

## APPENDIX 4.6

### DEFAULT MANAGEMENT PROTOCOL

#### 1. INTRODUCTION

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This document, pursuant to the provisions of Chapter 9 the BME CLEARING Rule Book, contains the protocol dictating what action and measures to take, under Articles 38 to 46 of the Rule Book, in the event of a Member default, whether as a result of the temporary suspension of a Member, declaration of default or, lastly, loss of the condition of Member (Article 39.1 of the Rule Book). The actions and measures described are designed to enable BME CLEARING to attend promptly to duly complying with the obligations incumbent upon it in respect of the non-defaulting Clearing Members and to help the defaulting parties to meet their obligations with respect to their Clients.

#### CAUSES OF DEFAULT

The circumstances giving rise to the aforementioned actions are provided for in Article 38 of the Rule Book, which lists the causes of default.

According to Section 3.3 of the General Conditions for the Energy Segment, in addition to the causes of Default expressly defined in Article 38 of the Rule Book, it shall be a cause of Default in relation to Gas Contracts in the Energy Segment and for the purposes set out in Chapter 9 of the Rule Book, that the Member or Client, holder of an Account at BME CLEARING is declared a disabled or unlicensed User by the Transmission System Operator and prohibited from using a Balancing Portfolio, in accordance with the provisions of the gas system Regulations

#### MEASURES TO BE ADOPTED

The measures itemised in Article 42 of the Rule Book may be adopted upon declaration of default of a Member. These include:

- A resolution to suspend the Member or to maintain any precautionary suspension already resolved;
- Immediate restriction of the registration of new trades of the defaulting Member;
- Undertaking of as many trades as may be necessary, including trades over financial instruments, for the purpose of reducing unhedged risks until total coverage thereof; In this respect:
  - o BME CLEARING, as a CCP, may enter into derivatives contracts exclusively for the purpose of:
    - Hedging the portfolio of a defaulted clearing member; or
    - Hedging currency risk arising from its liquidity management framework.
  - o The use, if any, is also limited to derivative contracts in respect of which reliable price data is published on a regular basis and to the period of time necessary to reduce the credit and market risk to which the CCP is exposed.
- Closing out of the defaulting Member's positions, in accordance with the close-out netting provisions in the Rule Book, in application of the regime envisaged in Article 110 of the Securities Market Law, the Royal Decree-Law 5/2005, of 11 March, and Law 41/1999, of 12 November;

- The transfer to another Member or closing out, as applicable, of the individual segregated Accounts (both, agency and principal to principal) the omnibus segregated accounts, together with the corresponding second-tier register accounts, where applicable, and of the indirect clearing omnibus segregated accounts and indirect clearing gross omnibus segregated accounts. In the event of close-out of accounts, the close-out netting regime established in the Rule Book will be applicable;
- The selling off, in whole or in part, of the collateral posted.

In keeping with Article 42, paragraph 1.J, of the Rule Book, the CCP, or the General Clearing Member, as the case may be, may take any other measures which it is forced to take and deems necessary due the exceptional nature of the circumstances ensuing in the wake of a default even if not expressly contemplated in the Rule Book, informing the Competent Authorities thereof.

For the purpose of the provisions on Default it should be understood that (Article 30.7 of the Rule Book): a) mentions to Non-Clearing Members include Ordinary Non-Clearing Members, unless there are provisions that expressly apply to one class of member or the other; b) mentions to Individual Clearing Members include Direct Clearing Clients, unless there are provisions that expressly apply to the latter,

## **PARTIES RESPONSIBLE FOR ADOPTING SUCH MEASURES**

The declaration of default and the adoption of the measures required by such default (Article 41 of the Rule Book) are incumbent upon:

- BME CLEARING, in the event of default by Clearing Members; and
- The corresponding General Clearing Member, in the event of default by Non-Clearing Members.

However, when exceptional circumstances so dictate, BME CLEARING may, at its discretion, declare a Non-Clearing Member to be in default, notifying the latter's General Clearing Member of such decision. Likewise, the General Clearing Member must adopt any measures it is required to take by BME CLEARING in order to manage the Non-Clearing Member's default (Article 41.4 of the Rule Book).

Article 39.3 of the BME CLEARING Rule Book provides that BME CLEARING must report the start of actions relative to a potential declaration of default to the CNMV, the corresponding Competent Authorities, the markets, the organised trading systems and the clearing and settlement systems with which BME CLEARING has the opportune agreements.

## **2. DECLARATION OF TEMPORARY SUSPENSION**

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2.1. The CCP, with respect to the Clearing Members, or the General Clearing Members, in the case of Non-Clearing Members, may resolve to (Article 40 of the Rule Book):

- temporarily suspend a Member, as a precautionary measure, in the event that:
  - there are indications that the Member is subject to any of the causes of default listed in Article 38 of the Rule Book.
  - It detects anomalous Member behaviour in its dealings with the CCP;
  - The Member faces an uncertain credit situation which requires clarification; and
- Temporarily suspend a Member once it has been declared in Default for having incurred in any of the causes of Default stipulated in the Rule Book

2.2. Prior to resolving the suspension, if the cause of the default so permits, and so long as there is no attendant risk for the CCP or its counterparties, a Member may be given a

period of 24 hours to address the breach. If this period elapses without rectification of the underlying issue, the Member's temporary suspension may then be resolved.

- 2.3 General Clearing Members must inform the CCP of any decision to grant a Non-Clearing Member such leeway.

In the event that a Non-Clearing Member faces an uncertain credit situation that needs clarifying, the General Clearing Member may use that 24-hour period to get the information needed to this end, keeping the CCP apprised at all times.

The General Clearing Member must weigh up the risk implied by the Non-Clearing Member and: a) if the risk posed by the Non-Clearing Member is not deemed significant, no suspension will be imposed; but b) if the risk posed by the Non-Clearing Member is deemed significant in the view of the General Clearing Member or of BME CLEARING, as warranted, the suspension will be ruled.

- 2.4. In the event of an uncertain credit situation during a given trading session, BME CLEARING may call on the Clearing Member in such a situation or the Member's corresponding General Clearing Member, to post Extraordinary Funds, as provided for in Article 29.4.B of the Rule Book.

- 2.5. The temporary suspension of a Member shall imply:

- A restriction on the registration of new trades by the suspended Member;
- Suspension of access to the CCP; and
- Configuration of the necessary filters such that the suspended Member's give-ins, transfers and allocations are no longer accepted.

Under no circumstances shall the suspension of a Member restrict its obligations to post margins or pay its corresponding settlement amounts.

- 2.6. BME CLEARING must notify Clearing Members of their temporary suspension decisions.

Members must notify BME CLEARING immediately of the temporary suspension of Non-Clearing Members.

BME CLEARING will notify the Comisión Nacional del Mercado de Valores, in its case the other Competent Authorities, the markets or trading systems and clearing and settlement systems with which BME CLEARING has agreements.

If a Non-Clearing Member were to operate with several General Clearing Members, BME CLEARING will notify the other Members of the Non-Clearing Member or Client's temporary suspension so that all of them can take the corresponding measures.

### **3. DECLARATION OF MEMBER DEFAULT**

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- 3.1. The decision to declare a Member default and to issue the corresponding default declaration, upon learning that it meets one of the grounds for default defined in Article 38 of the Rule Book, is taken by:

- In the case of default of Clearing Members, or in the exceptional cases where BME CLEARING may declare the default of Non-Clearing Members, by BME CLEARING Managing Director or General Manager or, respectively, the Deputy Managing Director or the Deputy General Manager in his or her absence.
- In the case of default of Non-Clearing Members, by the legal representative of the General Clearing Member.

- 3.2. The decision to declare a Clearing Member default, or the reception by BME CLEARING

of the declaration of default of a Non-Clearing Member issued by its General Clearing Member, triggers the creation of a Crisis Committee in BME CLEARING.

3.2.1. The Crisis Committee shall be made up of four people: The Managing Director, someone from Legal Advisory and another two people appointed by the Managing Director.

3.2.2. As soon as it is constituted, the Crisis Committee must distribute an internal memorandum within the CCP in order to inform staff about the situation and give them contact details.

3.2.3. The Crisis Committee is the body that takes the corresponding decisions regarding how to manage the default and gives precise instructions to the rest of the CCP's staff.

3.2.4. The Crisis Committee must handle the most sensitive telephone calls.

3.3. The Crisis Committee will take the following steps, after assessing the complexity of the positions (proprietary position and client accounts positions):

3.3.1. Notifying the following parties by telephone of the situation and measures taken:

3.3.1.1. To the defaulting Member;

3.3.1.2. To the CNMV and the other Competent Authorities as warranted;

3.3.1.3. To the defaulting Member's General Clearing Member, in the exceptional cases where BME CLEARING declares the default of Non Clearing Members or where the Defaulting Non-Clearing Member operates with several General Clearing Members; and

3.3.1.4. To the different markets/trading platforms and clearing and settlement systems with which the CCP has agreements.

3.3.2. Verifying that the CCP has all the information needed regarding required margins and collateral posted and settlements outstanding with respect to the defaulting Member and, where applicable, its General Clearing Member.

3.3.3. If not already addressed, restricting the registration of new trades by the Defaulting Member and suspending electronic access by the defaulting Member to the CCP system and suspending its access to make or accept give-ins, transfers and allocations by:

3.3.3.1. Where applicable, instructing the General Clearing Member to suspend access by means of filter configuration; and

3.3.3.2. Notifying Executing Brokers that the Clearing Member will not make or accept give-ins, transfers and allocations.

3.3.4. If deemed convenient, notify the default to the CCPs comprising EACH, at least via e-mail.

3.3.5. BME CLEARING, in case of default of General Clearing Members, and the General Clearing Members, in case of Default of the Non-Clearing Member, shall issue the Declaration of Default.

3.3.6. Unless the Competent Authorities believe that such disclosure would imply a threat to financial stability or market confidence or would seriously jeopardise the financial markets or cause disproportionate harm to the interested parties, BME

CLEARING will publish declarations of Member default on its website, in keeping with Article 41.8 of the Rule Book, as fleshed out in section 6 below.

#### **4. CLOSING OUT OF THE PROPRIETARY POSITION**

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##### **CLOSING OUT OF THE PROPRIETARY POSITION OF DEFAULTING CLEARING MEMBER BY BME CLEARING (Article 43.1.A of the Rule Book)**

- 4.1. The complexity, size of the open position and structure of the proprietary position of the Defaulting Clearing Member will be assessed.
- 4.2. If the position is non-complex and small, it is unwound in the market.
- 4.3. If the position is complex and/or large, it is put out to price in order to unwind it.
  - 4.3.1. Two or three entities will be asked to quote prices;
  - 4.3.2. The affected Member will also be asked to provide a quote. If the latter has a taker for the position, this taker will be considered a potential candidate. If the affected Member does not have a taker for the position, its valuation will be used as a benchmark in assessing the quotes provided by the other two or three entities; and
  - 4.3.3. If the quotes provided by the two/three entities vary widely, additional entities may be asked to submit prices.
  - 4.3.4. The use of derivatives will be allowed, if necessary and within the limits set out in point 1 of the present document, in order to neutralize risks.
- 4.4. Potential exercises will be taken into account in closing out positions.
- 4.5. The CCP shall remain in communication with the CNMV.
- 4.6. The CCP will calculate the final net balance resulting from the closing out of the position, in application of the close-out netting provisions in the Rule Book (Articles 42.3 and subsequent).
- 4.7. The same rules that apply to the closing-out of the proprietary position of an Individual Clearing Member will also apply to the Direct Clearing Client Proprietary Account, in the event of default of the latter.

##### **CLOSING OUT OF THE PROPRIETARY POSITION OF DEFAULTING NON-CLEARING MEMBER BY ITS GENERAL CLEARING MEMBER (Article 43.2.A of the Rule Book)**

- 4.8. In the event of default of Non-Clearing Members, the closing out of the proprietary position of the defaulting Non-Clearing Member is done by its General Clearing Member, who will calculate the final net balance resulting from the closing out of the position, in application of the close-out netting provisions in the Rule Book (Articles 42.3, and subsequent). The CCP shall remain in communication with such General Clearing Member.

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##### **CLOSING OUT OF THE PROPRIETARY POSITION OF DEFAULTING ORDINARY NON-CLEARING MEMBER BY ITS GENERAL CLEARING MEMBER (Article 43.3 of the Rule Book)**

- 4.9. In the event of default of Ordinary Non-Clearing Members, the closing out of the proprietary position of the defaulting Non-Clearing Member registered in the corresponding Individually Segregated Principal to Principal Client Account (ISA PtoP Account) is done by its General

Clearing Member, who will calculate the final net balance resulting from the closing out of the position, in application of the close-out netting provisions in the Rule Book (Articles 42.3, and subsequent).

If the Ordinary Non-Clearing Member has opted for the Trades made on his own account to be registered in an Omnibus Segregated Client Account (OSA Account) held by the General Clearing Member, the latter will close-out the position of the Ordinary Non-Clearing Member and will calculate the final net balance. The General Clearing Member shall make the corresponding adjustments to the relevant OSA Account.

The CCP shall remain in communication with such General Clearing Member.

## **5. TRANSFER OR CLOSE-OUT OF CLIENT POSITIONS**

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- 5.1. Declaration of default shall trigger the adoption of the measures needed to transfer the Clients' positions, as described in the following sections.

In all cases, the minimum porting window needs to be respected, so that unless the Client or the Non-Clearing Member (as the case may be) communicates expressly to the General Clearing Member (a copy thereof to be provided by the latter to BME CLEARING), its intention not to transfer its accounts or its agreement to the immediate liquidation of Positions and Margins, BME CLEARING will not initiate the close out:

- prior to 9:00 on the Business Day following the day of declaration of Default of the Defaulting Member, if such declaration of Default is issued by BME CLEARING before 10:00; or
- prior to 13:00 on the Business Day following the day of declaration of Default of the Defaulting Member, if such declaration of Default is issued by BME CLEARING after 10:00.

Should transfer not be possible Client's positions will be closed-out.

The provisions in previous point 4.3, related to proprietary positions, will be applicable in the event some of the positions of the client account are complex and/or large.

### **DEFAULTING CLEARING MEMBER**

- 5.2. Management of ISA and OSA Client Accounts

If the defaulting Member is a Clearing Member, BME CLEARING, at the request of each Client, will attempt to transfer such Accounts to one or more other Non-Clearing or Clearing Members in respect of ISA Agency Accounts, or to another or other Clearing Members, in respect of ISA PtoP Accounts, designated by each Client, and in all cases previously informing the CNMV of such transfer. To perform such transfer, which must take place within 3 business days, the consent of the Member(s) to which the Accounts shall be transferred and of the Clients whose Accounts are to be transferred shall be required.

BME CLEARING shall inform affected Members and Clients of the situation and of its intention to transfer the Accounts by any customary means of communication. Such notice to the Clients shall be sent to the address provided by the defaulting Member. The transfer of Accounts to the new Member shall entail the transfer of the Collateral corresponding to the Clients of such Accounts.

In respect of OSA Accounts, BME CLEARING, previously informing the CNMV of such transfer, shall manage, at the request of the Clients, the transfer of the OSA Accounts and of the corresponding Second-Tier Register Accounts, together with the Collateral corresponding to such Accounts, to another or other Clearing Members, designated by



the group of Clients within the OSA Accounts, holders of Second-Tier Register Accounts. To perform such transfer, agreement between the Member or Members to which the OSA Accounts and related Second-Tier Register Accounts and the relevant Collateral shall be transferred and the Clients whose Second-Tier Register Accounts are to be transferred shall be required.

5.3. Management of ISA Agency Accounts in the event of Clearing Members' default

5.3.1. If the volume of ISA Agency Accounts is manageable, those presenting profits will be separated from those presenting losses:

- a) Accounts presenting losses will be prioritised. The position will be held until the loss on the Account exceeds 60% of the margin posted; and
- b) Accounts presenting gains will be handled with less urgency.

5.3.2. If the volume of ISA Agency Accounts is not easily manageable, those presenting significant open positions will be separated from retail Accounts:

- a) Accounts presenting more significant open positions will be prioritised in an attempt to transfer the Accounts using the method described above.
- b) Retail Accounts will be closed-out in the terms set out in the Rule Book with regards to close out netting (Articles 42.3 and subsequent of the Rule Book).

5.3.3. In the event that all or some of the ISA Agency Accounts should be unable to be transferred when the Initial Margins corresponding to all or some of the ISA Agency Accounts do not suitably cover BME CLEARING's risk, in BME CLEARING's opinion, the latter may request the holders of these Accounts to contribute the amounts required to adequately cover this risk as an adjustment to the Initial Margins.

This contribution must be made before 9 a.m. on the morning of the following Business Day to that on which it was requested by BME CLEARING (if the request was made before 10 a.m.) or before 1 p.m. on the following Business Day (if the request was made after 10 a.m.). If the amounts hereby requested are not contributed, a Default will be deemed to have occurred. In that case, BME CLEARING may close, in whole or in part, the net Positions of the corresponding ISA Agency Accounts. In the event of partial closing-out of the Position, the regulations governing the transfer provided in section 1 above shall apply in connection with the remaining open Position.

5.4. Management of ISA PtoP Accounts and OSA Accounts, in the event of Clearing Members' Default.

In the event that it is not possible to transfer the ISA PtoP Accounts, or the OSA Accounts and their related Second-Tier Register Accounts, or in the event that the Margins corresponding to all or any of the ISA PtoP Accounts, or OSA Accounts do not securely cover BME CLEARING's risk, in BME CLEARING's opinion, BME CLEARING may close-out in whole or in part the net Position of the ISA PtoP Accounts and/or OSA Accounts in accordance with the close-out netting provisions in the Rule Book (Articles 42.3 and subsequent of the Rulebook). The Positions of the corresponding Second-Tier Register Accounts must be modified in accordance with the transfers or closures occurred.

5.5. Management of Indirect Clearing Accounts, in the event of default of a Clearing Member

5.5.1 Indirect Clearing Omnibus Segregated Client Accounts (Indirect Clearing OSA Accounts).

BME CLEARING, where circumstances so permit, may initiate the measures it considers convenient to attempt to transfer the Indirect Clearing OSA Client Accounts, and the

Collateral corresponding to these Accounts, having previously notified the Comisión Nacional del Mercado de Valores.

This transfer may be made to one or more Clearing Members designated by and at the request of a) the Direct Client of the Defaulting Clearing Member of the Account of which the Defaulting Clearing Member is the holder, or b) the Direct Client holder of the Indirect Clearing OSA; in both cases on behalf of the Indirect Clients.

To perform this transfer, agreement between the Clearing Member or Members to which the Accounts and related Collateral shall be transferred and the referenced Direct Clients or holders of these Accounts on behalf of their Indirect Clients shall be required.

BME CLEARING shall inform the Members concerned of the situation and of its intention to transfer the Accounts, with an indication of the Members to which they will be transferred. The Defaulting Clearing Member shall inform the Direct Clients, and these shall inform the Indirect Clients of the situation, indicating the Clearing Members to which the Accounts shall be transferred.

In cases where, due to the circumstances, it is decided not to attempt the transfer of the Indirect Clearing OSA, or when such a transfer is not possible, BME CLEARING may at any time fully or partially Close-out the Position. A partial Close-out must not result in an increase in risk for any Direct or Indirect Client. The previous regulations governing the transfer shall apply in relation to the remaining open Position.

In the event that, the Client's Position in an Indirect Clearing OSA Client Account is fully or partially Closed-out, BME CLEARING shall calculate the corresponding Final Net Balance of the fully or partially Closed-out Position

#### 5.5.2 Indirect Clearing Gross omnibus Segregated Client Account (Indirect Clearing GOSA Accounts).

BME CLEARING shall initiate the measures it considers convenient to attempt to transfer the Indirect Clearing GOSA Accounts, and the Collateral corresponding to these Accounts, having previously notified the Comisión Nacional del Mercado de Valores.

This transfer shall be made to one or more Clearing Members designated by and at the request of a) the Direct Client of the Defaulting Clearing Member of the Account of which the Defaulting Clearing Member is the holder, or b) the Direct Client holder of the Indirect Clearing GOSA.

To perform this transfer, agreement between the Clearing Member or Members to which the Accounts and related Collateral shall be transferred and the referenced Direct Client of the Defaulting Clearing Member or holder of the Account on behalf of their Indirect Clients shall be required.

BME CLEARING shall inform the Members concerned of the situation and of its intention to transfer the Accounts, with an indication of the Members to which they will be transferred. The Defaulting Clearing Member shall inform the Direct Client, which shall inform the Indirect Client of the situation, indicating the Clearing Members to which the Accounts shall be transferred.

In cases where Indirect Clearing GOSA Client Accounts cannot be transferred, or where the Collateral posted is not sufficient to suitably cover the resulting risk, BME CLEARING may fully or partially Close-out the Position of the corresponding Indirect Clearing GOSA. A partial Close-out must not result in an increase in risk for any Direct or Indirect Client. The previous regulations governing the transfer shall apply in relation to the remaining open Position.



In the event that, due to the impossibility of transfer or due to the insufficiency of the Collateral posted to cover the Initial Margins, the Client's Position in an Indirect Clearing GOSA is fully or partially Closed-out, BME CLEARING shall calculate the corresponding Final Net Balance of the fully or partially Closed-out Position (in accordance with the close-out netting provisions in the Rule Book set forth in Articles 42.3 and subsequent).

#### **DEFAULTING NON-CLEARING MEMBER**

##### **5.6. Management of ISA Agency Accounts, in the event of Non-Clearing Member's default**

If the defaulting Member is a Non-Clearing Member, the CCP, following notification to the CNMV, shall transfer the ISA Agency Accounts to its General Clearing Member, which shall be obliged to accept them.

When Collateral corresponding to all or some of those Accounts do not suitably cover the risk of the General Clearing Member, the latter may request the holders of these Accounts to contribute the amounts required to adequately cover this risk as an adjustment to the Initial Margins.

This contribution must be made before 9 a.m. on the morning of the following Business Day to that on which it was requested by the General Clearing Member (if the request was made before 10 a.m.) or before 1 p.m. on the following Business Day (if the request was made after 10 a.m.).

In the event the amounts hereby requested are not contributed, a Default will be deemed to have occurred and the General Clearing Member will agree the total or partial closing-out of the Accounts with insufficient Initial Margins. In this case, the General Clearing Member, with respect to each Account which it has had to close-out, will obtain a final net balance, following the procedure stipulated in Articles 42.3 and subsequent of the Rule Book.

##### **5.7 Management of Indirect Clearing Client Accounts in the event of Non-Clearing Member's default**

###### **5.7.1 Indirect Clearing OSA Accounts.**

In the event that a Defaulting Non-Clearing Member holds Indirect Clearing OSA, the General Clearing Member, having informed BME CLEARING, which shall in turn inform the Comisión Nacional del Mercado de Valores thereof, when circumstances so permit, may initiate the measures it deems appropriate to attempt to transfer the Indirect Clearing OSA and the Collateral corresponding to these Accounts.

This transfer shall be made to another Account of the same General Clearing Member, to one or more other Clearing Members, Non-Clearing Members or Clients of the General Clearing Member, designated by the General Clearing Member, on behalf of all the Indirect Clients.

To perform this transfer, agreement between the Clearing Member or Members, Non-Clearing Members or Clients of the Clearing Member to which the Accounts and related Collateral shall be transferred and the Indirect Clients whose Positions and Collateral are to be transferred shall be required.

In cases where, due to the circumstances, the General Clearing Members decides not to attempt the transfer of the Indirect Clearing OSA, the General Clearing Member may at any time fully or partially Close-out the Position of these Accounts. A partial Close-out may not result in an increase in risk for any Indirect Client. The previous regulations governing the transfer shall apply in relation to the remaining open Position.

In the event that, the Client's Position in an Indirect Clearing OSA Client Account is fully or partially Closed-out, the General Clearing Member shall calculate the corresponding

Final Net Balance of the fully or partially Closed-out Position, following the procedure stipulated in Articles 42.3 and subsequent of the Rule Book.

#### 5.7.2 Indirect Clearing GOSA Accounts

If the Defaulting Non-Clearing member is the holder of the Indirect Clearing GOSA, the General Clearing Member, having informed BME CLEARING, which in turn shall inform the Comisión Nacional del Mercado de Valores, and at the request of the Indirect Client, shall initiate the procedure that it must have in place to transfer the Indirect Clearing GOSA, together with the Collateral corresponding to these Accounts, to another Account of the same General Clearing Member or one or more Clearing Members, Non-Clearing Members or Clients of the Clearing Member, designated by the group of Indirect Clients whose Positions and Collateral shall be transferred.

To perform this transfer, agreement between the Clearing Member or Members, Non-Clearing Members or Clients of the Clearing Member to which the Accounts and related Collateral shall be transferred and the Indirect Clients whose Positions and Collateral are to be transferred shall be required.

In cases where Indirect Clearing GOSA Client Accounts cannot be transferred, or where the Collateral posted is not sufficient to suitably cover the resulting risk, the Member or Client of the Clearing Member which receives the account, at their discretion, may fully or partially Close-out the net Position of the corresponding Indirect Clearing GOSA. A partial Close-out may not result in an increase in risk for any Indirect Client. The previous regulations governing the transfer shall apply in relation to the remaining open Position.

In the event that, due to the impossibility of transfer or due to the insufficiency of the Collateral posted to cover the Initial Margins, the Client's Position in an Indirect Clearing GOSA is fully or partially Closed-out, the General Clearing Member shall calculate the corresponding Final Net Balance of the fully or partially Closed-out Position, following the procedure stipulated in Articles 42.3 and subsequent of the Rule Book.

- 5.8. BME CLEARING shall remain in permanent contact with the defaulting Member, where applicable with its General Clearing Member, and with the corresponding Competent Authorities.

The General Clearing Members shall keep BME CLEARING informed.

## **6. DISCLOSURES TO THE MARKET, MEMBERS, CLIENTS, MEDIA AND AUTHORITIES**

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- 6.1. For the purpose of market disclosures, a declaration of default will be treated as an incident, subject to the exceptions listed in section 3.3.6 above.
- 6.2. The first distributed notice, to the extent possible, depending on the circumstances, may contain information on the transfer of Client Accounts.
- 6.3. Communication with Clients, particularly in respect of Clients of OSA Accounts, will follow the instructions issued by the Crisis Committee. Clients must be notified as soon as possible of decisions to transfer their accounts.

BME CLEARING will summons Client contact details from the defaulting Member, which shall be obliged to furnish them.

- 6.4. If deemed convenient, notice shall be provided to Reuters and Bloomberg.
- 6.5. The Crisis Committee is the body charged with duly reporting to the Competent Authorities, the defaulting Member, its General Clearing Member, and the markets or trading systems and clearing and settlement systems with which BME CLEARING has entered into the corresponding agreements and, if deemed convenient, to CCPs comprising EACH.

- 6.6 As soon as any decision is taken to enforce margin collateral, the non-defaulting Clearing Members shall be notified if whether, as a result of the Default, their contributions to the Default Fund are going to be used in the affected Segments of the CCPS and they shall be informed of the amount of the contributions utilised, the amounts to be replenished and additional contributions to the Fund, if any.
- 6.7. The media strategy will be determined when the default has been duly handled and closed.

## **7. INFRASTRUCTURE MANAGEMENT**

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- 7.1. BME CLEARING shall take one of the following decisions in respect of the defaulting Member's communication lines.
- 7.1.1. Disconnect the lines; or
- 7.1.2. Keep the lines, in which case it has to be able to collect the corresponding fees.

## **8. INTERIM REGULATION FOR NON-CLEARING MEMBERS OF A DEFAULTING GENERAL CLEARING MEMBER AND FOR DIRECT CLEARING CLIENTS OF A DEFAULTING AGENT MEMBER**

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- 8.1. In the event of default by a General Clearing Member, as provided in Article 44 of the CCP's Rule Book, its Non-Clearing Members will have 90 days to find another General Clearing Member.

Throughout this period:

8.1.1 The Non-Clearing Members will be obliged to service their payment obligations directly with the CCP, to which end they must indicate the entity which, holding an account in the payment system established by BME CLEARING, will act as its payment agent; and

8.1.2 The CCP will require that Non-Clearing Members make an Individual Fund contribution for each Segment of the CCP within no more than 24 hours in the sum equivalent to that which a Clearing Member would have to provide under all headings, including its contribution to the Default Fund.

- 8.2 In the case of default by an Agent Member, its Direct Clearing Clients, unless they had already signed a contract with a second Agent Member, in which case it shall enter into force, must sign an agreement with another Agent Member within a period not longer than ninety (90) calendar days from the date on which BME CLEARING issues the declaration of Default of the Agent Member.

During the period between the declaration of Default and the execution of the new agreement, the Direct Clearing Clients shall assume vis-à-vis BME CLEARING, in relation to the Accounts of which they are Account holders, the duties corresponding to the Clearing Members. For such purposes:

8.2.1 Direct Clearing Clients shall agree with BME CLEARING the collection and payment mechanisms related that are necessary.

8.2.2 BME CLEARING shall require Direct Clearing Clients the posting of an Individual Fund, for each Segment in which they operate, the amount whereof shall be the amount which a Clearing Member would have to contribute for all items pertaining to each Segment, including the contribution to the Default Fund. This Individual Fund must be provided by the Direct Clearing Client within 24 hours of the BME CLEARING requesting the posting thereof.

Failure to execute a new agreement with an Agent Member, failure to properly arrange the required mechanisms, failure to comply with any obligation relating to the Default Fund as well as the other causes of default laid down in these Rule Book, shall entail a cause of declaration of Default of the Direct Clearing Client, and BME CLEARING shall adopt the measures set out for the event of Default of a Clearing Member.

## **9. OTHER FORMALITIES/LEGAL ASPECTS**

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The Crisis Committee shall weigh up, depending on the specific circumstances of the default, whether, in addition to the disclosures referred to in section 6 above, it is necessary to take any other measure or disclosure of a legal nature.

## **10. OTHER**

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- 10.1. This protocol will be reviewed annually by the Internal Risk Committee. BME CLEARING will simulate the default procedure annually. The Risk Committee will advise the Board of Directors on default procedures.
- 10.2. Insofar as any circumstances not expressly contemplated in this protocol, the provisions laid down in Chapter 9 of BME CLEARING's Rule Book and its enacting regulations shall apply.

#### **Annex 4.6.1**

### **PROCEDURES APPLICABLE IN THE EVENT OF DEFAULT IN BME CLEARING'S IRS SEGMENT**

The General Conditions for the CCP IRS Segment, in accordance with Article 45.7 of the Rule Book, set out the following particular default rules, as detailed in the corresponding Circulars:

- a) Introduction of a Default Management Group (DMG) whose role is to advise and guide BME CLEARING in managing the default. The DMG will be composed of between three and five representatives. Representatives in the DMG may be appointed at the voluntary request of the clearing members or by objective designation, if the DMG cannot be created with the voluntary request of clearing members.
- b) Introduction of an Auction Procedure in order to sell the portfolio of a Defaulting Clearing Member. The main feature of this Auction Procedure are:
  - BME CLEARING with the assistance of the Default Management Group shall determine the composition of any Auction Portfolio and shall have the discretion to divide a Portfolio into two or more Auction Portfolios. Additionally BME CLEARING with the assistance of the DMG shall decide whether the auction will be held with the model of "One Winner per Auction Portfolio" or the model of "Several Winners per Auction Portfolio".
  - The Auction Portfolios will include any transaction done in order to hedge the risk arising from the default.
  - Non Defaulting Clearing Members (NDCM) are obliged to participate in the Auctions, although Clearing Members may delegate to another Clearing Member or subcontract the professional or technical services of experts to take their place in the auction. The consequences of a NDCM not participating in the auction is that its contributions to the Default Fund of the Segment will be used before the contributions of the other Clearing Members that do bid in the auctions, in the case the losses due to the default oblige to use the Default Fund (DF) contributions of the NDCM.
  - The use of the contributions to the Default Fund of the NDCM is subject to particular rules and to the following order:
    - 1° The contributions of the NDCM which do not bid.
    - 2° The contributions of the NDCM which bid but do not become Auction Winners.
    - 3° The contributions of the NDCM which bid and become Auction Winners.
- c) In order to ensure the best level of preparation in the event of a declaration of default of a Clearing Member, BME CLEARING may perform simulations of auctions. These simulations will be no less than 1 and no more than 3 yearly. Participation in the auction simulations is mandatory for all Clearing Members. Clearing Members may delegate to

another Clearing Member or subcontract the professional or technical services of experts to take their place in the fulfilment of their obligations in the aforementioned Simulations. Clearing Members that do not participate in a simulations must double their Default Fund Contribution in this Segment of the CCP.