

## **CHAPTER 4**

### **SEOCH PARTICIPANTS' OBLIGATIONS**

#### **Compliance with the Clearing Rules**

401. Each SEOCH Participant shall at all times:-

- (1) adhere strictly to, and be bound by, these Clearing Rules, the Operational Clearing Procedures and any conditions set out in the notice of approval of its SEOCH Participantship; and
- (2) comply with the decisions, directions, directives, determinations, findings of fact and/or interpretation of the Board, the SEOCH Board and/or any other person or body of persons in the exercise or performance of any right, power, privilege, discretion, function, duty or obligation conferred on them by or pursuant to these Clearing Rules, the Operational Clearing Procedures and, to the extent applicable, the Exchange Rules and the HKSCC Rules.

#### **Continuing Obligations**

402. Each SEOCH Participant shall at all times, unless it is a GCP which is a Registered Institution, comply with the Financial Resources Rules and each SEOCH Participant shall comply at all times with the applicable financial resources requirements prescribed under Clearing Rule 403(9), 403(9)(A) or 403A.

- 402A. (1) It is the duty of every SEOCH Participant to ensure that any systems it uses for the purposes of conducting its Exchange Traded Options Business, including accounting system and back-office clearing and settlement systems, shall be Year 2000 Compliant.
- (2) SEOCH Participant shall immediately report any failure, error or defect in his or its systems which is directly or indirectly caused by its systems not being Year 2000 Compliant and rectify such failure, error or defect. All losses, damages, demands, costs (including legal costs) and expenses arising out of directly or indirectly as a result of or in connection with any failure, error or defect shall be borne by the SEOCH Participant concerned.
  - (3) SEOCH, HKFE and a recognized exchange controller which is the controller of SEOCH shall have no liability for any losses, damages, demands, costs (including legal costs) and expenses suffered or incurred directly or indirectly as a result of or in connection with the Options System or any system upon which the Exchange, SEOCH, HKFE or a recognized exchange controller which is the controller of SEOCH is/are reliant in the operations of the Options System is not Year 2000 Compliant.

403. Each SEOCH Participant shall at all times:-

- (1) unless it is a GCP which is a Registered Institution, be in good standing as an Exchange Participant and be in compliance with the Exchange Rules;
- (2) unless it is a GCP which is a Registered Institution, be in good standing as an Options Trading Exchange Participant and be in compliance with the Options Trading Rules;
- (2A) if it is a GCP which is a Registered Institution, be in good standing as a Registered Institution, and demonstrate to the satisfaction of SEOCH its ability to manage the portfolio of a defaulting NCP for which it clears;

- (3)
  - (a) be in good standing as a CCASS Clearing Participant and be in compliance with the HKSCC Rules; or
  - (b) have a valid, binding and effective CCASS Clearing Agreement with a CCASS GCP if it intends to settle its delivery obligations through a CCASS GCP.
- (4) [Repealed]
- (5) pay when due all amounts of margin, Premium, payable by him to SEOCH and amounts required by HKSCC including but not limited to Gainer MTM Flow Adjustment in the Loss Distribution Process, Termination Value Payable in the contract termination process, Limited Recourse Interim CP Payable or Limited Recourse Final CP Payable upon a Clearing Service Termination Event and SEOCH Default Interim CP Payable or SEOCH Default Final CP Payable pursuant to Section 20.1 of the Operational Clearing Procedures and the amounts in relation to the settlement under the CNS system of his delivery obligations arising from exercise of OCH Contracts;
- (6) meet all its delivery obligations when due;
- (7) deliver all SEOCH Collateral in respect of its Reserve Fund Contributions and Assessments when due;
- (8) pay all levies, duties, charges and fees payable from time to time by it in its capacity as a SEOCH Participant when due;
- (9) unless it is a GCP which is a Registered Institution and notwithstanding Clearing Rule 402, maintain liquid capital of no less than:-
  - (a) its required liquid capital under the Financial Resources Rules; or
  - (b) the following amount, as appropriate:-
    - (i) HK\$100,000,000 for a GCP provided that if it has entered into valid clearing agreements with no more than five NCPs, an additional HK\$20,000,000 for each NCP after the fifth NCP with which it has entered into a valid clearing agreement, subject to a maximum of HK\$390,000,000;
    - (ii) HK\$5,000,000 if a Direct Clearing Participant,
 whichever is the greater;
- (9A) if it is a GCP which is a Registered Institution, maintain Tier 1 capital of not less than HK\$390,000,000;
- (10) have two bank accounts for Hong Kong dollars and each applicable non-Hong Kong dollar Settlement Currency with a Designated Bank or a Settlement Bank, as the case may be, and maintain in force a mandate in favour of SEOCH in such form as may be prescribed by SEOCH in relation to each bank account pursuant to which SEOCH may debit or credit such bank account and if a SEOCH Participant does not open bank accounts in the Settlement Currency of a Contract (and Hong Kong dollars if the Settlement Currency is not Hong Kong dollars) and provide mandates to the bank as aforesaid, it will not be allowed to record, register and clear that Contract;

- (11) have, to the satisfaction of SEOCH, adequate personnel, back office systems and unless exempted by SEOCH (which exemption may be granted on such conditions as SEOCH considers appropriate), have installed such computer hardware and software for gaining access to DCASS and CCMS as may be specified by SEOCH for its category of SEOCH Participants and its Exchange Traded Options Business and ensure that such hardware and software are maintained in accordance with the requirements as prescribed by SEOCH from time to time.
  - (12) comply with any procedures or enter into any documentation from time to time prescribed by the SEOCH Board and which relate to the business of SEOCH;
  - (13) keep all books, records or documents relating to each Contract registered in its name for the term of such Contract and for at least seven years following the termination of each such Contract, and of its Exchange Traded Options Business and make such regular financial and other returns as may from time to time be required by the Commission;
  - (14) be able to demonstrate, to the satisfaction of SEOCH, the ability to comply with the above at all times;
  - (15) maintain in force a mandate in such form as may be prescribed by SEOCH authorising SEOCH:
    - (a) to transfer SEOCH Collateral provided by the SEOCH Participant to HKSCC (as required by HKSCC) in relation to the settlement of the delivery obligations of the SEOCH Participant or the CCASS GCP, where applicable, under the CNS System; and
    - (b) to pay Settlement Amount in relation to stock delivery obligations settled by securities collateral already provided to SEOCH to the cash account of the SEOCH Participant or the CCASS GCP, where applicable, maintained with HKSCC;
  - (16) comply with any law, decree, rule, regulation, or order of any government, regulatory authority, competent authority, court or tribunal anywhere in the world, applicable to it or to its status, the conduct of its business and the performance of its obligations as a SEOCH Participant, including, for the avoidance of doubt, all applicable laws, decrees, rules, regulations, and orders of any government, regulatory authority, competent authority, court, or tribunal relating to the prevention of bribery, money laundering, tax evasion, financial crimes and terrorist financing; and
  - (17) notify SEOCH of any change in the details supplied to SEOCH at the time of admission and thereafter, including but not limited to anything relating to such SEOCH Participant, its directors or employees which would render inaccurate, incomplete or superseded a statement or information previously furnished by such SEOCH Participant to SEOCH in connection with either (a) such SEOCH Participant's application for admission to be a SEOCH Participant or (b) the status of such SEOCH Participant under the Tax Information Exchange Framework, the documentation previously furnished by such SEOCH Participant on such status or the meeting by SEOCH under Rule 403E of any obligations relating to the Tax Information Exchange Framework.
- 403A. Notwithstanding the Financial Resources Rules and Clearing Rules 403(9) and 403(9)(A), SEOCH may increase the requirements thereunder in respect of any SEOCH Participant to suit the circumstances of a particular case or of SEOCH

Participants generally, if it deems that circumstances so justify. Such increased requirements may be subsequently varied by SEOCH as various circumstances may exist which require SEOCH to make ad hoc decisions. However, every SEOCH Participant, unless it is a GCP which is a Registered Institution, must still comply with the Financial Resources Rules.

- 403B. SEOCH shall ensure that changes in the prevailing minimum financial resources requirements determined pursuant to Clearing Rule 403A are promptly notified to all relevant SEOCH Participants in such manner as SEOCH may specify.
- 403C. SEOCH shall ensure that the Commission is notified of all prevailing minimum financial resources requirements as determined by SEOCH pursuant to Clearing Rule 403A and shall notify the Commission immediately of any changes in the minimum financial resources requirements prevailing from time to time.
- 403D. In respect of any SEOCH Participant, other than a GCP which is a Registered Institution, if any discrepancy exists between the level of liquid capital or other financial resources requirements as set forth or determined by SEOCH pursuant to these Clearing Rules and that set forth in the Financial Resources Rules, the level which is higher or more stringent shall prevail.
- 403E. Each SEOCH Participant shall provide SEOCH with sufficient information so as to enable SEOCH to determine whether any payments to be made by SEOCH under these Rules are withholdable payments pursuant to the Tax Information Exchange Framework and to enable SEOCH to meet any applicable obligations relating to the Tax Information Exchange Framework.
- 403F. Each SEOCH Participant shall provide to SEOCH:
- (1) as soon as reasonably practicable subsequent to any reorganisation of its corporate group, an updated group organisation chart;
  - (2) on an annual basis, a list of each of its direct and indirect shareholders holding 10% or more interest in the share capital or voting rights of the SEOCH Participant;
  - (3) as soon as reasonably practicable following a change (direct or indirect) affecting 10% or more in the share capital or voting rights of the SEOCH Participant (including any change in the interest of an existing shareholder who holds an interest (direct or indirect) of 10% or more in the share capital or voting rights of the SEOCH Participant and any new shareholder acquiring an interest (direct or indirect) of 10% or more in the share capital or voting rights of the SEOCH Participant), the relevant information setting out such change; and
  - (4) within the time frame specified by SEOCH, such information as SEOCH may request from time to time, including changes to its financial condition.
- 403G. Each GCP which is a Registered Institution shall notify SEOCH in writing without delay providing full particulars known to it of:
- (1) any failure to maintain Tier 1 capital in an amount not less than that set out in Clearing Rule 403(9)(A);
  - (2) a decrease in Tier 1 capital by more than 10% from the amount of Tier 1 capital shown on its most recent financial information as provided to SEOCH pursuant to Clearing Rule 403H;

- (3) any events or matters which relate to its clearing activities and exposure to general and financial risks as from time to time specified in the Clearing Rules or as SEOCH may from time to time specify or notify to the GCP;
- (4) any material breach, infringement of or non-compliance with any provisions of the Clearing Rules, or where it has reason to suspect any such breach, infringement or non-compliance whether by itself, or any other persons acting on its behalf; and
- (5) within the time frame specified by SEOCH, submit to SEOCH such statements, books, records, accounts, other documents or information which relate to its clearing activities or its exposure to general and financial risks as SEOCH may reasonably demand, and shall promptly respond to all queries from SEOCH.

403H. Each GCP which is a Registered Institution must provide the following information to SEOCH:

- (1) audited financial statements and audited consolidated financial statements, including balance sheet and profit and loss accounts, with the auditor's report drawn up in accordance with applicable law and accounting standards within 120 days of the end of the GCP's fiscal year;
- (2) quarterly balance sheet and profit and loss statements that are signed by authorized signatory or signatories of such GCP, drawn up in accordance with applicable law and accounting standards, within 30 days of its quarter-end date, together with evidence of signing authority and specimen signatures. Save and except for any changes made to a GCP's list of authorized signatory(ies), a GCP is only required to provide evidence of signing authority and specimen signatures for the first time its quarterly balance sheet and profit and loss statements are delivered to SEOCH;
- (3) copies of all financial returns made by a GCP to its regulator as soon as reasonably practicable following such returns having been submitted to the relevant regulator; and
- (4) such financial or other relevant information which relates to the GCP's clearing activities or its exposure to general and financial risks, in addition to what is required by this Clearing Rule 403H, as may be requested by SEOCH at its reasonable discretion from time to time.

- 404.
- (1) Every SEOCH Participant must set Prescribed Risk Controls for itself (as Options Trading Exchange Participant) and every GCP must set Prescribed Risk Controls for each Options Trading Exchange Participant for whom it clears, including its or such Options Trading Exchange Participant's Authorized Persons and any other person who is allowed to trade through HKATS via its or such Options Trading Exchange Participant's connection or any connection granted by the Exchange through it or such Options Trading Exchange Participant.
  - (2) Every SEOCH Participant must provide SEOCH with such information as it may request from time to time to enable SEOCH to assess whether the Prescribed Risk Controls set by the SEOCH Participant are reasonable.
  - (3) Every SEOCH Participant must notify SEOCH forthwith upon the execution by any of its Authorized Persons of an order blocking or cancellation function using the HKATS Risk Functions or any other function as prescribed by SEOCH from time to time.

- (4) Every SEOCH Participant is responsible for the Prescribed Risk Controls set by it. SEOCH, the Exchange and a recognized exchange controller of SEOCH shall in no case be liable for the sufficiency or effectiveness of the Prescribed Risk Controls set by a SEOCH Participant or any failure or unavailability of, or error or defect in the HKATS Risk Functions, the SEOCH Participant's connection to HKATS or any Prescribed Risk Controls-related reports, warnings or notifications that may be provided to the SEOCH Participant by SEOCH.
- (5) Every SEOCH Participant agrees to use the HKATS Risk Functions for the purpose of establishing, monitoring and implementing Prescribed Risk Controls only and not for any other purpose. Every SEOCH Participant shall ensure that only its Authorized Person shall gain access to HKATS through the HKATS Risk Functions.

### **Reserve Fund Purpose**

404A. The purpose of the Reserve Fund is to provide resources to support the obligations of SEOCH as counterparty under OCH Contracts and shall only be used in accordance with these Clearing Rules.

### **Reserve Fund Threshold**

404B. For the purpose of calculating the Reserve Fund size under 11.2.2 of the Operational Clearing Procedures, SEOCH may, from time to time in its absolute discretion, prescribe an amount which is projected to be the maximum required size for the time being of the Reserve Fund, known as the Reserve Fund Threshold, taking into account such relevant factors as it shall consider appropriate, including any historical data and prevailing market conditions.

### **Reserve Fund Requirements**

405. In addition to the amount of Initial Contribution required pursuant to Clearing Rule 310, each GCP shall deliver SEOCH Collateral in respect of an Initial Contribution of HK\$1,500,000 (or such other amount as the SEOCH Board may from time to time prescribe) for every subsequent Clearing Agreement entered into by that GCP where the GCP already has three valid Clearing Agreements in place. A GCP shall not clear any OCH Contracts pursuant to such a Clearing Agreement until that contribution has been paid.
406. Each SEOCH Participant must at all times maintain a level of Reserve Fund Contributions which SEOCH in its absolute discretion determines to be appropriate having regard (without limitation) to the Reserve Fund size which is needed given aggregate open positions and estimated market volatility, any minimum Reserve Fund size needed regardless of those positions and that volatility and the Reserve Fund Threshold. The amount for the time being calculated by SEOCH and required to be contributed to the Reserve Fund by each SEOCH Participant in order to maintain the Reserve Fund at the size so determined to be appropriate is referred to in these Clearing Rules as the "Reserve Fund Requirement" of a SEOCH Participant.
407. When, in its judgement, it is necessary to do so, SEOCH will re-calculate the Reserve Fund Requirement of each SEOCH Participant. SEOCH will make such recalculations at least monthly, subject to Clearing Rule 413F. SEOCH may re-calculate the Reserve Fund Requirement of one or more SEOCH Participants more frequently than this. Following each such re-calculation, each affected SEOCH Participant will be notified of his re-calculated Reserve Fund Requirement.
408. If for any reason (including due to a recalculation pursuant to Clearing Rule 407 or a replenishment of the Reserve Fund pursuant to Clearing Rule 413F) the value, as

determined by SEOCH, of the SEOCH Collateral provided by a SEOCH Participant in respect of its Reserve Fund Contributions is less than the then current Reserve Fund Requirement of that SEOCH Participant, that SEOCH Participant shall deliver additional SEOCH Collateral to SEOCH in accordance with these Clearing Rules.

409. Each SEOCH Participant shall deliver additional SEOCH Collateral in respect of its Reserve Fund Requirement as notified to it by SEOCH and by the time specified in the notification from SEOCH and in accordance with the Operational Clearing Procedures.
410. If the value of the SEOCH Collateral provided by a SEOCH Participant in respect of its Reserve Fund Contributions exceeds that SEOCH Participant's then current Reserve Fund Requirement, that SEOCH Participant may request SEOCH to redeliver to it such excess. SEOCH will redeliver SEOCH Collateral in such form and amount as it determines in accordance with the Operational Clearing Procedures. SEOCH may withhold or deduct from the SEOCH Collateral to be redelivered to a SEOCH Participant such sum SEOCH regards as appropriate in relation to any obligation the SEOCH Participant owes to SEOCH or if the SEOCH Participant is not in compliance with these Clearing Rules.

#### **Maximum Current Liability to Contribute to the Reserve Fund and Provide Assessments**

411. There shall be no limit on the Reserve Fund Requirement to be maintained by a SEOCH Participant at any given time. A SEOCH Participant's liability in respect of Assessments and a resigning SEOCH Participant's liability in respect of the Reserve Fund are set out in Clearing Rules 413CA and 419 to 426 (inclusive).

#### **Resources which may be appropriated by SEOCH as contributions to Reserve Fund**

- 411A. In the event that payments out of the Reserve Fund under Clearing Rule 413(2a) are required, SEOCH will appropriate its resources as contributions to the Reserve Fund. The appropriation should amount to 10% or such other percentage of the Reserve Fund size as SEOCH may determine from time to time.

#### **SEOCH Use and Order of Application of the Reserve Fund**

412. Except as provided in Clearing Rule 413B, amounts standing to the credit of the Reserve Fund may be applied in respect of SEOCH's liabilities which arise by virtue of its being counterparty to every OCH Contract cleared by it including, but not limited to, the costs and expenses involved in making recoveries against Defaulters to those OCH Contracts. If, in the opinion of SEOCH, the resources of the Reserve Fund are at any time liable to be fully depleted or are at any time at a level which is unlikely to satisfy all such liabilities, the resources of the Reserve Fund shall be applied to all such liabilities on a pro rata basis or in such other manner as SEOCH may consider fair and appropriate.
413. Without prejudice to SEOCH's rights to draw on any other resources available to the Reserve Fund including those stated in Clearing Rule 205 (4), (5) or (6), the amounts standing to the credit of the Reserve Fund will be applied towards any payment permitted by Clearing Rule 412 in the following order of priority:-
- (1) SEOCH Collateral held by SEOCH in respect of the Reserve Fund Contributions of the Defaulter(s) (if applicable);
  - (2) interest income credited to the Reserve Fund;
  - (2a) resources appropriated by SEOCH as contributions to the Reserve Fund;

- (3) SEOCH Collateral held by SEOCH in respect of other SEOCH Participants' Initial Contributions;
- (4) SEOCH Collateral held by SEOCH in respect of other SEOCH Participants' Variable Contributions;
- (5) the proceeds of insurance policies arranged pursuant to Clearing Rule 205; and
- (6) the proceeds of guarantees or facilities arranged pursuant to Clearing Rule 205.

SEOCH will notify the affected SEOCH Participants of any amounts applied pursuant to this Clearing Rule and, where applicable, notify SEOCH Participants of any obligations to provide Assessment and deliver additional SEOCH Collateral in respect of their Reserve Fund Requirements pursuant to Clearing Rules 408 and 413C.

413AA. For the purposes of Clearing Rules 413 (3) and (4), if after the date of default of a Defaulter, a SEOCH Participant has itself been declared as a Defaulter, any prevailing amounts standing to the credit of its Initial Contribution and Variable Contribution shall be applied towards the default of the other Defaulter and its own default in such manner as SEOCH may consider appropriate.

413AB. The amount of Initial Contribution and Variable Contribution in respect of each SEOCH Participant to be applied pursuant to Clearing Rules 413 (3) and (4) respectively shall be calculated on a pro rata basis by reference to the SEOCH Participant's share of the total Initial Contributions or total Variable Contributions, as the case may be, on the Business Day immediately before the start of the Capped Liability Period, excluding the portions contributed by any Defaulter and any SEOCH Participant whose SEOCH Participantship has been effectively terminated at or prior to the start of the Capped Liability Period. Following such application, the Reserve Fund Contributions Balance of each relevant SEOCH Participant shall be reduced by an amount equal to the amount so applied in respect of such SEOCH Participant. Notwithstanding the aforesaid, if at or prior to the start of the Capped Liability Period, the SEOCH Participantship of a SEOCH Participant is effectively terminated, its Initial Contribution and Variable Contribution will not be applied towards the default, and if at or prior to the start of the Capped Liability Period, a SEOCH Participant has itself been declared as a Defaulter, its Initial Contribution and Variable Contribution will only be applied towards its own default.

#### **Accounts of Reserve Fund**

413A. SEOCH shall maintain a separate record of:-

- (1) all amounts standing to the credit of;
- (2) all resources appropriated or which may under these Clearing Rules be appropriated by SEOCH as contributions to; and
- (3) all guarantees, facilities or policies arranged or taken out for the purpose of providing financial resources to support;



the Reserve Fund from time to time. Without prejudice to the aforesaid, SEOCH shall maintain a separate account in respect of all the contributions made or required to be made by SEOCH Participants to the Reserve Fund.

413B. SEOCH may apply any amounts standing to the credit of the Reserve Fund (other than SEOCH Collateral delivered to SEOCH in respect of SEOCH Participants' Reserve Fund Contributions) which are in the opinion of SEOCH surplus to the Reserve Fund Requirement in such manner as SEOCH thinks fit, including appropriation of such monies out of the Reserve Fund temporarily or permanently for the following purposes including, but not limited to:-

- (1) payment of any interest or money obligations as may be determined from time to time by the SEOCH Board arising from or in respect of the SEOCH Collateral delivered to meet the demand for Reserve Fund Requirement; and
- (2) payment for costs and expenses incurred in establishing, maintaining, managing, administering and terminating any arrangements such as guarantees, facilities and policies of insurance as SEOCH may from time to time consider appropriate for the purpose of providing additional resources to the Reserve Fund.

### **Assessments**

413C. Upon the occurrence of an event of default, where all or part of the Reserve Fund is applied pursuant to Clearing Rule 413 or SEOCH determines that the resources available to SEOCH under the Reserve Fund and those that may be applied under Clearing Rule 703(10) will not be sufficient to satisfy the obligations and liabilities of SEOCH in relation to an event of default, SEOCH may demand each SEOCH Participant (excluding any SEOCH Participant specified under Clearing Rule 413D) to provide such additional contributions (i) to bring the Reserve Fund to the same level as that before any application is made or to be made; and/or (ii) to provide such additional contributions as SEOCH may require to meet any obligations and liabilities in relation to an event of default, subject to the limit set out in Clearing Rule 413CA ("Assessments"). Any Assessment provided by a SEOCH Participant shall form part of its Reserve Fund Contributions Balance.

413CA. In respect of one or more events of default occurring during a Capped Liability Period, the aggregate liability of a SEOCH Participant to provide Assessments during a Capped Liability Period shall be limited to an amount which is equal to a SEOCH Participant's Reserve Fund Requirement on the Business Day immediately preceding the start of the Capped Liability Period, plus one time such amount.

413D. Assessments shall not be required from SEOCH Participants which have been declared as a Defaulter on the day such Assessment are demanded or whose SEOCH Participantships have been effectively terminated by SEOCH at or prior to the start of the Capped Liability Period. For the avoidance of doubt, the obligations and liabilities of a SEOCH Participant to provide Assessments under Clearing Rule 413C in respect of any events of default which occur during a Capped Liability Period which commenced prior to the termination of its SEOCH Participantship shall survive the termination of the SEOCH Participantship notwithstanding the fact that the expiry of such Capped Liability Period occurs after termination, provided that the aggregate liability of the SEOCH Participant shall be limited as provided for in Clearing Rule 413CA.

413E. SEOCH shall notify SEOCH Participants of any demand for Assessments by issuing a written notice ("Notice of Assessment") as SEOCH considers appropriate. SEOCH may demand such Assessments to be satisfied before, after or at the same time that an application is made under Clearing Rule 413. All demands for Assessments must be met by cash payment in Hong Kong dollars or in any other currency prescribed by

SEOCH from time to time no later than the first Business Day after the demand is made by SEOCH or within such other time period as may be specified by SEOCH.

### **Replenishment of Reserve Fund**

413F. Following the occurrence of an event of default, any top-up calculation of the Reserve Fund size apart from under Clearing Rule 413C shall be suspended during the relevant Capped Liability Period. Upon the expiry of the relevant Capped Liability Period, SEOCH shall assess the adequacy of the Reserve Fund and recalculate the Reserve Fund Requirement of each SEOCH Participant in accordance with Chapter 11 of the Operational Clearing Procedures. Subject to Clearing Rule 413J, SEOCH will notify the SEOCH Participant of any replenishment amount required as Reserve Fund Contributions as a result of the recalculation. The SEOCH Participant shall make such Reserve Fund Contributions no later than the first Business Day after the date of the notice, or within such other time period as may be specified by SEOCH. Any such Reserve Fund Contributions made by a SEOCH Participant following the expiry of such Capped Liability Period shall only be applied in respect of the events of default which occur after the expiry of the relevant Capped Liability Period and shall not be applied in respect of any event of default that occurred prior to the expiry of such Capped Liability Period.

413G. Following the expiry of a Capped Liability Period following an event of default, if the whole or any part of SEOCH's appropriation to the Reserve Fund is applied in accordance with Clearing Rule 413, SEOCH shall make appropriations for the deficiency of its appropriation to the Reserve Fund following the same replenishment time period as specified in Clearing Rule 413F, subject to the approval of the SEOCH Board and regulatory capital requirements applicable to SEOCH. Any part of SEOCH's appropriation to the Reserve Fund following the expiry of such Capped Liability Period shall only be applied in respect of the events of default which occur after the expiry of the relevant Capped Liability Period and shall not be applied in respect of any event of default that occurred prior to the expiry of such Capped Liability Period.

### **Voluntary Recapitalization**

413H. (1) If SEOCH determines at any stage that the loss arising from an event of default is expected to exceed the financial resources available including the Reserve Fund and the relevant amount received or to be received under Clearing Rule 413C and those available to be applied under Clearing Rule 703(10), SEOCH may issue a written notice (the "Voluntary Recap Request Notice") requesting each SEOCH Participant to make a payment of funds (each a "Voluntary Recap Amount") to SEOCH.

(2) Upon receipt of a Voluntary Recap Request Notice issued by SEOCH in accordance with Clearing Rule 413H(1), a SEOCH Participant may, but is not obliged to, provide its Voluntary Recap Amount to SEOCH within one Business Day following receipt of the Voluntary Recap Request Notice. The Voluntary Recap Amount provided by SEOCH Participants must be met by cash payment in Hong Kong dollars or in any other currency prescribed by SEOCH from time to time. Any Voluntary Recap Amount made by a SEOCH Participant to SEOCH may not be withdrawn.

(3) Any Voluntary Recap Amount received by SEOCH from a SEOCH Participant shall form part of the Reserve Fund Contributions Balance of such SEOCH Participant after such Voluntary Recapitalization is declared successful by SEOCH, and the application of such amount will be subject to Clearing Rule 413.

(4) If the total Voluntary Recap Amount received by SEOCH is less than the aggregate of the Voluntary Recap Amounts requested by SEOCH from the SEOCH Participants, any amounts received will be refunded to the relevant SEOCH

Participants on the next Business Day and will not form part of the Variable Contributions or Reserve Fund Contributions Balances of the relevant SEOCH Participants.

### **Loss Distribution Process**

- 413I. (1) On each Business Day during the Loss Distribution Period, SEOCH will determine whether the loss resulting from an event of default will exceed the resources available to SEOCH including the relevant amount received under Clearing Rule 413H and those available to be applied pursuant to Clearing Rules 703(10) and 413 with respect to such event of default. If it does, then SEOCH will consult with the Commission and may either invoke the "Loss Distribution Process" set out in Clearing Rule 413I or invoke the Clearing Service Termination Event as set out in Clearing Rules 1301 to 1304.
- (2) If the Loss Distribution Process applies, then on each Business Day during the Loss Distribution Period:
- (a) SEOCH will determine whether a clearing account registered in the name of a non-defaulting SEOCH Participant is a Clearing Account Gainer or a Clearing Account Loser;
  - (b) if the clearing account registered in the name of a non-defaulting SEOCH Participant is a Clearing Account Gainer, and the Gainer MTM Flow Adjustment calculated for a Currency MTM Amount in respect of that clearing account for that Business Day is a positive number, the relevant non-defaulting SEOCH Participant shall pay an amount equal to such Gainer MTM Flow Adjustment to SEOCH. If the clearing account registered in the name of a non-defaulting SEOCH Participant is a Clearing Account Gainer and the Gainer MTM Flow Adjustment calculated for a Currency MTM Amount in respect of that clearing account for that Business Day is a negative number, SEOCH shall pay to the relevant non-defaulting SEOCH Participant an amount equal to the absolute value of such Gainer MTM Flow Adjustment; and
  - (c) if the clearing account registered in the name of a non-defaulting SEOCH Participant is a Clearing Account Loser, SEOCH shall pay to the relevant non-defaulting SEOCH Participant an amount equal to the absolute value of such negative Loser MTM Flow Adjustment calculated for a Currency MTM Amount in respect of that clearing account for that Business Day.

For the purpose of the calculations and adjustments conducted under the Loss Distribution Process, each clearing account of a non-defaulting SEOCH Participant will be treated separately.

- (3) On each Business Day during the Loss Distribution Period, SEOCH will apply the exchange rate determined by SEOCH from such source and on such basis as it shall consider appropriate, in making the calculations required to be made under the Loss Distribution Process, including components which relate to payments made, or falling due, on previous days.
- (4) On each loss distribution day, SEOCH shall apply set-off with respect to any payment or receipt of any MTM Flow Adjustment on such day against any payments denominated in the same Settlement Currency as such MTM Flow Adjustment payable to, or receivable from, the relevant SEOCH Participant.
- (5) Without prejudice to Clearing Rules 205, 723A, 723F, 723G and 1301, in the absence of manifest error, any MTM Flow Adjustment determined by SEOCH shall be final and conclusive. Any application of a Gainer MTM Flow Adjustment resulting

in a reduction of payment by SEOCH to a non-defaulting SEOCH Participant shall not constitute a failure to pay by SEOCH.

**Resignation of SEOCH Participantship for limiting liability following the expiry of the Capped Liability Period**

413J. (1) Where a SEOCH Participant wishes to resign its participantship to limit its liability to any subsequent events of default that may occur following the expiry of the applicable Capped Liability Period, it must:

- (a) submit a notice of resignation to SEOCH and receive an acknowledgement from SEOCH.
  - (b) successfully close out, transfer, sell or otherwise discharge its liabilities in respect of all OCH Contracts registered in its house clearing account and any clearing account which is not of a client nature in accordance with the Clearing Rules prior to the expiry of the Capped Liability Period; and
  - (c) either: (i) successfully close out, transfer, sell or otherwise discharge its liabilities in respect of all OCH Contracts registered in its client clearing accounts and any clearing account which is of a client nature in accordance with the Clearing Rules prior to the expiry of the applicable Capped Liability Period or (ii) notify SEOCH that it wishes to extend the period for the winding down of OCH Contracts registered in its client clearing accounts and any clearing account which is of a client nature until the date which falls 5 Business Days from the date of expiry of the applicable Capped Liability Period. If a SEOCH Participant sends a notification pursuant to Clearing Rule 413J(1)(c)(ii) above it must provide collateral, by way of additional margin, which is at least equal to the net projected loss (projected aggregate loss less General Collateral (excluding any excess collateral) and any margin) arising from such OCH Contracts registered in the client clearing accounts and any clearing account which is of a client nature as communicated by SEOCH until the time at which any remaining open positions in its client clearing accounts and any clearing account which is of a client nature have been successfully closed out, transferred, sold or any liabilities in respect of such open positions have been discharged in accordance with the Clearing Rules.
- (2) If the conditions set out in Clearing Rule 413J(1) are not met, the SEOCH Participant will be subject to the replenishment of Reserve Fund Contributions pursuant to Clearing Rule 413F (and liabilities thereto) upon the expiry of the applicable Capped Liability Period.

**Recoveries**

414. If SEOCH receives any amounts from a Defaulter, or any other amounts howsoever recovered relating to the event of default of the Defaulter, the amounts recovered (less any uncovered costs and expenses of recovery) may, but need not necessarily, be repaid to the relevant SEOCH Participants and SEOCH, subject to the terms of any relevant guarantee, bank facility or policy of insurance. If the amounts recovered are repaid to the relevant SEOCH Participants and SEOCH, it would be in the reverse order of priority and on the same pro rata basis (if applicable) as the order or basis to the amounts that have been utilized and applied to satisfy the liabilities and obligations in relation to an event of default including:

- (1) any amount paid out of the Reserve Fund pursuant to Clearing Rules 413 to 413AB;
- (2) any Voluntary Recap Amount applied pursuant to Clearing Rule 413H; and

- (3) any amount of Gainer MTM Flow Adjustment paid by the non-defaulting SEOCH Participants pursuant to Clearing Rules 413I.

It may be a term of any guarantee, facility or insurance policy that recoveries from the Defaulter be applied in a particular fashion other than repaid to the relevant SEOCH Participants or SEOCH, in which case the recoveries shall be applied in accordance with such term.

To the extent that the amount repaid to SEOCH represents the financial support provided by HKEX, SEOCH will pay the relevant amount received by it to HKEX.

For the avoidance of doubt, a Defaulter shall be liable to reimburse or repay SEOCH in full for:

- (1) any amount paid out of the Reserve Fund pursuant to Clearing Rules 413 to 413AB;
- (2) any Voluntary Recap Amount applied pursuant to Clearing Rule 413H;
- (3) any amount of Gainer MTM Flow Adjustment paid by the non-defaulting SEOCH Participants pursuant to Clearing Rules 413I; and
- (4) any unpaid amount of Termination Value Payable by the Defaulter pursuant to Section 13A.1 of the Operational Clearing Procedures

as a result of its default.

#### **No Transfer of SEOCH Participants**

415. SEOCH Participants shall not be capable of being transferred and no SEOCH Participant shall attempt to sell or transfer its SEOCH Participants.
416. A SEOCH Participant shall not pledge or mortgage, or create any trust, charge, lien or other encumbrance over, its SEOCH Participants.
417. A SEOCH Participant shall not assign any of its rights, benefits or privileges as a SEOCH Participant and such rights, benefits and privileges shall be incapable of assignment.
418. SEOCH shall not be bound or in any way compelled to recognise (even if it has notice of the same) any purported dealing or disposition made in contravention of Clearing Rule 415, 416 or 417.

#### **Resignation as a SEOCH Participant**

419. If a SEOCH Participant wishes to resign its SEOCH Participants, it shall do so by giving written notice at any time to SEOCH and, if it is a GCP, then to its NCPs of its intention to do so.
420. A notice of resignation may only be revoked before the effective date of termination of its SEOCH Participants with the prior written consent of SEOCH. The resigning SEOCH Participant is required to submit a written request to SEOCH giving reasons for the revocation.
421. Unless otherwise determined by the SEOCH Board, every SEOCH Participant who gives notice of resignation of its SEOCH Participants shall:-

- (1) subject to Clearing Rule 413J, continue to be obligated to deliver SEOCH Collateral in respect of its Reserve Fund Requirement pursuant to these Clearing Rules until the effective date of the termination of its SEOCH Participantship. However, a resigning SEOCH Participant's liability in respect of Assessments shall be limited to such maximum amount as may be specified in Clearing Rule 413CA and Section 11.6 of the Operational Clearing Procedures;
  - (2) at the time it gives such notice or within such time period specified by SEOCH, submit for approval to SEOCH a plan for the orderly winding down of its affairs in relation to Exchange Traded Options Business, including, but not limited to, the closing or give-up, in accordance with these Clearing Rules and the Options Trading Rules, of all OCH Contracts to which it is party, and shall, upon approval of such plan by SEOCH, and unless otherwise agreed by SEOCH, adhere to that plan until the expiry of its SEOCH Participantship;
  - (3) not (except with the consent of, or as directed by, SEOCH) enter into any opening contracts; and
  - (4) if SEOCH is satisfied that a SEOCH Participant is resigning its SEOCH Participantship pursuant to a reorganisation of the group of companies of which the SEOCH Participant is a member and in circumstances where another company in the same group is to become a SEOCH Participant and to continue the business of the existing SEOCH Participant in place of the existing SEOCH Participant; and for this purpose a company shall be in the same group as another company if, in the opinion of SEOCH, the ultimate beneficial owners of both companies are the same or substantially the same, then, upon written application of the resigning SEOCH Participant, SEOCH may issue a written notice exempting that SEOCH Participant from compliance with Clearing Rules 421(2), 421(3) and 422 and, if SEOCH thinks fit, allowing the resigning SEOCH Participant's Reserve Fund Contributions to be credited to the new SEOCH Participant with effect from a date stipulated by SEOCH (such date not to be later than the date upon which the new SEOCH Participant becomes a SEOCH Participant). Any such notice may be issued on such conditions as SEOCH thinks fit. SEOCH shall have an absolute discretion to determine whether or not the ultimate beneficial ownership of companies is "the same or substantially the same" and SEOCH's decision in relation to the same shall be final and binding.
422. SEOCH may take any of the steps set out in Clearing Rule 703 in order to ensure the orderly winding down of a resigning SEOCH Participant's Exchange Traded Options Business and may, in addition, impose position limits or revise any position limits already imposed on that SEOCH Participant.
423. A resigning SEOCH Participant shall, until the effective date of termination of its SEOCH Participantship, remain bound by all the provisions of these Clearing Rules.
424. A resigning SEOCH Participant's SEOCH Participantship will be terminated at such time as may be specified by SEOCH and notified to the resigning SEOCH Participant.
425. A resigning SEOCH Participant shall be entitled to the redelivery of any SEOCH Collateral provided to SEOCH in respect of its Reserve Fund Contributions subject to, and in accordance with, the provisions of Clearing Rules 722, 723, 723H and 1303. SEOCH may deliver or return to SEOCH Participant assets in such form and in such amount, as SEOCH deems appropriate, equivalent to the assets recorded as part of its Reserve Fund Contributions Balance.

426. Any SEOCH Participant which, in its capacity as an Options Trading Exchange Participant, gives notice of resignation of its Options Trading Participantship or is treated, pursuant to the Options Trading Rules, as having given any such notice, shall be treated as having given on the same day notice of resignation as a SEOCH Participant and these Clearing Rules shall apply accordingly.
427. A SEOCH Participant which resigns, whether under the provisions of Clearing Rule 411 or otherwise, may be required to provide additional SEOCH Collateral in respect of its Reserve Fund Requirement or otherwise compensate SEOCH in order to be eligible for re-admission as a SEOCH Participant.

### **Confidentiality**

428. All information in the possession of SEOCH relating to a SEOCH Participant will be kept confidential by the directors and other staff or officers of SEOCH having access to the same in accordance with procedures made by SEOCH. SEOCH, however, may disclose any information at any time:-
- (1) to the Exchange;
  - (2) to the Commission;
  - (3) to HKSCC;
  - (4) to HKFE;
  - (5) to any insurer, insurance broker or banker in connection with the arrangement of support for the Reserve Fund;
  - (6) to any professional advisers or consultants of SEOCH;
  - (7) as required by the laws of Hong Kong;
  - (8) to any exchange, clearing house, governmental, regulatory or competent authority or any organization (whether in Hong Kong or elsewhere) with whom HKEX, SEOCH or the Exchange has entered into an information sharing arrangement or agreement or pursuant to the Tax Information Exchange Framework;
  - (9) to any recognized exchange controller;
  - (10) to any company of which a recognized exchange controller which is a controller of the Exchange is a controller;
  - (11) to the chief executive or the chief operating officer of HKEX for the time being appointed or deemed to have been appointed in accordance with the Securities and Futures Ordinance or, as the context may require, their designees;
  - (12) if so required pursuant to any requirement or request of any governmental, regulatory or other competent authority whether within or outside Hong Kong (including, but not limited to, the Commission, Hong Kong Monetary Authority and the Inland Revenue Department of the Hong Kong government) or by or in accordance with the Tax Information Exchange Framework; or
  - (13) to specified persons or to the public if required for SEOCH to comply with any local or international regulatory standards applicable to it,

provided that, in any such case other than under sub-paragraphs (7), (8), (12) and (13) above, the confidentiality of the information is made known to the recipient (it being understood that, if a case is described in multiple sub-paragraphs of this sentence that include sub-paragraphs (7), (8), (12) or (13) above, then the confidentiality of the information need not be made known to the recipient) and provided that, in case of disclosure of information concerning or in connection with a SEOCH Participant under sub-paragraph (13), it shall be on an aggregated and/or anonymised basis.

428A. The Board may direct a SEOCH Participant to provide it with any information required or requested by an exchange, clearing house, governmental, regulatory or other competent authority or any organization (whether in Hong Kong or elsewhere) with whom HKEX, SEOCH or the Exchange has entered into an information sharing arrangement or agreement or pursuant to the Tax Information Exchange Framework.

### **Clearing Agreements**

429. Every GCP shall enter into a Clearing Agreement in such form or containing such provisions as may from time to time be required by SEOCH with each NCP for whom it proposes to accept Options Contracts for clearing. Except where a non-defaulting GCP consents to accept a give-up of OCH Contracts pursuant to Clearing Rule 715, a GCP shall not accept for clearing any such Options Contracts for an NCP until a Clearing Agreement has been signed by both parties.

430. [Repealed]

431. A GCP shall notify SEOCH immediately of the execution of each Clearing Agreement to which that GCP is party, identifying the name of the relevant NCP. Such notification shall be in such form as SEOCH may from time to time specify.

432. The form of Clearing Agreement proposed to be entered into by a GCP with NCPs must facilitate the performance of, and be consistent with, the GCP's obligations under these Clearing Rules and the Operational Clearing Procedures.

433. A GCP shall, at the request of SEOCH, supply it and the Exchange with a certified copy of any executed Clearing Agreement to which that GCP is or has been party.

434. A GCP shall be bound by, and shall comply strictly with, the terms of each Clearing Agreement to which it is party, to the extent that those Clearing Agreements are consistent with these Clearing Rules.

434A. (1) A GCP shall give prior written notice to SEOCH if it or an NCP intends to terminate the Clearing Agreement between them, unless the NCP has already given notice to terminate the Clearing Agreement to the Exchange in accordance with the Options Trading Rules.

(2) When SEOCH receives a termination notice from the GCP or when SEOCH receives notification from the Exchange that notice to terminate the Clearing Agreement had been given by an NCP, SEOCH will issue a confirmation of termination to the GCP (with a copy to the NCP concerned) in writing and unless and until written confirmation has been issued to the GCP, the Clearing Agreement shall be treated as valid, binding and effective by SEOCH for the purposes of these Clearing Rules notwithstanding any provision to the contrary in the Clearing Agreement and/or the termination notice from the GCP or the NCP and the GCP shall continue to be bound by the Clearing Agreement and



responsible for all the OCH Contracts concluded and designated to it for clearing by such NCP.

- (3) Notwithstanding the above and without prejudice to the rights of SEOCH under Clearing Rules 714 to 717, the Clearing Agreement is deemed to be terminated when the GCP has resigned or is suspended or expelled from SEOCH Participantship or when its access to the Options Clearing System is suspended or terminated under these Clearing Rules.
- (4) The termination of the Clearing Agreement between a GCP and an NCP will not affect any of their rights or liabilities arising out of matters which have taken place prior to the termination of the Clearing Agreement and for the purpose of settlement of any such rights or liabilities of the GCP and NCP, SEOCH may continue to treat the GCP as the GCP of the NCP for all the OCH Contracts concluded and designated to it for clearing by such NCP.
- (5) Each GCP shall notify SEOCH forthwith of any failure of an NCP to meet its obligations under a Clearing Agreement, in which case SEOCH may disclose such information to any other GCP of the NCP. Such notification shall be in such form as SEOCH may from time to time specify.

#### **Monitoring by GCPs**

435. Every GCP must monitor the ability of each NCP with whom it has entered into a Clearing Agreement to satisfy promptly all demands for SEOCH Collateral in respect of margin, all demands for Premium and all delivery obligations. A GCP must forthwith notify the Exchange of any failure by any such NCP to meet such a demand, identifying the NCP concerned.
436. A GCP shall not extend any credit or other financial accommodation or give any rebate of any kind to any NCP on whose behalf it accepts Options Contracts for clearing for the purpose, or which has the effect, of circumventing or evading the margin requirements set out in the Options Trading Rules.
437. Each GCP shall collect margin from each NCP with whom it has entered into a Clearing Agreement in an amount not less than the amount calculated in accordance with the Operational Trading Procedures.

#### **Right to Demand Documents**

438. Every SEOCH Participant shall, within a period as the SEOCH Board may specify, submit to it such statements, books, records, accounts and other documents as the SEOCH Board may demand.

#### **Power to Make Inspections**

439. Officers or employees of SEOCH or such persons appointed by the SEOCH Board may from time to time inspect and copy the statements, books, records, accounts and other documents maintained by the SEOCH Participant relating to the clearing of Contracts. Every SEOCH Participant shall provide or allow those officers or employees or appointed persons access to its premises, statements, books, records, accounts and other documents necessary for the discharging of their duty, with or without prior notice.

440. Any costs and expenses incidental to or consequential upon an inspection ordered under Clearing Rule 439 by SEOCH shall be borne by the SEOCH Participant concerned, unless the SEOCH Board otherwise determines.
441. A SEOCH Participant shall not be entitled to claim against SEOCH, a recognized exchange controller which is the controller of SEOCH, the SEOCH Board, officers or employees of SEOCH or any appointed person for any loss or damages whatsoever relating to any inspection ordered under Clearing Rule 439.

#### **Power of SEOCH to Modify the Terms of Continued Participantship**

442. SEOCH may form the view that its best interests are served by a SEOCH Participant's continued SEOCH Participantship being conditional on that SEOCH Participant meeting new financial or operational requirements including but not limited to increased liquid capital (or Tier 1 capital in the case of a GCP which is a Registered Institution), Reserve Fund Requirement or changes to its internal operations in terms of personnel or facilities. Each SEOCH Participant instructed to comply with such special requirements shall comply within SEOCH's stated time frame with any instructions made pursuant to this Clearing Rule.
443. [Repealed]

#### **Tax**

444. SEOCH shall make any payments due to a SEOCH Participant net of any Withholding Tax (whether withheld by SEOCH or any other parties), and SEOCH shall have no obligation to gross-up any such payment or to pay any additional amount as a result of such Withholding Tax. SEOCH shall be entitled to deduct Withholding Tax from payments to a SEOCH Participant.
445. In the event that any payment made by a SEOCH Participant to SEOCH is subject to deduction or withholding (either at the time of such payment or in the future) for or on account of any Withholding Tax, then the SEOCH Participant shall pay to SEOCH an amount, in addition to the payment to which SEOCH is otherwise entitled, necessary to ensure that the net amount actually received by SEOCH (free and clear of any such deduction or withholding for or on account of any such Withholding Tax), will be equal to the full amount SEOCH would have received in the absence of any such deduction or withholding.
446. Each SEOCH Participant shall indemnify SEOCH, the Exchange, and a recognized exchange controller which is the controller of SEOCH and keep SEOCH, the Exchange, and a recognized exchange controller which is the controller of SEOCH indemnified from and against any loss, cost (including cost of enforcement), interests, liability (including any tax or other fiscal liability), claim, damage, cost or expenses of whatever nature which SEOCH, the Exchange, and a recognized exchange controller which is the controller of SEOCH incurred or suffered in connection with any actions taken by SEOCH or any actions that SEOCH is required to take to comply with any obligations relating to the Tax Information Exchange Framework (or fails to take relating to Withholding Tax obligations) with respect to such SEOCH Participant.