

CHAPTER 9

EXCHANGE PARTICIPANTS' COMPENSATION

(FIDELITY FUND AND GUARANTEE SCHEME)

General

901. For the purpose of compensating Exchange Participants which have suffered pecuniary loss as a result of or in connection with the default or defaults (each a "Relevant Default") of any Exchange Participant ("the Defaulting Exchange Participant") in its capacity as such or as a Member of the Exchange up to the Scheme Effective Date in the course of carrying on the business of dealing in securities listed or admitted to trading (notwithstanding that any such securities may be suspended from trading) on the Exchange and transacted in a manner recognised by the Exchange all Exchange Participants which carry on the business of dealing in securities on the Exchange shall furnish in respect of each Stock Exchange Trading Right held by them a guarantee of \$2,000,000 in accordance with Rule 921 ("the Guarantee") or in the alternative participate in the Fidelity Fund established under Rule 911.
902. The Board shall establish a committee to be known as the "Compensation Committee" for the purpose of administering the Fidelity Fund, the receipt and enforcement of the Guarantee, and enforcing the Rules contained in this Chapter. Members of the Compensation Committee shall in no way be liable to any Exchange Participant (save for gross negligence or misconduct) and shall be entitled to be indemnified by the Exchange in respect of all liabilities arising in the course of their duties hereunder.
903. The Compensation Committee shall be constituted in accordance with Rule 212A. At least one member of the Compensation Committee should not be a participant of the Fidelity Fund.

Claims

904. Any Exchange Participant which wishes to claim compensation in respect of a Relevant Default must notify the Compensation Committee in writing within 10 trading days of its becoming aware of any such Relevant Default and at the same time submit in writing and in such form as the Compensation Committee may from time to time prescribe the full particulars of the default or defaults complained of and the nature and amount of its claim, together with all documentary evidence or other evidence available to substantiate its claim. The Compensation Committee shall investigate the claim, may summon any person who is reasonably believed or suspected to have any information relevant to the investigation to attend before the Compensation Committee and to provide or produce such further information or documents as the Compensation Committee may require. If satisfied that reasonable grounds for the claim have been shown, the Compensation Committee shall notify Exchange Participants as soon as practicable after being so satisfied by circular. Such circular shall state brief particulars of the claim, and invite Exchange Participants to lodge by notice to the Compensation Committee all claims they may have against the Defaulting Exchange Participant for any Relevant Defaults within 10 trading days of the date of such circular. The Compensation Committee shall have an absolute discretion to refuse to entertain any claim lodged beyond this 10

trading day period.

905. An Exchange Participant which has lodged a notice of claim pursuant to these Rules shall provide forthwith to the Compensation Committee such further information or documents as the Compensation Committee may require. The Exchange Participant shall notify forthwith the Compensation Committee of any change in the status of the claim or in the information submitted by the Exchange Participant to the Compensation Committee.
906. Any determination, ruling or direction by the Compensation Committee shall be conclusive and binding on all Exchange Participants. The Compensation Committee may allow a claim in respect of interest, legal and other costs in its sole discretion.
907. The Compensation Committee shall process any claims as soon as practicable after receipt of a notice of claim lodged under Rule 904 above and shall as soon as practicable after all claims against a Defaulting Exchange Participant have been determined by it, notify the claimants whether their claims have been accepted, rejected or accepted in whole or in part, as the case may be.
908. A claim in respect of a Defaulting Exchange Participant which is a participant of the Fidelity Fund shall be deemed to be a claim against the Fidelity Fund and payment shall be met out of the Fidelity Fund. A claim in respect of a Defaulting Exchange Participant which is not a participant in the Fidelity Fund shall be deemed to be a claim against the Guarantee of the Defaulting Exchange Participant. If the Compensation Committee accepts any claims it shall effect payment out of the Fidelity Fund or by enforcing the Guarantee of the Defaulting Exchange Participant, as the case may be, and the appropriate parts of these Rules including those regarding payment and apportionment shall apply.
- 908A. Any Exchange Participant which suffers a pecuniary loss as a result of or in connection with the default of any Exchange Participant, shall not be entitled to compensation under the Guarantee or the Fidelity Fund, if such loss arises out of a default relating to securities borrowing and lending transaction effected pursuant to the Regulations in the Sixth Schedule of these Rules or the HKSCC Rules (as the case may be).
- 908B. Any Exchange Participant which suffers a pecuniary loss as a result of or in connection with the default of any Exchange Participant, shall not be entitled to compensation under the Guarantee or the Fidelity Fund, if such loss arises out of a default relating to a transaction settled under the CNS System.
- 908C. Any Exchange Participant which suffers a pecuniary loss as a result of a default of any Options Trading Exchange Participant, shall not be entitled to compensation under the Guarantee or the Fidelity Fund, if such loss arises out of a default directly relating to that Options Trading Exchange Participant's Exchange Traded Options Business.
909. Payments under these Rules in satisfaction of claims shall be subject to the availability of funds or realisable assets in the Fidelity Fund or realisable assets of the Defaulting Exchange Participant under its Guarantee, as the case may be, but provided that the aggregate amount payable to all successful claimants in respect of all the defaults of any one Defaulting Exchange Participant shall not exceed \$2,000,000.

910. In the event that the sum of \$2,000,000 (or, if the funds comprising the Fidelity Fund or realisable under the Defaulting Exchange Participant's Guarantee are less than \$2,000,000, then the available funds) is insufficient to compensate the loss of the claimant or claimants, the said sum of \$2,000,000 (or, if less, the available funds) shall be apportioned by the Compensation Committee amongst the claimants in such manner as the Compensation Committee thinks equitable.
- 910A. Upon any Exchange Participant ceasing to carry on the business of dealing in securities or ceasing to be an Exchange Participant, the Compensation Committee shall issue a circular to Exchange Participants advising Exchange Participants of the fact and inviting Exchange Participants to lodge claims they may have against such Exchange Participant within a period of time not less than 10 trading days from the date of the circular. The Compensation Committee shall have an absolute discretion to refuse to entertain any claim lodged beyond this 10 trading day period.

Fidelity Fund

911. A fund shall be established by the Exchange to be known as the "Fidelity Fund" for the purpose of compensating Exchange Participants which have suffered pecuniary loss as a result of or in connection with any Relevant Default(s) of any Exchange Participant which is a participant of the Fidelity Fund.
912. Any Exchange Participant which is desirous of participating in the Fidelity Fund shall deposit with the Compensation Committee a sum of \$50,000 at the time of submitting an application to participate in the Fidelity Fund which application shall be in such form as the Compensation Committee may from time to time prescribe. For the avoidance of doubt, participation in the Fund is voluntary, subject to the requirement that an Exchange Participant which is not a participant of the Fidelity Fund shall furnish a Guarantee in accordance with Rule 921.
- 912A. Any Exchange Participant which was a participant in the Fidelity Fund immediately prior to the Scheme Effective Date shall be deemed to have made the required deposit under Rule 912.
913. Upon any payment being made out of the Fidelity Fund in respect of any claim under these Rules the Fidelity Fund shall be subrogated to the extent of that payment to all the rights and remedies of the Exchange Participant receiving the payment in relation to the loss sustained by that Exchange Participant by reason of the default or defaults on which the claim was based and the Compensation Committee may require that Exchange Participant to execute such deed of assignment or other documents in favour of such person or persons as the Committee may stipulate. Without prejudice to the foregoing the Defaulting Exchange Participant shall pay to the Fidelity Fund all sums or amounts which are paid or payable out of the Fidelity Fund in respect of any Relevant Default and all incidental legal and other expenses.

914. The Compensation Committee shall prepare and arrange for audit of annual accounts in respect of the Fidelity Fund which shall be delivered to all Exchange Participants which participate in the Fidelity Fund.
915. The Fidelity Fund may be dissolved if so resolved by a three-quarters majority of Exchange Participants which are participants in the Fidelity Fund (or, if the amount for the time being standing to the credit of the Fidelity Fund shall fall below \$2,000,000, by a simple majority) present and voting at a meeting of such Exchange Participants, at which 10 participating Exchange Participants shall constitute a quorum. Such meeting may be convened by the Compensation Committee or by not less than 10% in number of the participating Exchange Participants by not less than 21 days' notice in writing. The accidental omission to give such notice to any such Exchange Participant shall not invalidate any business transacted at such meeting. No payment under Rule 916 or Rule 917 shall be made at any time after a notice convening a meeting to consider a resolution to dissolve the Fidelity Fund has been despatched unless at such meeting or at any adjournment thereof such resolution has been defeated and no dissolution of the Fidelity Fund shall take effect until and unless all participating Exchange Participants thereof shall have provided Guarantees as set out in Rule 921.
916. Any Exchange Participant which has not ceased and is not intending to cease carrying on its business of dealing in securities and which has not committed any Relevant Defaults may apply to withdraw from the Fidelity Fund by notice to the Compensation Committee and furnishing a Guarantee pursuant to Rule 921. Such withdrawal shall be subject to the prior written approval of the Compensation Committee and, if so approved, the retiring Exchange Participant shall be entitled to a refund from the Fidelity Fund of an amount being the lesser of firstly the amount of \$50,000 and secondly the sum attributable to the retiring Exchange Participant calculated by dividing the amount comprising the Fidelity Fund at the time (less such provisions as the Compensation Committee may for the time being set aside against liabilities or unrecoverable amounts or doubtful debts, actual or contingent) by the number of participating Exchange Participants of the Fidelity Fund (including the retiring Exchange Participant).
917. Upon any Exchange Participant ceasing to carry on the business of dealing in securities or ceasing to be an Exchange Participant, the Exchange Participant itself, its liquidator or (in the case of an Individual Exchange Participant) his personal representatives, successors and assigns or trustees in bankruptcy shall be entitled to withdraw from the Fidelity Fund subject to Rule 910A and provided that the Compensation Committee is satisfied that such Exchange Participant has no outstanding liabilities (actual or contingent) in respect of a Relevant Default. A refund calculated under Rule 916 shall be made after the expiration of 3 months from the date of cessation. The cessation of business of dealing in securities of an Exchange Participant shall be notified to the Compensation Committee by the Exchange. The Exchange Participant shall not be liable to replenish under Rule 918 for any claims lodged in respect of other participating Exchange Participants, the first notice of which is received subsequent to its date of cessation of business of dealing in securities.

918. Upon any payment out of the Fidelity Fund under these Rules in order to satisfy any claim, all Exchange Participants participating in the Fidelity Fund as at the day when the first notice of such claim was received by the Compensation Committee shall replenish the Fund by depositing with the Compensation Committee a sum (unless reduced under Rule 918A) equivalent to the amount of the payment divided by the number of such Exchange Participants, and all Exchange Participants which are participants of the Fidelity Fund shall be liable to meet all such calls to replenish whenever made.
- 918A. The Compensation Committee shall have absolute discretion to reduce the sum to be replenished by Exchange Participants under Rule 918 by deducting all or part of any interest received by or accrued to the Fidelity Fund.
- 918B. The Compensation Committee may at any time repay such amounts as it may think fit from the Fidelity Fund equally to all Exchange Participants which are participants in the Fidelity Fund, by reference to the number of months of participation in the Fidelity Fund of each participant in any period as the Compensation Committee may determine and based on such criteria as it deems equitable, provided that no such payment shall reduce the size of the Fidelity Fund below an amount equivalent to \$50,000 per participant.
919. The Compensation Committee shall be entitled to manage and invest and administer the Fidelity Fund in such manner as it shall in its absolute discretion think fit (including the power to evaluate any assets to determine the amount comprising the Fidelity Fund) and the Compensation Committee, the Exchange and a recognized exchange controller which is the controller of the Exchange shall not be liable for any losses of the Fidelity Fund and shall be entitled to be indemnified out of the Fidelity Fund for any liabilities incurred in relation thereto. Without limiting the generality of the foregoing, the Compensation Committee may use a part or the whole of the Fidelity Fund to take out and pay for any policies of insurance to cover any claims against the Fidelity Fund.
920. The Compensation Committee may from time to time issue circulars to Exchange Participants which are participants of the Fidelity Fund and any instructions, requirements or directions stated in such circulars shall be observed or complied with by such Exchange Participants and shall be conclusive and binding on all such Exchange Participants. Without prejudice to any disciplinary powers conferred by these Rules, any Exchange Participant which is in default of any Rules or requirements or calls issued under these Rules shall be liable to be expelled by the Compensation Committee from participating in the Fidelity Fund and in such event it shall furnish a Guarantee pursuant to Rule 921 and all amounts (if any) standing to its credit in the Fidelity Fund shall in the meantime be held in a suspense account.

Guarantee

921. Any Exchange Participant which is not a participant of the Fidelity Fund shall provide and maintain a Guarantee by way of security for any Relevant Defaults committed by it. This Guarantee shall be in a form acceptable to the Compensation Committee and shall be for such amounts as the Committee may from time to time require but shall not in any event be for a sum less than \$2,000,000. The Compensation Committee may determine from time to time what property or other

assets are acceptable as a basis for any Guarantee and may determine the appropriate basis for valuation of any property or other assets. Upon any payment out of the funds or against the security provided by such Exchange Participant, such Exchange Participant shall replenish the amounts so paid.

- 921A. Any Exchange Participant which maintains a Guarantee under Rule 921 and which has not ceased and is not intending to cease carrying on its business of dealing in securities and which has not committed any Relevant Defaults may apply in writing to the Compensation Committee for permission to participate in the Fidelity Fund pursuant to Rule 912. If written permission is given by the Compensation Committee, then upon the Exchange Participant making the deposit required by Rule 912, its Guarantee and all associated security shall be released to it by the Compensation Committee.
- 921B. Upon any Exchange Participant ceasing to carry on the business of dealing in securities or ceasing to be an Exchange Participant, the Exchange Participant itself or its liquidator shall be entitled to the release of its Guarantee subject to Rule 910A provided that the Compensation Committee is satisfied that such Exchange Participant has no outstanding liabilities (actual or contingent) in respect of a Relevant Default. Its Guarantee and all associated security or the balance after payment in respect of a Relevant Default shall be released to it after the expiration of 3 months from the date of cessation.

Miscellaneous

922. For the purposes of determining the contribution or security required and the limit of compensation payable under this Chapter the expression "Exchange Participant" and "Exchange Participants" shall be construed by reference to the number of Stock Exchange Trading Rights held so that any company holding more than one Stock Exchange Trading Right shall be treated as being a separate Exchange Participant for each Stock Exchange Trading Right held.
923. The Rules in this Chapter shall be binding on the liquidators of all Exchange Participants.
924. The Compensation Committee may, with the approval of the Commission, require any further or additional payments to the Fidelity Fund and further or additional Guarantees and assets to be provided as security for such Guarantees and may increase the maximum limit of payment out of the Fidelity Fund or Guarantees.