

OTC Clear Rates and FX Derivatives Clearing Rules

Chapter 1 Definitions and Interpretation

Definitions

101. In these Clearing Rules, unless the context otherwise requires:

<p><u>“Tax Information Exchange Framework”</u></p>	<p><u>means:</u></p> <p><u>(1) sections 1471 to 1474 of the United States Internal Revenue Code of 1986, as amended (the “Code”) or any similar or successor legislation introduced by the United States;</u></p> <p><u>(2) any agreement described in section 1471(b) of the Code;</u></p> <p><u>(3) any regulations or guidance pursuant to any of the foregoing;</u></p> <p><u>(4) any official interpretations of any of the foregoing;</u></p> <p><u>(5) any intergovernmental agreement (an “IGA”) to facilitate the implementation of any of the foregoing;</u> <u>or</u></p> <p><u>(6) any law implementing an IGA;</u></p>
<p>“Web Portal”</p>	<p>means a user interface via which a Clearing Member can, amongst other things, lodge a request for movement of Collateral or retrieve a report; and</p>
<p>“Web Portal User Manual”</p>	<p>means a user manual which details the process of raising a request for movement of Collateral or retrieving a report via Web Portal; <u>and</u></p>
<p><u>“Withholding Tax”</u></p>	<p><u>means any withholding or deduction pursuant to the Tax Information Exchange Framework.</u></p>

Chapter 2 General Provisions

Liability

203. Except as otherwise expressly provided in these Clearing Rules, OTC Clear, its Affiliates, a recognized exchange controller which is the controller of OTC Clear, or any of their respective Representatives shall not be liable to any Clearing Member or to any other Person in respect of anything done or omitted to be done by it in good faith in connection with the operations of the Rates and FX Clearing Services, the provision of such services and facilities available thereunder, and all other matters as contemplated in these Clearing Rules, including but not limited to any civil liability, whether arising in contract, tort, defamation, equity or otherwise for any Damage suffered or incurred directly or indirectly by a Clearing Member or any other Person as a result of or in connection with the following matters:

- (1) any error, interruption, failure or malfunction of, or inability to use any systems, communication lines or facilities or technology supplied, operated or used (directly or indirectly) by OTC Clear for purposes of operating its Rates and FX Clearing System;
 - (2) any action or omission by any of them in connection with the operation of the Rates and FX Clearing System, the provision of services and facilities available thereunder, and all other matters as contemplated in these Clearing Rules;
 - (3) any suspension, restriction or closure of OTC Clear or its services or any relevant over-the-counter derivatives market;
 - (4) any act or omission, including any delay on the part, of any Clearing Member or any other third party;
 - (5) any dispute relating to the validity, existence or terms of any Contract;
 - (6) a failure by a Clearing Member to comply with any Clearing Documentation;
 - (7) the taking of action or the omission of taking of actions by OTC Clear authorized, permitted or contemplated in the Clearing Documentation;
 - (8) the inability of OTC Clear to perform as a result of the invalidity or cancellation of any insurance or assurances effected by OTC Clear or the insolvency of such insurers or assurers (provided that the selection of such insurance, assurances or insurers by OTC Clear shall not have been unreasonable at the time of selection);
 - (9) any act or omission by OTC Clear in accordance with the directions of any Governmental Authority, or an order made or directions given by a court in exercise of its proper jurisdiction, where it is required to do so by ~~law~~[Applicable Law](#);
 - (10) any failure by OTC Clear to obtain appropriate warranties, certificates or other commitments from any system's supplier or a failure to take any steps to enforce the same;
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- (11) any acts or omissions, or delay on the part, of the owners and licensees of all hardware and software operated or used by the OTC Clear for the purposes of providing the Rates and FX Clearing Services (or any acts or omissions of the employees or agents of those owners and licensees);
 - (12) any proceeding or investigation brought by or on behalf of any Governmental Authority, self-regulatory organization, or other regulatory authority exercising any disciplinary functions to which one or more Clearing Member is subject;
 - (13) any acts or omissions, including any delay on the part, of OTC Clear's own banker, or any other custodians, sub-custodians, depositaries, clearing systems, if any, appointed or used by OTC Clear in relation to Collateral, or the occurrence of an Insolvency Proceedings with respect to such Persons (provided that the selection by OTC Clear of such Persons shall not have been unreasonable); and
 - (14) any inability by any Clearing Member or any other Person to use any programme or system for purposes of accessing the Rates and FX Clearing Services.
204. OTC Clear reserves the right to act in accordance with the directions of any Governmental Authority, or an order made or directions given by a court in exercise of its proper jurisdiction, where it is required to do so by lawApplicable Law.

Disclosure of Information

212. All information provided to or in the possession of OTC Clear regarding past or current positions carried by OTC Clear for a Clearing Member, Margin payments between OTC Clear and a Clearing Member or deliveries made by or to a Clearing Member and any financial statements submitted to OTC Clear by any Clearing Member shall be kept confidential by OTC Clear in accordance with such procedures or policies as OTC Clear may from time to time determine. Notwithstanding the foregoing, OTC Clear may disclose any information described in the immediately preceding sentence, any information received from a Clearing Member and any other information in connection with a Clearing Member at any time:
- (1) with the written consent of the Clearing Member involved;
 - (2) to HKEx and any of its Affiliates and any Representatives, committees, auditors or advisers of HKEx or any Affiliate of OTC Clear which is a recognized exchange company or a recognized clearing house under the SFO;
 - (3) pursuant to any requirement or, ~~formal~~ request of any Governmental Authority, including, but not limited to, the SFC, ~~and~~ HKMA, and the Inland Revenue Department of the Hong Kong government; or to any Person required by or in accordance with the Tax Information Exchange Framework;
 - (4) pursuant to any order of a court of competent jurisdiction;
 - (5) as expressly permitted by the Clearing Documentation, including, without limitation, to one or several Clearing Members, to the extent that such
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disclosure is necessary for the proper management of an Event of Default and the implementation by OTC Clear and Clearing Members of settlement of any Contract provided that where OTC Clear discloses any information to any Clearing Member in such circumstances, the receiving Clearing Member shall treat such information as confidential information and shall not make the information known or available to any other Person or use the information for any purpose other than that for which it has been disclosed by OTC Clear;

- (6) to any insurer, insurance broker or banker in connection with any arrangement in support of the Rates and FX Guarantee Resources;
- (7) to any professional advisers, auditors or consultants of OTC Clear;
- (8) as required by any Applicable Law;
- (9) to any trade repository or Governmental Authority (whether in Hong Kong or elsewhere) with whom OTC Clear or HKEx has entered into an information sharing arrangement or agreement or pursuant to the Tax Information Exchange Framework;
- (10) to any service provider or third party contractor whom OTC Clear has engaged to provide data processing or other similar services for OTC Clear, provided that any such persons shall be bound by confidentiality obligation or undertaking; or
- (11) to any Person if the information comes into the public domain, other than as a result of a breach of this Clearing Rule 212 by OTC Clear or any of its Representatives,

provided that, in any such case other than under sub-paragraphs (1), ~~(3)~~, ~~(4)~~, ~~(5)~~ and ~~(9)~~~~(8)~~ 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-paragraph (1), (3), (4), (5) or (9) above, then the confidentiality of the information need not be made known to the recipient).

Each Clearing Member agrees that OTC Clear has the power to publish on its own or through the Exchange or the Exchange's agent aggregated trade information in respect of Contracts cleared and settled through OTC Clear, whether relating to data on open positions, trade volumes, types of Contracts cleared and settled by OTC Clear, provided that the identity of Clearing Members or Clients cannot reasonably be determined from the data, statistics or other materials so published. Should OTC Clear decide that publication of aggregated trade information be made through the Exchange or its agent, it is entitled to transfer, transmit or provide the relevant information to the Exchange or its agent on terms that OTC Clear considers appropriate without seeking further consent from Clearing Members.

213. OTC Clear may direct a Clearing Member to provide it with any information requested by a trade repository or Governmental Authority (whether in Hong Kong or elsewhere) with whom OTC Clear or HKEx has entered into information sharing agreement or arrangement or pursuant to the Tax Information Exchange Framework.

Chapter 5 Information Obligations

Notifications by Clearing Members

501. Each Clearing Member shall notify OTC Clear in writing without delay providing full particulars known to it of:
- (1) any non-compliance with a Regulatory Capital Requirement or any failure to maintain Capital in an amount not less than the Minimum Capital Requirement;
 - (2) a decrease in Capital by more than 10% from the amount of Capital shown on its most recent financial information as provided to OTC Clear pursuant to Clearing Rule 504;
 - (3) any events or matters which relate to the Clearing Member's clearing activities and exposure to general and financial risks as from time to time specified in the Clearing Procedures or as OTC Clear may from time to time specify or notify to Clearing Members;
 - (4) any material breach, infringement of or non-compliance with any provisions of the Clearing Documentation, or where it has reason to suspect any such breach, infringement or non-compliance whether by itself, its Representatives, other Persons acting on its behalf; and
 - (5) anything relating to the Clearing Member which would cause any statement or information previously furnished to OTC Clear in connection with (a) the Rates Derivatives Clearing Services and/or FX Derivatives Clearing Services ~~or in connection with, (b) its application for admission to be a Clearing Member, or (c) the Tax Information Exchange Framework,~~ to be inaccurate, incomplete or superseded.

Chapter 10 Payments

Income on Non-Cash Collateral

1006. OTC Clear will pay an amount to a Clearing Member representing any income received by OTC Clear on non-cash Collateral transferred to OTC Clear, whether in satisfaction of its Margin requirements or CM Funded Contribution Amount, net of any Tax (including net of any Withholding Tax). Distributions of such income will take into account any deduction required to reflect any accommodation charges, administration costs or commitment fees for credit lines incurred by OTC Clear in respect of such non-cash Collateral in accordance with section 7.6.2 of the Clearing Procedures. Without prejudice to the foregoing, to the extent required by the Tax Information Exchange Framework or other Applicable Laws, OTC Clear shall be entitled to deduct or withhold Withholding Tax (whether withheld by OTC Clear or any other parties) from any payment of income received by OTC Clear on the non-cash Collateral to a Clearing Member (or from any other payment made by OTC Clear to a Clearing Member) and shall have no obligation to gross-up any such payment or to pay any additional amount as a result of such Withholding Tax.

Chapter 11 Tax

Tax

1101. In the event that any payment made by a Clearing Member to OTC Clear under the Clearing Documentation or any Contract is subject to deduction or withholding (either at the time of such payment or in the future) for or on account of any Tax and/or any Withholding Tax, then the Clearing Member shall pay to OTC Clear an amount (the “**Additional Amount**”), in addition to the payment to which OTC Clear is otherwise entitled under the Clearing Documentation or any Contract, necessary to ensure that the net amount actually received by OTC Clear (free and clear of any such deduction or withholding for or on account of any such Tax and/or Withholding Tax), will be equal to the full amount OTC Clear would have received in the absence of any such deduction or withholding.
1102. OTC Clear shall make any payments due to a Clearing Member under the Clearing Documentation or any Contract net of any deduction or withholding for or on account of any Tax it is required to make from such payments and (to the extent required by the Tax Information Exchange Framework or Applicable Laws) net of any Withholding Tax, and OTC Clear shall have no obligation to gross-up any such payment or to pay any additional amount as a result of such deduction, withholding or payment of any such Tax or any such Withholding Tax.
1103. If:
- (1) a Clearing Member is required by any Applicable Law, as modified by the practice of any relevant ~~governmental revenue authority~~Governmental Authority, to make any deduction or withholding from any payment made to OTC Clear under the Clearing Documentation or any Contract for or on account of any Tax, in respect of which the Clearing Member would be required to pay an Additional Amount to OTC Clear under Clearing Rule 1101;
 - (2) the Clearing Member does not so deduct or withhold; and
 - (3) a liability resulting from such Tax is assessed directly against OTC Clear, then, except to the extent the Clearing Member has satisfied or then satisfies the liability resulting from such Tax, the Clearing Member will promptly pay to OTC Clear the amount of such liability (including any related liability for interest, penalties and costs).
1104. Each Clearing Member will pay any stamp, registration, documentation, excise, sales or value added Tax or any other similar Tax levied or imposed upon it or in respect of its execution or performance of any agreement, contract or transaction in connection with the Clearing Documentation and will indemnify OTC Clear against any such stamp, registration, documentation, excise, sales or value added Tax (to the extent that OTC Clear is not able, in OTC Clear’s commercially reasonable judgment, to reclaim or recover such value added Tax) or any other similar Tax levied or imposed upon OTC Clear or in respect of OTC Clear’s execution or performance of any agreement, contract or transaction in connection with the Clearing Documentation. Any payment required to be made by a Clearing Member to OTC Clear under this Clearing Rule 1104 shall include an additional amount
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equal to any Tax levied or imposed on OTC Clear as a result of the receipt of any payment under this Clearing Rule 1104.

1105. Each Clearing Member shall provide OTC Clear with sufficient Information so as to enable OTC Clear to determine whether any payments to be made by it under the Clearing Documentation or any Contract are withholdable payments pursuant to the Tax Information Exchange Framework and to enable OTC Clear to meet any applicable obligations relating to the Tax Information Exchange Framework.

Chapter 13 Default Procedures

Indemnity

1316. Each Clearing Member shall indemnify OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear and keep OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear indemnified from and against any loss, cost (including cost of enforcement), interests, liability (including any tax or other fiscal liability), claim or Damage which OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear:

- (1) incurred or suffered as a consequence of such Clearing Member's conduct, or a breach of any of such Clearing Member's obligations under the Clearing Documentation or the terms of a Contract or any Applicable Laws, including as a consequence of OTC Clear acting upon the instructions of a Clearing Member's Designated Person(s) in connection with any Original Transaction submitted by such Designated Person(s) on behalf, and in the name, of the Clearing Member; or
 - (2) incurred or suffered directly in connection with OTC Clear's ensuring the settlement of a Contract in the case of a DMP Event relating to any other Clearing Member, whether or not OTC Clear takes any steps pursuant to Clearing Rule 1305 or any other steps under these Clearing Rules, provided that the aggregate amount indemnified by any Non-Defaulting Clearing Member in respect of each Capped Liability Period shall not exceed its Maximum Current Liability and shall be satisfied by application of its Rates and FX Contribution Balance in accordance with Clearing Rule 1549.
 - (3) incurred or suffered in connection with any actions taken by OTC Clear or any actions that OTC Clear 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 Clearing Member.
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