

**LCH.CLEARNET LIMITED****(The Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001, Part IV)****DEFAULT FUND RULES**

14. These Default Fund Rules form part of the Default Rules and the Clearing House Rulebook but do not apply in relation to a Participating Exchange.

**Interpretation**

15. For the purposes of Rules 15 to 37 (inclusive), the following terms have the following meanings:-

**“Cleared Exchange Contract”** means, for the purposes of the Default Fund Rules, a Contract on the terms of a contract entered into under or in accordance with the rules of a Specified Exchange;

**“Contribution”** has the meaning assigned to it in Rule 17;

**“Deductible”** means, at the time of preparation of a Rule 26 Certificate, the Capped Amount;

**“Default”** means the issue, in respect of a Clearing Member, of a Default Notice as provided for by Rule 3;

**“Default Loss”** has the meaning assigned to it in Rule 23(b);

**“EquityClear Contracts”** includes, for the purposes of the Default Fund Rules, all cash equity contracts and CFDs cleared by the Clearing House;

**“EquityClear Contribution”** means the part of a Clearing Member’s Contribution attributable to EquityClear business as calculated in accordance with Rules 18A, 19A, 19B and 32A;

**“EquityClear Clearing Member”** includes, for the purposes of the Default Fund Rules, any Clearing Member participating in any part of the EquityClear service;

**“EquityClear Fund Amount”** means, subject to Rule 32, £100,000,000;

**“EquityClear Transition Date”** means the first Quarter Day as at which the aggregate of EquityClear Contributions calculated under the formula stated in Rule 19A is equal to or greater than the EquityClear Fund Amount;

**“Excess Loss”** means the net sum or aggregate of net sums certified to be payable by a defaulter by a Rule 26 Certificate less (a) the Deductible and (b) any sums then immediately payable in respect of Default Losses owed by such defaulter by any insurer or provider of analogous services under any policy of insurance or analogous instrument written in favour of the Clearing House in relation to Default Losses;

**“Exchange Contribution”** has the meaning assigned to it in Rule 19;

**“Exchange Fund Amount”** means, subject to Rule 32, £310,000,000;

**“Excluded Transaction”** means, subject to Rule 37, any Contract designated by the Procedures as excluded for the purposes of the Default Fund Rules;

**“Fund Amount”** means the sum of the EquityClear Fund Amount and the Exchange Fund Amount and the RepoClear Fund Amount and the SwapClear Fund Amount;

**“LIBOR”** means, in relation to a Contribution, the rate per annum (rounded upwards, if not already such a multiple, to the next whole multiple of one-sixteenth of one per cent) known as the British Bankers’ Association Interest Settlement Rate for three-month deposits in sterling being offered to prime banking names in London at or about the time specified by the Procedures for fixing the rate of interest for the period for which interest is payable or, where no such rate is available, such rate as in the opinion of the Clearing House approximates thereto;

**“Margin Weight”** has the meaning assigned to it in Rule 19;

**“Minimum Contribution”** means, subject to Rule 32, the sum of the Minimum EquityClear Contribution and the Minimum Exchange Contribution and the Minimum RepoClear Contribution and the Minimum SwapClear Contribution;

**“Minimum EquityClear Contribution”** means, subject to Rule 32, £1,000,000;

**“Minimum EquityClear Contribution Member”** means a Clearing Member in respect of which the Preliminary EquityClear Contribution calculated under Rule 19B is equal to or less than the Minimum EquityClear Contribution for the time being;

**“Minimum Exchange Contribution”** means, subject to Rule 32, £100,000;

**“Minimum Exchange Contribution Member”** means a Clearing Member in respect of which the Preliminary Exchange Contribution calculated under Rule 19(d) is equal to or less than the Minimum Exchange Contribution for the time being;

**“Minimum RepoClear Contribution”** means, subject to Rule 32, £1,000,000;

**“Minimum RepoClear Contribution Member”** means a Clearing Member in respect of which the Preliminary RepoClear Contribution calculated under Rule 19C is equal to or less than the Minimum RepoClear Contribution for the time being;

**“Minimum SwapClear Contribution”** means, subject to Rule 32, £2,000,000;

**“Minimum SwapClear Contribution Member”** means a Clearing Member in respect of which the Preliminary SwapClear Contribution calculated under Rule 19D is equal to or less than the Minimum SwapClear Contribution for the time being;

**“Net Recovery”** means any sum received by the Clearing House from or for the account of a defaulter after the issue by the Clearing House of a Rule 26 Certificate in respect of losses arising upon the defaulter’s Default less any amount payable to any insurer or provider of analogous services in respect of any amount due from but not previously paid by the defaulter;

**“New Member”** means, at the time of assessment of the amount of any Contribution, any Clearing Member whose Clearing Member status commenced or will commence after the Quarter Day immediately before such time and includes any Clearing

Member whose Clearing Membership Agreement commenced before the Quarter Day immediately before such time but who commenced or will commence clearing Cleared Exchange Contracts or EquityClear Contracts or RepoClear Contracts or SwapClear Contracts after the Quarter Day immediately before such time;

**“Quarter Day”** means each of 31 January, 30 April, 31 July and 31 October in any year or, if any such day is not a business day, the next succeeding business day, or, in exceptional circumstances, any such other business day as may be determined by the Clearing House;

**“RepoClear Contribution”** means the part of a Clearing Member’s Contribution attributable to RepoClear business as calculated in accordance with Rules 19C and 32B;

**“RepoClear Fund Amount”** means, subject to Rule 32, £105,000,000;

**“Retiring Member”** means at any time any Clearing Member or, as the context may require, any former Clearing Member, who has given notice to terminate its Clearing Member status of the Clearing House or in respect of whom the Clearing House has terminated or given notice to terminate its Clearing Member status;

**“Rule 26 Certificate”** has the meaning assigned to it in Rule 26;

**“Specified Exchange”** means EDX London Limited, LIFFE Administration and Management Limited, The London Metal Exchange Limited, Nodal Exchange LLC or any Exchange succeeding to any such person;

**“SwapClear Contribution”** means the part of a Clearing Member’s Contribution attributable to SwapClear business as calculated in accordance with Rules 19D and 32C;

**“SwapClear Fund Amount”** means, subject to Rule 32, £125,000,000; and

**“Volume Weight”** has the meaning assigned to it in Rule 19.

Words and expressions assigned meanings in the Clearing House Rulebook shall have the same meanings in these Rules.

**Reduction of Losses on Default**

16. Subject to any contrary provision of the Rulebook, where a defaulter fails to pay any sum payable to the Clearing House, the Clearing House shall reduce or bear its loss in the manner provided by this Rule:-
- (1) first, to the extent the Clearing House determines appropriate, in applying any cover for margin and any other sum owed to the defaulter other than his Contribution;
  - (2) second, in applying by set-off the defaulter's own Contribution;
  - (3) third, by payment from the Clearing House's own account of an amount up to a maximum of £20,000,000 (or such greater amount (if any) as may be determined from time to time by the Board of the Clearing House), (the "Capped Amount");
  - (4) fourth, to the extent that any insurance or analogous arrangement is not available to the Clearing House, by recourse to the indemnities given under Rule 28 by Clearing Members other than the defaulter (which shall be satisfied by set-off against the Clearing House's obligation to repay such Clearing Members' Contributions);
  - (5) fifth, by recourse to any insurance cover or analogous arrangement;
  - (6) sixth, by recourse to any undischarged balance of the indemnities given under Rule 28 by Clearing Members other than the defaulter (which shall be satisfied by set-off against the Clearing House's obligation to repay such Clearing Members' Contributions);
  - (7) seventh, by recourse to any other indemnities, guarantees, undertakings or monies provided by Clearing Members; and
  - (8) eighth, as a loss borne by the Clearing House for its own account.

This Rule has effect without prejudice to any rights of the Clearing House or any other person against the defaulter.

**Contributions to Fund**

17. Each Clearing Member shall deposit and maintain with the Clearing House a sum of cash (a "**Contribution**") which is the sum of its EquityClear Clearing Member Contribution (if any), as defined in Rule 19A, and its Exchange Contribution (if any), as defined in Rule 19, and its RepoClear Clearing Member Contribution (if any), as defined in Rule 19C, and its SwapClear Clearing Member Contribution (if any), as defined in Rule 19D, denominated in sterling as cover, in accordance with Rules 15 to 37 (inclusive).
18. Subject to Rule 18A, the amount of each Clearing Member's Contribution shall be determined by the Clearing House as soon as practicable after each Quarter Day on the basis of information available as at close of business on such Quarter Day and notified to such Clearing Member as soon as practicable after such determination in accordance with the Procedures.
- 18A Until the EquityClear Transition Date, and subject to Rule 32A, the Clearing House may require an EquityClear Clearing Member to deposit and maintain with the Clearing House an additional sum of cash (a "**Supplementary EquityClear Contribution**") denominated in sterling as cover, to form part of the Clearing Member's Contribution. The Clearing House may exercise its rights under this Rule in respect of any date before the EquityClear Transition Date on which, in the reasonable opinion of the Clearing House, 10% of the Clearing Member's requirement for initial margin (as calculated under the Procedures section of the Rulebook or other arrangements applicable) in respect of all EquityClear Contracts significantly exceeds the Clearing Member's EquityClear Contribution actually held by the Clearing House on that date. A Supplementary EquityClear Contribution required to be deposited under this Rule shall be payable in such amount and at such time as the Clearing House shall appoint.
19. Subject to Rules 20, 21, 33 and 34, a Clearing Member's Contribution (its "**Exchange Contribution**") to the Exchange Fund Amount shall be determined with reference to business conducted by it on the Specified Exchanges and under the LCH Enclear OTC Regulations, as at close of business on each Quarter Day, as follows:-
  - (a) the Clearing Member's "**Margin Weight**" shall be calculated by dividing the average daily requirement for initial margin (as calculated under the

- Procedures or other arrangements applicable) which has applied to the Clearing Member during the Reference Period in respect: (1) of all Contracts (other than EquityClear, SwapClear and RepoClear Contracts) and (2) all LCH Enclear OTC Contracts by the total of such average daily requirements applied to all Clearing Members other than defaulters;
- (b) the Clearing Member's "**Volume Weight**" shall be calculated by dividing the average daily number of Cleared Exchange Contracts and LCH Enclear OTC Contracts registered for the first time with the Clearing House in the name of the Clearing Member during the Reference Period by the total of such average numbers for all Clearing Members other than defaulters;
  - (c) the Clearing Member's "**Weight Factor**" shall be calculated by adding one-half of its Margin Weight as defined in (a) above to one-half of its Volume Weight as defined in (b) above;
  - (d) the Clearing Member's "**Preliminary Exchange Contribution**" shall be calculated by multiplying the Exchange Fund Amount by its Weight Factor;
  - (e) if the Clearing Member's Preliminary Exchange Contribution is below the Minimum Exchange Contribution for the time being, the Clearing Member's Exchange Contribution shall be the Minimum Exchange Contribution;
  - (f) for each Minimum Exchange Contribution Member, the arithmetical difference shall be calculated between (i) the Minimum Exchange Contribution and (ii) the Clearing Member's Preliminary Exchange Contribution, and the "**Exchange Surplus**" shall be calculated by adding together all such differences;
  - (g) for each Clearing Member other than a Minimum Contribution Member, the Clearing Member's "**Exchange Discount**" shall be such Clearing Member's pro rata share of the Exchange Surplus calculated as the proportion of such Clearing Member's Preliminary Exchange Contribution relative to the aggregate Preliminary Exchange Contributions of all Clearing Members other than Minimum Exchange Contribution Members;
  - (h) for each Clearing Member other than a Minimum Exchange Contribution Member, the Clearing Member's Exchange Contribution shall be the

Preliminary Exchange Contribution less the Clearing Member's Exchange Discount; provided that if the outcome of such calculation would result in an Exchange Contribution less than the Minimum Exchange Contribution, such Clearing Member shall pay the Minimum Exchange Contribution notwithstanding that the arithmetical sum of Exchange Contributions paid by all Clearing Members may thereby exceed the Exchange Fund Amount.

19A Subject to Rules 18A, 20, 21, 32A, 33 and 34, each EquityClear Clearing Member's Contribution attributable to EquityClear business conducted by it shall be determined as at close of business on each Quarter Day before the EquityClear Transition Date and shall be the higher of the Minimum EquityClear Contribution and 10% of the Clearing Member's average daily requirement for initial margin (as calculated under the Procedures or other arrangements applicable) which has applied to the Clearing Member during the Reference Period in respect of all EquityClear Contracts.

19B Subject to Rules 20, 21, 33 and 34, each EquityClear Clearing Member's Contribution attributable to EquityClear business conducted by it shall be determined as at close of business on the EquityClear Transition Date and each Quarter Day thereafter as follows:-

- (a) the Clearing Member's "**EquityClear Margin Weight**" shall be calculated by dividing the average daily requirement for initial margin (as calculated under the Procedures or other arrangements applicable) which has applied to the Clearing Member during the Reference Period in respect of all EquityClear Contracts by the total of such average daily requirements applied to all Clearing Members other than defaulters;
- (b) the Clearing Member's "**Preliminary EquityClear Contribution**" shall be calculated by multiplying the EquityClear Fund Amount by the Clearing Member's EquityClear Margin Weight;
- (c) if the Clearing Member's Preliminary EquityClear Contribution is below the Minimum EquityClear Contribution for the time being, the Clearing Member's EquityClear Contribution shall be the Minimum EquityClear Contribution;
- (d) for each Minimum EquityClear Contribution Member, the arithmetical difference shall be calculated between (i) the Minimum EquityClear

Contribution and (ii) the Clearing Member's Preliminary EquityClear Contribution, and the "**EquityClear Surplus**" shall be calculated by adding together all such differences;

- (e) for each Clearing Member other than a Minimum EquityClear Contribution Member, the Clearing Member's "**EquityClear Discount**" shall be such Clearing Member's pro rata share of the EquityClear Surplus calculated as the proportion of such Clearing Member's Preliminary EquityClear Contribution relative to the aggregate Preliminary EquityClear Contributions of all Clearing Members other than Minimum EquityClear Contribution Members;
- (f) for each Clearing Member other than a Minimum EquityClear Contribution Member, the Clearing Member's EquityClear Contribution shall be the Preliminary EquityClear Contribution less the Clearing Member's EquityClear Discount; provided that if the outcome of such calculation would result in a EquityClear Contribution less than the Minimum EquityClear Contribution, such Clearing Member shall pay the Minimum EquityClear Contribution notwithstanding that the arithmetical sum of EquityClear Contributions paid by all Clearing Members may thereby exceed the EquityClear Fund Amount.

19C Subject to Rules 20, 21, 33 and 34, each RepoClear Clearing Member's Contribution attributable to RepoClear business conducted by it shall be determined as at close of business on the RepoClear Transition Date and each Quarter Day thereafter as follows:-

- (a) the Clearing Member's "**RepoClear Margin Weight**" shall be calculated by dividing the average daily requirement for initial margin (as calculated under the Procedures or other arrangements applicable) which has applied to the Clearing Member during the Reference Period in respect of all RepoClear Contracts by the total of such average daily requirements applied to all Clearing Members other than defaulters;
- (b) the Clearing Member's "**Preliminary RepoClear Contribution**" shall be calculated by multiplying the RepoClear Fund Amount by the Clearing Member's RepoClear Margin Weight;

- (c) if the Clearing Member's Preliminary RepoClear Contribution is below the Minimum RepoClear Contribution for the time being, the Clearing Member's RepoClear Contribution shall be the Minimum RepoClear Contribution;
  - (d) for each Minimum RepoClear Contribution Member, the arithmetical difference shall be calculated between (i) the Minimum RepoClear Contribution and (ii) the Clearing Member's Preliminary RepoClear Contribution, and the "**RepoClear Surplus**" shall be calculated by adding together all such differences;
  - (e) for each Clearing Member other than a Minimum RepoClear Contribution Member, the Clearing Member's "**RepoClear Discount**" shall be such Clearing Member's pro rata share of the RepoClear Surplus calculated as the proportion of such Clearing Member's Preliminary RepoClear Contribution relative to the aggregate Preliminary RepoClear Contributions of all Clearing Members other than Minimum RepoClear Contribution Members;
  - (f) for each Clearing Member other than a Minimum RepoClear Contribution Member, the Clearing Member's RepoClear Contribution shall be the Preliminary RepoClear Contribution less the Clearing Member's RepoClear Discount; provided that if the outcome of such calculation would result in a RepoClear Contribution less than the Minimum RepoClear Contribution, such Clearing Member shall pay the Minimum RepoClear Contribution notwithstanding that the arithmetical sum of RepoClear Contributions paid by all Clearing Members may thereby exceed the RepoClear Fund Amount.
- 19D Subject to Rules 20, 21, 33 and 34, each SwapClear Clearing Member's Contribution attributable to SwapClear business conducted by it shall be determined as at close of business on the SwapClear Transition Date and each Quarter Day thereafter as follows:-
- (a) the Clearing Member's "**SwapClear Margin Weight**" shall be calculated by dividing the average daily requirement for initial margin (as calculated under the Procedures or other arrangements applicable) which has applied to the Clearing Member during the Reference Period in respect of all SwapClear Contracts by the total of such average daily requirements applied to all Clearing Members other than defaulters;

- (b) the Clearing Member's "**Preliminary SwapClear Contribution**" shall be calculated by multiplying the SwapClear Fund Amount by the Clearing Member's SwapClear Margin Weight;
  - (c) if the Clearing Member's Preliminary SwapClear Contribution is below the Minimum SwapClear Contribution for the time being, the Clearing Member's SwapClear Contribution shall be the Minimum SwapClear Contribution;
  - (d) for each Minimum SwapClear Contribution Member, the arithmetical difference shall be calculated between (i) the Minimum SwapClear Contribution and (ii) the Clearing Member's Preliminary SwapClear Contribution, and the "**SwapClear Surplus**" shall be calculated by adding together all such differences;
  - (e) for each Clearing Member other than a Minimum SwapClear Contribution Member, the Clearing Member's "**SwapClear Discount**" shall be such Clearing Member's pro rata share of the SwapClear Surplus calculated as the proportion of such Clearing Member's Preliminary SwapClear Contribution relative to the aggregate Preliminary SwapClear Contributions of all Clearing Members other than Minimum SwapClear Contribution Members;
  - (f) for each Clearing Member other than a Minimum SwapClear Contribution Member, the Clearing Member's SwapClear Contribution shall be the Preliminary SwapClear Contribution less the Clearing Member's SwapClear Discount; provided that if the outcome of such calculation would result in a SwapClear Contribution less than the Minimum SwapClear Contribution, such Clearing Member shall pay the Minimum SwapClear Contribution notwithstanding that the arithmetical sum of SwapClear Contributions paid by all Clearing Members may thereby exceed the SwapClear Fund Amount.
20. For the purposes of the calculations under Rules 18A, 19, 19A, 19B, 19C and 19D:-
- (a) "**Reference Period**" means the period starting on the day immediately after the Quarter Day immediately before the Quarter Day as at which the determination is made and ending on the Quarter Day as at which the determination is made (including both the day at the start of the period and the day at the end of the period);

- (b) no account shall be taken, in calculating Margin Weight or EquityClear Margin Weight or RepoClear Margin Weight or SwapClear Margin Weight, of any margin required in relation to an Excluded Transaction, nor in calculating Volume Weight of any Contract which is registered in the course of an Excluded Transaction;
- (c) references to “**Clearing Members**” do not include references to defaulters (apart from any defaulter in respect of which the Clearing House permits the application of Rules 19, 19A, 19B, 19C and 19D and this Rule) or persons which were formerly Clearing Members but are not Clearing Members at the Quarter Day as at which the determination is made;
- (d) Contributions shall be rounded upwards, if not already such a multiple, to the next integral multiple of one thousand pounds; and
- (e) no account shall be taken, in calculating initial margin under Rules 18A, or 19A, 19B, 19C and 19D, Margin Weight under Rule 19, EquityClear Margin Weight under Rule 19B, RepoClear Margin Weight under Rule 19C, or SwapClear Margin Weight under Rule 19D, of any offsets in the initial margin required for Cleared Exchange Contracts and SwapClear Contracts from a Clearing Member, which may otherwise be permissible under the Procedures or other arrangements applicable.

Provided that the Clearing Member is not a defaulter, the amount of its Contribution shall be paid in accordance with and subject to Rule 22. The provisions of Rule 19, 19A, 19B, 19C and 19D and this Rule do not apply to a Clearing Member which is a defaulter, unless the Clearing House so permits in any particular case.

21. Without prejudice to any other requirements which the Clearing House may impose, the amount of the Contribution of a New Member shall be the sum of (a) where the New Member has applied to become an EquityClear Clearing Member, the Minimum Contribution, (b) where the New Member has applied to become an Exchange Clearing Member, the Minimum Contribution, (c) where the New Member has applied to become a RepoClear Clearing Member, the Minimum RepoClear Contribution, (d) where the New Member has applied to become a SwapClear Clearing Member, the Minimum SwapClear Contribution, and (e) any supplementary sum determined by the Clearing House in its discretion and notified to the New Member. The Clearing House

shall determine the amount of such supplementary sum by reference to the actual or expected level of clearing activity of the New Member.

### **Payment of Contributions**

22. Upon determination of the amount of a Contribution as at any Quarter Day:
- (a) if the amount of the Contribution of a Clearing Member immediately before close of business on that Quarter Day exceeds the amount of the Clearing Member's Contribution as determined under Rule 19 as at close of business on that Quarter Day, the excess shall be paid by the Clearing House to such Clearing Member in accordance with the Procedures;
  - (b) if the amount of the Contribution of a Clearing Member immediately before close of business on that Quarter Day is the same as the amount of the Clearing Member's Contribution as so determined, no sum shall then be payable by or to such Clearing Member in respect of its Contribution; and
  - (c) if the amount of the Contribution of a Clearing Member immediately before close of business on that Quarter Day is less than the amount of the Clearing Member's Contribution as so determined, the shortfall shall be paid by such Clearing Member to the Clearing House in accordance with the Procedures.

The provisions of this Rule do not apply to a Clearing Member which is a defaulter, unless the Clearing House so permits in any particular case.

### **Terms on which Contribution is held**

23. (a) Subject to Rules 23(b) and 23(c), the outstanding balance of a Clearing Member's Contribution (or, as appropriate, part thereof) shall be repayable to the Clearing Member on the earliest to occur of the following events:
- (i) if the Clearing Member is not a defaulter, the effective date of termination of Clearing Member's status;
  - (ii) if the Clearing Member has become a defaulter, the date or event appointed by the Clearing House for repayment of sums due to the Clearing Member under Rule 9;

- (iii) the amount of the Contribution being reduced by virtue of the recalculation of its amount in accordance with Rule 19 (in which case the Contribution shall be repayable only to the extent of such reduction); and
    - (iv) the expiry of a period of 50 years from the date on which the Contribution was paid to the Clearing House.
  - (b) If a Clearing Member becomes a defaulter, the Clearing House shall as soon as practicable after any cover provided to the Clearing House in respect of the defaulter's obligations has been applied, certify the net sums then payable by the defaulter to the Clearing House (each a "**Default Loss**"), disregarding for this purpose the Clearing Member's Contribution. If the Clearing House certifies a Default Loss, the Clearing Member's Contribution shall immediately mature, but only in an amount not exceeding the Default Loss.
  - (c) If an amount becomes payable by the Clearing Member under Rule 28, the Clearing Member's Contribution shall immediately mature, but only to the extent of such amount.
24. On any day interest shall accrue on the amount of each Contribution then held by the Clearing House, to the extent that it has not been applied under Rule 26 or Rule 28, at such rate and in such manner as provided by the Procedures, provided that the rate of interest shall not be less than LIBOR plus one per cent. Interest shall be payable in arrear and shall be paid on the date or dates specified by the Procedures. In these Default Fund Rules any interest which has accrued under this Rule shall not be regarded as part of the Contribution.
25. A Clearing Member's entitlement to repayment of its Contribution or any part of it shall not be capable of assignment by the Clearing Member, nor shall it be capable of being charged or subject to any other form of security whether purporting to rank in priority over, *pari passu* with or subsequent to the rights of the Clearing House. Any purported charge or assignment by a Clearing Member (whether by way of security or otherwise) of its Contribution shall be void. A Clearing Member shall not otherwise encumber (or seek to encumber) its Contribution.

**Application of defaulter's Contribution, and Certification of Excess Losses**

26. Without prejudice to any other right of set-off or application of funds to which the Clearing House may be entitled, in the event of a Default and the certification by the Clearing House of a Default Loss under Rule 23(b) in respect thereof the Clearing House shall without notice set off in or towards satisfaction of any sums payable to the Clearing House from the defaulter any amount of the defaulter's Contribution which has matured in accordance with Rule 23(b). If the Clearing House is to have recourse, in accordance with Rule 16, to the indemnities and Contributions of Clearing Members other than the defaulter, as soon as practicable the Clearing House shall certify (by a "**Rule 26 Certificate**"):-

- (a) the amount of the defaulter's Contribution applied under this Rule and the net sum (if any), or each net sum (if more than one), then immediately payable by the defaulter to the Clearing House in respect of Contracts, taking into account for this purpose the defaulter's Contribution but excluding for this purpose any sum due to the Clearing House in respect of any Excluded Transaction; and
- (b) the extent to which any sums so payable by the defaulter to the Clearing House but unpaid may be claimed by the Clearing House under a policy of insurance or analogous instrument relating to Default Losses.

The Clearing House may issue more than one Rule 26 Certificate in relation to losses arising upon any Default.

27. The Clearing House may in the exercise of the right conferred by Rule 26 set off the amount due (in accordance with Rule 23(b)) to a defaulter in respect of the defaulter's Contribution or any part thereof against sums owing on any account whether or not it is a client account, and the Clearing House shall have unfettered discretion in this regard. A defaulter's Contribution shall not be treated as standing to the credit of any client account of the defaulter except to the extent that any Default Loss certified under Rule 23(b) arises in relation to a client account and the Clearing House so requires.

**Application of Fund and Indemnity**

28. By virtue of the Clearing Membership Agreement and this Rule, and subject to Rule 29, each Clearing Member indemnifies the Clearing House in respect of each Excess Loss arising upon the Default of another Clearing Member in an aggregate amount not exceeding the outstanding balance of its Contribution at the date of the issue of the Rule 26 Certificate which relates to such excess loss. The amount due by a Clearing Member in respect of an Excess Loss shall be the Clearing Member's pro rata share of such Excess Loss arising upon the relevant Default calculated as the proportion of such Member's Contribution relative to the aggregate Contributions of all Clearing Members other than the relevant defaulter at the time of the relevant Default. The amount so due shall become immediately payable automatically (without any obligation on the part of the Clearing House to make demand on the Clearing Member) upon the issue by the Clearing House of the applicable Rule 26 Certificate. Without prejudice to any other right of set-off or application of funds to which the Clearing House may be entitled, the Clearing House shall forthwith without notice set off any amount due in accordance with Rule 23(c) to a Clearing Member in respect of such Clearing Member's Contribution in or towards satisfaction of the amount payable by such Clearing Member under this Rule 28.
29. This Rule applies to a defaulter (the "**First defaulter**") where the Contribution of the First defaulter has not been repaid to the First defaulter or applied by the Clearing House under Rule 26, and Excess Losses arise upon the Defaults of other Clearing Members. Where this Rule applies, Rule 28 shall have effect with the following modifications:-
- (a) the balance (if any) of the First defaulter's Contribution may be applied under Rule 28 in respect of such Excess Losses up to and including the date three months after the date of issue of the Default Notice in respect of the First defaulter's Default; and
  - (b) after the date three months after the date of issue of such Default Notice, the balance (if any) of the First defaulter's Contribution may not be applied under Rule 28 in respect of such Excess Losses, but it may be retained on account of losses arising upon the First defaulter's own Default, and for the purposes of Rule 28 it shall be disregarded.

30. The Clearing House shall give notice to each Clearing Member as soon as practicable after an amount has become due in accordance with Rule 28 and of the manner in which it has been satisfied.
31. If, in relation to a Default, the Clearing House has been unable to certify in any Rule 26 Certificates issued on or before the Quarter Day immediately after the Default all sums which may be or become due to the Clearing House from the Defaulter (because such sums will not or may not become liquidated or for any other reason payable until a later date), the Clearing House shall maintain a Contribution from each Clearing Member (other than the Defaulter) as cover for the performance by such Clearing Member of its obligation to indemnify the Clearing House in relation to any Excess Losses not yet certified. In fulfilment of this requirement the Clearing House may take any step which appears to the Clearing House to be appropriate, and the steps so taken may include any (including a combination) of the following:-
- (a) postponement of the date for adjustment of Clearing Members' Contributions under Rule 22;
  - (b) reduction of the amounts payable to some or all Clearing Members under Rule 22(a); and
  - (c) estimation of the amount of Excess Losses which may become certified after the Quarter Day in question, and application of Rule 28 as if such estimated amount were already realised as Excess Losses.

The Clearing House shall notify Clearing Members of any steps taken under this Rule.

### **Reinstatement of the Fund**

32. Where, after a Default, the Clearing House has applied part or all of a Contribution under Rule 26 or Rule 28, the Fund Amount shall be reduced forthwith by the aggregate amount of the Contributions or parts of Contributions so applied, and the EquityClear Fund Amount and the Exchange Fund Amount and the RepoClear Fund Amount and the SwapClear Fund Amount shall be reduced pro rata. Unless and until the Clearing House has repaid a defaulter's Contribution, the Fund Amount shall be treated as having been reduced by the amount of the defaulter's Contribution regardless of whether the Clearing House has applied part or all of that Contribution

under Rule 26. Following a reduction of the Fund Amount in accordance with this Rule, the Clearing House may by a single increase or by a series of increases raise the Fund Amount to such level not exceeding £640,000,000 and after such interval or intervals as it considers appropriate, provided that:

- (a) upon each such increase the EquityClear Fund Amount and the Exchange Fund Amount and the RepoClear Fund Amount and the SwapClear Fund Amount shall increase pro rata; and
- (b) no such increase shall bind any Clearing Member which does not agree to it.

Where by virtue of this Rule the Fund Amount is less than £640,000,000, the size of the Minimum EquityClear Contribution and the Minimum Exchange Contribution and the Minimum RepoClear Contribution and the Minimum SwapClear Contribution shall also be adjusted in proportion to the size of the Fund Amount as adjusted for the time being.

- A. If on any Quarter Day before the EquityClear Transition Date the Fund Amount is by virtue of Rule 32 less than it was before the default the formula in Rule 19A shall be modified so that the alternative basis of calculation is reduced from 10% of the Clearing Member's average daily requirement for initial margin (as provided by Rule 19A) to 10% of such average daily requirement multiplied by the Relevant Proportion. On any date in respect of which the Clearing House exercises its rights under Rule 18A and as at which the Fund Amount is by virtue of Rule 32 less than it was before the default the sum with which the Clearing Member's EquityClear Contribution is to be compared shall be reduced from 10% of the Clearing Member's requirement for initial margin (as provided by Rule 18A) to 10% of such requirement multiplied by the Relevant Proportion. For the purposes of this Rule, the "**Relevant Proportion**" means, in relation to a date, the proportion which the Fund Amount at such date bears to the amount before the default.

**Effect of cessation of Clearing Member status**

33. Subject to Rule 34, if a Quarter Day occurs after the giving of notice by or in respect of any Retiring Member and before the termination of such Retiring Member's Clearing Member status:-
- (a) if the Retiring Member is not a defaulter, the amount of such Retiring Member's Contribution shall be determined by the Clearing House on the basis set out in Rules 19, 19A, 19B, 19C and 19D without regard to the impending termination of such Retiring Member's Clearing Member status, and the provisions of Rule 22 shall apply in respect of such Contribution accordingly;
  - (b) if the Retiring Member is a defaulter, the balance of the defaulter's Contribution after any part of it has been applied under Rule 26 or Rule 28 shall not be subject to adjustment under Rules 19, 19A, 19B, 19C and 19D and the provisions of Rule 22 shall not apply to such Retiring Member.

Notwithstanding the foregoing, in such circumstances the amounts of the respective Contributions of all Clearing Members other than any Retiring Member shall be determined by the Clearing House on the basis set out in Rules 18A, 19, 19A, 19B, 19C and 19D, but disregarding for all purposes any Clearing Member which is a Retiring Member, in particular disregarding such Clearing Member's daily requirement for margin and such Clearing Member's daily number of Contracts and treating such Clearing Member as no longer being a Clearing Member, but without prejudice to any reduction of the Fund Amount under Rule 32.

34. This Rule applies at any Quarter Day after a Retiring Member has given notice of termination of its Clearing Member status, where another Clearing Member (the "**Continuing Member**") has arranged to undertake clearing on behalf of the Retiring Member. If, in the opinion of the Clearing House, the Contribution of the Continuing Member determined under Rules 18A, 19, 19A, 19B, 19C and 19D does not fairly reflect the Continuing Member's share of clearing activity, the Clearing House may determine the Contribution of the Continuing Member as if the EquityClear Margin Weight, Margin Weight, Volume Weight, RepoClear Margin Weight and SwapClear Margin Weight of the Retiring Member were part of the EquityClear Margin Weight, Margin Weight, Volume Weight, RepoClear Margin Weight and SwapClear Margin Weight respectively of the Continuing Member. If the Clearing House determines the

amount of a Continuing Member's Contribution under this Rule, the Clearing House shall give notice to the Continuing Member, and the provisions of Rule 33 shall not apply.

35. A Retiring Member shall, until the completion of the process set out in Rule 8 in relation to any Default, continue to be liable under its indemnity in respect of Excess Losses arising upon such Default, notwithstanding that the Clearing Member status of the Retiring Member has terminated before that time. While a Retiring Member continues to be so liable, it shall provide such cover as the Clearing House shall require in respect of its liability in relation to any Excess Losses not yet certified, subject to such cover not exceeding the Retiring Member's Contribution at the time of the termination of its clearing membership. In fulfilment of this requirement the Clearing House may take any step which appears to the Clearing House to be appropriate, including postponement of the date for repayment of part or all of the Retiring Member's Contribution. The Clearing House shall notify the Retiring Member of any steps taken under this Rule.

#### **Recoveries from defaulters**

36. If all or part of the Contribution of any Clearing Member shall have been applied in accordance with Rule 28, the Clearing House shall account to each such Clearing Member (whether or not he remains at the relevant time a Clearing Member of the Clearing House) in respect of any Net Recovery, pro rata to the respective amounts applied in accordance with Rule 28 in relation to the relevant Default and not exceeding, in relation to each such Clearing Member, the amount of its Contribution so applied.

#### **Contracts on terms prescribed by new Exchanges**

37. Notwithstanding anything in the Procedures, and subject as follows, any Contract on terms prescribed by any Exchange other than a Specified Exchange shall be an Excluded Transaction. The Clearing House may direct that any such Contract as is referred to in this Rule shall not be an Excluded Transaction, provided that no such direction shall bind any Clearing Member which does not agree to it.