

## Chapter 15 Rates and FX Guarantee Resources

### Rates and FX Guarantee Resources Purpose

1501. The purpose of the Rates and FX Guarantee Resources is to provide resources to support the obligations of OTC Clear as a counterparty under Contracts in respect of the Rates and FX Clearing Service but not for any other clearing service that OTC Clear may from time to time offer, and shall only be used in accordance with these Clearing Rules. The Rates and FX Guarantee Resources comprise the Rates and FX Guarantee Fund, Rates and FX Assessments and OTC Clear Contribution.
1502. Each Clearing Member agrees and acknowledges that, for the purpose of securing its liabilities (including to indemnify OTC Clear in the circumstances described in Clearing Rule 1316), it shall provide Collateral on an outright transfer basis in respect of its CM Funded Contribution Amount and CM Unfunded Contribution Amount, each in an amount determined by OTC Clear in accordance with the Clearing Procedures. With respect to a Defaulting Clearing Member, for the purpose of securing its liabilities to OTC Clear in connection with the settlement of its Contracts, the Rates and FX Contribution Balance of such Defaulting Clearing Member shall be taken into account by OTC Clear when determining the net sum payable by, or to, such Defaulting Clearing Member in accordance with Clearing Rules 1306B and 1306C. With respect to a Non-Defaulting Clearing Member, for the purpose of securing its liabilities to indemnify OTC Clear in the circumstances described in Clearing Rule 1316(2), the Rates and FX Contribution Balance of each Non-Defaulting Clearing Member may be applied in accordance with Clearing Rule 1549. Unless otherwise specified in Clearing Rule 1508(1)(a), each Clearing Member must satisfy a demand for CM Funded Contribution Amount and/or CM Unfunded Contribution Amount within one OTC Clear Business Day following the receipt of such demand from OTC Clear.

### Calculations relating to the Rates and FX Guarantee Fund, Rates and FX Assessments and Rates and FX Contribution Balance

1503. Subject to Clearing Rule 1508, OTC Clear shall calculate the Rates and FX Guarantee Fund and Rates and FX Assessments and resize the CM Funded Contribution Amount and CM Unfunded Contribution Amount for each Clearing Member, in each case as detailed in section 6.1 of the Clearing Procedures, on each Rates and FX Contribution Determination Date. A “**Rates and FX Contribution Determination Date**” will occur on:
- (1) the first or second OTC Clear Business Day of each calendar month, as may be notified by OTC Clear;
  - (2) on any date if the Max EUL calculated on such date changes by more than 20% from the Max EUL calculated on the immediately preceding Rates and FX Contribution Determination Date, where “Max EUL” has the meaning given to it in section 6.1.1(6) and as modified by section 6.1.1(8) of the Clearing Procedures if Client Clearing Services are provided by one or more Clearing Members on OTC Clear Clearing Days falling within the GF Calculation Period relating to such Rates and FX Contribution Determination Date; and
  - (3) upon expiry of a Capped Liability Period pursuant to Clearing Rule 1508(2).

The Rates and FX Contribution Balance will be valued by OTC Clear daily in accordance with section 7.5.3 of the Clearing Procedures.

#### **Initial Rates and FX Contribution**

1504. A Clearing Member shall, upon receipt of a notice of approval of its application to become a Clearing Member, deliver Collateral with an aggregate value, determined by OTC Clear in accordance with Chapter 7 of the Clearing Procedures, equal to the Rates and FX Minimum Contribution Amount plus such other amount as OTC Clear may determine at its discretion based on projected clearing activity of such Clearing Member as its initial contribution to the Rates and FX Guarantee Fund. OTC Clear will set out any such additional amount required from a Clearing Member as part of its initial contribution to the Rates and FX Guarantee Fund in the notice of approval to become a Clearing Member. A Clearing Member shall satisfy its initial contribution to the Rates and FX Guarantee Fund in full no later than five OTC Clear Business Days from the date of receipt of notice of approval, or if earlier, the day prior to it submitting its first Original Transaction to OTC Clear for registration.

#### **Further Rates and FX Contribution**

1505. Following each Rates and FX Contribution Determination Date, each Clearing Member will be notified of its CM Funded Contribution Amount and CM Unfunded Contribution Amount in the Base Currency, each as determined by OTC Clear in the manner set out in Chapter 6 of the Clearing Procedures and calculated as at such Rates and FX Contribution Determination Date. The demand will be issued on the relevant Rates and FX Contribution Determination Date and will specify the amount of any additional Collateral required or any Rates and FX Contribution Excess. Each Clearing Member must satisfy the demand for additional Collateral one OTC Clear Business Day following receipt of such demand.

#### **Rates and FX Assessments Demand**

1506. Each Clearing Member agrees and acknowledges that, for the purpose of securing its liabilities in connection with the settlement of its Contracts pursuant to Clearing Rules 1306, 1306A, 1306B, 1306C and 1307 and to indemnify OTC Clear in the circumstances described in Clearing Rule 1316(2), it has an unconditional obligation to pay its CM Unfunded Contribution Amount in cash to the Rates and FX Guarantee Resources if required to do so by OTC Clear pursuant to Clearing Rule 1507.

1507. If, following the occurrence of a DMP Event with respect to one or more Clearing Members:

- (1) the Rates and FX Contribution Balance of all Clearing Members (for the avoidance of doubt, excluding any amounts applied by OTC Clear in connection with the DMP Event, but including the value of any Rates and FX Contribution in respect of any earlier demand of Rates and FX Assessments) falls below, or is expected to fall below, 75% of the last calculated value of the Rates and FX Guarantee Fund; or
- (2) OTC Clear determines in its sole discretion that all cash or liquid resources comprising the Rates and FX Guarantee Fund then held by it have been utilized in full, or are expected to be utilized in full, regardless of whether the value of the Rates and FX Contribution Balance of all Clearing

Members (for the avoidance of doubt, excluding any amounts applied by OTC Clear in connection with the DMP Event, but including the value of any Rates and FX Contribution in respect of any earlier demand of Rates and FX Assessments) have fallen below 75% of the last calculated value of the Rates and FX Guarantee Fund,

OTC Clear may issue a Rates and FX Assessments demand to each Non-Defaulting Clearing Member demanding it to contribute its CM Unfunded Contribution Amount to bring the total Rates and FX Contribution Balance of all Clearing Members to 100% of the last calculated value of the Rates and FX Guarantee Fund. If a Rates and FX Assessments demand is issued by OTC Clear under this Clearing Rule 1507, unless otherwise specified in Clearing Rule 1508(1)(a), each Clearing Member has an unconditional obligation to deliver its CM Unfunded Contribution Amount so demanded within one OTC Clear Business Day following receipt of such demand from OTC Clear. OTC Clear may issue multiple Rates and FX Assessments demands under this Clearing Rule 1507 following a DMP Event, provided that no such Rates and FX Assessments demands shall cause the Rates and FX Liability in respect of a Clearing Member to exceed its Maximum Current Liability set out in Clearing Rule 1544.

#### **Rates and FX Contribution due to Recalculations or Replenishments**

1508. (1) Subject to sub-paragraph (2) below, if the Rates and FX Contribution Balance in respect of a Clearing Member is less than the then current Rates and FX Liability of that Clearing Member, OTC Clear will notify such Clearing Member of the updated CM Funded Contribution Amount in the Base Currency, and:
- (a) if the shortfall arises as a result of either market movement affecting the value of such Collateral or change in the applicable Collateral Haircut, or if OTC Clear determines there are wrong-way risk concerns, the Clearing Member shall deliver additional Collateral required to meet such shortfall to OTC Clear within one hour following receipt of such demand;
  - (b) in all other cases, the Clearing Member shall deliver additional Collateral required to meet such shortfall to OTC Clear within one OTC Clear Business Day following receipt of such demand;
- (2) save and except for the circumstance described in Clearing Rule 1510(2), following the occurrence of any DMP Event, any recalculation of the Rates and FX Guarantee Fund and Rates and FX Assessments shall be suspended until after the expiry of the relevant Capped Liability Period. Upon the expiry of a Capped Liability Period, OTC Clear will recalculate the Rates and FX Guarantee Fund, the Rates and FX Assessments and with respect to each Non-Defaulting Clearing Member, the Rates and FX Contribution Balance and the Rates and FX Liability relating to each such Non-Defaulting Clearing Member. In any such recalculation, and with respect to each Non-Defaulting Clearing Member, OTC Clear shall take into account any reduction in the Rates and FX Contribution Balance relating to such Non-Defaulting Clearing Member by the amount applied during the Default Management Process in respect of such Capped Liability Period in accordance with Clearing Rule 1516. If the Default Management

Process(es) in respect of any DMP Event(s) relating to such Capped Liability Period has not been completed at the time of recalculation, OTC Clear shall, for the purpose of determining the Rates and FX Contribution Balance in sub-paragraph (1) above only, and only for so long as the relevant Default Management Process(es) have not been completed, treat the Rates and FX Contribution Balance prior to the end of the Capped Liability Period as having been applied in full regardless of whether such Rates and FX Contribution Balance have in fact been so applied, in whole or in part. Following completion of the relevant Default Management Process(es), OTC Clear will determine the reduction in the Rates and FX Contribution Balance with respect to each Clearing Member, and a Clearing Member may request the redelivery of Collateral in respect of any Rates and FX Contribution Excess in accordance with Clearing Rule 1546. Subject to sub-paragraph (3) below, any Rates and FX Contribution delivered by any Clearing Member following the expiry of such Capped Liability Period shall not be applied in respect of any Rates and FX Loss arising out of any DMP Event occurring prior to the expiry of such Capped Liability Period; and

- (3) notwithstanding sub-paragraph (2) above, following the expiry of a Capped Liability Period, OTC Clear may apply any Rates and FX Contribution delivered to it prior to the end of such Capped Liability Period and may demand additional Rates and FX Assessments up to the Maximum Current Liability relating to such Capped Liability Period, in each case, for application in accordance with Clearing Rule 1516 in respect of DMP Event(s) relating to such Capped Liability Period.

1509. Unless otherwise specified in Clearing Rule 1508(1)(a), each Clearing Member shall deliver additional Collateral in respect of its Rates and FX Liability as notified to it by OTC Clear within one OTC Clear Business Day following receipt of demand from OTC Clear. For the avoidance of doubt, in respect of any Rates and FX Contribution Determination Date falling after the occurrence of the DMP Event with respect to a Defaulting Clearing Member, such Defaulting Clearing Member will not be included for the purpose of recalculation of the Rates and FX Guarantee Fund and Rates and FX Assessments by OTC Clear on any such Rates and FX Contribution Determination Date, notwithstanding the fact that the Membership Termination Date of such Defaulting Clearing Member may fall on or after any such Rates and FX Contribution Determination Date.

1510. Notwithstanding the operation of Clearing Rule 1508, if OTC Clear determines that:

- (1) the Expected Uncollateralized Loss ("EUL") with respect to a Clearing Member on any two consecutive OTC Clear Clearing Days during the period between two Rates and FX Contribution Determination Dates exceeds its largest EUL within the GF Calculation Period relating to the earlier of the two Rates and FX Contribution Determination Date by 10% or more, and the EUL for such Clearing Member exceeds 50% of the Rates and FX Guarantee Fund, where Expected Uncollateralized Loss has the meaning given to it in section 6.1.1(4) of the Clearing Procedures (and as modified by section 6.1.1(8) of the Clearing Procedures if Client Clearing Services are provided); or

- (2) the EUL with respect to a Clearing Member on any two consecutive OTC Clear Clearing Days during a Capped Liability Period exceeds its largest EUL within the GF Calculation Period relating to the Rates and FX Contribution Determination Date immediately preceding the start of such Capped Liability Period by 10% or more, and the EUL for such Clearing Member exceeds 50% of the Rates and FX Guarantee Fund

(such excess, the “**Increased Risk**”),

then OTC Clear has the right to demand additional Collateral from such Clearing Member in an amount equal to the Increased Risk determined on the relevant second consecutive OTC Clear Clearing Day. The relevant Clearing Member shall provide additional Collateral to OTC Clear on the immediately following OTC Clear Business Day following receipt of OTC Clear’s notice. Thereafter, the requirement on additional Collateral will be determined by OTC Clear on a daily basis according to the latest calculation of Increased Risk less the amount of additional Collateral collected under this Clearing Rule 1510. Any additional Collateral provided by the relevant Clearing Member pursuant to this Clearing Rule 1510 shall be treated as part of such Clearing Member’s Additional Margin. Additional Collateral provided by a Clearing Member pursuant to a demand made by OTC Clear under this Rule 1510 one day before the later Rates and FX Contribution Determination Date will still be required by OTC Clear as Additional Margin under this Clearing Rule 1510 until the receipt of any additional Collateral demanded by OTC Clear pursuant to Clearing Rule 1505 to reflect the new CM Funded Contribution Amount of such Clearing Member as calculated on the later Rates and FX Determination Date. The Maximum Current Liability determined in respect of a Non-Defaulting Clearing Member during a Capped Liability Period pursuant to Clearing Rule 1513 will not be increased by virtue of the application of this Clearing Rule 1510.

1511. Following the occurrence of any DMP Event, and completion of the related Default Management Process, provided that there is no ongoing Default Management Process relating to other DMP Events taking place at the relevant time, OTC Clear will determine any reduction in the OTC Clear Contribution by the amount applied during the Default Management Process in accordance with Clearing Rule 1516. If prior to the completion of a Default Management Process, a subsequent DMP Event occurs, OTC Clear will only determine any reduction in the OTC Clear Contribution at the time where all relevant Default Management Processes have been completed. To the extent that the OTC Clear First Contribution and/or OTC Clear Second Contribution have been utilized as a result of the operation of the Default Management Process(es), OTC Clear will replenish each of the OTC Clear First Contribution and OTC Clear Second Contribution to its original value using its retained earnings, provided that OTC Clear will only replenish the OTC Clear Second Contribution if the OTC Clear First Contribution has first been replenished in full to its original value. In either case, OTC Clear shall only replenish if and to the extent that OTC Clear’s working capital after such replenishment shall not fall below the amount required for its continuous operation for the following 12 months (including but not limited to OTC Clear’s ability to meet all its other actual, contingent or anticipated future liabilities (taking into account for these purposes the obligation of OTC Clear to redeliver Collateral in respect of Margin provided in the form of cash and any Rates and FX Liability to the relevant Clearing Members)).

### **Changes to Calculations relating to the Rates and FX Guarantee Fund and Rates and FX Assessments**

1512. Any changes to the methodology for calculating the Rates and FX Guarantee Fund and Rates and FX Assessments that result in an increase to the Rates and FX Guarantee Fund and Rates and FX Assessments of 20% or more shall be effective on the 20<sup>th</sup> OTC Clear Business Day following the date OTC Clear provides notice to Clearing Members of such change, provided that in respect of any such changes due to a change of requirement in Applicable Laws, rules, regulations or a request of a Regulatory Authority, such changes to the methodology shall be effective on the day as required by the Applicable Laws, rules or regulations, or the day specified in the relevant request of the Regulatory Authority, as applicable (in each case, a **“GF Increase Effective Date”**). Clearing Members shall deliver any additional Collateral required on or prior to the date such change is effective. OTC Clear will not initiate a change to the calculation methodology during a Capped Liability Period unless such change is required or mandated by a change of requirement in Applicable Laws, the rules or regulations or a request of a Regulatory Authority. For the avoidance of doubt, this Clearing Rule 1512 does not apply to any increase to the Rates and FX Guarantee Fund and Rates and FX Assessments resulting from periodic recalculations and not resulting from changes to the methodology.
1513. A Clearing Member who resigns pursuant to Clearing Rule 604 as a result of the increase to the Rates and FX Guarantee Fund and Rates and FX Assessments of 20% or more but who fails to complete the Non-Default Unwind in respect of all of its House Business and Client Clearing Services (if any) prior to the relevant GF Increase Effective Date will be subject to the increased Rates and FX Guarantee Fund and Rates and FX Assessments with effect from (and including) the relevant GF Increase Effective Date, provided that such increased requirement will only apply in respect of the Contracts then registered in the name of such Clearing Member (excluding those which the Clearing Member has successfully unwound as part of its Non-Default Unwind prior to the GF Increase Effective Date).

For the avoidance of doubt, the Maximum Current Liability determined in respect of a Non-Defaulting Clearing Member during a Capped Liability Period will not be increased by virtue of the application of Clearing Rule 1512 and this Clearing Rule 1513.

### **OTC Clear Use of the Rates and FX Guarantee Resources**

1514. Amounts standing to the credit of the Rates and FX Guarantee Resources may only be applied in accordance with Clearing Rule 1516 following the occurrence of a DMP Event or in the following limited circumstances:
- (1) to satisfy any amount due to OTC Clear by the Defaulting Clearing Member as a result of the occurrence of a DMP Event (including but not limited to Margin, amounts due pursuant to Contract Terms, fees, dues, assessments, fines and any costs and expenses of recovery against the Defaulting Clearing Member); or
  - (2) for the purposes described in Clearing Rules 1520 and 1521.

### **Reduction of Losses on a DMP Event and Application of the Rates and FX Guarantee Resources**

1515. The total losses suffered by OTC Clear as a result of the occurrence of a DMP Event relating to a Defaulting Clearing Member (the “**Rates and FX Loss**”) are:

- (1) all Auction Losses or Contract Termination Losses relating to each Auction Portfolio constructed as a result of such DMP Event;
- (2) any other general losses suffered by OTC Clear as a result of such DMP Event which is not attributable to a specific Auction Portfolio or Contract Termination Losses (the “**General Losses**”), including but not limited to any costs involved in entering into Hedging instruments pursuant to Rule 1803 which do not form part of the Auction Portfolio, porting Affected Contracts registered in the name of such Defaulting Clearing Member to the Replacement Clearing Member, the losses or costs incurred by OTC Clear in liquidating any non-cash Collateral, for purchasing equivalent assets for the redelivery of the Rates and FX Contribution Balance to a Clearing Member to the extent utilised pursuant to Clearing Rule 1516, for currency conversion, or as a result of payment of any interest on liquidity facilities, in each case, with respect to the Default Management Process relating to such DMP Event; and
- (3) Unpaid Amounts due from such Defaulting Clearing Member to OTC Clear, excluding, for the avoidance of doubt, losses in respect of Contracts relating to Porting Clients.

1516. OTC Clear shall be entitled to apply its resources, in any manner or order including for the avoidance of doubt in an order which is different from the order described hereunder, for satisfaction of the Rates and FX Loss during a Default Management Process invoked as a result of the occurrence of a DMP Event with respect to a Defaulting Clearing Member, provided that upon completion of a successful Auction or the occurrence of a Contract Termination Event (as applicable) in respect of all Auction Portfolios relating to such DMP Event, it shall perform the loss allocation process set out below:

- (1) OTC Clear shall first determine the General Losses suffered by it as a result of the DMP Event and the extent to which there are any Unpaid Amounts due from such Defaulting Clearing Member to OTC Clear in respect of Contracts recorded in such Defaulting Clearing Member’s House Position Account, and reduce or bear such General Losses and Unpaid Amounts by application of the following resources in descending order as follows:
  - (a) first, the aggregate of (i) all Auction Payments (if any) received by OTC Clear with respect to one or more House Auction Portfolios constructed as a result of such DMP Event, (ii) any Unpaid Amounts due from OTC Clear to such Defaulting Clearing Member in respect of Contracts recorded in such Defaulting Clearing Member’s House Position Account, (iii) the Unsettled VM Amount in respect of the Auction Contracts and/or Auction Failed Positions comprised in House Auction Portfolio(s) (to the extent that such Unsettled VM Amount is payable by OTC Clear to the relevant Defaulting Clearing Member) (if any), (iv) the Margin Balance recorded to the House

- Collateral Account, any income and redemption proceeds on any non-cash Collateral recorded to the House Collateral Account and any proceeds of realization of any such non-cash Collateral that have not already been paid to or withdrawn by the Defaulting Clearing Member and (v) the aggregate Contract Termination Net Payments payable by Non-Defaulting Clearing Members to OTC Clear as a result of a Contract Termination Event;
- (b) second, the Rates and FX Contribution Balance of the Defaulting Clearing Member (by application in the manner set out in Clearing Rule 1548);
  - (c) third, the OTC Clear First Contribution;
  - (d) fourth, the aggregate value of the Rates and FX Contribution Balance in respect of the CM Funded Contribution Amount of each Non-Defaulting Clearing Member (by application in the manner set out in Clearing Rule 1517);
  - (e) fifth, the OTC Clear Second Contribution; and
  - (f) sixth, the aggregate value of the Rates and FX Contribution Balance in respect of the CM Unfunded Contribution Amount of each Non-Defaulting Clearing Member (by application in the manner set out in Clearing Rule 1517);
- (2) To the extent that there are any Unpaid Amounts due from such Defaulting Clearing Member to OTC Clear in respect of Contracts recorded in such Defaulting Clearing Member's Client Position Account(s), OTC Clear shall reduce or bear each such Unpaid Amounts by application of the following resources in descending order as follows. In respect of such Unpaid Amounts due in respect of a Client Position Account:
- (a) first, the aggregate of (i) all Auction Payments (if any) received by OTC Clear with respect to one or more Client Auction Portfolios constructed as a result of such DMP Event which relate to such Client Position Account, (ii) any Unpaid Amounts due from OTC Clear to such Defaulting Clearing Member in respect of Contracts recorded in such Client Position Account, (iii) the Unsettled VM Amount in respect of the Auction Contracts and/or Auction Failed Positions comprised in Client Auction Portfolio(s) which relate to Contracts recorded in such Client Position Account (to the extent that such net amount is payable by OTC Clear to the relevant Defaulting Clearing Member) (if any), (iv) the Margin Balance recorded to the Client Collateral Account attributed to such Client Position Account, (v) any income and redemption proceeds on any non-cash Collateral recorded to the Client Collateral Account attributed to such Client Position Account and any proceeds of realization of any such non-cash Collateral that have not already been paid to or withdrawn by the Defaulting Clearing Member and (vi) the aggregate Contract Termination Net Payments payable by Non-Defaulting Clearing Members to OTC Clear as a result of a



- Contract Termination Event relating to Contracts recorded in such Client Position Account;
- (b) second, the Rates and FX Contribution Balance of the Defaulting Clearing Member (by application in the manner set out in Clearing Rule 1548);
  - (c) third, the OTC Clear First Contribution;
  - (d) fourth, the aggregate value of the Rates and FX Contribution Balance in respect of the CM Funded Contribution Amount of each Non-Defaulting Clearing Member (by application in the manner set out in Clearing Rule 1517);
  - (e) fifth, the OTC Clear Second Contribution; and
  - (f) sixth, the aggregate value of the Rates and FX Contribution Balance in respect of the CM Unfunded Contribution Amount of each Non-Defaulting Clearing Member (by application in the manner set out in Clearing Rule 1517);
- (3) for the purposes of sub-paragraph (2)(a) above, the amount of Auction Payments in the form of risk concessions that shall be treated as “relating to” a Client Position Account shall be an amount equal to the product of:
- (A) with respect to an Auction Portfolio, the hypothetical Initial Margin with respect to the Contracts of that Client Position Account comprised in the relevant Auction Portfolio (calculated on a portfolio margining basis assuming that such Contracts were booked into a single separate hypothetical Client Position Account) divided by the aggregate of the hypothetical Initial Margin of all Client Position Accounts comprised in such Auction Portfolio (where such Auction Portfolio comprises Contracts originally booked to more than one Client Position Account, but the entire Client Position Account is not comprised in such Auction Portfolio, the hypothetical Initial Margin for each such partial Client Position Account shall be calculated on a portfolio margining basis disregarding the fact that such Client Position Account is not whole; for the avoidance of doubt, where such Auction Portfolio comprises Contracts originally booked to more than one Client Position Account and each entire Client Position Account is comprised in such Auction Portfolio, the Initial Margin of such Client Position Accounts shall be aggregated), in each case, such Initial Margin being calculated by OTC Clear in its sole and absolute discretion as at the latest practicable time immediately preceding the occurrence of the relevant DMP Event; and
  - (B) the amount of Auction Payments in the form of risk concessions relating to the relevant Auction Portfolio referred to in sub-paragraph (3)(A) above; and

- (4) upon completion of the process described in sub-paragraphs (1) and (2) above, OTC Clear shall determine the Auction Losses or Contract Termination Losses with respect to each Auction Portfolio constructed as a result of the DMP Event, and shall reduce or bear such losses in accordance with Clearing Rules 1914 to 1916, and

with respect to each DMP Event, the aggregate value of the resources described in sub-paragraphs (1)(a) to (1)(f) and (2)(a) to (2)(f) above is the “**Total Available Resources**” with respect to such DMP Event. The Total Available Resources, together with any Gainer VM Flow Adjustment and/or Voluntary Recap Amount received by OTC Clear pursuant to Clearing Rules 1524(2) and 1542, respectively, shall be the sole source of funds for satisfaction of the Rates and FX Loss arising out of the relevant DMP Event.

1517. OTC Clear will satisfy its claim under the indemnities given by each Non-Defaulting Clearing Member pursuant to Clearing Rule 1316(2) in respect of the Rates and FX Loss, by setting off the amount of loss calculated under Clearing Rules 1516(1)(d), 1516(1)(f), 1516(2)(d), 1516(2)(f), 1913A(4), 1913A(6), 1913B(4) and 1913B(6) against OTC Clear’s obligation to pay the amount specified in Clearing Rule 1549.
1518. OTC Clear will notify the affected Clearing Members of any amounts applied pursuant to Clearing Rule 1516 and, where applicable, notify Clearing Members of any obligations to deliver additional Collateral in respect of their respective Rates and FX Liability pursuant to Clearing Rule 1509.

#### **Accounts of Rates and FX Guarantee Resources**

1519. OTC Clear shall maintain a separate record of all amounts of the Rates and FX Guarantee Resources from time to time, clearly identifying the amount and type(s) of Collateral provided by each Clearing Member in respect of their respective Rates and FX Liability in the relevant GF Account. In addition, OTC Clear shall maintain a separate account in respect of all the Rates and FX Contribution made (and not reinvested by OTC Clear under Clearing Rule 1520) or required to be made by each Clearing Member to the Rates and FX Guarantee Resources. OTC Clear undertakes to all Clearing Members from time to time to maintain amounts equal to the OTC Clear Contribution in a separate account from its other assets and to use such amounts only for the purposes of investment under Clearing Rule 1520, or meeting shortfalls arising directly or indirectly from Events of Default or a Rates and FX Clearing Termination Event in accordance with this Chapter 15. Simultaneously, with the annual audit of its accounts, OTC Clear shall request its auditors to prepare a report on the Rates and FX Guarantee Resources for circulation to the SFC and, upon request, to Clearing Members.
1520. OTC Clear has the power to invest any cash amount contributed to the Rates and FX Guarantee Resources in accordance with its investment policy. OTC Clear may perform any such investment itself as it sees fit, or it may engage an independent third party to perform such investment. OTC Clear’s power to invest any cash amount contributed to the Rates and FX Guarantee Resources shall be suspended in case of occurrence of an OTC Clear Failure to Pay Event or OTC Clear Insolvency Event. OTC Clear may not exercise its power of investment under this Clearing Rule 1520 in respect of any non-cash asset contributed to the Rates and FX Guarantee Resources, provided that in the case of any DMP Event, OTC Clear may sell, liquidate, transfer or create any security or other third party right or

interest in or over any non-cash asset contributed to the Rates and FX Guarantee Resources for the purpose of ensuring that OTC Clear shall in its determination have sufficient liquid resources available to meet its payment obligations in a timely manner as they fall due. For the avoidance of doubt, notwithstanding any such sale, liquidation, transfer or creation of right or interest, OTC Clear shall remain liable to redeliver Rates and FX Contribution in equivalent form and currency to the relevant Clearing Member at the time and to the extent required under Clearing Rules 1546 and 1547.

1521. OTC Clear may apply any amounts contributed to the Rates and FX Guarantee Resources which are in the opinion of OTC Clear surplus to the Rates and FX Guarantee Fund (the reference to “surplus” in the immediately preceding sentence shall mean any gains arising out of the investment of the Rates and FX Guarantee Fund) in such manner as OTC Clear thinks fit. OTC Clear may appropriate such monies out of the Rates and FX Guarantee Resources temporarily or permanently for the following purposes including, but not limited to:

- (1) payment of any amount representing interest or money obligations as may be determined from time to time by OTC Clear in respect of Rates and FX Contribution; and
- (2) payment for costs and expenses incurred in establishing, maintaining, managing, administering and terminating any arrangements such as bank facilities and policies of insurance as OTC Clear may from time to time consider appropriate for the purpose of providing additional resources to the Rates and FX Guarantee Fund.

### **Recoveries**

1522. If any amount paid out of the Rates and FX Guarantee Fund pursuant to Clearing Rule 1516 is subsequently recovered by OTC Clear, OTC Clear may use such amount (less any costs and expenses of recovery) to refund the relevant Clearing Members or itself in the reverse order of application under Clearing Rule 1516.

### **Loss Distribution Process**

1523. On each OTC Clear Clearing Day during the Loss Distribution Period, OTC Clear will determine whether the Rates and FX Loss resulting from a DMP Event will exceed the Total Available Resources and any relevant Voluntary Recap Amount received or to be received under Clearing Rule 1541 relating to such DMP Event. If it does, then OTC Clear will consult with the SFC and will either invoke the “**Loss Distribution Process**” set out in this Clearing Rule 1523 to Clearing Rule 1528 or invoke the limited recourse wind down with respect to OTC Clear as set out in Clearing Rules 1529 to 1539.

1524. If the Loss Distribution Process applies, then on each OTC Clear Clearing Day during the Loss Distribution Period:

- (1) OTC Clear will determine whether a Position Account registered in the name of a Non-Defaulting Clearing Member is a Position Account Gainer or a Position Account Loser;
- (2) if the Position Account registered in the name of a Non-Defaulting Clearing Member is a Position Account Gainer, and the Gainer VM Flow Adjustment calculated for a Currency Payment in respect of that Position Account for

that OTC Clear Clearing Day is a positive number, the relevant Non-Defaulting Clearing Member shall pay an amount equal to such Gainer VM Flow Adjustment to OTC Clear. If the Position Account registered in the name of a Non-Defaulting Clearing Member is a Position Account Gainer and the Gainer VM Flow Adjustment calculated for a Currency Payment in respect of that Position Account for that OTC Clear Clearing Day is a negative number, OTC Clear shall pay to the relevant Non-Defaulting Clearing Member an amount equal to the absolute value of such Gainer VM Flow Adjustment; and

- (3) if the Position Account registered in the name of a Non-Defaulting Clearing Member is a Position Account Loser, OTC Clear shall pay to the relevant Non-Defaulting Clearing Member an amount equal to the absolute value of such negative Loser VM Flow Adjustment calculated for a Currency Payment in respect of that Position Account for that OTC Clear Clearing Day.

For the purpose of the calculations and adjustments conducted under the Loss Distribution Process, each Position Account of a Non-Defaulting Clearing Member will be treated separately.

If an OTC Clear Clearing Day is not a Currency Day for a Currency Payment, OTC Clear will perform the calculations and adjustment required under the Loss Distribution Process on such OTC Clear Clearing Day, but payment of the relevant Currency Payment, as adjusted by the Gainer VM Flow Adjustment or Loser VM Flow Adjustment, as the case may be, will be deferred to the immediately following Currency Day for such Currency Payment.

1525. On each OTC Clear Clearing Day during the Loss Distribution Period, OTC Clear will apply the Latest Exchange Rate determined on the relevant OTC Clear Clearing Day in making the calculations required to be made under the Loss Distribution Process, including components which relate to payments made, or falling due, on previous days.
1526. On each Loss Distribution Day, OTC Clear shall apply set-off with respect to any payment or receipt of any VM Flow Adjustment on such day against any payments denominated in the same currency as such VM Flow Adjustment payable to, or receivable from, the relevant Clearing Member.
1527. Without prejudice to the operation of Clearing Rule 1531, in the absence of manifest error, any VM Flow Adjustment determined by OTC Clear shall be final and conclusive. Any application of a Gainer VM Flow Adjustment resulting in a reduction of Currency Payment by OTC Clear to a Non-Defaulting Clearing Member shall not constitute a failure to pay by OTC Clear.
1528. Subsequent to the completion of the Loss Distribution Process by OTC Clear, if OTC Clear receives any amounts from the Defaulting Clearing Member, or any other amounts howsoever obtained or recovered during the Default Management Process relating to the Defaulting Clearing Member, OTC Clear shall reimburse the Non-Defaulting Clearing Members (regardless of whether the relevant Non-Defaulting Clearing Member remains a Clearing Member at the time of recovery) on a pro-rata basis by reference to the resources which have been applied pursuant to

Clearing Rule 1516 after deducting any costs or expenses incurred by OTC Clear during the process of such recovery.

For the avoidance of doubt, nothing in this Clearing Rule 1528 shall oblige OTC Clear to pursue any action to recover the amounts contemplated above.

### **Rates and FX Clearing Service Limited Recourse**

1529. The Total Available Resources, together with any Gainer VM Flow Adjustment and/or Voluntary Recap Amount received by OTC Clear pursuant to Clearing Rules 1524(2) and 1542, respectively, shall be the sole source of funds available to cover any Rates and FX Loss arising from a DMP Event. In the event OTC Clear determines that utilization of such resources in their entirety will be insufficient to cover payments due to one or more Clearing Members arising out of such DMP Event, all Contracts will be closed-out in accordance with the procedures set out in Clearing Rules 1530 to 1540 without any further recourse to the capital or any other assets of OTC Clear. As from the occurrence of a Rates and FX Clearing Termination Event, neither OTC Clear nor any Clearing Member shall be required to pay any further amount in respect of any Contract, and any right to receive any further amount in respect of any Contract shall be satisfied by settlement (by payment, set-off or otherwise) of the Limited Recourse Final CM Payable or the Limited Recourse Applicable Percentage of the Limited Recourse CM Receivable payable relating to the Position Account to which such Contract is registered under Clearing Rule 1538. Neither the Clearing Members nor their respective Clients shall have any recourse to any other funds or any other entity, including without limitation any Affiliate or recognized exchange controller which is the controller of OTC Clear once the Total Available Resources, together with any Gainer VM Flow Adjustment and/or Voluntary Recap Amount received by OTC Clear, have been exhausted. In particular, no Clearing Members or Clients shall be entitled to institute steps for the winding-up of, or the appointment of a receiver to, OTC Clear.

### **Winding Down of the Rates and FX Clearing Services**

1530. If OTC Clear determines at any stage that:

- (1)
  - (a) the Rates and FX Loss(es) resulting from one or more DMP Events occurring within the same Capped Liability Period will exceed the Total Available Resources with respect to all such DMP Events and decides not to issue a Voluntary Recap Request Notice pursuant to Clearing Rule 1541;
  - (b) notwithstanding a Voluntary Recap Request Notice has been issued pursuant to Clearing Rule 1541, it has not received any Voluntary Recap Amount within the period set out therein; or
  - (c) the Rates and FX Loss(es) exceed the Voluntary Recap Amount received by OTC Clear; or
- (2) OTC Clear has determined to withdraw the Rates and FX Clearing Services, including without limitation the circumstance contemplated by Clearing Rules 1320(2) and 1321(2) but excluding any temporary suspension of the Rates and FX Clearing Services in accordance with Clearing Rule 210(5),

then a **“Rates and FX Clearing Termination Event”** shall occur and OTC Clear shall notify all Clearing Members of the occurrence of such Rates and FX Clearing Termination Event, and the Rates and FX Clearing Service will be wound down in accordance with Clearing Rules 1531 to 1540. For the avoidance of doubt, a declaration of a Rates and FX Clearing Termination Event shall be irrevocable.

1531. Upon the occurrence of a Rates and FX Clearing Termination Event, with respect to each Clearing Member, all obligations of OTC Clear and such Clearing Member in respect of any Contract between them shall cease to exist and be replaced with the obligation to pay the termination amounts determined under Clearing Rules 1531 to 1540. The close-out value for each Contract shall be determined in accordance with section 10.1(i) of the Clearing Procedures, provided that OTC Clear may also take into account any unpaid amounts that have become due and payable in respect of any Contract on or prior to the occurrence of the Rates and FX Clearing Termination Event, including without limitation, any Gainer VM Flow Adjustment made during the Loss Distribution Period to which the Rates and FX Clearing Termination Event relates.
1532. Following the declaration of a Rates and FX Clearing Termination Event, any unused Margin Balance then held by OTC Clear in respect of one or more Clearing Members and any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by the Clearing Member(s) shall be returned to the relevant Clearing Members in accordance with Clearing Rule 1536; and any unused Rates and FX Contribution Balance then held by OTC Clear in respect of one or more Clearing Members or Former Clearing Members shall be returned to the relevant Clearing Members or Former Clearing Members in accordance with Clearing Rule 1538(4).
1533. As soon as reasonably practicable following a Rates and FX Clearing Termination Event, OTC Clear shall calculate a net sum payable by or to each Clearing Member separately in relation to each Position Account registered in the name of such Clearing Member. In determining such net sum, OTC Clear will take into account the close-out values established for each Contract pursuant to Clearing Rule 1531, and the value of all other amounts which is due to OTC Clear from the Clearing Member under these Clearing Rules, or which is due to the Clearing Member from OTC Clear (other than OTC Clear's obligation to return (i) any unused Margin Balance, (ii) any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by the relevant Clearing Member or Former Clearing Member and/or (iii) Rates and FX Contribution Balance to the relevant Clearing Member or Former Clearing Member), in each case, whether future, liquidated or unliquidated, actual or contingent. There shall be no combining or set-off between any House Position Account and Client Position Account(s), or between two or more Client Position Accounts. OTC Clear will determine any such net sum payable by, or to, a Clearing Member in the Base Currency. For the purpose of the determination under this Clearing Rule 1533, OTC Clear may convert any amounts denominated in any other currency into the Base Currency at such rate prevailing at the time of the calculation as it shall reasonably select.
1534. If, pursuant to Clearing Rule 1533, a net sum is determined to be payable by a Clearing Member to OTC Clear with respect to one or more of its Position Accounts, OTC Clear shall reduce each such sum by application of the Outright

Transfer Margin Balance, if any, relating to the relevant Position Account. With respect to each Clearing Member and each of its Position Account(s), after application of the Outright Transfer Margin Balance relating to the relevant Position Account:

- (1) if there remains a balance payable by the Clearing Member to OTC Clear for such Position Account (the "**Remaining Balance**"), OTC Clear will, as soon as reasonably practicable, notify the relevant Clearing Member of the Remaining Balance, and the relevant Clearing Member shall pay OTC Clear the Remaining Balance within two OTC Clear Business Days following receipt of such notification; and
  - (2) if the Clearing Member fails to pay the Remaining Balance within the time frame set out in sub-paragraph (1) above, OTC Clear may declare an Event of Default in respect of such Clearing Member. OTC Clear may, in satisfaction of any due but unpaid Remaining Balance in respect of a Position Account, apply the proceeds of enforcement of any non-cash Collateral comprising the Margin Balance of the corresponding Collateral Account and any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by such Clearing Member, and if any of the Remaining Balance remains unsatisfied following such application, the unsatisfied amount shall form part of the Limited Recourse Interim CM Payable with respect to the relevant Position Account.
1535. If, pursuant to Clearing Rule 1533, a net sum is determined to be payable by OTC Clear to a Clearing Member with respect to one or more of its Position Accounts, each such sum shall form part of the Limited Recourse CM Receivable with respect to the relevant Position Account.
1536. With respect to each Clearing Member and each of its Position Account(s), taking into account (if applicable) the operation of Clearing Rule 1534:
- (1) any unused Outright Transfer Margin Balance and, if applicable, any remaining proceeds of enforcement of non-cash Collateral further to the application of Clearing Rule 1534(2) for such Position Account shall be returned to the Clearing Member; and
  - (2) any non-cash Collateral provided to OTC Clear on a security interest basis and comprising the Margin Balance of the Collateral Account corresponding to such Position Account and any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by the Clearing Member shall be redelivered to the Clearing Member in accordance with the relevant security document.
1537. Following the completion of the processes described in Clearing Rules 1534 to 1536:
- (1) OTC Clear shall, with respect to each Position Account (without regard to its obligation to return any unused Rates and FX Contribution Balance to the relevant Clearing Member or Former Clearing Member), determine the resulting net sum payable by a Clearing Member to OTC Clear for such Position Account (such sum, a "**Limited Recourse Interim CM Payable**"),

or the resulting net sum payable by OTC Clear to a Clearing Member for such Position Account (such sum, a “**Limited Recourse CM Receivable**”);

- (2) OTC Clear shall notify the relevant Clearing Member of its Limited Recourse Interim CM Payable(s) or Limited Recourse CM Receivable(s). Each Clearing Member that receives a notice to pay any Limited Recourse Interim CM Payable shall pay each such amount to OTC Clear in full within two OTC Clear Business Days following receipt of such notification;
- (3) if a Clearing Member fails to pay any Limited Recourse Interim CM Payable in full within the time frame set out in sub-paragraph (2) above, regardless of whether such Limited Recourse Interim CM Payable arises out of a House Position Account or Client Position Account belonging to such Clearing Member, OTC Clear will apply any unused Rates and FX Contribution Balance then held by OTC Clear in respect of such Clearing Member against the unpaid Limited Recourse Interim CM Payable;
- (4) with respect to a Clearing Member and each of its Position Account(s) with a Limited Recourse Interim CM Payable, following the application of any unused Rates and FX Contribution Balance as described in sub-paragraph (3) above, OTC Clear shall determine the final net sum payable by the Clearing Member, if any (each a “**Limited Recourse Final CM Payable**”) with respect to such Position Account, and notify such Clearing Member of the same. Each Clearing Member that receives a notice to pay any Limited Recourse Final CM Payable shall pay each such amount to OTC Clear in full at or prior to the time specified by OTC Clear; and
- (5) for the avoidance of doubt, a Clearing Member may have a Limited Recourse Interim CM Payable or Limited Recourse Final CM Payable in respect of one Position Account registered in its name, but a Limited Recourse CM Receivable in respect of another Position Account registered in its name.

1538. With respect to each Clearing Member who has a Limited Recourse CM Receivable (and, for the avoidance of doubt, subject to Rule 1539), and each Clearing Member or Former Clearing Member with any unused Rates and FX Contribution Balance (taking into account the operation of Clearing Rule 1537(3)), OTC Clear shall pay each such Clearing Member or Former Clearing Member in proportion to the value of their respective claims on OTC Clear under Clearing Rule 1537 in the following manner:

- (1) OTC Clear shall, until the time specified in Clearing Rule 1540, take reasonable steps to recover any unpaid Limited Recourse Final CM Payables, and may deduct from such amounts any reasonable costs in connection with such recovery;
- (2) following receipt of all or some (if any Clearing Member defaults in its payment of the relevant Limited Recourse Final CM Payable) Limited Recourse Final CM Payables, OTC Clear will calculate a percentage (“**Limited Recourse Applicable Percentage**”) equal to the lesser of:
  - (a) 100%; and



- (b) (A) the aggregate value of (I) the Rates and FX Guarantee Resources then held by OTC Clear, (II) any Margin Balance and any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by the Clearing Members or Former Clearing Members applied pursuant to Clearing Rules 1533 and/or 1534(2) and (III) all Remaining Balance, Limited Recourse Interim CM Payables and/or Limited Recourse Final CM Payables received by OTC Clear; divided by
- (B) the aggregate value representing the sum of (I) all Limited Recourse CM Receivables and (II) any unused Rates and FX Contribution Balance then held by OTC Clear in respect of all Clearing Members or Former Clearing Members (taking into account the operation of Clearing Rule 1537(3));
- (3) subject to Clearing Rule 1539, OTC Clear shall pay each Clearing Member with a Limited Recourse CM Receivable an amount equal to the Limited Recourse Applicable Percentage of such Limited Recourse CM Receivable;
- (4) OTC Clear shall pay each Clearing Member or Former Clearing Member with unused Rates and FX Contribution Balance an amount equal to the Limited Recourse Applicable Percentage of such unused Rates and FX Contribution Balance, provided that the aggregate sum payable by OTC Clear in respect of unused Rates and FX Contribution Balance for all Clearing Member(s) and Former Clearing Member(s) shall never exceed the value of the Rates and FX Guarantee Resources then held by OTC Clear. Once the Rates and FX Guarantee Resources have been exhausted, the unpaid balance of any unused Rates and FX Contribution Balance shall be extinguished; and
- (5) all payments made under this Clearing Rule 1538 shall be made in the Base Currency provided that if OTC Clear does not have sufficient Base Currency to satisfy such payment, it may satisfy such payment obligation in any other Eligible Currency.
1539. Where a Limited Recourse CM Receivable relates to a Client Position Account of one or more Non-Porting Clients of a Defaulting Clearing Member, and subject to entering into relevant documentation between OTC Clear and the relevant Non-Porting Client(s) (which may, without limitation, include an indemnity (secured or otherwise) to OTC Clear in respect of any loss or liability arising from the legal invalidity of any payment of the relevant Limited Recourse CM Receivable to the Client(s)), OTC Clear shall pay any amount payable by it under Clearing Rule 1538(3) in relation to such Limited Recourse CM Receivable directly to the relevant Non-Porting Client(s) as Client Entitlement in accordance with Clearing Rules 1308A and 1309. For the purpose of this Clearing Rule 1539, OTC Clear may take into account any Non-Porting Client's interest in any Collateral or proceeds thereof pursuant to Clearing Rules 1308A and 1309 and, if applicable, any relevant Security Deed, and the operations of section 56(1) of the SFO shall be modified by this Clearing Rule 1539, as permitted under section 56(2) of the SFO.
1540. If OTC Clear determines that no further amounts in respect of any Limited Recourse Final CM Payables are likely to be recovered and notifies the same to the relevant Clearing Member(s) and Former Clearing Member(s), then the unpaid balance of any Limited

Recourse CM Receivable and/or unused Rates and FX Contribution Balance shall thereafter be extinguished and the relevant Clearing Member(s) and Former Clearing Member(s) shall have no further recourse to OTC Clear (its Affiliates, a recognized exchange controller which is the controller of OTC Clear, or any of their respective Representatives) in respect thereof.

### **Voluntary Recapitalisation**

1541. If OTC Clear determines at any stage that the Rates and FX Loss resulting from a DMP Event will exceed the Total Available Resources relating to such DMP Event determined under Clearing Rule 1516, it has absolute discretion in determining whether to declare a Rates and FX Clearing Termination Event or to issue a written notice (the “**Voluntary Recap Request Notice**”) requesting each Non-Defaulting Clearing Member to make a payment of funds (each a “**Voluntary Recap Amount**”) to OTC Clear.
1542. Upon receipt of the Voluntary Recap Request Notice, each Non-Defaulting Clearing Member may, but is not obliged to, provide its Voluntary Recap Amount to OTC Clear within one OTC Clear Business Day following receipt of the Voluntary Recap Request Notice. Any Voluntary Recap Amount made by a Non-Defaulting Clearing Member to OTC Clear may not be withdrawn.
1543. Any Voluntary Recap Amount received by OTC Clear from a Non-Defaulting Clearing Member shall form part of the Rates and FX Contribution Balance relating to such Non-Defaulting Clearing Member, and the usage of the same will be subject to Clearing Rule 1514.
- 1543A. If, on any OTC Clear Business Day, OTC Clear in its sole discretion determines that any Voluntary Recap Amount that OTC Clear expects to receive from a Non-Defaulting Clearing Member, when aggregated with the Total Available Resources and any Voluntary Recap Amounts that OTC Clear expects to receive from other Non-Defaulting Clearing Members, is insufficient to meet any outstanding obligations and liabilities in relation to the DMP Event, that Voluntary Recap Amount (i) shall not form part of the Rates and FX Contribution Balance relating to that Non-Defaulting Clearing Member, (ii) shall be refunded to the relevant Clearing Member on the next OTC Clear Business Day and (iii) shall in no circumstances be available to pay any other creditor of OTC Clear.

### **Multiple DMP Events**

1544. In respect of one or more DMP Event(s) occurring within a Capped Liability Period, the maximum current liability of a Non-Defaulting Clearing Member to contribute to the Rates and FX Guarantee Resources in respect of such Capped Liability Period shall be capped at the aggregate of the CM Funded Contribution Amount and the CM Unfunded Contribution Amount allocated to such Non-Defaulting Clearing Member on the immediately preceding Rates and FX Contribution Determination Date falling prior to the start of such Capped Liability Period (the “**Maximum Current Liability**”).
1545. In the event of multiple DMP Events occurring within a Capped Liability Period, then:
- (1) the loss allocation process described in Clearing Rule 1516 will only commence upon completion of the Default Management Processes with respect to all such DMP Events;
  - (2) multiple Default Management Processes will be invoked as a result of multiple DMP Events occurring within the same Capped Liability Period. Notwithstanding the immediately foregoing, however, “Total Available Resources” and “Rates and FX

Losses” shall be construed to mean the aggregate sum of the Total Available Resources and Rates and FX Losses relating to each such DMP Event, and OTC Clear will consolidate any Loss Distribution Process described in Clearing Rules 1523 to 1528 invoked during such Capped Liability Period into one single process, and will only issue one Voluntary Recap Request Notice during such Capped Liability Period; and

- (3) with respect to any Clearing Member who has delivered its Rates and FX Contribution during such Capped Liability Period and who subsequently becomes a Defaulting Clearing Member within the same Capped Liability Period, the entirety of its Rates and FX Contribution Balance shall be applied and utilized in accordance with Clearing Rules 1516(1)(b) and 1516(2)(b), notwithstanding that at the time of provision of such CM Funded Contribution Amount and/or CM Unfunded Contribution Amount, no DMP Event has yet occurred with respect to the relevant Clearing Member.

### **Terms of Redelivery or Repayment of Rates and FX Contribution**

1546. Subject to Clearing Rules 1324, 1530 to 1540, 1548 and 1549, if a Clearing Member's Rates and FX Contribution Balance exceeds its then current Rates and FX Liability, it may request OTC Clear to redeliver Collateral in equivalent form and currency as any Collateral it has delivered to OTC Clear as CM Funded Contribution Amount and/or CM Unfunded Contribution Amount in a value not exceeding the Rates and FX Contribution Excess. A Clearing Member shall specify the exact form and currency of the relevant Collateral requested to be redelivered. Following receipt of such request, OTC Clear shall redeliver Collateral in respect of such Rates and FX Contribution Excess in equivalent form and currency as requested in an amount not exceeding the Rates and FX Contribution Excess, provided that:

- (1) if and only to the extent that any Rates and FX Losses are allocated to such Clearing Member in accordance with Clearing Rules 1516 and 1914, then OTC Clear's obligation to redeliver Collateral in equivalent form and currency shall be converted into an obligation to pay an amount equal to the value of the Rates and FX Contribution Balance as determined by OTC Clear; or
- (2) in the event that OTC Clear is unable to obtain Collateral in equivalent form and currency for such redelivery, including but not limited to the case where the relevant Rates and FX Contribution is of a type or currency that is the subject of foreign exchange or other settlement risk or disruption, as determined by OTC Clear, at the time such redelivery is due, then OTC Clear may deliver Collateral in other forms or currency determined by OTC Clear.

OTC Clear may apply set-off with respect to any Collateral to be redelivered to a Clearing Member against any obligation such Clearing Member owes to OTC Clear, and OTC Clear may withhold any Collateral to be redelivered to a Clearing Member if such Clearing Member is not in compliance with any of these Clearing Rules.

1547. Subject to Clearing Rules 1306, 1306A, 1306B, 1306C, 1307, 1324, 1548 and 1549, OTC Clear will redeliver to a Former Clearing Member Collateral, in equivalent form and currency to the Rates and FX Contribution recorded on the relevant GF Account of such Clearing Member, 21 calendar days after its Membership Termination Date, provided that OTC Clear is satisfied that such Former Clearing Member has no outstanding liability or sums owing to OTC Clear (including pursuant to Clearing Rules 606 and 609), and OTC

Clear's obligation to redeliver any such Collateral (whether in the form of cash or non-cash) will be subject to the relevant custodian being able to process any such withdrawal or release request at the relevant time, provided further that OTC Clear may deliver such Collateral in other forms or currency determined by OTC Clear:

- (1) if and only to the extent that any Rates and FX Losses are allocated to such Clearing Member in accordance with Clearing Rules 1516 and 1914, then OTC Clear's obligation to redeliver Collateral in equivalent form and currency shall be converted into an obligation to pay an amount equal to the value of the Rates and FX Contribution Balance as determined by OTC Clear; or
- (2) in the event that OTC Clear is unable to obtain Collateral in equivalent form and currency for such redelivery, including but not limited to the case where the relevant Rates and FX Contribution is of a type or currency that is the subject of foreign exchange or other settlement risk or disruption, as determined by OTC Clear, at the time such redelivery is due,

and provided further that OTC Clear may deduct:

- (a) any amount in respect of which it is indemnified by a Former Clearing Member pursuant to these Clearing Rules; and
- (b) an amount determined by OTC Clear to be adequate to satisfy any outstanding contingent liabilities of a Former Clearing Member.

To the extent that assets of the Rates and FX Guarantee Fund in excess of a Former Clearing Member's Rates and FX Contribution Balance are applied in discharging the rights and liabilities in respect of any Contracts to which it was party, OTC Clear may recover in full the amount so applied from that Clearing Member as a debt due to OTC Clear from it.

This Clearing Rule 1547 shall not be applicable in the occurrence of a Rates and FX Clearing Termination Event. In the event of the occurrence of a Rates and FX Clearing Termination Event, OTC Clear's obligation to return any unused Rates and FX Contribution Balance attributable to a Clearing Member shall be converted into an obligation to pay an amount in respect of such unused Rates and FX Contribution and be returned to such Clearing Member in the manner set out in Clearing Rules 1530 to 1540.

1548. Upon the occurrence of a DMP Event with respect to a Defaulting Clearing Member, OTC Clear's obligation to redeliver Collateral in equivalent form and currency shall be converted into an obligation to pay an amount equal to the value of such Defaulting Clearing Member's Rates and FX Contribution Balance as determined by OTC Clear, and such amount may be applied by OTC Clear in good faith if and only to the extent that any Rates and FX Losses are allocated to such Defaulting Clearing Member pursuant to Clearing Rules 1516(1)(b), 1516(2)(b) and 1914(2). Any remaining Rates and FX Contribution Balance relating to such Defaulting Clearing Member shall be applied by OTC Clear in accordance with Clearing Rules 1516 and 1914 in connection with any other DMP Events occurring in the relevant Capped Liability Period. Upon OTC Clear being satisfied that such Defaulting Clearing Member has no outstanding liability or sums owing to OTC Clear, the remaining value of its Rates and FX Contribution Balance as determined by OTC Clear shall be taken into account by OTC Clear in determining the net sum payable by, or to, such Defaulting Clearing Member in accordance with Clearing Rule 1306B(2).

1549. Upon the occurrence of a DMP Event, in respect of each Non-Defaulting Clearing Member, if and only to the extent that any Rates and FX Losses are allocated to such Non-Defaulting Clearing Member in accordance with Clearing Rules 1516 and 1914, any obligation of OTC Clear to return the Rates and FX Contribution to the Non-Defaulting Clearing Member shall be converted into an obligation of OTC Clear to pay an amount in respect of its Rates and FX Contribution equal to the sum(s) allocated to such Non-Defaulting Clearing Member in accordance with Clearing Rules 1516 and 1914. Such payment shall discharge OTC Clear's obligation to pay the amount set out in Clearing Rule 1546 to the extent of the amount paid, and such Non-Defaulting Clearing Member's GF Account and Rates and FX Contribution Balance shall be adjusted by OTC Clear in good faith accordingly.