

DRAFT LEGAL TEXT FOR PROPOSED MODIFICATION P385

SECTION H: GENERAL (V26.0)

3. DEFAULT

3.1 Events of Default

Amend paragraph 3.1.1 to read as follows:

3.1.1 For the purposes of this paragraph 3, there shall have occurred a "**Default**" in relation to a Party (the "**Defaulting Party**") in any of the following events or circumstances:

(a) where, in respect of the Defaulting Party's liability for amounts in respect of Trading Charges and in relation to any amount which has become due for payment by the Defaulting Party under the Code in respect thereof:

- (i) the Defaulting Party has not paid the amount in full on the due date for payment; and
- (ii) on or after the due date for payment BSCCo has given notice to the Defaulting Party requiring payment of such amount; and
- (iii) the Defaulting Party has not paid such amount in full by the third Business Day after the date of BSCCo's notice under paragraph (ii); or

(a)(A) where, in respect of the Defaulting Party's liability for amounts in respect of Trading Charges and in relation to any such amount which has become due for payment by the Defaulting Party under the Code in respect thereof:

- (i) the Defaulting Party has not paid the amount in full by 0900 hours on the Second Business Day after the Affected Date in accordance with Section N regardless of whether such sums have otherwise been recovered from Credit Cover pursuant to Section N;
- (ii) such amount exceeds the Advice Note Threshold Limit; and
- (iii) the circumstances referred to in paragraphs (a)(A)(i) and (a)(A)(ii) have occurred on three or more occasions over a 30 calendar day period or on such other number of occasions and over such period as may be determined by the Panel in accordance with paragraph 3.1A; or

(b) where, in respect of the Defaulting Party's liability for any sums under the Code other than Trading Charges and in relation to any amount which has become due for payment by the Defaulting Party under the Code in respect thereof:

- (i) the Defaulting Party has not paid the amount in full on the due date for payment; and
- (ii) on or after the due date for payment BSCCo has given notice to the Defaulting Party requiring payment of such amount; and
- (iii) the Defaulting Party:

(A) ~~has not paid such amount in full by the fifteenth fifth~~ Business Day after the date of BSCCo's notice under paragraph (ii) or by such other period as may be determined by the Panel in accordance with paragraph 3.1A; or

(B) has paid any amounts to which this paragraph (b) relates after the due date for payment but before the expiry of the notice period referred to in paragraph (b)(iii)(A) on three or more occasions during a period of 12 months or on such other number of occasions and over such period as may be determined by the Panel in accordance with paragraph 3.1A; or

(c) where:

(i) ~~in respect of any continuous period of 90 days or any intermittent period of 120 days out of 180,~~ a Trading Party is in Level 1 Credit Default for a period that meets or exceeds the relevant Credit Default Thresholds; or

(ii) ~~in respect of any continuous period of 60 days or any intermittent period of 75 days out of 120,~~ a Trading Party is in Level 2 Credit Default for a period that meets or exceeds the relevant Credit Default Thresholds; or

(iii) a Trading Party's Credit Cover Percentage, as determined by the ECVAA, is not equal to or lower than 90% by the end of the same numbered Settlement Period on the second to next occurring Working Day after the Settlement Period during which the Trading Party was in Level 2 Credit Default and had a Credit Cover Percentage exceeding 100%; or

(iv) a Trading Party is in Level 1 Credit Default or Level 2 Credit Default (an instance of "Relevant Credit Default") and such Relevant Credit Default is followed by a series of further Relevant Credit Defaults that collectively meet the Relevant Credit Default Series threshold determined in accordance with paragraph c(A)(ii) occurs in relation to a Trading Party.

(c)(A) For the purposes of:

(i) paragraphs 3.1.1(c)(i) and (ii) a "Credit Default Threshold" shall be a period of time determined by the Panel in accordance with paragraph 3.1A which, if met or exceeded by a Party in Level 1 Credit Default or Level 2 Credit Default, shall constitute a Default. A Credit Default Threshold may be comprised of continuous and/or intermittent time periods;

(ii) ~~this~~ paragraph 3.1.1(c)(iv) a "Relevant Credit Default Series" shall be a series of Relevant Credit Defaults that collectively meet or exceed the values determined by the Panel in accordance with paragraph 3.1A including with regard to the following:

(A) ~~an instance of a Trading Party being in Level 2 Credit Default and having a Credit Cover Percentage, as~~

determined by the ECVA, exceeding 100% (an instance of "**Relevant Credit Default**"); FOLLOWED BY

~~(B) five further instances of Relevant Credit Default each occurring on or later than the same numbered Settlement Period on the second to next occurring Working Day after the Settlement Period in which the Trading Party's previous instance of Relevant Credit Default in the Relevant Credit Default Series ended but which need not be consecutive; and~~

~~(C) where each of the five instances referred to in paragraph (B) occurs within six (6) calendar months of the instance of Relevant Credit Default referred to in paragraph (A)(A) the minimum number of Relevant Credit Defaults that must have occurred during the time period referred to in paragraph (B) in order to constitute a Relevant Credit Default Series;~~

~~(B) the time period during which the Relevant Credit Defaults referred to in paragraph A must have arisen in order to constitute a Relevant Credit Default Series; and~~

~~(C) any further parameters that the Panel considers appropriate and which it has determined in accordance with paragraph 3.1A; and~~

(d) where:

- (i) the Defaulting Party is in breach of any material provision of the Code (other than a provision which is the subject of paragraphs (a), (b) or (c) above); and
- (ii) the breach is capable of remedy by the Defaulting Party; and
- (iii) BSCCo has given notice (making reference to this paragraph 3) of such breach to the Defaulting Party; and
- (iv) within 14 days (or such longer period as the Panel may approve) after BSCCo's notice under paragraph (iii), the Defaulting Party does not either:
 - (1) remedy the breach in all material respects, where the breach is capable of remedy within such period; or
 - (2) where the breach is not so capable of remedy, provide to BSCCo a programme (setting out the steps to be taken by the Defaulting Party and the timetable for taking such steps, in each case to be approved by BSCCo) for the remedy as soon as reasonably practicable of the breach; and
- (v) in the case in paragraph 3.1.1(d)(iv)(2), the Defaulting Party does not remedy the breach in all material respects with all reasonable diligence and so far as reasonably practicable in accordance with the

programme provided under that paragraph (or such revised programme as the Panel may approve); or

(e) where:

- (i) the Defaulting Party is in breach of any material provision of the Code (other than a provision which is the subject of paragraphs (a), (b) or (c) above); and
- (ii) the breach is not capable of remedy; and
- (iii) BSCCo has given notice (making reference to this paragraph 3) of the breach to the Defaulting Party; and
- (iv) at any time within the period of 12 months following BSCCo's notice under paragraph (iii), there occurs a further breach by the Defaulting Party of the same provision or any other material provision (excluding a provision which is the subject of paragraphs (a), (b) or (c) above) of the Code; or

(f) where:

- (i) the Defaulting Party is in persistent breach of any provision of the Code (other than a provision which is the subject of paragraphs (a), (b) or (c) above) during a period of 6 months; and
- (ii) after such 6-month period has elapsed, BSCCo has given notice (making reference to this paragraph 3) of the persistent breach to the Defaulting Party; and
- (iii) the Defaulting Party persists in breaching such provision of the Code for a further period in excess of 3 months; or

(g) where:

- (i) the Defaulting Party suspends payment of its debts or admits its inability to pay its debts as they fall due;
- (ii) the Defaulting Party is unable to pay its debts (within the meaning of Section 123(1) or (2) of the Insolvency Act 1986, but subject to paragraph 3.1.2), or any voluntary arrangement is proposed in relation to it or it enters into any composition or scheme of arrangement (other than for the purpose of a bona fide solvent reconstruction or amalgamation); or
- (iii) the Defaulting Party has a receiver of the whole or any material part of its assets or undertaking appointed; or
- (iv) the Defaulting Party has an administrator appointed or a winding-up order made in relation to it; or
- (v) the Defaulting Party passes any resolution for winding-up (other than for the purpose of a bona fide solvent reconstruction or amalgamation); or
- (vi) a petition is presented or legal proceedings are commenced for making an administration order in relation to, or for the winding up

or dissolution of, the Defaulting Party (other than a petition which is vexatious or frivolous and is, in any event, discharged within 21 days of presentation and before it is advertised); or

(vii) the Defaulting Party ceases carrying on all of its business and/or publically announces that it has ceased carrying on all of its business;

or any analogous events occur in respect of the Defaulting Party in any other jurisdiction;

in any such case for whatever reason and whether or not within the control of the Defaulting Party.

Insert new paragraph 3.1A to read as follows:

3.1A Default Values or Parameters Established by the Panel

3.1A.1 Where, for the purposes of paragraph 3.1.1, the Panel is required to determine any values or parameters, the Panel shall:

- (a) subject to paragraph (c), establish the initial values or parameters to be applied to paragraph 3.1.1;
- (b) review such values or parameters from time to time and in any event within 1 year after the Relevant Implementation Date of Modification P385, and, subject to paragraph (c), determine:
 - (i) any revisions to such values or parameters; and
 - (ii) the effective date(s) for implementing the revised values or parameters;
- (c) in establishing the initial values or parameters under paragraph (a), or revising such values or parameters and determining an implementation approach in each case under paragraph (b), consult with Parties and take due regard of any representations made and not withdrawn during such consultation,

and for the purposes of paragraph (a), a consultation undertaken prior to the Relevant Implementation Date of Modification P385, including a consultation undertaken pursuant to Section F2 that seeks representations from Parties on the initial values or parameters to be applied to paragraph 3.1.1, shall constitute a consultation for the purposes of paragraph (a).

3.1A.2 BSCCo shall ensure that the values and parameters determined by the Panel pursuant to this paragraph 3.1A are at all times published on the BSC Website.