

## SECTION N: CLEARING, INVOICING & PAYMENT

### 4. BANKING ARRANGEMENTS

#### 4.6 Reserve Account

4.6.3 The FAA on behalf of the BSC Clearer shall pay or repay the following amounts at the times indicated from the Reserve Account to each Payment Party:

(a) (subject to paragraph 4.6.6) quarterly the amount of interest referred to in paragraph 4.6.4;

(b) an amount requested in accordance with Section M2.3; and

(a) ~~(b)~~ if that Payment Party is a Discontinuing Party (as defined in Section A), on the Discontinuance Date the cash paid by or on behalf of that Discontinuing Party credited to the Reserve Account and not subsequently withdrawn or repaid in accordance with this Section N.

### 8. PAYMENT PROCEDURE

#### 8.1 Instructions for payment

8.1.1 Each BSC Debtor shall, in respect of each Payment Date on which it is under an obligation to make a payment under this Section N, make such arrangements as will ensure that the payment is credited to the relevant Collection Account ~~by 12.00~~ as soon as practicable and in any event no later than [16.00] hours on that Payment Date.

8.1.2 Each BSC Debtor shall ensure all remittances by its bank to the relevant Collection Account shall be remittances for value on the relevant Payment Date.

#### 8.2 FAA's responsibilities

8.2.1 As soon as practicable and in any event not later than ~~13.00~~ [16.00] hours on each Payment Date the FAA shall find out whether all amounts required to be credited to each Collection Account on such Payment Date have been so credited.

8.2.2 As soon as practicable and in any event not later than ~~13.30~~ [16.00] hours on each Payment Date the FAA shall take such action as is required to ensure that all amounts credited to each Collection Account on such Payment Date in accordance with paragraph 8.1 have been remitted to the Clearing Account.

8.2.3 As soon as practicable and in any event not later than ~~14.30~~ [16.00] hours on each Payment Date the FAA shall reconcile the actual amounts credited to each Collection Account and remitted to the Clearing Account on or before ~~13.30~~ [16.00] hours on that Payment Date and the aggregate of such amounts.

#### 8.3 Non-payment

8.3.1 If any BSC Debtor becomes aware that a payment for which it is responsible will not be credited to the relevant Collection Account by ~~12~~ [16:00] hours on the relevant Payment Date, it will immediately notify the FAA of the non-payment and the reasons therefor.

8.3.2 The FAA shall, as soon as it becomes aware that a payment has not or will not be credited to the relevant Collection Account or remitted to the Clearing Account, use its reasonable endeavours to establish the reason.

## 8.4 Excess payments

- 8.4.1 If by ~~12.30~~[15.00] hours on any Payment Date the FAA is advised by a Collection Bank that it has received from a BSC Debtor a payment in excess of the amount notified to that BSC Debtor pursuant to paragraph 7.1 in respect of that Payment Date, or if the BSC Banker notifies the FAA by ~~13.30~~[15.00] hours that amounts greater than the amounts notified to the BSC Banker pursuant to paragraph 7.1.3(b) have been credited to the Clearing Account, the FAA shall use its reasonable endeavours to ascertain the nature of the excess payment, to calculate the entitlement to such payment and to instruct the BSC Banker by ~~14.30~~[16.00] hours that day to credit the relevant BSC Debtor's Settlement Account or (if so requested by the BSC Debtor) the Reserve Account or such other account authorised by BSCCo.
- 8.4.2 Any Payment Party who instructs its bank to make a payment in excess of the amount owing by that Payment Party on any Payment Date shall simultaneously with giving such instructions advise the FAA in writing of the amount of the excess payment providing a description of what that Payment Party considers the excess payment relates to.

## 8.5 Payment to BSC Creditors

- 8.5.1 ~~The FAA shall, prior to 1430~~At about [15.00] hours on each Payment Date ~~the FAA shall:~~
- (a) estimate the aggregate amounts which will be credited to Collection Accounts in accordance with paragraph 8.1;
  - (b) subject to paragraph 8.5.4, on the basis of such estimate, calculate the amounts available for payment by the BSC Clearer to BSC Creditors, taking account of paragraph ~~2.7,2.7~~and anticipating the steps (where relevant) in paragraph 9.2, on that Payment Date—;
  - (c) for the purposes of paragraph 8.5.4, determine, by reference only to the amounts which have by that time on the Payment Date already been credited to Collection Accounts:
    - (i) the amount (if any) which would be required to be drawn on the Credit Facility in order to enable full payment to be made of the amounts due to BSC Creditors;
    - (i) whether, and if so the amount ("possible shortfall amount") by which, the amount in paragraph (i) exceeds the amount then remaining available for drawing on the Credit Facility;
- after allowing for any amounts which the FAA is satisfied will be paid into the Clearing Account on the Payment Date pursuant to paragraphs 9.2.2(b) and (c).
- 8.5.2 ~~As~~Subject to paragraph 8.5.4, as soon as practicable and not later than ~~1430 hours~~[15.00] on ~~that day~~the Payment Date the FAA shall arrange for the remittance from the Clearing Account to the relevant Settlement Accounts maintained by the BSC Creditors of the aggregate of amounts determined by the FAA to be available for payment to BSC Creditors and, if required, arrange for the transfer of amounts from the Reserve Account or ~~the~~ (subject to paragraph 8.5.3) the Borrowing Account to the Clearing Account to the Clearing Account or vice versa.
- 8.5.3 Subject to paragraph 8.5.4, any differences between the amount of the FAA's estimate under paragraph 8.5.1(a) and the aggregate amount actually credited to Collection Accounts in accordance with paragraph 8.1 on the Payment Date shall be addressed by way of adjustment (later on the Payment Date) to the amount of any drawing on the Credit Facility, and the FAA shall arrange for such adjustment to be made in respect of the transfer of any amount from the Borrowing Account to the Clearing Account or vice versa.

8.5.4 If the FAA determines that there is a possible shortfall amount, the FAA shall calculate the amounts under paragraph 8.5.1(b) assuming the reduction of payments (by the BSC Clearer to BSC Creditors) under paragraph 9.2(d) by an aggregate amount equal to the possible shortfall amount, and arrange remittances under paragraph 8.2 accordingly.

## **8.6 Prohibition on transfers**

8.6.1 The FAA shall not at any time instruct the BSC Banker to transfer any sum from a BSC Account to another account (not being a BSC Account) unless that account is a Settlement Account or (in the case of erroneous payments to the BSC Clearer) with the authority of BSCCo and the relevant Payment Party concerned.

## **8.7 Clearing of Clearing Account**

8.7.1 Any amounts standing to the credit of the Clearing Account at the close of business on any Payment Date shall be transferred to the Reserve Account so that the balance in the Clearing Account shall at the end of such day be nil.

## **9. PAYMENT DEFAULT**

### **9.1 General**

9.1.1 For the purposes of this paragraph 9:

- (a) an "**Amount in Default**" is all or any part of any amount due and payable from a BSC Debtor to the BSC Clearer which is not remitted to the relevant Collection Account by ~~13.30~~16.00 hours on the relevant Payment Date and, at any time thereafter, together with interest payable by that Non-paying BSC Debtor pursuant to paragraph 9.4 and less any amounts paid or recovered (as defined in paragraph 9.3.1) in respect thereof at that time;
- (b) a "**Drawing**" is a drawing on the Credit Facility by the FAA on behalf of the BSC Clearer and includes interest and banking charges charged to the BSC Clearer by the BSC Banker from time to time; and
- (c) the "**Default Interest Rate**", in relation to an Amount in Default, is the Base Rate at the Affected Date plus 2 per cent per annum.

### **9.2 Affected Date**

9.2.1 Paragraph 9.2.2 shall apply if, on any Payment Date (such date, in respect of the Settlement Day to which it relates, the "**Affected Date**"), the FAA has been notified by a Settlement Bank or it otherwise has reason to believe there will be an Amount in Default in respect of any BSC Debtor (the "**Non-paying BSC Debtor**").

9.2.2 Where this paragraph 9.2.2 applies, the FAA shall, on behalf of the BSC Clearer, act in accordance with the following provisions (or whichever of them shall apply) in the order in which they appear, until the FAA is satisfied that the Clearing Account will clear to zero not later than the close of business on the Affected Date:

- (a) subject to paragraph 9.2.5, if a Credit Facility is available to the BSC Clearer, the FAA shall make a Drawing by debiting the Borrowing Account and crediting the Clearing Account with a sum being the lesser of the Amount in Default and the amount available for drawing under the Credit Facility;

- (b) if the FAA is satisfied that any Cash Cover provided by the Non-paying BSC Debtor will be paid into the Clearing Account in sufficient time to ensure that that Cash Cover can be applied to the Amount in Default by close of business on the Affected Date, the FAA shall debit the Reserve Account and credit the Clearing Account with a sum being the lesser of the Amount in Default (to the extent that it will not be covered by the amount borrowed by application of paragraph (a)) and that Cash Cover;
- (c) if the FAA is satisfied that the proceeds of a call under the Letter(s) of Credit supplied by the Non-paying BSC Debtor will be paid into the Clearing Account in sufficient time to ensure that those proceeds can be applied to the Amount in Default by close of business on the Affected Date, the FAA shall make a call under the Letter of Credit(s) in a sum not exceeding the lesser of the Amount in Default (to the extent it will not be covered by the application of paragraph (a) or recovered by the application of paragraph (b)) and the available amount of such Letter(s) of Credit and the FAA shall cause the proceeds of such call to be paid into the Clearing Account; and
- (d) if and to the extent that, notwithstanding application of the foregoing measures, it is not possible to credit an amount in cleared funds equal to the Amount in Default to the Clearing Account by close of business on the Affected Date, the FAA shall:
  - (i) on behalf of the BSC Clearer, reduce payments by the BSC Clearer to all BSC Creditors in proportion to the amounts payable to them by the BSC Clearer on and in respect of the Affected Date by an aggregate amount equal to the amount necessary to cover the Amount in Default (to the extent it will not be covered by the application of paragraph (a) or recovered by the application of paragraphs (b) or (c)); and
  - (ii) (subject to paragraph 2.7) account for such reduction in the Ledger Accounts as amounts due and owing by the BSC Clearer to each BSC Creditor (a **'Shortfall Creditor'**) whose payments were so reduced; and
- (e) notify BSCCo and (in the case of action under paragraph (b) or (c)) the Non-paying BSC Debtor ~~and BSCCo by close of business~~ as soon as reasonably practicable on the Affected Date of the action taken.

9.2.3 For the purposes of this paragraph 9, the amount of the reduction pursuant to paragraph 9.2.2(d) plus interest at the Default Rate from time to time in respect of each Shortfall Creditor is a **"Shortfall Amount"**.

9.2.4 It is acknowledged for the avoidance of doubt that the FAA may (for the purposes of paragraph 9.2.1) have reason to believe, before a given Payment Date, that there will on that Payment Date be an Amount in Default in respect of a BSC Debtor; and in such case the FAA may take steps before such date to implement paragraph 9.2.2(b) or (c) on that date.

9.2.5 Where there is an Amount in Default on a Payment Date in respect of a BSC Debtor which is a Defaulting Party, paragraph 9.2.2(a) or 9.5.2(a) (as the case may be) shall not apply and the FAA shall proceed directly to the subsequent provisions (or whichever of them shall apply) of paragraph 9.2.2 or 9.5.2 (as the case may be).

### 9.3 Amount in Default

9.3.1 For the purposes of this Section N, an Amount in Default shall be **'paid or recovered'** on any Business Day, only if, and to the extent that:

- (a) an amount has been paid to the BSC Clearer by ~~4330~~16.00 on that Business Day and applied by the FAA on behalf of the BSC Clearer to that Amount in Default; or
- (b) [etc]

## 9.5 D+1

9.5.1 Paragraphs 9.5.2 to 9.5.4 (inclusive) shall apply if:

- (a) the FAA on behalf of the BSC Clearer reduced payments to BSC Creditors in accordance with paragraph 9.2.2 (d); and
- (b) the Amount in Default is not paid in full by the Non-paying Debtor and/or recovered by operation of set-off pursuant to paragraph 2.6 by the Business Day after the Affected Date ("**D+1**").

9.5.2 Where this paragraph 9.5.2 applies, the FAA shall, on behalf of the BSC Clearer, not later than the close of business on D+1 act in accordance with the following provisions (or whichever of them shall apply) in the order in which they appear:

(a) subject to paragraph 9.2.5, if a Credit Facility is available to the BSC Clearer (and since the Affected Date any amount has become available for drawing on such facility), make a Drawing by debiting the Borrowing Account with a sum being the lesser of the Amount in Default (including interest at the Default Rate) and the amount available for drawing under the Credit Facility and credit the Settlement Accounts (and the ledger accounts) of the Shortfall Creditors with that sum, in proportion to their respective Shortfall Amounts;

~~(a)~~ debit the Reserve Account with a sum being the lesser of the Amount in Default (including interest at the Default Rate) and that Non-paying BSC Debtor's Cash Cover and credit the Settlement Accounts (and the ledger accounts) of the Shortfall Creditors with that sum, in proportion to their respective Shortfall Amounts; and

~~(b)~~ if, after the application of ~~paragraph~~paragraphs ~~(a) and (b)~~, there remains any Shortfall Amounts:

- (i) make a call under the Non-paying BSC Debtor's Letter of Credit in a sum not exceeding the lesser of the Amount in Default (including interest due pursuant to paragraph 9.4) and the available amount of such Letter(s) of Credit; and
- (ii) cause the proceeds of such call to be paid forthwith into the Reserve Account.

9.5.3 On the next Business Day following receipt of such proceeds under a Letter of Credit in accordance with paragraph 9.5.2 (b), the FAA shall pay on behalf of the BSC Clearer such amounts as have been credited to the Reserve Account to the Shortfall Creditors in full or (as the case may be) in proportion to their respective Shortfall Amounts.

9.5.4 Where ~~this paragraph~~paragraphs 9.5.2 to 9.5.4 apply, ~~the~~ FAA shall promptly notify Shortfall Creditors and BSCCo and (where it takes action under paragraph 9.5.2(b) or (c)) the Non-paying BSC Debtor.

