

### **CHAPTER III**

#### **REGISTRATION, CLEARING, RISK**

##### General

301. (a) Every HKCC Participant shall at all times procure that every Contract transacted by it or on its behalf or which it has agreed to clear shall be registered and cleared in accordance with the provisions of the HKCC Rules.
- (b) The Board may from time to time prescribe procedures to be followed by HKCC Participants in the registration and clearing of Contracts.
302. The Clearing House shall be open for business whenever any of the Markets of the Exchange are open for business, including on public holidays.
303. – 308. (deleted)

##### Timing of registration

- 308A. (a) Unless otherwise specified in the Exchange Rules, these Rules or the Clearing House Procedures, the registration of a Contract validly executed through HKATS shall occur immediately upon the recording of such Contract in accordance with the Exchange Rules. The parties to such registration will be determined as follows:
- (i) where the original parties to a Contract are General Clearing Participants or Clearing Participants, that Contract will be registered in the respective names of the relevant HKCC Participants; or
- (ii) where an original party to a Contract is a Non-Clearing Participant, that Contract will be registered in the name of the General Clearing Participant with which that Non-Clearing Participant has executed a Clearing Agreement and which has been designated by that Non-Clearing Participant to clear the Contract and the General Clearing Participant will be treated for all purposes as the party to the Contract for registration and novation purposes.
- (b) The registration of a Contract executed during the Pre-Market Opening Period of a Market shall not occur until the opening of the Market.
- (c) The registration of a Block Trade executed through HKATS shall not occur until the Clearing House is satisfied that the Block Trade recorded in the Transaction Register of HKATS is a valid Block Trade and all criteria applicable to the Block Trade, including but not limited to the payment of any Special Block Trade Margin, have been satisfied. Unless

an HKCC Participant receives any oral or written notice from the Exchange or the Clearing House that a Block Trade is not valid or not all criteria have been satisfied or the Block Trade shall not be registered for any other reason, the Block Trade shall be deemed to have been registered with the Clearing House upon the recording of such Block Trade in the Transaction Register of HKATS. The Exchange will endeavour to notify the HKCC Participant of any issue concerning any criteria set forth in Exchange Rule 815A within 30 minutes of the execution by the HKCC Participant of the Block Trade.

- (d) Notwithstanding any provisions to the contrary in the Exchange Rules, these Rules or the Clearing House Procedures, the Clearing House shall have absolute discretion to determine the acceptance or refusal for registering and clearing any Contract executed through HKATS or otherwise. The Clearing House shall give notice to the Exchange and to the relevant HKCC Participants of any decision to refuse to register and clear any Contract. Any such refusal by the Clearing House shall not affect any then existing open positions in the relevant Exchange Contract, which shall continue to be subject to these Rules and the Clearing House Procedures.
- (e) In respect of Contracts which are not executed through HKATS but which arise from the exercise of Physically Settled Options on Futures Contracts, the registration of such Contracts shall occur immediately upon the exercise of the Physically Settled Options on Futures Contracts as described in section 2A.5 of the Clearing House Procedures.

308B. (deleted)

#### Dispute resolution

308C. All matters relating to the resolution of disputes in respect of Contracts may be referred to and performed by the Exchange in accordance with the Exchange Rules and Procedures. For the avoidance of doubt, in this regard the Exchange shall be authorised to interpret the HKCC Rules and render determinations in respect thereto. The Clearing House shall recognise and where applicable enforce any such determinations rendered by the Exchange and HKCC Participants shall be bound thereby.

#### Legal effect of registration

309. After registration of every Contract (other than a Contract registered pursuant to Rule 308A(e)), the registered Contract shall be novated and there shall arise two separate Contracts:-

- (a) one of them subsisting between the HKCC Participant registered as the Buyer of the Contract and the Clearing House in lieu of the original counterparty to such HKCC Participant; and

- (b) the other of them subsisting between the HKCC Participant registered as the Seller of the Contract and the Clearing House in lieu of the original counterparty to such HKCC Participant,

each of these two separate Contracts being identical to the registered Contract except as to the parties thereto and except as provided in Rules 310 and 311 so that the obligations and rights of the parties to the two new Contracts shall entirely supersede and replace the obligations and rights of the parties to the novated Contract and (in particular) so that the Clearing House shall be bound by the terms of such new Contracts as principal.

After registration of every Contract arising from the exercise by an HKCC Participant of a Physically Settled Options on Futures Contract pursuant to Rule 308A(e), the HKCC Participant and the Clearing House shall continue to be bound by the terms of the Contract as principal, and for the avoidance of doubt, such Contract shall be a market contract for the purposes of the Securities and Futures Ordinance (Cap 571 of the Laws of Hong Kong).

309A. In respect of Contracts in Physically Settled Metal Futures Contracts which have been novated to the Clearing House pursuant to Rule 309 and which have the same Final Settlement Day, following:

- (a) the completion of the Matching Process described in section 2A.3.2.1(c) of the Clearing House Procedures in respect of such Physically Settled Metal Futures Contracts;
- (b) the giving of notice of the results of such Matching Process and relevant settlement details by the Clearing House to the relevant HKCC Participants as described in section 2A.3.2.1(c)(vii) of the Clearing House Procedures;
- (c) receipt by the Clearing House of notice from the relevant Approved Depository that the Approved Depository has successfully earmarked the required quantity of Deliverable Metal to be delivered by a matched Seller to the corresponding matched Buyer pursuant to section 2A.3.2.2(b) of the Clearing House Procedures; and
- (d) receipt by the Clearing House of payment to the prescribed settlement account of the amount of the payment obligation which is payable by the matched Buyer to the corresponding matched Seller in respect of the Matched Contract pursuant to section 2A.3.2.3(a) of the Clearing House Procedures,

any such Contracts arising pursuant to Rule 309 between (i) the relevant Buyer or Buyers and the Clearing House and (ii) the Clearing House and the relevant Seller or Sellers (each a "**Pending Contract**") shall immediately be novated without further notice to or action by any party, with the result that new

contracts (each a "**Re-novated Contract**") shall arise directly between the matched Buyers and the corresponding matched Sellers on the terms and as further described in section 2A of the Clearing House Procedures.

Under each Re-novated Contract:

- (i) all rights and obligations between the Clearing House and the relevant Buyer or Seller, as the case may be, under each relevant Pending Contract shall be simultaneously discharged and replaced by the rights and obligations between the relevant Buyer and relevant Seller under the corresponding Re-novated Contract; and
- (ii) thereafter the Clearing House shall be fully and finally released and discharged from all its obligations and liabilities as a central counterparty to the relevant Buyer and Seller under each relevant Pending Contract.

For the avoidance of doubt, a Re-novated Contract shall be a market contract for the purposes of the Securities and Futures Ordinance (Cap 571 of the Laws of Hong Kong).

310. The obligations of the Clearing House to HKCC Participants under a Contract registered pursuant to Rule 308A(e) or arising pursuant to Rule 309 and for the time being extant shall be limited exclusively to:-
- (a) amounts received by the Clearing House from HKCC Participants on the settlement of any Contract including variation adjustments and any underlying commodity or instrument;
  - (b) amounts recovered by the Clearing House from any Defaulting HKCC Participant (whether on enforcement of non-cash collateral, realization of assets or otherwise);
  - (c) the amount from time to time standing to the credit of the Reserve Fund, including the relevant amount received under Rules 707A and 709, which is available to support the Clearing House's obligations under that particular Contract or class of Contract;
  - (d) the amount received pursuant to any claim under any insurance policy taken out by the Clearing House for the purpose of providing financial resources to support the Reserve Fund and which is available to support the Clearing House's obligations under that particular Contract or class of Contract;
  - (e) the amount of any guarantees or facilities available to the Clearing House and arranged expressly for the purpose of providing financial resources to support the Reserve Fund and which are available to

support the Clearing House's obligations under that Contract or class of Contract; and

- (f) any HKCC Participant Additional Deposits Credit which may be made available and utilized by HKCC Participants and which, if actually applied to satisfy any liabilities of the Clearing House as a result of the default of a Defaulting HKCC Participant, shall be repayable by the Defaulting HKCC Participant to the Clearing House.

No other assets of the Clearing House shall be available to meet any such obligation.

For the avoidance of doubt it is hereby declared that to the extent that the aggregate of the funds or assets of the Clearing House referred to in subparagraphs (a) to (f) above are insufficient at any time to meet the aggregate of the Clearing House's liabilities to HKCC Participants under all Contracts subsisting at any time, each HKCC Participant to which the Clearing House is liable shall, subject to Rules 515A, 545 to 554, 710 to 713 and 1101 to 1103, only be entitled to receive payment pro rata according to the amount due to it as compared with the aggregate due to all HKCC Participants. Without prejudice to the foregoing:

- (i) in respect of the Clearing House's obligations to deliver the underlying commodity or instrument under Physical Delivery Contracts, to the extent that the Chairman determines that it is not possible or reasonably practicable to deliver the underlying commodity or instrument, the Clearing House's obligations shall be to make money compensation to HKCC Participants concerned in substitution for the delivery of the underlying commodity or instrument in whole or in part and in such amount as the Chairman may in his absolute discretion considers appropriate in consultation with the Commission by reference to the market value of such underlying commodity or instrument at the time of payment of compensation by the Clearing House (or the value at such other time as the Chairman shall, in consultation with the Commission, consider fair and reasonable in the circumstances). The money compensation shall be in such currency or currencies (whether in the Settlement Currency, the Currency of the Contract or otherwise) and at such conversion rate(s) as the Clearing House may in its absolute discretion determine to be fair and reasonable, taking into account all relevant circumstances as it may consider appropriate; and
- (ii) in respect of the Clearing House's obligations to make payment to HKCC Participants under Contracts in the Settlement Currency, to the extent that the Clearing House determines that it is not possible or reasonably practicable to make payment in such Settlement Currency, the Clearing House's obligations shall be to make payment, in full or in part, in such other currency or currencies and at such conversion rate(s) as the Clearing House may in its absolute discretion determine to be fair and reasonable,

taking into account all relevant circumstances as it may consider appropriate.

Subject to Rules 515A(e), 555, 714 and 1104, the Clearing House shall remain liable on all Contracts which remain to be settled by the Clearing House, but payment of the balance of any amounts due and delivery of the balance of any underlying commodity or instrument (or payment of money compensation in substitution therefor) shall only be made as and when, and to the extent that, the amounts, funds or assets referred to in sub-paragraphs (a) to (e) are subsequently replenished. The Clearing House shall only exercise its powers to defer making payment to HKCC Participants under this Rule in consultation with the Commission.

Terms of Contracts where the Clearing House is counterparty

311. Each Contract registered pursuant to Rule 308A(e) or arising pursuant to Rule 309 shall incorporate the following terms:-
- (a) the Clearing House shall have no liability for any brokerage, commission or levy;
  - (b) the Clearing House shall have no liability for consequential loss of any kind;
  - (c) in every case the HKCC Participant which is a party to such a Contract shall deal with the Clearing House as principal and not as agent, and the Clearing House shall take no legal notice of any agency or other arrangement whether or not it has actual notice of the same. In particular (but without limitation), the Clearing House shall have no contractual relationship with any Non-Clearing Participant or any client of an HKCC Participant. Accordingly the Clearing House shall be entitled to treat all monies and non-cash collateral paid to it by an HKCC Participant as monies and non-cash collateral paid to it by a principal, and no monies or non-cash collateral in the hands of the Clearing House shall be impressed with a trust or other equitable interest in favour of any person, and payment by the Clearing House to an HKCC Participant shall constitute a good and sufficient discharge of the indebtedness represented thereby; and
  - (d) the Clearing House shall not be responsible for the accuracy of any Official Settlement Price or Final Settlement Price as the case may be or other settlement price calculated by the Exchange or any other person including the Clearing House in the case of any Contract.

Fees, etc.

312. (a) On registration of each Contract under these Rules, HKCC Participants shall pay:-

Clearing fees

- (i) to the Clearing House for its own account the fee(s) from time to time prescribed by the Clearing House; and

Exchange fees

- (ii) to the Clearing House for transmission to the Exchange all such fees, levies and other dues as HKCC Participants are required to pay under the Exchange Rules, the Ordinance or any other relevant ordinances.
- (b) Every HKCC Participant shall pay to the Clearing House such other fees in respect of accommodation charges, delivery, exercise, settlement, its connection to or use of DCASS or CCMS, or other matters as the Clearing House may from time to time prescribe.
- (c) The fees imposed by the Clearing House on or after the Scheme Effective Date (as defined in the Exchange Rules) in its capacity as a recognized clearing house within the meaning of the Ordinance shall, unless otherwise specified in these Rules, be specified in Appendix A.
- (d) In addition to the fees specified in these Rules, the Clearing House reserves the right to charge HKCC Participants for any disbursements and out-of-pocket expenses it incurs in the delivery of services and facilities to HKCC Participants. Such disbursements and out-of-pocket expenses may or may not be specified in Appendix A or these Rules.

Transfer of Contracts after registration

313. (a) Registered Contracts are not transferable except in accordance with this Rule.
- (b) Where a Contract made by one HKCC Participant for another HKCC Participant has been registered in the name of the former, or where an HKCC Participant becomes compelled by reason of Rule 508(a), Rule 518(a)(iv), Rule 519(c), Rule 606 or Rule 606B to transfer a Contract registered in its name and another HKCC Participant agrees to accept a transfer of that Contract, the Clearing House may at its absolute discretion and at the joint request of both such HKCC Participants and subject to any conditions it may think fit to impose, transfer the registration of the Contract into the name of the second HKCC Participant.

- (c) Without prejudice to paragraph (a) or paragraph (b) above, the Clearing House may at any time and for any reason transfer the registration of a Contract from the name of one HKCC Participant to the name of another HKCC Participant or from one account of an HKCC Participant to another account of such HKCC Participant, and may do so in its absolute discretion and subject to any conditions it may think fit to impose, subject only to obtaining the consent thereto of both HKCC Participants (or, in the case of a transfer between a single HKCC Participant's accounts, the HKCC Participant concerned) and of the Exchange and to any conditions imposed by the Exchange.
- (d) A transfer made pursuant to paragraph (b) or (c) above (other than a transfer between a single HKCC Participant's accounts) will take effect by means of a novation of the Contract between the transferor, the transferee and the Clearing House. Every transfer made pursuant to paragraph (b) or (c) above will be recorded in a statement or summary issued by the Clearing House to the transferor and the transferee (or, in the case of a transfer between a single HKCC Participant's accounts, to that HKCC Participant). With effect from the issue of such statement or summary, the transferee (if any) shall be deemed for all purposes of these Rules to be a principal party to the Contract to the exclusion of the transferor.

#### Clearing agreements

314. (a) Each General Clearing Participant shall enter into a Clearing Agreement in such form and containing such provisions as may from time to time be required by the Clearing House with each Non-Clearing Participant for which it proposes to clear trades. Except as otherwise prescribed by the Clearing House, no General Clearing Participant may clear trades for a Non-Clearing Participant until such Clearing Agreement has been signed by both parties.
- (b) Each General Clearing Participant shall notify the Clearing House forthwith on the execution of each Clearing Agreement, identifying the name of the relevant Non-Clearing Participant. Such notification shall be in such form as the Clearing House may from time to time specify. The General Clearing Participant shall, at the request of the Clearing House, supply it with a certified copy of the executed Clearing Agreement.
- (c) Each General Clearing Participant shall be responsible for all the trades that each of its Non-Clearing Participants has concluded and designated to it for clearing and a General Clearing Participant shall not be entitled to decline to verify or (except in the case of a Contract transferred in accordance with these Rules) otherwise refuse to accept registration, as



the case may be, in its name by the Clearing House of each relevant Contract made by the relevant Non-Clearing Participant.

- (d) Each General Clearing Participant shall notify the Clearing House forthwith of any failure of a Non-Clearing Participant to meet its obligations under the Clearing Agreement, in which case the Clearing House may disclose such information to any other General Clearing Participant of the Non-Clearing Participant. Such notification shall be in such form as the Clearing House may from time to time specify.

315. (deleted)

316. (deleted)

317. The form of Clearing Agreement must facilitate the performance of, and be consistent with, the obligations of the General Clearing Participant under these Rules.

318. (deleted)

319. (a) A General Clearing Participant shall give prior written notice to the Clearing House if it or any of its Non-Clearing Participants intends to terminate the Clearing Agreement between them, unless the Non-Clearing Participant has already given notice to terminate the Clearing Agreement to the Exchange in accordance with the Exchange Rules.

(b) When the Clearing House receives a termination notice from the General Clearing Participant or when HKCC receives notification from the Exchange that notice to terminate the Clearing Agreement had been given by a Non-Clearing Participant, the Clearing House will issue a confirmation of termination to the General Clearing Participant (with a copy to the Non-Clearing Participant concerned) in writing and unless and until written acknowledgement has been issued to the General Clearing Participant, the Clearing Agreement shall be treated as valid, binding and effective by the Clearing House for the purposes of these Rules notwithstanding any provision to the contrary in the Clearing Agreement and/or the termination notice from the General Clearing Participant or the Non-Clearing Participant and the General Clearing Participant shall continue to be bound by the Clearing Agreement and responsible for all the Contracts that such Non-Clearing Participant has concluded and designated to the General Clearing Participant for clearing.

(c) Notwithstanding the above, the Clearing Agreement is deemed to be terminated when the General Clearing Participant has resigned or is suspended or revoked from HKCC Participantship or when its access to DCASS and/or CCMS is suspended or revoked under the HKCC Rules.

- (d) The termination of the Clearing Agreement between a General Clearing Participant and a Non-Clearing Participant will not affect any of their rights or liabilities arising out of matters which have taken place prior to the termination of the Clearing Agreement and for the purpose of settlement of any such rights or liabilities of the General Clearing Participant and Non-Clearing Participant, the Clearing House may continue to treat the General Clearing Participant as the General Clearing Participant of the Non-Clearing Participant.

#### Holiday Trading Exchange Contracts

- 320. The Clearing House may in its absolute discretion specify, and shall notify HKCC Participants of, the clearing arrangements applicable to Holiday Trading Exchange Contracts from time to time.
- 321. An HKCC Participant that wishes to clear Holiday Trading Exchange Contracts shall apply to the Clearing House and comply with such terms, conditions and requirements as prescribed by the Clearing House from time to time, including but not limited to:
  - (a) having an arrangement with a Designated Bank, an Approved Settlement Bank, or a Prime Settlement Bank for settlement on all Trading Days, including Trading Days which are public holidays in Hong Kong; and
  - (b) being able to comply with any margin and other payment obligations required by the Clearing House on a Trading Day which may be a public holiday in Hong Kong.
- 322. An HKCC Participant which is not approved by the Clearing House to clear Holiday Trading Exchange Contracts is prohibited from clearing Holiday Trading Exchange Contracts on all Trading Days, regardless of whether such Trading Days are Business Days.