

香港場外結算有限公司

(香港交易及結算所有限公司附屬公司)

OTC CLEARING HONG KONG LIMITED

(A subsidiary of Hong Kong Exchanges and Clearing Limited)

通告 CIRCULAR

Subject: Amendments to the Clearing Rules and Clearing Procedures of OTC Clearing Hong Kong Limited ("OTC Clear")

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Clearing Members of OTC Clear are requested to note that the Securities and Futures Commission has approved amendments to the Clearing Rules and the Clearing Procedures of OTC Clear for the purpose of enabling Clearing Members incorporated in England and France to sponsor Clients as Sponsored Settlement Members.

The amendments, as set out in Appendices 1 and 2 respectively will come into effect on Friday, 30 September 2022.

The marked-up version of the amendments can be downloaded from the following sections of the HKEX website:

- ["Rule Update - OTC Clear Clearing Rules"](#)
- ["Rule Update - OTC Clear Clearing Procedures"](#)

Florence Leung
Head of Legal

OTC Clear Clearing Rules

PART I GENERAL PROVISIONS

Chapter 1 Definitions and Interpretation

Definitions

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

<p>“SSM Payment Amount”</p>	<p>means, in respect of a sponsoring Clearing Member and OTC Clear, any payment owed between that sponsoring Clearing Member and OTC Clear of Variation Margin (other than Routine Intra-day Variation Margin) (for the avoidance of doubt, as adjusted for price alignment interest in accordance with Section 4.3.2 of the Clearing Procedures), 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, in respect of Contracts registered to the Client Account relating to a Sponsored Settlement Member who is a Client of that sponsoring Clearing Member, and such other amounts as have been specified as SSM Payment Amounts by OTC Clear in Clearing Notices issued from time to time;</p>
<p>“SSM Tripartite Agreement”</p>	<p>means an agreement between OTC Clear, a relevant sponsoring Clearing Member and its Client which is substantially in the form set out in Appendix VII or VIII of the Clearing Procedures (the relevant form to be determined according to the jurisdiction of incorporation of that sponsoring Clearing Member) and which sets out, amongst other things, the terms on which payments of amounts equal to (and in the same currency as) SSM Payment Amounts may be made directly between OTC Clear and that Client;</p>

108. In the event of any conflict between:

- (1) any definition or provision contained in these Clearing Rules, the Clearing Procedures or any Clearing Notices, unless OTC Clear otherwise determines, the document first listed shall have precedence and shall prevail over the documents listed later, in descending order, as follows:
 - (a) these Clearing Rules;
 - (b) the Clearing Procedures; and
 - (c) the Clearing Notices.

- (2) the Clearing Rules or any Membership Agreement on the one hand and any Client Clearing Agreement, any Security Deed or any Deed of Charge on the other, the Clearing Rules or the Membership Agreement shall prevail.
- (3) any Client Clearing Agreement and any Security Deed, the Security Deed will prevail over the Client Clearing Agreement.
- (4) the Clearing Rules, the Clearing Procedures, any Client Clearing Agreement or any other agreement between all or any of the parties to an SSM Tripartite Agreement on the one hand and any SSM Tripartite Agreement on the other, the SSM Tripartite Agreement will prevail.

PART II MEMBERSHIP

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. A Sponsored Settlement Member may settle SSM Payment Amounts with OTC Clear in respect of the Client Clearing Category 1 Accounts relating to such Sponsored Settlement Member, as set out in the Clearing Procedures, and in the case of Sponsored Settlement Members incorporated in England or France, on the terms and subject to the conditions set out in the SSM Tripartite Agreement to which that Sponsored Settlement Member, OTC Clear and the relevant Clearing Member are party. Each relevant sponsoring Clearing Member which is incorporated in Hong Kong and OTC Clear agree that:

- (1) OTC Clear's obligation to pay SSM Payment Amounts to that sponsoring Clearing Member in respect of any Contract shall be extinguished or reduced to the extent of payment of the same by OTC Clear to the Sponsored Settlement Member with which that sponsoring Clearing Member has a Corresponding Client Transaction in respect of that Contract; and
- (2) that sponsoring Clearing Member's obligation to pay SSM Payment Amounts to OTC Clear in respect of any Contract shall be extinguished or reduced to the extent of payment of the same by the Sponsored Settlement Member with which that sponsoring Clearing Member has a Corresponding Client Transaction in respect of that Contract 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, 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 sponsoring Clearing Member is incorporated in Hong Kong, England or France;
- (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;

- (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; and
- (5) in the case of sponsoring Clearing Members who are incorporated in England or France, the relevant Client, the relevant sponsoring Clearing Member and OTC Clear have entered into the relevant SSM Tripartite Agreement.

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 sponsoring Clearing Member agrees that each of its Clients who is its Sponsored Settlement Member may settle SSM Payment Amounts with OTC Clear in respect of the Client Clearing Category 1 Accounts relating to such Sponsored Settlement Member in accordance with the Clearing Procedures.

7A04. Each sponsoring 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 (including, without limitation, any amounts to be paid by those Sponsored Settlement Members to OTC Clear pursuant to any SSM Tripartite Agreement), 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.

PART III CLEARING OPERATIONS

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 (i) 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) or (ii) amounts equal to (and in the same currency as) SSM Payment Amounts directly from OTC Clear (in the case of a Client which is a Sponsored Settlement Member of a sponsoring Clearing Member which is incorporated in England or France under the terms of a relevant SSM Tripartite Agreement which governs payment of those amounts), 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) in the case of a Client that is to become a Sponsored Settlement Member of a sponsoring Clearing Member which is incorporated in England or France, such sponsoring Clearing Member must, prior to that Client becoming a Sponsored Settlement Member, enter into a legal, valid, binding and enforceable SSM Tripartite Agreement with that Client and OTC Clear; and
- (4) 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 (other than, in the case of a Client which is a Sponsored Settlement Member of a sponsoring Clearing Member which is incorporated in England or

France, in respect of amounts payable by OTC Clear to that Sponsored Settlement Member as provided for in an SSM Tripartite Agreement with that Sponsored Settlement Member);

- (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;
- (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 amounts corresponding to (and in the same currency as) any SSM Payment Amounts in respect of one or more Contracts shall (to the extent of such payment) 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) payment by such Sponsored Settlement Member to OTC Clear of amounts corresponding to (and in the same currency as) any SSM Payment Amounts in respect of one or more Contracts shall (to the extent of such payment) 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.

PART IV RISK MANAGEMENT AND DEFAULT 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, (ii) the delivery of a Notice of Default in respect of a Clearing Member or (iii) any failure to pay by a Clearing Member (except, for the avoidance of doubt, to the extent that such payment is discharged by a Sponsored Settlement Member), 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.

PART IV RISK MANAGEMENT AND DEFAULT PROCEDURES

Chapter 15A Default relating to a Sponsored Settlement Member

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 amounts equal to (and in the same currency as) any SSM Payment Amount to OTC Clear (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 sponsoring Clearing Member that has one or more Clients who are 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 may (prior to any porting or termination of the relevant Contracts in accordance with the Default Management Process) continue to pay to the Sponsored Settlement Member amounts equal to (and in the same currency as) the SSM Payment Amounts payable by OTC Clear to the Clearing Member in accordance with Clearing Rule 7A01 (or any SSM Tripartite Agreement with that Sponsored Settlement Member and Clearing Member where applicable) for so long as the Sponsored Settlement Member has paid to OTC Clear amounts equal to (and in the same currency as) the SSM Payment Amounts due to OTC Clear pursuant to Clearing Rule 7A03 (or any SSM Tripartite Agreement with that Sponsored Settlement Member and Clearing Member where applicable).

OTC Clear Clearing Procedures

**Chapter 3
Rates and FX Clearing Services**

3.11 Cash Settlement Method

3.11.2 Bulk Settlement Run

- (i) In respect of the cash payments relevant to the settlements of Initial Exchange Amount and/or Final Exchange Amount of any Standard Cross-currency Rates Derivatives Contract and Notional Amounts of any Deliverable FX Derivatives Contract relevant to a Currency Pair (swap and FX) for a particular Clearing Member or Sponsored Settlement Member (where applicable), if the netted amounts of at least one of the currencies of a Currency Pair (swap and FX) derived in accordance with section 3.11 (v) is greater than zero, they must be settled through the Bulk Settlement Run process for such Currency Pair (swap and FX), where “**Bulk Settlement Run**” is a money clearing and settlement service linked with the RTGS system provided by HKICL, which settles interbank payments through a payment-versus-payment mechanism on a bulk settlement basis, “**payment-versus-payment**” (or “**PVP**”) is a mechanism whereby a transfer of one currency in a Currency Pair (swap and FX) occurs only if a transfer of the other currency in the Currency Pair (swap and FX) also takes place, and “**Bulk Settlement Run process**” is the settlement process comprising all the Bulk Settlement Runs in the same Currency Pair (swap and FX) on any particular payment date. For a Clearing Member who is not a member of the RTGS system, for cash settlement purpose, it should maintain an account with a member of the RTGS system. If a Clearing Member is a member of the RTGS system, it must settle directly through the Bulk Settlement Run process. A Sponsored Settlement Member must settle directly through the Bulk Settlement Run process.

3.12 Cash Settlement Time

- (i) Save and except the Initial Exchange Amount and the Final Exchange Amount of any Standard Cross-currency Rates Derivatives Contract and the Notional Amounts of any Deliverable FX Derivatives Contract, any cash settlement to be payable by a Clearing Member or by a Sponsored Settlement Member (where applicable) on a particular payment date must be settled by the Clearing Member or by the Sponsored Settlement Member (where applicable):
- (a) no later than 11:00 hours Hong Kong time on the relevant payment due date if the “OTC Clear Settlement Report (Report Number STRP01)” and/or “OTC Clear Settlement Report for Client (Report Number STRP01_C)” (if applicable) relating to that particular payment date is published at or prior to 08:30 hours Hong Kong time on such day; or
- (b) in all other cases, within two hours following the “OTC Clear Settlement Report (Report Number STRP01)” and/or “OTC Clear Settlement Report for Client (Report Number STRP01_C)” (if applicable) relating to that particular payment date is published or information equivalent to that which would be set out in such

reports is communicated to Clearing Member by OTC Clear, subject to the availability of RTGS services.

- (ii) In respect of the Initial Exchange Amount and the Final Exchange Amount of any Standard Cross-currency Rates Derivatives Contract and Notional Amounts of any Deliverable FX Derivatives Contract:
- (a) the Clearing Member or the Sponsored Settlement Member (where applicable) must be operationally ready to settle the relevant cash settlement on a particular payment date by reserving sufficient funding for the relevant cash settlement no later than the Notional Exchange USD/HKD Settlement Ready Time for the Currency Pair (swap and FX) of USD and HKD and the Notional Exchange USD/CNY (offshore) Settlement Ready Time for the Currency Pair (swap and FX) of USD and CNY (offshore), on the relevant payment due date regardless of whether the “OTC Clear Settlement Report (Report Number STRP01)” and/or “OTC Clear Settlement Report for Client (Report Number STRP01_C)” (if applicable) relating to that particular payment date is published at or prior to 08:30 hours Hong Kong time on such day or not;
 - (b) the cash settlement process for the Initial Exchange Amount and the Final Exchange Amount of any Standard Cross-currency Rates Derivatives Contract and Notional Amounts of any Deliverable FX Derivatives Contract must be completed by both the Clearing Member or the Sponsored Settlement Member (where applicable) and OTC Clear no later than: (A) the Notional Exchange USD/HKD Settlement Cutoff Time for the Currency Pair (swap and FX) of USD and HKD and the Notional Exchange USD/CNY (offshore) Settlement Cutoff Time for the Currency Pair (swap and FX) of USD and CNY (offshore) or (B) if OTC Clear determines to continue to settle any amount pursuant to section 3.19(ii)(a) of these Clearing Procedures by means of other methods as determined by OTC Clear, then in respect of such amount only, 16:00 hours Hong Kong time, in each case on the relevant payment due date regardless of whether the “OTC Clear Settlement Report (Report Number STRP01)” and/or “OTC Clear Settlement Report for Client (Report Number STRP01_C)” (if applicable) relating to that particular payment date is published at or prior to 08:30 hours Hong Kong time on such day or not but provided that if such reports are not published information equivalent to that which would be set out in such reports is communicated to Clearing Member and/or the Sponsored Settlement Member (where applicable) by OTC Clear no later than the Notional Exchange USD/HKD Settlement Ready Time for the Currency Pair (swap and FX) of USD and HKD, and the Notional Exchange USD/CNY (offshore) Settlement Ready Time for the Currency Pair (swap and FX) of USD and CNY (offshore); and
 - (c) If a Black Rainstorm Warning or a Typhoon Signal Number 8 or above is issued by The Hong Kong Observatory or Extreme Conditions are announced, the special arrangements as set out in section 9.6 of these Clearing Procedures will apply and the operation of the procedures set out in this section 3.12(ii) shall be construed accordingly.

3.19 Notional Exchange Failure Handling Procedures

Following the occurrence of a Notional Exchange Failure:

- (i) OTC Clear may, on the basis of the Notional Exchange Failure, determine that the Non-delivering Clearing Member is or appears to be unable, or likely to become unable, to meet its obligations in respect of the Clearing Documentation and/or one or more Contracts to which it is party, such that an Event of Default occurs with respect to the Non-delivering Clearing Member pursuant to Clearing Rule 1301 (an “**Event of Default Determination**”); and
- (ii) irrespective of whether OTC Clear makes an Event of Default Determination in respect of that Notional Exchange Failure:
 - (a) subject to sub-paragraph (d) below, OTC Clear will continue the settlement of Initial Exchange Amounts and Final Exchange Amounts of Standard Cross-currency Rates Derivatives Contracts and the settlement of Notional Amounts of Deliverable FX Derivatives Contracts with other Clearing Members. Such settlement may be processed by means of Bulk Settlement Run(s) and/or any other methods as determined by OTC Clear;
 - (b) OTC Clear may, in its sole discretion, obtain one or more short term loans and/or enter into one or more FX Transactions in order to fulfil OTC Clear’s outstanding obligations with other Clearing Members under Standard Cross-currency Rates Derivatives Contracts or Deliverable FX Derivatives Contracts;
 - (c) if the relevant Initial Exchange Amount or Final Exchange Amount under a Standard Cross-currency Rates Derivatives Contract or the relevant Notional Amount under a Deliverable FX Derivatives Contract, as the case may be (the “**Unpaid Exchange Amount**”), remains unpaid: (a) in respect of a Bulk Settlement Run process for the Currency Pair (swap and FX) of USD and HKD, 15 minutes after the Commencement Time of such Bulk Settlement Run process; or (b) in respect of a Bulk Settlement Run process for the Currency Pair (swap and FX) of USD and CNY (offshore), 15 minutes after the Commencement Time of such Bulk Settlement Run process, on the relevant Initial Exchange Date or Final Exchange Date or Settlement Date, as the case may be, OTC Clear may, in its sole discretion, elect to satisfy its obligation to pay the Corresponding Exchange Amount in the following manner:
 - (A) the obligation of the Non-delivering Clearing Member, or of the Sponsored Settlement Member (where applicable), to pay the Unpaid Exchange Amount shall be replaced by an obligation to pay an amount (the “**Substitute Exchange Amount**”) equal to (and payable in the same currency and on the same date as) the Corresponding Exchange Amount. The obligation of OTC Clear to pay the Corresponding Exchange Amount shall be immediately and automatically set-off against the obligation of the Non-delivering Clearing Member, or the relevant Sponsored Settlement Member (where applicable), to pay the Substitute Exchange Amount such that each such obligation is discharged in full;
 - (B) OTC Clear shall determine the Notional Exchange Failure Adjustment Amount in respect of the Unpaid Exchange Amount; and

- (C) if that Notional Exchange Failure Adjustment Amount is a positive number, the Non-delivering Clearing Member, or the Sponsored Settlement Member (where applicable), shall pay it to OTC Clear immediately upon demand and if that Notional Exchange Failure Adjustment Amount is a negative number, OTC Clear shall pay the absolute value of such amount to the Non-delivering Clearing Member (subject to any rights of set-off against amounts owed by the Non-delivering Clearing Member to OTC Clear, including, without limitation, amounts owed by the Non-delivering Clearing Member pursuant to Clearing Rule 1002A) or the relevant Sponsored Settlement Member (where applicable), as soon as practicable;
- (d) in the event that OTC Clear is unable, as a result of that Notional Exchange Failure, to satisfy its obligation to pay any part or the whole of an Initial Exchange Amount or Final Exchange Amount under a Standard Cross-currency Rates Derivatives Contract and/or any part or the whole of a Notional Amount under a Deliverable FX Derivatives Contract (each such amount the “**Affected Amount**”) with any other Clearing Member (the “**Affected Clearing Member**”), or the Sponsored Settlement Member (where applicable) (the “**Affected SSM**”), in the currency in which the Affected Amount is denominated by 16:00 hours Hong Kong time on the relevant Initial Exchange Date or Final Exchange Date or Settlement Date, as the case may be:
 - (A) OTC Clear shall promptly notify the Affected Clearing Member or Affected SSM of OTC Clear’s inability to do so; and
 - (B) OTC Clear may, in its sole discretion, elect to satisfy its obligation to pay that Affected Amount in the following manner:
 - (i) the obligation of OTC Clear to pay the Affected Amount shall be replaced by an obligation to pay an amount (the “**Substitute Affected Amount**”) equal to (and payable in the same currency and on the same date as) the Corresponding Affected Amount. The obligation of the Affected Clearing Member or the Affected SSM (where applicable) to pay the Corresponding Affected Amount shall be immediately and automatically set-off against the obligation of OTC Clear to pay the Substitute Affected Amount such that each such obligation is discharged in full;
 - (ii) OTC Clear shall determine the Notional Exchange Failure Adjustment Amount in respect of the Unpaid Exchange Amount (if not already calculated pursuant to sub-paragraph (c) above); and
 - (iii) if that Notional Exchange Failure Adjustment Amount is a positive number, OTC Clear shall pay an amount equal to that amount to the Affected Clearing Member or the Affected SSM (where applicable) and if it is a negative number, the Affected Clearing Member or the Affected SSM (where applicable) shall pay an amount equal to the absolute value of such amount to OTC Clear, in each case as soon as practicable, but in no event later than 2 OTC Clear Business Days after the relevant Initial Exchange Date

or Final Exchange Date or Settlement Date, as the case may be;
and

- (e) unless and until the Non-delivering Clearing Member or Sponsored Settlement Member (where applicable) fails to pay or deliver any amounts (excluding Notional Amounts of Deliverable FX Derivatives Contracts and/or Initial Exchange Amounts and Final Exchange Amounts of Standard Cross-currency Rates Derivatives Contracts) when due under the Clearing Documentation or an Event of Default occurs with respect to the Non-delivering Clearing Member, OTC Clear will continue the settlement of cash settlements (other than Notional Amounts of Deliverable FX Derivatives Contracts and/or Initial Exchange Amounts and Final Exchange Amounts of Standard Cross-currency Rates Derivatives Contracts) with the Non-defaulting Clearing Member, or the Sponsored Settlement Member (where applicable), in accordance with section 3.11 of these Clearing Procedures.

For the purpose of this section 3.19:

“Corresponding Affected Amount” means, in respect of an Affected Amount, the corresponding Notional Amount of a Deliverable FX Derivatives Contract and/or Initial Exchange Amount or Final Exchange Amount of a Standard Cross-currency Rates Derivatives Contract (as the case may be) payable by the relevant Affected Clearing Member, or the Affected SSM (where applicable), to OTC Clear on the Settlement Date and/or on the Initial Exchange Date or Final Exchange Date (as the case may be) for that Affected Amount;

“Corresponding Exchange Amount” means, in respect of an Unpaid Exchange Amount, the corresponding Notional Amount of a Deliverable FX Derivatives Contract and/or Initial Exchange Amount or Final Exchange Amount of a Standard Cross-currency Rates Derivatives Contract (as the case may be) payable by OTC Clear to the Non-delivering Clearing Member, or to the Sponsored Settlement Member (where applicable) on the Settlement Date and/or the Initial Exchange Date or Final Exchange Date (as the case may be) for that Unpaid Exchange Amount;

Chapter 4
Margin and Valuation

4.7.3 Settlement of SSM Payment Amounts

A Clearing Member's obligations to pay SSM Payment Amounts to OTC Clear and OTC Clear's obligations to pay SSM Payment Amounts to a Clearing Member shall be extinguished, reduced or discharged in accordance with (i) the terms of Clearing Rule 7A01 (in the case of any sponsoring Clearing Member which is incorporated in Hong Kong) or (ii) the terms of the applicable SSM Tripartite Agreement (in the case of any sponsoring Clearing Member which is incorporated in England or France).

Appendix VII

Template SSM Tripartite Agreement – sponsoring Clearing Member incorporated in England

SSM TRIPARTITE AGREEMENT

dated [_____]

BETWEEN

OTC CLEARING HONG KONG LIMITED,

[CLEARING MEMBER]

(Registered No. [_____])

and

[SPONSORED SETTLEMENT MEMBER]

(Registered No. [_____])

THIS AGREEMENT is dated [●] and made between:

- (1) **OTC Clearing Hong Kong Limited**, a company incorporated under the laws of Hong Kong (registration number: 1745273) and having its registered office at 8/F, Two Exchange Square, 8 Connaught Place, Central, Hong Kong ("**OTC Clear**");
- (2) [●], incorporated in [England] and having its registered office at [●] (the "**Clearing Member**"); and
- (3) [●], incorporated in [England] and having its registered office at [●] (the "**Sponsored Settlement Member**").

BACKGROUND

- (A) The Parties are entering into this Agreement to simplify the payments between OTC Clear and the Clearing Member in respect of Contracts and between such Clearing Member and its Client under the Corresponding Client Transactions.
- (B) This Agreement sets out the contractual terms on which Sponsored Settlement Members may make direct payments of SSM Payment Amounts to OTC Clear, and vice versa.

IT IS AGREED as follows:

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

"**Clearing Procedures**" means the OTC Clearing Hong Kong Limited Clearing Procedures, as amended from time to time.

"**Clearing Rules**" means the OTC Clear Rates and FX Derivatives Clearing Rules, as amended from time to time, and shall include the Clearing Procedures.

"**CM Corresponding Client Transaction Debt**" has the meaning given to that term in paragraph (b)(i) of Clause 2.1 (*OTC Clear Direct Payment Obligations*).

"**CM Corresponding Debt**" has the meaning given to that term in paragraph (b) of Clause 2.2 (*Sponsored Settlement Member Direct Payment Obligations*).

"**OTC Clear Corresponding Debt**" has the meaning given to that term in paragraph (b) of Clause 2.1 (*OTC Clear Direct Payment Obligations*).

"**OTC Clear Parallel Debt**" has the meaning given to that term in paragraph (b) of Clause 2.1 (*OTC Clear Direct Payment Obligations*).

"**Party**" means a party to this Agreement.

"**SSM Corresponding Client Transaction Debt**" has the meaning given to that term in paragraph (b)(i) of Clause 2.2 (*Sponsored Settlement Member Direct Payment Obligations*).

"**SSM Parallel Debt**" has the meaning given to that term in paragraph (b) of Clause 2.2 (*Sponsored Settlement Member Direct Payment Obligations*).

1.2 Incorporation of defined terms

Unless a contrary indication appears, terms defined in the Clearing Rules or the Clearing Procedures have the same meanings when used in this Agreement.

1.3 Primacy of this Agreement

In the event of any inconsistency or conflict between the provisions of:

- (a) this Agreement; and
- (b) the provisions of the Clearing Rules, the Clearing Procedures, the Client Clearing Agreement between the Clearing Member and the Sponsored Settlement Member or any other agreement entered into between all or any of the Parties,

the provisions of this Agreement shall prevail.

2 Direct Payment Obligations

2.1 OTC Clear Direct Payment Obligations

- (a) OTC Clear shall, subject to paragraph (b) of this Clause 2.1 and to Clause 2.4 (*Termination of Direct Payment Obligations*), pay to the Sponsored Settlement Member amounts equal to (and in the same currency as) any SSM Payment Amounts which are payable from time to time by OTC Clear to the Clearing Member if and when those SSM Payment Amounts are due and payable by OTC Clear to the Clearing Member in accordance with the terms of the Contracts governing those SSM Payment Amounts, the Clearing Rules and the Clearing Procedures.
- (b) Each Party acknowledges and agrees that the obligations of OTC Clear to pay amounts under paragraph (a) of this Clause 2.1 (each amount payable pursuant to those obligations being an “**OTC Clear Parallel Debt**”) are separate and independent from, and shall not in any way limit or affect, any obligations of OTC Clear to pay SSM Payment Amounts to the Clearing Member (each amount payable pursuant to those obligations being an “**OTC Clear Corresponding Debt**”) nor shall any OTC Clear Parallel Debt be limited or affected in any way by any OTC Clear Corresponding Debt provided that:
 - (i) an OTC Clear Parallel Debt shall be automatically and irrevocably discharged to the extent that the corresponding OTC Clear Corresponding Debt (or the Clearing Member’s obligations under a Corresponding Client Transaction to pay to the Sponsored Settlement Member amounts which correspond to that OTC Clear Corresponding Debt (each amount payable pursuant to those obligations being a “**CM Corresponding Client Transaction Debt**”)) has or have been irrevocably paid or discharged upon such payment or discharge;
 - (ii) an OTC Clear Corresponding Debt shall be automatically and irrevocably discharged to the extent that the corresponding OTC Clear Parallel Debt has been irrevocably paid or discharged upon such payment or discharge; and
 - (iii) subject to Clause 2.4 (*Termination of Direct Payment Obligations*), OTC Clear may in its sole and absolute discretion elect to make payment in respect of:
 - (A) an OTC Clear Corresponding Debt, which shall have the effect set out in paragraph (b)(i) of this Clause 2.1; or

- (B) an OTC Clear Parallel Debt, which shall have the effect set out in paragraph (b)(ii) of this Clause 2.1.

2.2 Sponsored Settlement Member Direct Payment Obligations

- (a) The Sponsored Settlement Member shall, subject to paragraph (b) of this Clause 2.2 and to Clause 2.4 (*Termination of Direct Payment Obligations*), pay to OTC Clear amounts equal to (and in the same currency as) any SSM Payment Amounts which are payable from time to time by the Clearing Member to OTC Clear if and when those SSM Payment Amounts are due and payable by the Clearing Member to OTC Clear in accordance with the terms of the Contracts governing those SSM Payment Amounts, the Clearing Rules and the Clearing Procedures.
- (b) Each Party acknowledges and agrees that the obligations of the Sponsored Settlement Member to pay amounts under paragraph (a) of this Clause 2.2 (each amount payable pursuant to those obligations being an "**SSM Parallel Debt**") are separate and independent from, and shall not in any way limit or affect, any obligations of the Clearing Member to pay SSM Payment Amounts to OTC Clear (each amount payable pursuant to those obligations being a "**CM Corresponding Debt**") nor shall any SSM Parallel Debt be limited or affected in any way by any CM Corresponding Debt provided that:
 - (i) an SSM Parallel Debt shall be automatically and irrevocably discharged to the extent that the corresponding CM Corresponding Debt (or the Sponsored Settlement Member's obligations under a Corresponding Client Transaction to pay to the Clearing Member amounts which correspond to that CM Corresponding Debt (each amount payable pursuant to those obligations being an "**SSM Corresponding Client Transaction Debt**")) has or have been irrevocably paid or discharged upon such payment or discharge;
 - (ii) a CM Corresponding Debt shall be automatically and irrevocably discharged to the extent that the corresponding SSM Parallel Debt has been irrevocably paid or discharged upon such payment or discharge; and
 - (iii) unless specified to the contrary in the Client Clearing Agreement between the Clearing Member and the Sponsored Settlement Member and subject to Clause 2.4 (*Termination of Direct Payment Obligations*), the Sponsored Settlement Member may in its sole and absolute discretion elect to make payment in respect of:
 - (A) an SSM Corresponding Client Transaction Debt, which shall have the effect set out in paragraph (b)(i) of this Clause 2.2; or
 - (B) an SSM Parallel Debt, which shall have the effect set out in paragraph (b)(ii) of this Clause 2.2.

2.3 Nature of arrangements

- (a) Each Party acts in its own name and as principal (and not as trustee or agent of any person) for the purposes of this Clause 2 (*Direct Payment Obligations*), and no claims in respect of any OTC Clear Corresponding Debt, OTC Clear Parallel Debt, CM Corresponding Debt, SSM Parallel Debt, CM Corresponding Client Transaction Debt or SSM Corresponding Client Transaction Debt shall be held on trust or as agent for any person pursuant to this Clause 2 (*Direct Payment Obligations*).

- (b) Nothing in this Clause 2 (*Direct Payment Obligations*) is intended to, or does, operate to discharge any obligation of any Party other than as, and only to the extent, expressly stated in this Clause 2 (*Direct Payment Obligations*).
- (c) Nothing in this Clause 2 (*Direct Payment Obligations*) is intended to, or does, create in favour of any person any mortgage, charge, lien, pledge, encumbrance or other security interest.

2.4 Termination of Direct Payment Obligations

- (a) If any Contract giving rise to any SSM Payment Amounts to which this Agreement applies (or any Corresponding Client Transaction relating to that Contract) is transferred or terminated (including, without limitation, by means of that Contract being transferred between Client Accounts and House Accounts of the Clearing Member or that Contract being ported to a Replacement Clearing Member (or its termination if porting does not occur)), no amounts shall be payable by OTC Clear under paragraph (a) of Clause 2.1 (*OTC Clear Direct Payment Obligations*) or by the SSM under paragraph (a) of Clause 2.2 (*Sponsored Settlement Member Direct Payment Obligations*) in respect of the SSM Payment Amounts governed by that Contract following the time at which such transfer or termination occurs.
- (b) If the Sponsored Settlement Member ceases to be a Sponsored Settlement Member (as defined in, and for the purposes of, the Clearing Rules), no amounts shall be payable by OTC Clear under paragraph (a) of Clause 2.1 (*OTC Clear Direct Payment Obligations*) or by the Sponsored Settlement Member under paragraph (a) of Clause 2.2 (*Sponsored Settlement Member Direct Payment Obligations*) following the time at which such event occurs.
- (c) This Clause 2.4 shall not have the effect of reducing the amount of any OTC Clear Corresponding Debt, any CM Corresponding Debt, any CM Corresponding Client Transaction Debt or any SSM Corresponding Client Transaction Debt.

3 Representations

The Sponsored Settlement Member represents and warrants, on a continuing basis, that it will satisfy the SSM Eligibility Criteria, and acknowledges and agrees that satisfaction of the SSM Eligibility Criteria is a condition precedent to this Agreement.

4 Counterparts

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

5 Governing law

This Agreement is governed by Hong Kong law.

6 Enforcement

- (a) The courts of Hong Kong have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement) (a "**Dispute**").

- (b) The Parties agree that the courts of Hong Kong are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) [Without prejudice to any other mode of service allowed under any relevant law, [●]:
 - (i) irrevocably appoints [●] as its agent for service of process in relation to any proceedings before the Hong Kong courts in connection with this Agreement; and
 - (ii) agrees that failure by a process agent to notify [●] of the process will not invalidate the proceedings concerned.]

7 Third Party Rights

- (a) A person who is not a Party has no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) (the “**Third Parties Ordinance**”) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

Signed for and on behalf of **OTC Clearing Hong Kong Limited**

Name:

Title:

Date:

Signed for and on behalf of [●]

Name:

Title:

Date:

Signed for and on behalf of [●]

Name:

Title:

Date:

Appendix VIII

**Template SSM Tripartite Agreement – sponsoring Clearing Member incorporated
in France**

SSM TRIPARTITE AGREEMENT

dated [_____]

BETWEEN

OTC CLEARING HONG KONG LIMITED,

[CLEARING MEMBER]

(Registered No. [_____])

and

[SPONSORED SETTLEMENT MEMBER]

(Registered No. [_____])

THIS AGREEMENT is dated [●] and made between:

- (1) **OTC Clearing Hong Kong Limited**, a company incorporated under the laws of Hong Kong (registration number: 1745273) and having its registered office at 8/F, Two Exchange Square, 8 Connaught Place, Central, Hong Kong ("**OTC Clear**");
- (2) [●], incorporated in [France] and having its registered office at [●] (the "**Clearing Member**"); and
- (3) [●], incorporated in [France] and having its registered office at [●] (the "**Sponsored Settlement Member**").

BACKGROUND

- (A) The Parties are entering into this Agreement to simplify the payments between OTC Clear and the Clearing Member in respect of Contracts and between such Clearing Member and its Client under the Corresponding Client Transactions.
- (B) This Agreement sets out the contractual terms on which Sponsored Settlement Members may make direct payments of SSM Payment Amounts to OTC Clear, and vice versa.

IT IS AGREED as follows:

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

"**Clearing Procedures**" means the OTC Clearing Hong Kong Limited Clearing Procedures, as amended from time to time.

"**Clearing Rules**" means the OTC Clear Rates and FX Derivatives Clearing Rules, as amended from time to time, and shall include the Clearing Procedures.

"**CM Corresponding Client Transaction Debt**" has the meaning given to that term in paragraph (b)(i)(i) of Clause 3.1 (*OTC Clear Direct Payment Obligations*).

"**CM Corresponding Debt**" has the meaning given to that term in paragraph (b) of Clause 3.2 (*Sponsored Settlement Member Direct Payment Obligations*).

"**OTC Clear Corresponding Debt**" has the meaning given to that term in paragraph (b) of Clause 3.1 (*OTC Clear Direct Payment Obligations*).

"**OTC Clear Parallel Debt**" has the meaning given to that term in paragraph (b) of Clause 3.1 (*OTC Clear Direct Payment Obligations*).

"**Party**" means a party to this Agreement.

"**SSM Corresponding Client Transaction Debt**" has the meaning given to that term in paragraph (b) of Clause 3.2 (*Sponsored Settlement Member Direct Payment Obligations*).

"**SSM Parallel Debt**" has the meaning given to that term in paragraph (b) of Clause 3.2 (*Sponsored Settlement Member Direct Payment Obligations*).

1.2 Incorporation of defined terms

Unless a contrary indication appears, terms defined in the Clearing Rules or the Clearing Procedures have the same meanings when used in this Agreement.

1.3 Primacy of this Agreement

In the event of any inconsistency or conflict between the provisions of:

- (a) this Agreement; and
- (b) the provisions of the Clearing Rules, the Clearing Procedures, the Client Clearing Agreement between the Clearing Member and the Sponsored Settlement Member or any other agreement entered into between all or any of the Parties,

the provisions of this Agreement shall prevail.

2 Delegations

2.1 In accordance with, and subject to, the provisions of Articles 1336 and *seq.* of the French Civil Code:

- (a) the Clearing Member (as delegating entity, *délegant*) hereby irrevocably and unconditionally delegates OTC Clear (as delegated debtor, *délegué*) to the Sponsored Settlement Member (as beneficiary, *délegataire*) (the "**First Delegation**"). OTC Clear (as delegated debtor) hereby irrevocably and unconditionally accepts such First Delegation. As a result of the First Delegation, OTC Clear shall pay, as primary obligor and not as a surety, directly to the Sponsored Settlement Member the SSM Payment Amounts due by OTC Clear pursuant to, and in accordance with the conditions set out in, Clause 3.1 below. The Sponsored Settlement Member (as beneficiary) hereby expressly accepts: (i) the conditions of the First Delegation; and (ii) OTC Clear as delegated debtor (*délegué*); and
- (b) the Clearing Member (the delegating entity, *délegant*) hereby irrevocably and unconditionally delegates the Sponsored Settlement Member (the delegated debtor, *délegué*) to OTC Clear (as beneficiary, *délegataire*) (the "**Second Delegation**" and, together with the First Delegation, the "**Delegations**"). The Sponsored Settlement Member (as delegated debtor) hereby irrevocably and unconditionally accepts such Second Delegation. As a result of the Second delegation, the Sponsored Settlement Member shall pay, as primary obligor and not as a surety, directly to OTC Clear the SSM Payment Amounts due by the Sponsored Settlement Member pursuant to, and in accordance with the conditions set out in, Clause 3.2 below. OTC Clear (as beneficiary) hereby expressly accepts: (i) the conditions of the Second Delegation; and (ii) the Sponsored Settlement Member as delegated debtor (*délegué*).

2.2 Each of the Delegations constitutes a "*délégation imparfaite*" within the meaning of Article 1338 of the French Civil Code. It is expressly agreed that the Delegations shall not constitute a waiver or release of the Clearing Member's obligations under either of the Clearing Rules, the Clearing Procedures or the Client Clearing Agreement. As a consequence, the Clearing Member, as *délegant*, remains liable: (i) vis-à-vis OTC Clear of any SSM Payment Amounts referred to in Clause 3.2(a) below to the extent set out in Clause 3.2(b); and (ii) vis-à-vis the Sponsored Settlement Member of SSM Payment Amounts referred to in Clause 3.1(a) below, to the extent set out in Clause 3.1(b).

- 2.3 The First Delegation shall automatically terminate when the Clearing Member's obligations under the Corresponding Client Transactions are satisfied in full and/or upon the termination of Direct Payment Obligations referred to in Clause 3.4 below. The second Delegation will terminate when the Clearing Member's obligations under the Contracts are satisfied in full and/or upon the termination of Direct Payment Obligations referred to in Clause 3.4 below.

3 Direct Payment Obligations

3.1 OTC Clear Direct Payment Obligations

- (a) OTC Clear shall, subject to paragraph (b) of this Clause 3.1 and to Clause 3.4 (*Termination of Direct Payment Obligations*), pay to the Sponsored Settlement Member amounts equal to (and in the same currency as) any SSM Payment Amounts which are payable from time to time by OTC Clear to the Clearing Member if and when those SSM Payment Amounts are due and payable by OTC Clear to the Clearing Member in accordance with the terms of the Contracts governing those SSM Payment Amounts, the Clearing Rules and the Clearing Procedures.
- (b) Each Party acknowledges and agrees that the obligations of OTC Clear to pay amounts under paragraph (a) of this Clause 3.1 (each amount payable pursuant to those obligations being an "**OTC Clear Parallel Debt**") are separate and independent from, and shall not in any way limit or affect, any obligations of OTC Clear to pay SSM Payment Amounts to the Clearing Member (each amount payable pursuant to those obligations being an "**OTC Clear Corresponding Debt**") nor shall any OTC Clear Parallel Debt be limited or affected in any way by any OTC Clear Corresponding Debt provided that:
- (i) an OTC Clear Parallel Debt shall be automatically and irrevocably discharged to the extent that the Clearing Member's obligations under a Corresponding Client Transaction to pay to the Sponsored Settlement Member amounts which correspond to that OTC Clear Corresponding Debt (each amount payable pursuant to those obligations being a "**CM Corresponding Client Transaction Debt**") has or have been irrevocably paid or discharged upon such payment or discharge;
 - (ii) an OTC Clear Corresponding Debt shall be automatically and irrevocably discharged to the extent that the corresponding OTC Clear Parallel Debt has been irrevocably paid or discharged upon such payment or discharge; and
 - (iii) subject to Clause 3.4 (*Termination of Direct Payment Obligations*), OTC Clear shall:
 - (A) be required to make payment to the Sponsored Settlement Member in respect of OTC Clear Parallel Debt, which shall have the effect set out in paragraph (b)(ii) of this Clause 3.1 and shall have no discretion to pay the corresponding OTC Clear Corresponding Debt instead; and
 - (B) have the right to receive payment from the Sponsored Settlement Member in respect of SSM Parallel Debt, which shall have the effect set out in paragraph (b)(i)(ii) of Clause 3.2 (*Sponsored Settlement Member Direct Payment Obligations*) below.

3.2 Sponsored Settlement Member Direct Payment Obligations

- (a) The Sponsored Settlement Member shall, subject to paragraph (b) of this Clause 3.2 and to Clause 3.4 (*Termination of Direct Payment Obligations*), pay to OTC Clear amounts equal to (and in the same currency as) any SSM Payment Amounts which are payable from time to time by the Clearing Member to OTC Clear if and when those SSM Payment Amounts are due and payable by the Clearing Member to OTC Clear in accordance with the terms of the Contracts governing those SSM Payment Amounts, the Clearing Rules and the Clearing Procedures.
- (b) Each Party acknowledges and agrees that the obligations of the Sponsored Settlement Member to pay amounts under paragraph (a) of this Clause 3.2 (each amount payable pursuant to those obligations being an "**SSM Parallel Debt**") are separate and independent from, and shall not in any way limit or affect, any obligations of the Clearing Member to pay SSM Payment Amounts to OTC Clear (each amount payable pursuant to those obligations being a "**CM Corresponding Debt**"), nor shall any SSM Parallel Debt be limited or affected in any way by any CM Corresponding Debt (or the obligations of the Sponsored Settlement Member to pay to the Clearing Member amounts which correspond to that CM Corresponding Debt under a Corresponding Client Transaction (each amount payable pursuant to those obligations being an "**SSM Corresponding Client Transaction Debt**")), provided that:
- (i) an SSM Parallel Debt shall be automatically and irrevocably discharged to the extent that the corresponding CM Corresponding Debt has or have been irrevocably paid or discharged upon such payment or discharge; and
 - (ii) a CM Corresponding Debt shall be automatically and irrevocably discharged to the extent that the corresponding SSM Parallel Debt has been irrevocably paid or discharged upon such payment or discharge; and
 - (iii) notwithstanding anything to the contrary in the Client Clearing Agreement between the Clearing Member and the Sponsored Settlement Member and subject to Clause 3.4 (*Termination of Direct Payment Obligations*), the Sponsored Settlement Member shall:
 - (A) be required to make payment to OTC Clear in respect of SSM Parallel Debt, which shall have the effect set out in paragraph (b)(ii) of this Clause 3.2; and
 - (B) have the right to receive payment from OTC Clear in respect of OTC Clear Parallel Debt, which shall have the effect set out in paragraph (b)(ii) of Clause 3.1 (*OTC Clear Direct Payment Obligations*).

The Sponsored Settlement Member acknowledges and agrees that it shall not have the discretion to make payment in respect of an SSM Corresponding Client Transaction Debt, in lieu of its obligation to make payment in respect of the corresponding SSM Parallel Debt.

3.3 Nature of arrangements

- (a) Each Party acts in its own name and as principal (and not as trustee or agent of any person) for the purposes of this Clause 3 (*Direct Payment Obligations*), and no claims in respect of any OTC Clear Corresponding Debt, OTC Clear Parallel Debt, CM Corresponding Debt, SSM Parallel Debt, CM Corresponding Client Transaction Debt or SSM Corresponding Client Transaction Debt shall be held on trust or as agent for any person pursuant to this Clause 3 (*Direct Payment Obligations*).

- (b) Nothing in this Clause 3 (*Direct Payment Obligations*) is intended to, or does, operate to discharge any obligation of any Party other than as, and only to the extent, expressly stated in this Clause 3 (*Direct Payment Obligations*).
- (c) Nothing in this Clause 3 (*Direct Payment Obligations*) is intended to, or does, create in favour of any person any mortgage, charge, lien, pledge, encumbrance or other security interest.

3.4 Termination of Direct Payment Obligations

- (a) If any Contract giving rise to any SSM Payment Amounts to which this Agreement applies (or any Corresponding Client Transaction relating to that Contract) is transferred or terminated (including, without limitation, by means of that Contract being transferred between Client Accounts and House Accounts of the Clearing Member or that Contract being ported to a Replacement Clearing Member (or its termination if porting does not occur)), no amounts shall be payable by OTC Clear under paragraph (a) of Clause 3.1 (*OTC Clear Direct Payment Obligations*) or by the SSM under paragraph (a) of Clause 3.2 (*Sponsored Settlement Member Direct Payment Obligations*) in respect of the SSM Payment Amounts governed by that Contract following the time at which such transfer or termination occurs.
- (b) If the Sponsored Settlement Member ceases to be a Sponsored Settlement Member (as defined in, and for the purposes of, the Clearing Rules), no amounts shall be payable by OTC Clear under paragraph (a) of Clause 3.1 (*OTC Clear Direct Payment Obligations*) or by the Sponsored Settlement Member under paragraph (a) of Clause 3.2 (*Sponsored Settlement Member Direct Payment Obligations*) following the time at which such event occurs.
- (c) This Clause 3.4 shall not have the effect of reducing the amount of any OTC Clear Corresponding Debt, any CM Corresponding Debt, any CM Corresponding Client Transaction Debt or any SSM Corresponding Client Transaction Debt.

4 Representations

The Sponsored Settlement Member represents and warrants, on a continuing basis, that it will satisfy the SSM Eligibility Criteria, and acknowledges and agrees that satisfaction of the SSM Eligibility Criteria is a condition precedent to this Agreement.

5 Counterparts

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

6 Governing law

This Agreement is governed by Hong Kong law, save for Clause 2 (*Delegation*), which will be governed by French law.

7 Enforcement

- (a) The courts of Hong Kong have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement) (a "**Dispute**"), provided that the courts of Hong Kong will apply

French law in order to interpret Clause 2 and/or assess the validity and enforceability of the Delegations created pursuant to this Agreement.

- (b) The Parties agree that the courts of Hong Kong are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) Without prejudice to any other mode of service allowed under any relevant law, [●]:
 - (i) irrevocably appoints [●] as its agent for service of process in relation to any proceedings before the Hong Kong courts in connection with this Agreement; and
 - (ii) agrees that failure by a process agent to notify [●] of the process will not invalidate the proceedings concerned.

8 Third Party Rights

- (a) A person who is not a Party has no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) (the “**Third Parties Ordinance**”) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

Signed for and on behalf of **OTC Clearing Hong Kong Limited**

Name:

Title:

Date:

Signed for and on behalf of [●]

Name:

Title:

Date:

Signed for and on behalf of [●]

Name:

Title:

Date: