

PART VA PROVISIONS RELATING TO THE SPECIAL CLEARING HOUSE PARTICIPANT

Chapter 21A General Provisions

General Provisions

21A01. Capitalised terms used but not otherwise defined in this Part VA shall have the meanings given to them in Chapter 1 of these Clearing Rules.

Obligations of the Special Clearing House Participant

21A02. OTC Clear and the Special Clearing House Participant have entered into the Clearing Link Agreement to provide Clearing Link Services for the clearing of Original Northbound Transactions.

21A03. All obligations of the Special Clearing House Participant under these Clearing Rules have been specified in, or otherwise incorporated by reference into, this Part VA. For the avoidance of doubt, the Special Clearing House Participant shall have no other obligations under these Clearing Rules other than as specified or incorporated in this Part VA.

Liability

21A04. The Special Clearing House Participant shall be liable for any Damage incurred or suffered by OTC Clear or any of its officers or employees as a consequence of its breach of any of its obligations under the Clearing Documentation or the terms of a Contract or any Applicable Laws.

21A05. 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 the Special Clearing House Participant 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 any civil liability, whether arising in contract, tort, defamation, equity or otherwise for any Damage suffered or incurred directly or indirectly by the Special Clearing House Participant 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 and/or providing its services;
- (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 the Special Clearing House Participant or any other third party;
- (5) any dispute relating to the validity, existence or terms of any Contract;

- (6) a failure by the Special Clearing House Participant 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 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;
- (11) any acts or omissions, or delay on the part, of the owners and licensees of all hardware and software operated or used by 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 the Special Clearing House Participant 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, depositories, 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 the Special Clearing House Participant or any other Person to use any programme or system for purposes of accessing the Rates and FX Clearing Services.

21A06. 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 the Special Clearing House Participant or to any other Person in respect of any information and statistics (including market prices, numbers of Contracts cleared and risk management assumptions) provided or made available by OTC Clear 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 any civil liability, whether arising in contract, tort, defamation, equity or otherwise for any Damage suffered or incurred directly or indirectly by the Special Clearing House Participant or any other Person.

Disclosure of Information

21A07. All information provided to or in the possession of OTC Clear regarding past or current positions carried by OTC Clear for the Special Clearing House Participant, Margin payments between OTC Clear and the Special Clearing House Participant or deliveries made by or to the Special Clearing House Participant 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 the Special Clearing House Participant and any other information in connection with the Special Clearing House Participant at any time:

- (1) with the written consent of the Special Clearing House Participant;
 - (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 request of any Governmental Authority, including the SFC, 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 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 Total Available 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 reporting service agreement or pursuant to the Tax Information Exchange Framework, such trade repository or Governmental Authority may use, handle, store, transfer and disclose such information in accordance with the terms of any such information sharing arrangement, reporting service 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;
 - (11) to any Person if the information comes into the public domain, other than as a result of a breach of this Clearing Rule 21A07 by OTC Clear or any of its Representatives; or
 - (12) to any Client or Designated Person to which the information relates,
- provided that, in any such case other than under sub-paragraphs (1), (3), (4), (5), (9) and (11) above, the confidentiality of the information is made known to the recipient (it being

understood that, if more than one sub-paragraph of this sentence applies to a particular disclosure and that includes any of sub-paragraph (1), (3), (4), (5), (9) or (11) above, then the confidentiality of the information need not be made known to the recipient).

The Special Clearing House Participant agrees that OTC Clear has the power to publish 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 the Special Clearing House Participant cannot reasonably be determined from the data, statistics or other materials so published.

21A08. OTC Clear may request the Special Clearing House Participant to provide it with any information (including personal data) required by a trade repository or Governmental Authority (whether in Hong Kong or elsewhere) with whom OTC Clear or HKEX has entered into an information sharing or reporting service agreement or arrangement or pursuant to the Tax Information Exchange Framework. In the event that regulatory approval is required for the Special Clearing House Participant to comply with such request, the Special Clearing House Participant shall provide the information in the permitted scope of relevant regulators or applicable regulatory requirements, and if necessary to comply with such request, the Special Clearing House Participant shall use reasonable efforts to obtain approval from the relevant regulator.

21A09. To the extent that the information to be provided by the Special Clearing House Participant to OTC Clear under Clearing Rule 21A08 or pursuant to any other obligations under the Clearing Rules constitutes personal data as defined in the Personal Data (Privacy) Ordinance, the Special Clearing House Participant shall:

- (1) ensure that the disclosure of personal data by the Special Clearing House Participant or its Representatives to OTC Clear is in all respects and in each case lawful;
- (2) ensure that the Special Clearing House Participant has obtained (and if requested by OTC Clear, provide) all necessary consents from the data subject prior to the disclosure of such personal data to OTC Clear, such consent to be sufficient to allow disclosure by OTC Clear of such personal data to any trade repository or Governmental Authority (whether in Hong Kong or elsewhere) upon request or as required by Applicable Law or the terms of any information sharing or reporting service agreement or arrangement that OTC Clear or HKEX has entered into or pursuant to the Tax Information Exchange Framework and to allow any subsequent use, handling, storage, transfer and disclosure by any such trade repository or Governmental Authority in accordance with the terms of any such information sharing or reporting service agreement or arrangement or pursuant to such Tax Information Exchange Framework;
- (3) ensure that the Special Clearing House Participant has fully complied with its obligations as a data user under the Personal Data (Privacy) Ordinance;
- (4) take all practicable steps to ensure that all personal data collected from relevant data subjects and disclosed to OTC Clear is accurate in all material respects; and
- (5) where a data subject withdraws, revokes or modifies any consent as described in sub-paragraph (2) above, the Special Clearing House Participant shall immediately inform OTC Clear of the same.

For the purpose of this Clearing Rule 21A09, the terms “**personal data**”, “**data subject**” and “**data user**” shall have the meanings given to them under the Personal Data (Privacy) Ordinance.

Governing Law

21A10. Clearing Rule 216 shall not apply to the Special Clearing House Participant. In lieu thereof, the courts of Hong Kong shall have non-exclusive jurisdiction to hear and determine any action or dispute which may arise out of or in connection with these Clearing Rules. OTC Clear and the Special Clearing House Participant agree to submit to the non-exclusive jurisdiction of the Hong Kong courts and agree to waive any objection they might otherwise have to such jurisdiction.

21A11. The Special Clearing House Participant irrevocably waives, to the extent permissible by Applicable Laws, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from:

- (1) suit or proceedings;
- (2) jurisdiction of any court or arbitral tribunal;
- (3) relief by way of injunction or order for specific performance or recovery of property;
- (4) attachment of its assets (whether before or after judgment or award), any effort to confirm, enforce, or execute any decision, settlement, award, judgment, service of process, execution order or attachment that results from any judicial or administrative proceedings; and
- (5) execution or enforcement of any judgment or award to which it or its revenues or assets might otherwise be entitled in any proceedings before an arbitral tribunal or in the courts of any jurisdiction.

The Special Clearing House Participant irrevocably agrees, to the extent permitted by law, that it will not claim any such immunity, or assert a defence of sovereign immunity, in any proceedings. The rights and obligations of the Special Clearing House Participant under these Clearing Rules and in relation to any Contract are of a commercial and not a governmental nature.

Notice

21A12. Except as otherwise expressly provided in these Clearing Rules, all notices, requests, demands or other communications from OTC Clear to the Special Clearing House Participant may be given orally or in writing, in person or by post, by electronic or wire transmission (including authenticated SWIFT), by telephone or facsimile, by posting on the HKEX website, or by any means of computer data transmission. Notwithstanding the immediately foregoing, in respect of any notices relating to suspension of Participantship, or designation of an Early Termination Date in respect of the Contract(s) registered in the name of the Special Clearing House Participant, OTC Clear shall deliver such notices to the Special Clearing House Participant by post, electronic or wire transmission or facsimile.

21A13. In the case of communications sent by post to the address last specified by the Special Clearing House Participant as its address (as the Special Clearing House Participant may from time to time notify OTC Clear), the communications from OTC Clear shall be deemed to have been received by the Special Clearing House Participant on the following OTC Clear Business Day if the address is in Hong Kong and, if the address is outside Hong

Kong, on such day as OTC Clear may from time to time specify with reference to the time the communications would be delivered to such address in the ordinary course of post. If the communications are delivered in person to such address, the communications will be deemed to have been received by the Special Clearing House Participant at the time of delivery made to such address.

- 21A14. In the case of communications made by OTC Clear to the Special Clearing House Participant by electronic or wire transmission, by telephone or facsimile, by posting on the HKEX website or any other instantaneous means, the communications shall be deemed to have been received by the Special Clearing House Participant immediately.
- 21A15. Except as otherwise expressly provided in these Clearing Rules, all notices, requests, demands or other communications from the Special Clearing House Participant to OTC Clear may be given orally or in writing, in person or by post, by electronic or wire transmission (including authenticated SWIFT), by telephone or facsimile, or by any means of computer data transmission. Notwithstanding the immediately foregoing, in respect of any notices relating to designation of an Early Termination Date by the Special Clearing House Participant in accordance with Clearing Rule 21J13, the Special Clearing House Participant shall deliver such notices to OTC Clear by post, electronic or wire transmission or facsimile.
- 21A16. In the case of communications sent by post to the address last specified by OTC Clear (as OTC Clear may from time to time notify the Special Clearing House Participant), the communications from the Special Clearing House Participant to the Hong Kong address of OTC Clear shall be deemed to have been received by OTC Clear on the following OTC Clear Business Day. If the communications are delivered in person to such address, the communications will be deemed to have been received by OTC Clear at the time of delivery made to such address.
- 21A17. In the case of communications made by the Special Clearing House Participant to OTC Clear by electronic or wire transmission, by telephone or facsimile or any other instantaneous means, the communications shall be deemed to have been received by OTC Clear immediately.

Process Agent

- 21A18. The Special Clearing House Participant shall appoint and maintain an agent in Hong Kong to act as its agent to accept service of process issued out of the courts of Hong Kong in relation to any proceedings in connection with any Clearing Documentation and shall deliver to OTC Clear a copy of the agreement relating to such appointment countersigned by such agent. The Special Clearing House Participant shall not give any notice of revocation to, or otherwise terminate the appointment of, any such agent unless prior to such termination it has validly appointed a replacement agent in Hong Kong to accept service of process issued out of the courts of Hong Kong in relation to any proceedings in connection with any Clearing Documentation, and has delivered to OTC Clear an agreement relating to the appointment of such replacement agent and countersigned by such replacement agent. If for any other reason any agent appointed under this Clearing Rule 21A18 ceases to be such an agent, the Special Clearing House Participant shall forthwith appoint a replacement agent in Hong Kong, and deliver to OTC Clear a copy of the new agent's acceptance of that appointment within 10 OTC Clear Business Days of such appointment. Nothing in the Clearing Documentation or any Contract shall affect the right of OTC Clear to serve process in any other manner permitted by law.

Calculations and Currency

21A19. The calculations made by OTC Clear pursuant to these Clearing Rules shall be conclusive and binding on the Special Clearing House Participant. If the Special Clearing House Participant believes that there is any error in OTC Clear's calculations, the Special Clearing House Participant shall immediately notify OTC Clear in writing and in any event, no later than 17:00 hours Hong Kong time on the immediately following OTC Clear Clearing Day upon receipt of the relevant calculations.

Force Majeure Event and Illegality

21A20. OTC Clear and the Special Clearing House Participant shall notify each other, SFC and PBOC as soon as possible upon being aware of the occurrence of any Force Majeure Event or Illegality that affects it. If such Force Majeure Event or Illegality results in, or is likely to result in, any failure to perform all or any part of the Inter-CCP Rates Derivatives Contracts:

- (1) payment and delivery obligations of both OTC Clear and the Special Clearing House Participant under any Inter-CCP Rates Derivatives Contracts affected by the Force Majeure Event or Illegality (including payments and delivery in respect of any Inter-CCP Margin Amount) shall be deferred or delayed until either the Force Majeure Event or Illegality ceases to exist, unless the Clearing Link Services is suspended or terminated; and
- (2) OTC Clear and the Special Clearing House Participant shall notify each other as soon as possible after it becomes aware that the Force Majeure Event or Illegality has ceased to exist, and both OTC Clear and the Special Clearing House Participant shall cooperate to resume normal operations under the Clearing Link Services unless the Clearing Link Services is suspended or terminated, but neither OTC Clear nor the Special Clearing House Participant shall be liable for any loss (whether direct, indirect or consequential) incurred by the other party or its Affiliates in connection with such Force Majeure Event or Illegality.

Such notice from OTC Clear or the Special Clearing House Participant shall include the nature of such event and the detailed information which are reasonable to provide in such circumstances and as reasonably required by the other party.

Original Northbound Transactions

21A21. OTC Clear and the Special Clearing House Participant acknowledge and agree that the registration, novation and clearing of Original Northbound Transactions shall be made pursuant to the terms of Chapter 8A of the Clearing Rules.