii) the Clearing House shall transfer the related Collateral Balance in respect of those Omnibus Clients’ Omnibus Account, having first appropriated all Collateral (other than cash collateral) that has not been liquidated, to the Omnibus Account in respect of all such Omnibus 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 transferred under (i) and (ii) above.

Consents and Conditions

1.9C.7 For the purposes of section 1.9C.4(ii), 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.5 nor section 1.9C.6 shall apply, and the Clearing House shall instead act in accordance with section 1.9C.8.

For the purposes of sections 1.9C.5 and 1.9C.6, no transfer of the Contracts or Collateral Balance with respect to a particular Client, or Clients in the case of an Omnibus 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.8 In relation to those Clients of a defaulting Clearing Member whose open Contracts are not dealt with pursuant to section 1.9C.5 or 1.9C.6 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 Client and at the defaulting Clearing Member’s or Client’s expense,

(a) to take one or more of the measures stated in section 1.8.6; and

(b) following the taking of any such measures, calculate the Collateral 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
(ii) the Clearing House shall determine the Client Balance and pay an amount and/or return Collateral, that together constitute the value of such Client Balance, having first appropriated all Collateral (other than cash collateral) that has not been liquidated, to (a) in the case of an Individual Client, such Individual Client or (b) when payment under (a) cannot be made, or in the case of Omnibus Clients, the relevant Clearing Member (or any applicable insolvency official of such Clearing Member) for the account of such Client(s) on terms, to the extent possible under insolvency laws applicable to the Clearing Member, that creditors of the Clearing Member other than such Client(s) (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 Client(s); and

(iii) the amount due to be returned to the defaulting Clearing Member in respect of a Client Account shall be reduced by an amount equivalent to the amount returned in respect of that Client Account under (ii) above.

Indemnity

1.9C.9 The relevant defaulting Clearing Member consents to the measures described in section 1.9C.5 and 1.9C.6 or, in case no such measure is taken, the measures described in section 1.9C.8 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.

Client Clearing Agreement

1.9C.10 No Client Clearing Agreement shall include any provision, the effect of which would be to restrict a Client’s ability to provide consent to the transfer of Contracts and Collateral Balance to a Back-up Client Clearing Member pursuant section 1.9C.4(ii) or 1.9C.7, or to otherwise limit the ability for the Clearing House to take any action required in order to execute the transfer of Contracts and Collateral Balance in accordance with section 1.9C.

1.9C.11 The Clearing Member shall enter into a Client Clearing Agreement with each Client for which it holds a Client Account. Such Client Clearing Agreement shall include provisions with the following effect:

(i) where a Clearing Member is in default under section 1.8.1 or 1.8.2, each Associated Client Transaction shall automatically terminate at or before the same time as the related Contract is terminated or transferred pursuant to section 1.9C.5 or 1.9C.6;

(ii) upon termination of an Associated Client Transaction under section 1.9C.11 (i), the value of each such terminated transaction shall be equal to the value of the related Contract as determined by the Clearing House as of the time that the Contract is terminated or transferred;

(iii) following a Clearing Member’s default under section 1.8.1 or 1.8.2, to the extent a Client receives (including the relevant Clearing Member (or any applicable insolvency official of such Clearing Member) receiving for the account of its Client in accordance with section 1.9C.8(ii) above) payment or delivery from the Clearing House of an amount in respect of (a) in relation to an Individual Client, its Client Balance or (b) in relation to an Omnibus Client, the relevant pro rata share of such Client Balance, if such amount received is greater than the value of all Liabilities, Client 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 or delivered to it, over (y) the value of all such Liabilities;

(iv) following a Clearing Member’s default under section 1.8.1 or 1.8.2, to the extent the Collateral Balance and relevant Contracts in respect of the Client are transferred to a Back-
up Client Clearing Member pursuant to section 1.9C.5 or 1.9C.6, if the value of the amount so transferred is greater than the value of all Liabilities, Client 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;

(v) by entering into the relevant Client Clearing Agreement, Client agrees to indemnify the Clearing Member and the Clearing House for any reasonable costs or expenses incurred as a result of any claims in connection with any steps taken under sections 1.9C.5 and 1.9C.6 brought by any Back-up Client Clearing Member (or on such Back-up Client Clearing Member’s behalf), or by any trustee, administrator, conservator or receiver appointed in respect of such Back-up Client Clearing Member or its affairs or its business, including reasonable attorney’s fees in connection with defending against any such claims, save that the Client shall not be liable to the Clearing House where the Clearing House has not taken normal care in exercising its right under sections 1.9C.5 and 1.9C.6; and

(vi) where the Clearing House transfers to a Back-up Client Clearing Member (x) the Collateral Balance in respect of a 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 pursuant to section 1.9C.5; and/or (y) the Collateral Balance in respect of Clients’ Omnibus Account to the Omnibus Account in respect of all such Clients held by such Back-up Client Clearing Member pursuant to section 1.9C.6, such Collateral Balance shall thereupon constitute Collateral that has been transferred to such Back-up Client Clearing Member by such Client(s) under the relevant Client Clearing Agreement(s) and the amount due to be returned to the Client in respect of such Individual Client Segregated Account and/or Omnibus Account (as applicable) shall be increased by an amount equivalent to the amount of the Collateral Balance so transferred.

In the event that no such Client Clearing Agreement has been entered into, or if there are any deficiencies in the Client Clearing Agreement, the Clearing Member and Client will be deemed to have been entered into an agreement incorporating the provisions set out in section 1.9C.11.

Identification of Omnibus Clients

1.9C.12 If in connection with a default under section 1.8.1 or 1.8.2 of a Clearing Member holding an Omnibus Account, sufficient information is made available to the Clearing House including at least the following items: (i) the identity of each Omnibus Client in such Omnibus Account, (ii) details of the positions of each such Omnibus Client in such Omnibus Account, (iii) each such Omnibus Client’s pro rata share of the Collateral Balance of such Omnibus Account, and (iv) all necessary payment details, the Clearing House shall perform the relevant calculations specified in this section 1.9C and, where relevant, return any resulting balances directly to the relevant Omnibus Clients in a manner consistent with the provisions of this section 1.9C and Article 48 of EMIR.