

OTC Clear Clearing Rules

Chapter 1 Definitions and Interpretation

Definitions

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

<p><u>“Sponsored Settlement Member” or “SSM”</u></p>	<p><u>means a Client Clearing Category 1 Client of a Clearing Member that has been admitted by OTC Clear to be a sponsored settlement member of such Clearing Member in accordance with Clearing Rule 7A02 and that has not been terminated as a sponsored settlement member in accordance with Clearing Rule 7A04 or 7A05;</u></p>
<p><u>“SSM Eligibility Criteria”</u></p>	<p><u>has the meaning given to it in Clearing Rule 7A02;</u></p>
<p><u>“SSM Payment Amount”</u></p>	<p><u>means, in respect of a Sponsored Settlement Member and OTC Clear, any payment by or to the relevant Clearing Member in respect of Variation Margin (other than Routine Intra-day Variation Margin), coupon payments of a Standard Rates Derivatives Contract, a Standard Cross-currency Rates Derivatives Contract and a Non Deliverable Rates Derivatives Contract, settlement amounts due in respect of an FX Derivatives Contract, and the Initial Exchange Amount and the Final Exchange Amount of a Standard Cross-currency Rates Derivatives Contract, relating to the Client Account in respect of the Sponsored Settlement Member, and other amounts as may be specified by OTC Clear in Clearing Notices issued from time to time to be payable by a Sponsored Settlement Member on behalf of the relevant Clearing Member to OTC Clear, or payable by OTC Clear to such Sponsored Settlement Member;</u></p>

Chapter 7A Sponsored Settlement Member

General

7A01. To simplify the payments between OTC Clear and a Clearing Member in respect of Contracts and between such Clearing Member and its Client under the Corresponding Client Transactions, and to provide for the continued clearing and performance of Contracts recorded to the Client Position Account of Clients following the occurrence of a DMP Event but prior to Porting of the relevant Contracts to a Replacement Clearing Member (or their termination if Porting does not occur) in order to manage risks relating to such DMP Event, OTC Clear may approve certain Clients to become Sponsored Settlement Members who can undertake certain payment obligations on behalf of the relevant Clearing Member. A Sponsored Settlement Member may settle SSM Payment Amounts with OTC Clear on behalf of its Clearing Member in respect of the Client Clearing Category 1 Accounts relating to such Sponsored Settlement Member, as set out in the Clearing Procedures. The relevant Clearing Member and OTC Clear agree that:

- (1) OTC Clear's obligation to pay the SSM Payment Amounts to the Clearing Member shall be extinguished or reduced to the extent of OTC Clear's payment of the same to the Sponsored Settlement Member; and
- (2) the Clearing Member's obligation to pay the SSM Payment Amounts to OTC Clear shall be extinguished or reduced to the extent of the Sponsored Settlement Member's payment of the same to OTC Clear.

For the avoidance of doubt, the relevant Clearing Member shall remain liable to OTC Clear for all its obligations in respect of the Contracts and Client Accounts registered in its name as further set out in Clearing Rule 817. In the event of a failure to pay all or part of any SSM Payment Amount by the Sponsored Settlement Member to OTC Clear on behalf of the relevant Clearing Member, the Clearing Member shall remain liable to pay any such unpaid amount.

7A02. A Clearing Member may submit for OTC Clear's approval any of its Clients to act as its Sponsored Settlement Member in respect of the Client Clearing Category 1 Accounts relating to such Client upon satisfaction of the following eligibility criteria ("**SSM Eligibility Criteria**"):

- (1) the relevant Clearing Member is incorporated in Hong Kong;
- (2) the relevant Client is validly incorporated and existing under the laws of its jurisdiction of incorporation, (if relevant in such jurisdiction) is in good standing and is an Authorized Institution;
- (3) the relevant Client satisfies OTC Clear's internal credit assessment metrics applicable to a Sponsored Settlement Member; and
- (4) the relevant Client complies with all relevant payment settlement operational arrangements applicable to a Sponsored Settlement Member to the satisfaction of OTC Clear, including, without limitation, being a member of, and having the operational capability to settle cash payments through the RTGS system.

A Client may be a Sponsored Settlement Member in respect of one or more of its Clearing Members at any given time. Notwithstanding the SSM Eligibility Criteria, OTC Clear retains the sole right and discretion in determining whether to approve a Client to be a Sponsored Settlement Member of a Clearing Member and shall issue a notice of approval to the Clearing Member and the relevant Sponsored Settlement Member if it decides to approve the relevant application.

7A03. Each Clearing Member confirms that it has granted continuing authority to and acknowledges that each of its Clients who is one of its Sponsored Settlement Member may settle SSM Payment Amounts with OTC Clear on its behalf in respect of the Client Clearing Category 1 Accounts relating to such Sponsored Settlement Member in accordance with the Clearing Procedures.

7A04. Each Clearing Member shall have procedures in place to notify the Sponsored Settlement Members approved by OTC Clear in relation to such Clearing Member of the ongoing requirements applicable to Sponsored Settlement Members in the Clearing Rules and Clearing Procedures from time to time, and shall procure the Sponsored Settlement Member's compliance with OTC Clear's directions or requests for information from time to time. Failure by any Sponsored Settlement Member to satisfy the SSM Eligibility Criteria and the ongoing requirements relating to Sponsored Settlement Members (including the requirement to comply with OTC Clear's directions or requests for information) at all times may result in termination by OTC Clear of its status as Sponsored Settlement Member.

7A05. A Clearing Member may not request OTC Clear to terminate any Sponsored Settlement Member's status unless it has complied with all requirements of OTC Clear for such termination as notified to the Clearing Member at the relevant time, which may include, without limitation, a requirement that the Clearing Member does not trigger a breach of its Notional Exchange Risk Limit as Clients' exposures are aggregated with House Business for the purposes of ensuring compliance with a Clearing Member's Notional Exchange Risk Limit.

7A06. OTC Clear shall notify each relevant Clearing Member as soon as reasonably practicable if an SSM Failure to Pay Event occurs or if OTC Clear otherwise decides to terminate any Client's status as Sponsored Settlement Member for any reason, including a failure by such Client to satisfy the SSM Eligibility Criteria.

Chapter 8 Clearing by OTC Clear

817. A Clearing Member providing Client Clearing Services to its Clients shall be liable to OTC Clear and be responsible for all its obligations as principal in respect of the Contracts and Client Accounts registered in its name. Each Clearing Member acknowledges that, save and except for the Client's right to receive any Client Entitlement directly from OTC Clear under Clearing Rules 1309 or 1309A (in the case of a Clearing Member who is a Rule-Based Clearing Member) or pursuant to a Security Deed (in the case of a Clearing Member who is a Non Rule-Based Clearing Member), OTC Clear owes no obligation towards any Client or any other Person that is not a Clearing Member whatsoever in respect of the Contracts or any Client Accounts. It is the responsibility of the Clearing Member (and not OTC Clear) to ensure its own compliance with Applicable Laws relating to conduct of business, client money and segregation of client assets. Subject to the provisions of these Clearing Rules, Client Clearing Services may be provided by a Clearing Member to its Clients on whatever terms the Clearing Member decides should apply, provided that each Clearing Member must, prior to providing Client Clearing Services to a Client:

- (1) in the case of a Clearing Member who is a Non Rule-Based Clearing Member, enter into a Security Deed in favour of that Client which is legal, valid, binding and enforceable, in accordance with its terms, and provide written confirmation to OTC Clear that it has complied with Clearing Rule 818 in respect of that Security Deed;
- (2) provide written confirmation to OTC Clear showing that it has delivered the Client Clearing Services Notice to such Client, and has undertaken to do all such things as OTC Clear may from time to time reasonably require to ensure that such Client is informed of the nature, costs and risks of the Client Clearing Services (including each Client Clearing Category);

- (3) enter into a Client Clearing Agreement with that Client that incorporates provisions with the following effect:
- (a) in the case of a Clearing Member who is a Rule-Based Clearing Member, the Clearing Member confirms that the positions and Collateral held in the relevant Client Account(s) by the Clearing Member as well as any Client Entitlement calculated by OTC Clear in respect thereto each relate to the corresponding positions between the Client and the Clearing Member and that, pursuant to the power of OTC Clear to make rules under section 40(2A) of the SFO, following an Event of Default of the Clearing Member, in the case of a Non-Porting Client such Client Entitlement shall be returned by OTC Clear directly to that Client pursuant to Clearing Rules 1308A and 1309 and in the case of a Porting Client such Client Entitlement shall be returned by OTC Clear directly to that Client pursuant to Clearing Rules 1308B and 1309A;
 - (b) in the case of a Clearing Member who is a Non Rule-Based Clearing Member, each of the Clearing Member and the Client confirms that the positions and Collateral held in the relevant Client Account(s) by the Clearing Member as well as any Client Entitlement calculated by OTC Clear in respect thereto each relate to the corresponding positions between the Client and the Clearing Member and, following an Event of Default of the Clearing Member, in the case of a Non-Porting Client such Client Entitlement shall be returned by OTC Clear to that Client pursuant to Clearing Rule 1309 and the terms of the Security Deed entered into by the Defaulting Clearing Member in favour of such Client and in the case of a Porting Client such Client Entitlement shall be returned by OTC Clear to that Client pursuant to Clearing Rule 1309A and the terms of the Security Deed entered into by the Defaulting Clearing Member in favour of such Client;
 - (c) Corresponding Client Transactions shall be transacted pursuant to the terms of the Client Clearing Agreement and be segregated (contractually or otherwise) from any other transactions entered into between the Clearing Member and the Client;
 - (d) upon the occurrence or designation of an Early Termination Date in respect of the Clearing Member following an Event of Default, any Corresponding Client Transaction with the Defaulting Clearing Member must either (i) be automatically terminated and re-established with, transferred or novated to a Replacement Clearing Member or (ii) the Client must have the right to terminate such transaction and re-establish, transfer or novate such transaction to a Replacement Clearing Member;
 - (e) if a Corresponding Client Transaction is terminated following such Early Termination Date, the net replacement value of the Corresponding Client Transaction shall be equal to the value attributed by OTC Clear to the Contract to which the Corresponding Client Transaction relates following such Early Termination Date;
 - (f) any non-cash collateral in respect of Corresponding Client Transactions shall be provided by way of full title transfer from the Client to the Clearing Member;
 - (g) that "two way payments" arise in the event of a termination of all Corresponding Client Transactions, the substantive effect of which is that either a Clearing Member or a Client will be entitled to receive payment under the relevant termination provisions if the net replacement value of all terminated Corresponding Client Transactions effected under the Client Clearing Agreement is in its favour;

- (h) an acknowledgement from the Client that the provision of Client Clearing Service by the Clearing Member to it will not give rise to any liability owed by OTC Clear to the Client;
- (i) the Clearing Member shall have the right in the event of a Rates and FX Clearing Termination Event relating to OTC Clear, to terminate the Corresponding Client Transaction;
- (j) upon the request of a Transferee Clearing Member to OTC Clear to port to the Transferee Clearing Member a Client's portfolio of Contracts registered with the Transferor Clearing Member in the relevant Client Position Account in full pursuant to Clearing Rule 830 or in part pursuant to Clearing Rule 831 from the Transferor Clearing Member to the Transferee Clearing Member, the Transferor Clearing Member shall have the right to (i) terminate the relevant Corresponding Client Transaction with such Client and/or (ii) have the relevant Corresponding Client Transaction re-established with, transferred or novated to the Transferee Clearing Member;
- (k) in the event that OTC Clear exercises its right under section 3.19 of the Clearing Procedures to vary the Economic Terms of a Standard Cross-currency Rates Derivatives Contract, the relevant Affected Clearing Member shall have the right to vary the terms and conditions of the relevant Corresponding Client Transaction to reflect such variation;
- (l) the Clearing Member shall only accept from the Client, as collateral for the Corresponding Client Transactions, the same types of Collateral which OTC Clear accepts from the Clearing Member in respect of the relevant Client Position Account to which Contracts relating to such Corresponding Client Transactions are recorded; ~~and~~
- (m) no margin financing or collateral transformation services shall be provided by the Clearing Member to the Client under the Client Clearing Agreement; ~~and~~
- (n) In the case of a Client Clearing Agreement with a Client that is a Sponsored Settlement Member of such Clearing Member, the Clearing Member and such Sponsored Settlement Member shall agree that (i) payment by OTC Clear to such Sponsored Settlement Member of any SSM Payment Amounts in respect of one or more Contracts shall satisfy and discharge the Clearing Member's obligation to pay the corresponding amount to such Sponsored Settlement Member under the Corresponding Client Transactions relating to those Contracts; and (ii) any payment by such Sponsored Settlement Member to OTC Clear of any SSM Payment Amounts in respect of one or more Contracts shall satisfy and discharge the Sponsored Settlement Member's obligation to pay the corresponding amount to the Clearing Member under the Corresponding Client Transactions relating to those Contracts,

and to the extent there is no Client Clearing Agreement in full force and effect or there is any deficiency in the Client Clearing Agreement, the Clearing Member and the Client will be deemed to have entered into a binding agreement into which the terms set out in this Clearing Rule 817(3) shall be deemed to have been incorporated. Any changes made to the terms of a Contract by OTC Clear shall be deemed to be reflected in the Corresponding Client Transaction.

Transfer of Contracts between Client Accounts and House Accounts

836. (1) If at any time an early termination date (howsoever described) occurs in respect of the relevant Client Clearing Agreement between a Clearing Member and a Client, and at the time of such early termination date such Clearing Member is not a Defaulting Clearing Member, such Clearing Member may instruct OTC Clear to transfer all Contracts relating to the Corresponding Client Transactions between such Clearing Member and such Client from its Client Position Account relating to such Client to its House Position Account and to transfer the Collateral recorded in the corresponding Client Collateral Account to its House Collateral Account, and OTC Clear will, subject to Clearing Rule 837 below, arrange such transfer of Contracts and Collateral within 24 hours of its receipt of such instructions together with receipt to its satisfaction of the following documents:

- (a) a copy of the notice from such Clearing Member to the relevant Client or from the relevant Client to such Clearing Member designating the relevant early termination date or, if such early termination date has occurred automatically, evidence of the relevant event of default or termination event;
- (b) a copy of a notice served by such Clearing Member on the relevant Client alerting that Client of its intention to request a transfer of the relevant Contracts pursuant to this Clearing Rule 836.

(2) 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, incurred or suffered in connection with any transfer of Contracts and Collateral set out in Clearing Rule 836(1).

837. In the event that the transfer set out in Clearing Rule 836(1) will lead to a requirement for the relevant Clearing Member to post additional Collateral to OTC Clear for the account of its House Collateral Account (after taking into account any Collateral that will be transferred from the relevant Client Collateral Account to the House Collateral Account as part of such transfer), the Clearing Member shall ensure that it has posted sufficient additional Collateral to OTC Clear prior to the transfer set out in Clearing Rule 836(1). If the relevant Clearing Member has failed to post such additional Collateral to OTC Clear by the transfer time specified in Clearing Rule 836(1), OTC Clear will continue to arrange for the transfer of Contracts and Collateral in accordance with Clearing Rule 836(1) but shall have the right to demand for such additional Collateral in accordance with the Clearing Procedures.

Chapter 13 Default Procedures

1305. Upon the occurrence of an Automatic Early Termination Event or delivery of a Notice of Default with respect to a Defaulting Clearing Member, OTC Clear may take such steps with respect to such Defaulting Clearing Member as in the circumstances appear to it, in its absolute discretion, best calculated:

- (1) to discharge the Defaulting Clearing Member's rights, obligations and liabilities under or in respect of one or more or all Contracts to which the Defaulting Clearing Member is party;
- (2) to minimize losses or the potential for losses to OTC Clear as a result of the default of the Defaulting Clearing Member; or
- (3) without the need for any prior notice to or consent of such Defaulting Clearing Member:
 - (a) (where an Automatic Early Termination Event has not occurred) to terminate any Contract of the Defaulting Clearing Member by designating an Early Termination Date in respect of such Contract;
 - (b) to apply any Collateral in the form of cash, and arranging for the liquidation of any non-cash Collateral and applying the proceeds of the realization of non-cash Collateral, for the absorption of losses incurred by OTC Clear as a result of the default of the Defaulting Clearing Member;
 - (c) to obtain any advice or assistance from the Defaulting Clearing Member and/or any third party as OTC Clear may deem necessary for any matter arising out of or in connection with an Event of Default and at the expense of the Defaulting Clearing Member, and/or
 - (d) to complete the process set out in Clearing Rules 1306, 1306A, 1306B, 1306C and 1307 in relation to such Defaulting Clearing Member,

in each case, acting in consultation with the Default Management Group and in accordance with the Default Management Process.

Upon the occurrence of any of (i) an Automatic Early Termination Event or, (ii) the delivery of a Notice of Default in respect of a Clearing Member or (iii) any failure to pay by a Clearing Member or any Sponsored Settlement Member on its behalf, OTC Clear shall not be obliged to: (a) pay any Notional Exchange Failure Adjustment Amount payable by it in respect of such Clearing Member; or (b) make any further payments or deliveries in respect of any Contract registered in the name of such Clearing Member, in either case which would otherwise have fallen due on or after such time, and upon the occurrence of an Early Termination Date in respect of such Contracts, any obligations to pay such Notional Exchange Failure Adjustment Amount or to make such further payments or deliveries and any amounts that are due but unpaid in respect of such Contracts shall be satisfied by the payment by, or to, the Defaulting Clearing Member of a single net sum to be determined in accordance with Clearing Rules 1306, 1306A, 1306B, 1306C and 1307, provided that if a Rates and FX Clearing Termination Event occurs at any time prior to the completion of the Default Management Process with respect to a Defaulting Clearing Member, no net sum shall be payable in accordance with Clearing Rules 1306, 1306A, 1306B, 1306C and 1307 and the applicable termination amounts shall instead be determined in accordance with Clearing Rules 1531 to 1540.

Chapter 15A Default relating to a Sponsored Settlement Member

15A01. If a potential Event of Default occurs in respect of a Clearing Member as a result of a Sponsored Settlement Member failing to pay any SSM Payment Amount on behalf of the relevant Clearing Member (a “SSM Failure to Pay Event”):

- (1) if OTC Clear determines that the relevant Sponsored Settlement Member is not insolvent or likely to become insolvent and (other than an SSM Failure to Pay Event) no Event of Default has occurred or is likely to occur in respect of the relevant Clearing Member, then OTC Clear may decide at its sole discretion not to deliver a Notice of Default in respect of the Clearing Member for a period of up to 5 OTC Clear Clearing Days (“SSM Payment Failure Grace Period”), provided that OTC Clear may charge the relevant Clearing Member default interest on the due but unpaid SSM Payment Amount and any costs, fees and expenses incurred by OTC Clear during the SSM Payment Failure Grace Period attributable to such failure to pay;
- (2) if an early termination date (howsoever described) occurs in respect of the relevant Client Clearing Agreement between a Clearing Member and a Client and the transfer of Contracts is effected under Clearing Rule 836(1), and the SSM Failure to Pay Event is continuing, OTC Clear may decide at its sole discretion not to deliver a Notice of Default in respect of the Clearing Member for a period of up to 5 OTC Clear Clearing Days from the date of the termination of the Client Clearing Agreement (“Early Termination Grace Period”), provided that the aggregate of any SSM Payment Failure Grace Period (if applicable) and Early Termination Grace Period does not exceed a period of 5 OTC Clear Clearing Days; and
- (3) if OTC Clear determines that the SSM Payment Failure Grace Period has expired and the SSM Failure to Pay Event is continuing, then such failure to pay shall constitute an Event of Default in respect of the Clearing Member.

15A02. If a potential Event of Default has occurred or is likely to occur in respect of a Clearing Member that has one or more Sponsored Settlement Members, but OTC Clear determines that the relevant Sponsored Settlement Member is not insolvent or likely to become insolvent, OTC Clear may deliver a Notice of Default in respect of the relevant Clearing Member and the Default Management Process shall apply, except that OTC Clear shall (prior to any porting or termination of the relevant Contracts in accordance with the Default Management Process) continue to pay the SSM Payment Amounts to the Sponsored Settlement Member in accordance with Clearing Rule 7A01 for so long as the Sponsored Settlement Member continues to pay the SSM Payment Amounts to OTC Clear instead of the Clearing Member pursuant to Clearing Rule 7A03, and to the extent such Sponsored Settlement Member has paid such amount to OTC Clear, such payment shall reduce or extinguish the Sponsored Settlement Member’s obligation to pay the same amount to the Clearing Member under the Client Clearing Agreement.