

Chapter 14 Disciplinary Actions and Proceedings

Situations Calling for Disciplinary Action

1401. OTC Clear may commence disciplinary proceedings against a Clearing Member:

- (1) if the Clearing Member contravenes any provisions of the Clearing Documentation or any conditions attached to its Membership, including any breach of its obligations, undertakings or representations by the Clearing Member under the Membership Agreement to which it is a party;
- (2) if the Clearing Member commits any act or omits to commit any act relating to its clearing activities which may adversely affect the reputation of OTC Clear, or the soundness or integrity of OTC Clear as a recognized clearing house;
- (3) if OTC Clear has determined that an Event of Default (excluding an Automatic Early Termination Event) has occurred in relation to that Clearing Member;
- (4) if the Clearing Member fails to provide information requested by an exchange, clearing house, Regulatory Authority or an organization with whom HKEX or OTC Clear has entered into an information sharing agreement;
- (5) if the Clearing Member fails to participate in the Default Management Process when required to do so under the Clearing Documentation or OTC Clear, after consultation with the Risk Management Committee, determines that the Clearing Member participated in the Default Management Process in bad faith;
- (6) if a Clearing Member is subject to an adverse finding by any Governmental Authority, Clearing Organization or Regulated Exchange in respect of its activities as a Clearing Member;
- (7) if the Clearing Member refuses to answer fully questions or produce books, records or other documents as may be required at or during the course of any disciplinary investigation or proceedings, or testifies falsely;
- (8) if the Clearing Member refuses to appear before the Disciplinary Committee, the Disciplinary Appeals Committee or any other committee of OTC Clear duly constituted under these Clearing Rules to deal with disciplinary matters, at or during the course of any disciplinary investigation or proceedings; or
- (9) if the Clearing Member fails to meet or comply with any disciplinary sanction or other requirement imposed on it.

OTC Clear will notify the relevant Regulatory Authority of a Remotely Regulated Entity in case any disciplinary proceedings have been commenced by OTC Clear against such Remotely Regulated Entity.

1402. An initial election by OTC Clear to commence disciplinary proceedings against a Clearing Member with respect to whom an Event of Default (excluding Automatic Early Termination Event) has occurred shall not prejudice, or otherwise affect, OTC

Clear's right to subsequently deliver a Notice of Default, provided that an Event of Default is then in existence and continuing (regardless of whether such event constitutes the same, or different, ground of Event of Default which leads to the disciplinary action taken by OTC Clear pursuant to Clearing Rule 1401(3)).

Co-operation

1403. In any investigation into a disciplinary matter or into circumstances possibly giving rise to a disciplinary matter, every Clearing Member shall co-operate with OTC Clear, the OTC Clear Board, the Disciplinary Committee, the Disciplinary Appeals Committee, a recognized exchange controller which is the controller of OTC Clear, the SFC and any other Person or body of Persons to whom the investigation may be entrusted.

Notification

1404. Any proposal to take disciplinary proceedings, and the outcome of any disciplinary proceedings, shall be notified to the SFC.

Disciplinary Actions

1405. Without prejudice to any other rights OTC Clear may have, following the conclusion of disciplinary proceedings carried out against a Clearing Member pursuant to Clearing Rules 1406 to 1408, the Disciplinary Committee may impose no disciplinary action or any of the following disciplinary actions:

- (1) to terminate the Membership of a Clearing Member;
- (2) to call upon a Clearing Member, by written notice, to resign pursuant to Clearing Rule 604. If the relevant Clearing Member fails to tender its notice of resignation within seven days of receipt of such notice from OTC Clear, OTC Clear may exercise its power to terminate the Membership of such Clearing Member;
- (3) to suspend a Clearing Member from Membership pursuant to Clearing Rules 601 to 603 on such terms and for such period as OTC Clear shall think fit;
- (4) to impose a fine on a Clearing Member;
- (5) to censure publicly or privately a Clearing Member;
- (6) to issue a warning, including, as appropriate, a requirement that certain actions be taken (which may include a requirement that the Clearing Member cease and desist from certain actions) within the period specified in the warning and specifying the sanction (including a fine, suspension or revocation) in the event that such actions are not taken within the specified period;
- (7) to require for rectification or other remedial action or restitutionary measures to be taken by the Clearing Member within a stipulated period, including, if appropriate, the appointment of independent accountants, solicitors, consultants or other professionals in connection therewith;
- (8) to notify the matter to any competent authority to which a Clearing Member is subject; or

- (9) to take such other disciplinary action as the Disciplinary Committee shall consider appropriate in the circumstances.

The Disciplinary Appeals Committee may, following the conclusion of appeal hearings carried out pursuant to Clearing Rules 1409 and 1410, overturn any decision made by the Disciplinary Committee or impose any of the disciplinary actions set out in sub-paragraphs (1) to (8) above or take such other disciplinary action as the Disciplinary Appeals Committee shall consider appropriate in the circumstances.

Procedures relating to Disciplinary Committee

1406. If OTC Clear proposes to commence disciplinary proceedings against a Clearing Member in respect of any situation set out in Clearing Rule 1401, it shall provide the Clearing Member and the Disciplinary Committee a notice (the “**Notice of Disciplinary Committee Hearing**”) at least 10 OTC Clear Business Days prior to the proposed date of the hearing, and the Notice of Disciplinary Committee Hearing shall include:

- (1) the statement of case which shall comprise the charge(s), a summary of the facts to be relied on alleged to give rise to that situation;
- (2) a copy of the documents in the possession of OTC Clear which are relied on to support the facts alleged, as well as a copy of any document in the possession of OTC Clear which contradicts the alleged facts; and
- (3) the date, time and place of the hearing,

provided that OTC Clear shall have the power (either on its own initiative or upon a request received from the Clearing Member) to postpone or adjourn such hearing to a date, time and place to be determined by OTC Clear. In case of such proposed postponement or adjournment, OTC Clear shall notify the Clearing Member at least 10 OTC Clear Business Days prior to the date on which such proposed or adjourned hearing is due to take place.

1407. The Clearing Member shall have the right to attend the hearing of the Disciplinary Committee and to make representations, and may be legally represented at such hearing. A representative of OTC Clear may also make representations on behalf of OTC Clear.

1408. The Disciplinary Committee will communicate the outcome of such hearing, including any action to be taken by OTC Clear, and/or order as to costs by way of provision of a notice (the “**Initial Order Notice**”) to the relevant Clearing Member. Such Initial Order Notice shall set out in reasonable detail the reasons for the conclusions of the Disciplinary Committee.

Appeals to the Disciplinary Appeals Committee

1409. Following receipt of the Initial Order Notice, a Clearing Member may appeal to the Disciplinary Appeals Committee on one of the grounds set out in Clearing Rule 1411 within the Appeal Period, where the “**Appeal Period**” means:

- (1) three OTC Clear Business Days from the date of receipt of the Initial Order Notice by a Clearing Member if the Initial Order Notice indicates that such Clearing Member’s Membership shall be terminated. If the relevant Clearing Member does not appeal within the Appeal Period, it shall commence the

Non-Default Unwind immediately and its Membership Termination Date shall fall on the OTC Clear Clearing Day on which each of the:

- (a) Initial Margin requirements (in respect of each Position Account of such Clearing Member) shown on the end-of-day Margin report published on such day; and
- (b) the net notional of all Contracts recorded in the name of such Clearing Member,

becomes zero.

Failure by a Clearing Member to commence the Non-Default Unwind following the expiry of the Appeal Period pursuant to this Clearing Rule 1409(1) shall constitute an Event of Default with respect to such Clearing Member; and

- (2) 10 OTC Clear Business Days from the date of receipt of the Initial Order Notice by a Clearing Member if the Initial Order Notice indicates that OTC Clear will take disciplinary measures against the relevant Clearing Member other than termination of its Membership. If no appeal is brought by the Clearing Member prior to the expiry of the Appeal Period, then OTC Clear may, at the end of the Appeal Period, immediately enforce the proposed disciplinary action as set out in the Initial Order Notice against such Clearing Member.

A Clearing Member shall clearly indicate the ground(s) of appeal in its request to appeal. An appeal shall be deemed invalid if a Clearing Member fails to clearly indicate the ground(s) of appeal in its request to appeal within the Appeal Period.

1410. If an appeal on one of the grounds set out in Clearing Rule 1411 is lodged by a Clearing Member within the Appeal Period, then OTC Clear will provide such Clearing Member and the Disciplinary Appeals Committee a notice (the “**Notice of Disciplinary Appeals Committee Hearing**”) stating the date, time and place where the appeal hearing will take place, provided that OTC Clear shall have the power (either on its own initiative or upon a request received from the Clearing Member) to postpone or adjourn such hearing to a date, time and place to be determined by OTC Clear. In case of such proposed postponement or adjournment, OTC Clear shall notify the Clearing Member at least 10 OTC Clear Business Days prior to the date on which such proposed or adjourned hearing is due to take place.

Grounds for Appeal

1411. The Disciplinary Appeals Committee shall hear and determine appeals against a decision of the Disciplinary Committee on the following grounds:

- (1) that the Disciplinary Committee misdirected or misconducted itself contrary to these Clearing Rules or the rules of natural justice;
- (2) that the Disciplinary Committee’s decision was one which no reasonable Disciplinary Committee could have reached;
- (3) that the Disciplinary Committee’s decision was based on an error of law or a gross misinterpretation of these Clearing Rules; or

- (4) that any disciplinary action or penalty imposed by the Disciplinary Committee is unduly excessive,

provided that in each case, the onus of proof lies with the Clearing Member who appeals against the decision of the Disciplinary Committee as set out in the Initial Order Notice.

1412. The Clearing Member shall have the right to attend the hearing of the Disciplinary Appeals Committee and to make representations and shall be permitted to be legally represented at such hearing. A representative of OTC Clear may also make representations on behalf of OTC Clear.
1413. Unless otherwise determined by OTC Clear or the Disciplinary Appeals Committee, pending the outcome of any appeal to the Disciplinary Appeals Committee, the decision being appealed against shall be stayed from the date on which the appeal is lodged by the Clearing Member.
1414. The decision of the Disciplinary Appeals Committee on an appeal made to it pursuant to these Clearing Rules shall be final and conclusive. The Disciplinary Appeals Committee will issue and communicate the outcome of such hearing including any action to be taken by OTC Clear and/or order as to costs by way of provision of a notice (the "**Final Order Notice**") to the relevant Clearing Member.

Order as to Costs

1415. Where disciplinary proceedings are commenced against a Clearing Member, the Disciplinary Committee or Disciplinary Appeals Committee, as appropriate, may order any party to the disciplinary proceedings to pay or share such costs and expenses including, without limitation, the remuneration and expenses of the members of the Disciplinary Committee and/or the Disciplinary Appeals Committee adjudicating at the hearing, legal costs, administration costs and expenses, and costs and expenses incurred in the investigation, preparation and presentation of the case.
1416. Subject to Clearing Rule 1417, any costs awarded against a Clearing Member at any disciplinary hearing shall be payable within 10 OTC Clear Business Days of the delivery of the Initial Order Notice (if not appealed) or the Final Order Notice, as applicable and the determination of the amount of the costs.
1417. The Disciplinary Appeals Committee may affirm or reassess any order of costs made by the Disciplinary Committee whether or not an appeal is allowed, dismissed or withdrawn, and such order as to costs made by the Disciplinary Appeals Committee, if any, shall come into effect on the service of the Final Order Notice on the Clearing Member.