

## CHAPTER V

### LIMITS AND DEFAULTS

#### Position limits

501. The Clearing House may at any time in its absolute discretion:-
- (a) prescribe the maximum number or value of long or short open Contracts in respect of any of the Markets operated by the Exchange in respect of any or all futures expiries or option series which may at any time be registered in the name of all HKCC Participants or any particular HKCC Participant; or
  - (b) regulate or limit the net long or net short position in any of the Markets operated by the Exchange which HKCC Participants or any particular HKCC Participant may hold, or control in respect of any or all futures expiries or option series over such a period as the Clearing House may specify.
502. The Clearing House may at any time impose, increase, reduce or remove any position limits pursuant to Rule 501 by giving notice to the Exchange and the HKCC Participant in question. Notice may be given verbally or in writing as the Clearing House considers appropriate in the circumstances and any imposition, removal or change in position limits so notified shall take effect as stipulated in the notice.
503. In deciding whether or not to exercise its powers pursuant to Rule 501, the Clearing House shall have regard to the minimum financial resources requirement applicable to such HKCC Participant, the Liquid Capital of the HKCC Participant or, in the case of a General Clearing Participant which is a Registered Institution, the Adjusted Capital of such HKCC Participant, the volume of trading currently conducted by the HKCC Participant and whether the HKCC Participant is a General Clearing Participant or a Clearing Participant, and, if the latter, whether it has been given permission to clear for other Clearing Participants.
504. If the Clearing House forms the view that the position limits imposed under Rule 501 might be relaxed or lifted if an HKCC Participant's level of Liquid Capital or, in the case of a General Clearing Participant which is a Registered Institution, Adjusted Capital, were to be increased, it shall notify the HKCC Participant of the same in order to give the HKCC Participant an opportunity to reorganize its affairs and may stipulate the position limits which apply pending such reorganization.
505. The Clearing House may at any time increase, reduce or remove any position limits imposed pursuant to Rule 501 by giving five Business Days' notice in

writing to the Exchange and the HKCC Participant in question, or, in cases where the Clearing House thinks the same necessary or expedient, by giving fewer than 5 Business Days' notice in writing to the Exchange and the HKCC Participant in question.

506. The Clearing House shall not be required to give any reasons for its decision to impose, increase, reduce or remove any position limits pursuant to Rules 501 and 502.
- 506A. Notwithstanding the above, any position limit from time to time imposed by the Clearing House on an HKCC Participant pursuant to Rule 501 or 502 in respect of the maximum number or value of long or short open Contracts of a particular Market operated by the Exchange shall be, at all times, at least as stringent as that imposed by the Exchange under the Rules of the Exchange.

#### Position limits at direction of Exchange

507. The Clearing House will, on receipt of a written request from either the Exchange or the Commission, impose position limits of the level and nature requested by either of them (including speculative position limits) on such HKCC Participants as the Exchange or the Commission may designate in such request.

#### Exceeding position limits

508. (a) If an HKCC Participant exceeds any position limit imposed by the Clearing House under Rule 501 or Rule 507, the Clearing House shall be entitled to require that HKCC Participant to close out or to effect the transfer to another HKCC Participant of such number of open positions as will in the opinion of the Clearing House result in the HKCC Participant complying with the position limits.
- (b) If an HKCC Participant fails to comply with any requirement of the Clearing House to close out or transfer open positions pursuant to this Rule, the Clearing House may transfer such open positions on the HKCC Participant's behalf in accordance with Rules 313 and 513 or close out such open positions on the HKCC Participant's behalf in accordance with Rule 512.
- (c) Where an HKCC Participant (or, in the case of a General Clearing Participant, any Non-Clearing Participant for whom it clears) has failed to comply with any requirement of the Chief Executive of the Exchange to close out or transfer open positions pursuant to Rule 631 or Rule 632 of the Exchange Rules and the Clearing House receives a request from the Exchange to that effect, the Clearing House shall close out or transfer such open positions as may be directed by the Chief Executive of the Exchange on behalf of the Defaulting HKCC Participant (or, in the case of a General Clearing Participant, require the General Clearing

Participant to close out or transfer to another HKCC Participant such open positions, and if it fails to comply with such requirement, the Clearing House shall close out or transfer such open positions on the General Clearing Participant's behalf), in accordance with Rules 313, 512 and 513.

- (d) A HKCC Participant shall indemnify the Clearing House, the Exchange, and a recognized exchange controller which is the controller of the Clearing House in respect of any costs, loss or other expenses arising by reason of any Contract being closed out or transferred by the Clearing House on the HKCC Participant's behalf pursuant to this Rule.
- (e) The exercise by the Clearing House of any right pursuant to this Rule is without prejudice to and does not preclude the Clearing House from exercising any other right (including any powers under Rule 510) in respect of any default by an HKCC Participant.

#### Events of default

509. Any of the following events or circumstances shall constitute an event of default upon its occurrence or if the Clearing House in its absolute discretion determines that it has occurred:

- (a) (deleted)
- (b) a petition is presented or a proceeding is commenced or an order is made or an effective resolution is passed or any other step is taken by any person for the winding-up, re-organisation, reconstruction, amalgamation or dissolution of an HKCC Participant or for the appointment of a provisional liquidator, liquidator, receiver or similar officer over all or any part of the HKCC Participant's business or assets;
- (c) an HKCC Participant compounds with its creditors;
- (d) an HKCC Participant is unable to pay its debts as they fall due;
- (e) an HKCC Participant fails to comply with any of the following:
  - (i) any provision of the Financial Resources Rules or any financial resources requirement prescribed by the Clearing House;
  - (ii) any position limits imposed by the Clearing House or the Exchange;
  - (iii) any payment obligations in respect of its HKCC Participant Additional Deposit any Assessments demanded by the Clearing

House pursuant to Rule 707A or any replenishment of Reserve Fund Deposits pursuant to Rule 707B;

- (iv) margin calls or demands for variation adjustment, mandatory intra-day variation adjustment and margin, additional margin or intra-day variation adjustment;
  - (v) any payment obligations in respect of the Gainer VA Flow Adjustment pursuant to Rule 711;
  - (vi) any payment obligations in respect of the Termination Value Payable pursuant to section 2.13 of the Clearing House Procedures;
  - (vii) any payment obligations in respect of the Limited Recourse Interim CP Payable or Limited Recourse Final CP Payable pursuant to section 7.1 of the Clearing House Procedures; or
  - (viii) any payment obligations in respect of the HKCC Default Interim CP Payable or HKCC Default Final CP Payable pursuant to section 8.1 of the Clearing House Procedures;
- (f) an HKCC Participant defaults in any of its delivery or payment obligations in relation to the settlement of a Physical Delivery Contract including, without limitation, the payment of any Cash Compensation and non-delivery charge;
- (g) an HKCC Participant's Exchange Participants has been suspended or revoked by the Exchange or, in the case of a General Clearing Participant which is a Registered Institution, its registration as a Registered Institution has been suspended or revoked by the Commission or is no longer valid for any reason;
- (ga) failure by a General Clearing Participant which is a Registered Institution to demonstrate to the satisfaction of the Clearing House its capability to manage the portfolio of a defaulting NCP for which it clears. Such capability might include, for example, having a valid, binding and effective Clearing Agreement with more than one NCP for which it provides clearing services which permits such General Clearing Participant to close out trades of an NCP in the event of a default by such NCP under the Exchange Rules;
- (h) an HKCC Participant is charged with or convicted of any offence relating to fraud or dishonesty or any act of bad faith;
- (i) in respect of an HKCC Participant which is also a participant or member of any clearing and settlement system operated by HKEX or its affiliates:

- (i) failure to meeting any obligation owed by it to the central counterparty or operator of such system;
  - (ii) breach of the rules or terms of participation or membership of such system; or
  - (iii) declaration of default by, or suspension or expulsion from participation or membership of such system by the central counterparty; and
- (j) the Clearing House becomes aware of circumstances affecting a client, associate or affiliate of a HKCC Participant which might, in the opinion of the Clearing House, result in that HKCC Participant being unable to meet any of its obligation under these Rules or any Contract to which it is a party.

509A. Notwithstanding Rule 509(f) and in the absence of any other event of default set forth in Rule 509, if a Seller fails in any of its delivery obligations in relation to a Physically Settled Metal Futures Contract but continues to perform all of its payment obligations in relation to the Physically Settled Metal Futures Contract and all of its delivery and payment obligations under all its other Contracts, the Clearing House may in its discretion determine that such failure does not constitute an Event of Default and instead require the Seller to settle its delivery obligations by paying Cash Compensation to the affected Buyer and the non-delivery charge to the Clearing House and to return any amount paid by the Buyer to the Clearing House (in accordance with Rule 309A(d)).

#### Powers of the Chairman on default

510. Notwithstanding any other provision of these Rules, the Clearing House may by decision of the Chairman declare an HKCC Participant to be a Defaulter and/or take any of the following actions or such other action as the Chairman may think fit against the HKCC Participant upon the occurrence of an event of default without the need for any prior notice to or consent of the HKCC Participant:
- (a) to close out any or all of the open Contracts registered in that HKCC Participant's name;
  - (b) to settle any or all of the open Contracts registered in that HKCC Participant's name;
  - (ba) to sell any or all of the open Contracts registered in that HKCC Participant's name by auction and/or private arrangement on-market or off-market and to appoint any person as its agent to conduct the sale;

- (c) to suspend its HKCC Participantship on such terms and for such period as the Chairman shall think fit;
- (ca) to prohibit or restrict the HKCC Participant from having access to and/or using any or all of the Clearing House's facilities, including the suspension, withdrawal or revocation of the right of the HKCC Participant's access to DCASS and/or CCMS on such terms and for such period as the Chairman shall think fit;
- (d) without prior written notice to the HKCC Participant and without having to obtain from the HKCC Participant or any other person any power of attorney, consent or document, to realize any non-cash collateral delivered by the HKCC Participant pursuant to Rule 404 by public or private sale and to do such acts and things and execute such documents as the Clearing House may consider necessary or expedient for such purpose and (subject to Rule 415(b) and Rule 416) to apply the proceeds of any such non-cash collateral in or towards the satisfaction of any amount due to the Clearing House;
- (e) subject to Rule 415(b) and Rule 416 to apply amounts standing to the credit of any account of the HKCC Participant in or towards meeting any liability of the HKCC Participant to the Clearing House;
- (f) to transfer any open Contracts registered in the name of the HKCC Participant into the name of another HKCC Participant who agrees to accept such transfer, and to cause to be paid or transferred any margin, variation adjustments or non-cash collateral in respect of such Contracts to that other HKCC Participant;
- (g) subject to Rule 415(b) and Rule 416 to apply any funds or the proceeds of any non-cash collateral delivered by the HKCC Participant pursuant to Rule 404 in or towards the satisfaction of any amount due to the Clearing House;
- (h) to hedge the risk posed by any or all of the open Contracts registered in the name of the HKCC Participants by appointing any person to take appropriate positions via auction and/or private arrangement or by the Clearing House taking appropriate positions directly in any markets, including those Markets operated by the Exchange, on behalf of such Defaulting HKCC Participant;
- (i) to regulate or limit the net long or net short position which the HKCC Participant may hold or control or to prescribe the maximum number or value of long or short open Contracts which may be registered in the name of the HKCC Participant in respect of any of the Markets operated by the Exchange in respect of any or all futures expiries or option series;

- (j) to refer the matter to the Compliance Department for instigating disciplinary action against the HKCC Participant in accordance with Rule 520;
- (k) to execute a buy-in or effect a borrowing, or to instruct a designated agent to execute a buy-in or effect a borrowing of the underlying commodity or instrument up to the quantity required to be delivered by the HKCC Participant and to disclose the name and other details of the HKCC Participant and the details of the relevant Contracts to such designated agent as the Chairman deems fit; or
- (l) to purchase or borrow, or to instruct a designated agent to purchase or borrow the currency in which payment is required to be made by the HKCC Participant under any open Contract registered in the name of the HKCC Participant up to the amount required to be paid by the HKCC Participant and to disclose the name and other details of the HKCC Participant and the details of the relevant Contracts to such designated agent as the Chairman or his designee deems fit.

511. (deleted)

Compulsory closing out, transfer, sale and settlement

512. (a) Where the Clearing House exercises its powers under these Rules to close out a Contract compulsorily, it may close out the Contract itself or it may request an Exchange Participant to conclude on behalf of the Defaulting HKCC Participant a Contract (the “new Contract”) on exactly the same terms as the Contract to be closed out, except that the price may not be the same as the price specified in the Contract to be closed out and the side which the Defaulting HKCC Participant shall take in respect of the new Contract shall be opposite to the side it holds under the Contract to be closed out.
- (b) The price of the new Contract executed through HKATS shall be the price at which the new Contract is matched through HKATS.
- (c) (deleted)
- (d) On the execution of the new Contract through HKATS, the Defaulting HKCC Participant shall be deemed to have agreed to all of the terms of the new Contract and the new Contract will be registered accordingly.
- (e) For the avoidance of doubt, compulsory closing out may only be effected at prevailing market prices and the Clearing House has no power to determine the price of any Contract.

513. Where the Clearing House exercises its powers under these Rules:

- (a) to transfer a Contract compulsorily or to require an HKCC participant to transfer a Contract, such transfer shall be effected pursuant to Rule 313; or
- (b) to sell Contracts by auction or private arrangement, the Clearing House shall have the absolute discretion to determine the selling price of such Contract

and the Defaulting HKCC Participant shall be deemed to have given its consent to such transfer or sale.

- 513A. (a) Each HKCC Participant agrees and undertakes that, in consideration of it being provided with Default Information (in such capacity a **“Receiving HKCC Participant”**) it shall: (i) keep the Default Information strictly confidential and secure; (ii) only use the Default Information for the Permitted Purpose; and (iii) only disclose the Default Information to its employees, officers, representatives, advisers or Receiving HKCC Participant Affiliates for the Permitted Purpose (and to that extent only) and on a strict need to know basis.
- (b) Upon demand by the Clearing House and to the extent reasonably practicable, and in any event upon conclusion of the actions set out in Rule 510, the Receiving HKCC Participant shall promptly return to the Clearing House all or any part of the Default Information in its possession or the possession of any of its employees, officers, representatives, adviser or Receiving HKCC Participant Affiliates in whatever form it may be by a secure method or destroy or procure the destruction of any copies or reproductions of any material, paper, programme or record incorporating the Default Information including the destruction or expungement thereof from any memory device or medium, provided that the Receiving HKCC Participant may retain copies of any Default Information as required by law. Upon demand by the Clearing House, the Receiving HKCC Participant shall provide to the Clearing House a written confirmation that it has fully complied with the foregoing.
  - (c) Each Receiving HKCC Participant shall establish adequate procedures and mechanisms to ensure that the Default Information is, at all times, solely used for the Permitted Purpose by it and any of its employees, officers, representatives, advisers or Receiving HKCC Participant Affiliates.
  - (d) Nothing in these Rules shall prohibit disclosure or use of the Default Information if and to the extent: (i) it becomes publicly available other than as a result of a breach of these Rules by the Receiving HKCC Participant; (ii) the Receiving HKCC Participant is required to do so by order of a court of competent jurisdiction which arises as a result of the application of a third party; (iii) the Receiving HKCC Participant is



required or requested to do so by any governmental authority which exercises a regulatory or supervisory function over the Receiving HKCC Participant; or (iv) the Clearing House has given prior written approval to the disclosure.

514. The reference in Rule 510(b) to the settling of Contracts means settling in accordance with the following provisions:

(a) where a Defaulting HKCC Participant has registered in its name with the Clearing House Contracts for the purchase and sale of an equal quantity of a particular underlying commodity or instrument for:

(i) futures with the same expiry; or

(ii) option series with the same expiry,

(but not necessarily at the same price), the Clearing House shall be entitled to treat each of those Contracts as if it had been closed out at the applicable Closing Quotation on the date of default.

515. (a) Every Defaulting HKCC Participant shall indemnify the Clearing House, the Exchange and a recognized exchange controller which is the controller of the Clearing House in respect of any costs, loss, interests or other expenses incurred by it in effecting the transfer, closing out, sale or settlement of any Contract in pursuance of the powers of the Clearing House.

(b) Where the Clearing House determines that it is necessary and appropriate to take action against a Defaulting HKCC Participant in relation to all open Contracts of that HKCC Participant, the Clearing House may conduct the following process under the Ordinance :

(i) provide for there to be payable by or to the HKCC Participant a sum of money in relation to each open Contract if this is required after taking into account all the rights and liabilities of the HKCC Participant under or in respect of the Contract concerned;

(ii) provide for all sums of money payable by or to the HKCC Participant as determined in accordance with subparagraph (i) to be aggregated or set-off so as to produce a net sum (if any) payable by or to the HKCC Participant;

(iii) if any net sum referred to in subparagraph (ii) is payable by the HKCC Participant, provide for that net sum to be set-off against all property of the HKCC Participant which is either subject to a market charge or which has been provided as market collateral (or set-off against the proceeds of the realization of such property) so as to produce a further net sum (if any) payable by

or to the HKCC Participant (for the purpose of this subparagraph and subparagraph (iv), the terms “market charge” and “market collateral” bear the meanings set out in section 18 of the Ordinance;

- (iv) if any net sum referred to in subparagraph (iii) is payable to the HKCC Participant, provide that all property of the HKCC Participant which is either subject to a market charge or which has been provided as market collateral shall cease to be subject to the market charge (but without prejudice to any other form of charge to which it may be subject) or to be market collateral (but without prejudice to its provision as any other form of collateral) (as the case may be); and
- (v) provide for the certification by the Clearing House of any net sum referred to in subparagraph (ii) payable to the HKCC Participant, or of any further net sum referred to in subparagraph (iii) payable by or to the HKCC Participant (as the case may be) or, if there is no such sum, the certification by the Clearing House of that fact.

#### Contract Termination

- 515A. (a) Following the occurrence of an event of default, if the Clearing House reasonably believes that it will not be able to close out, settle, sell, transfer, hedge or conclude a new Contract in respect of all or any open Contracts of the Defaulter within a reasonable time as determined by the Clearing House, the Clearing House may, without prejudice to Rules 310, 545 to 551, 710 and 1101, invoke the contract termination process as provided for in this Rule 515A in consultation with the Commission.
- (b) The Clearing House will terminate all remaining open Contracts of the Defaulter and will determine which open Contracts of the non-defaulting HKCC Participants shall be terminated under this Rule (such open Contracts of the Defaulter and those of the non-defaulting HKCC Participants so determined by the Clearing House shall collectively be referred to as “Identified Contracts”). The Clearing House will notify relevant HKCC Participants of its determination, including details of the Identified Contracts and the effective date of termination of such Identified Contracts. In making this determination, the Clearing House may:
- (i) select those Contracts which are in the same Market with the same underlying commodity or instrument as, but whose side is opposite to, the open Contracts to which the Defaulter is a party. The Contracts to be terminated shall, to the extent practicable, be allocated among the clearing accounts of the non-defaulting HKCC Participants holding such open Contracts on a pro-rata basis with reference to the open Contracts in the relevant Market

with the same underlying commodity or instrument held by such non-defaulting HKCC Participants; or

- (ii) select some or all of the open Contracts in one or more Markets, regardless of whether the side of such open Contracts is the same as or opposite to that of the open Contracts to which the Defaulter is a party; or
  - (iii) select all of the open Contracts in all Markets which are to be cleared and settled by the Clearing House.
- (c) Upon termination of one or more Identified Contracts under this Rule, all prevailing obligations of the Clearing House and the relevant HKCC Participant in respect of each such Identified Contract between them (including the obligation to deliver any underlying commodities or instruments under the Identified Contracts) shall cease and be replaced with the obligation of the Clearing House or the relevant HKCC Participant, as the case may be, to pay the other party with respect to each clearing account registered in the name of such HKCC Participant a net sum equal to the aggregate termination value of each Identified Contract between them, as determined by the Clearing House under this Rule 515A and section 2.13 of the Clearing House Procedures.
- (d) The termination value for each Identified Contract shall be determined based on the Closing Quotation determined in accordance with section 2.3 of the Clearing House Procedures at the time of contract termination, or if such Closing Quotation is not available, the price shall be such price as the Clearing House may reasonably determine.
- (e) Payment by the Clearing House of the Termination Value Receivable with respect to each clearing account of each relevant HKCC Participant arising from its Identified Contracts pursuant to this Rule 515A and section 2.13 of the Clearing House Procedures discharges in full the obligations of the Clearing House in respect of these Identified Contracts and no HKCC Participant or client of an HKCC Participant shall have any recourse against the Clearing House or to any fund or other entity, including without limitation any affiliate or recognized exchange controller which is the controller of the Clearing House in relation to any Identified Contract.
- (f) Notwithstanding the above, at any time during the contract termination process but prior to the effective date of termination of the relevant Identified Contracts, the Clearing House may instead of proceeding with the termination of such open Contracts, declare the occurrence of a Clearing Service Termination Event, and in such case the Identified Contracts shall not be terminated in accordance with the contract termination process but shall be terminated in accordance with Rule 1101.

### Circumstances giving rise to disciplinary proceedings

516. Any HKCC Participant which:

- (a) in any manner contravenes the HKCC Rules, the Ordinance, any conditions stipulated in the notice of approval of its HKCC Participantship or any other rules, regulations or procedures as may from time to time be prescribed by the Clearing House;
- (b) makes any false return to the Clearing House or knowingly provides information which is untrue to the Clearing House;
- (c) makes a material misstatement to the Clearing House or the Exchange or their respective officials;
- (d) refuses to appear before the Disciplinary Committee, a Disciplinary Appeals Committee or any other committee of the Board duly constituted under these Rules to deal with disciplinary matters, at or during the course of any disciplinary investigation or proceedings;
- (e) refuses to answer fully questions or produce books, records or other documents as may be required at or during the course of any disciplinary investigation or proceedings, or testifies falsely;
- (f) acts in a manner which is likely to affect adversely the business reputation or other interests of the Clearing House or prejudice the interests of another HKCC Participant;
- (g) is disciplined for any reason by the Exchange;
- (h) fails to meet or comply with any disciplinary sanction or other requirement imposed on it; or
- (i) fails to provide information requested by an exchange, clearing house, regulatory authority or an organization (whether within or outside Hong Kong) with which HKEX, the Clearing House or the Exchange has entered into an information sharing arrangement or agreement or pursuant to Rule 214(m) or (n).

may be liable to disciplinary proceedings pursuant to Rule 520.

### Disciplinary powers

517. Any of the following disciplinary powers may be exercised against an HKCC Participant in respect of any matter which may be the subject of disciplinary proceedings:

- (i) revocation of its HKCC Participantship;
- (ii) suspension of its HKCC Participantship on such terms and for such period as may be considered fit to impose;
- (iii) issuance of a reprimand;
- (iv) issuance of a public censure;
- (v) imposition of a fine;
- (vi) issuance of a warning, including, as appropriate, a requirement that certain actions be taken within the period specified in the warning and specifying the sanction (including a fine, suspension or revocation) in the event that such actions are not taken within the specified period;
- (vii) prohibition or restriction from having access to and/or using any or all of the Clearing House's facilities, including the suspension, withdrawal or revocation of the right of an HKCC Participant's access to DCASS and/or CCMS on such terms and for such period as may be considered fit to impose;
- (viii) imposition of any other restriction or condition on the rights of an HKCC Participant or the manner in which an HKCC Participant may carry on its activities, functions and/or operations including for the avoidance of doubt any restriction or condition regarding the capacity in and extent to which any employee or director of an HKCC Participant may be involved in that HKCC Participant's activities, functions and/or operations;
- (ix) imposition of any restriction, prohibition or requirement regarding the disposal or holding by an HKCC Participant of, or the dealing by an HKCC Participant with, any monies or assets of its Clients; and
- (x) requirement for rectification or other remedial action or restitutionary measures to be taken within a stipulated period, including, if appropriate, the appointment of independent accountants, solicitors, consultants or other professionals in connection therewith.

Effect of suspension

518. (a) An HKCC Participant whose HKCC Participantship or right to access DCASS and/or CCMS is suspended for any reason:
- (i) shall not be entitled to register or clear any new open Contracts with the Clearing House;

- (ii) shall remain liable for any payments, fees and charges owing or due by the HKCC Participant to the Clearing House as if the suspension had not occurred;
  - (iii) shall remain liable for any agreement, transaction or arrangement in relation to any Contracts held by the HKCC Participant before the suspension;
  - (iv) shall, in accordance with the directions of the Clearing House, instruct and appoint another HKCC Participant to close out all the open positions held by it at the date of suspension or to effect the transfer to another HKCC Participant (subject to the approval of the Clearing House) of its open positions, together with the money or non-cash collateral standing to the credit of the CCMS Collateral Account in respect of those open positions and shall notify the Clearing House in writing of such appointment or transfer immediately; and
  - (v) shall remain bound by the HKCC Rules while suspended.
- (b) Where an HKCC Participant is required by the Clearing House pursuant to Rule 518(a)(iv) to close out or transfer any open positions held by the HKCC Participant, the Clearing House shall be entitled to close out or transfer such open positions on behalf of the HKCC Participant (to the exclusion of the HKCC Participant if the Clearing House considers appropriate). Such HKCC Participant shall indemnify and hold the Clearing House, the Exchange and a recognized exchange controller which is the controller of the Clearing House harmless in respect of any costs or other expenses arising by reason of such closing out or transfer and shall indemnify the Clearing House, the Exchange and a recognized exchange controller which is the controller of the Clearing House in respect of any loss suffered by the Clearing House in respect of such closing out or transfer.
- (c) An HKCC Participant whose HKCC Participantship, right to access DCASS and/or CCMS or other rights are suspended may at any time thereafter apply to the person or body which imposed the suspension for the lifting of such suspension by submitting to such person or body such information including any information as to the financial condition of the HKCC Participant as such person or body may require in order for it to be satisfied that it is proper in all the circumstances to lift the suspension. Such suspension may be lifted conditionally or unconditionally.

#### Revocation and effect of revocation

519. (a) Upon the liquidation of an HKCC Participant, its HKCC Participantship shall automatically cease and shall be deemed to have

been revoked and, for the avoidance of doubt, its HKCC Participantship shall not:

- (i)-(iii) (deleted)
  - (iv) vest in the liquidator of the HKCC Participant.
- (b) An HKCC Participant whose HKCC Participantship is revoked for any reason:
- (i) shall not be entitled to register or clear any new open Contracts with the Clearing House;
  - (ii) shall remain liable for any payments, fees and charges owing or due by the HKCC Participant to the Clearing House as if the revocation had not occurred;
  - (iii) shall remain liable for any agreement, transaction or arrangement in relation to any Contracts held by the HKCC Participant before the revocation;
  - (iv) shall be under a duty immediately to instruct and appoint another HKCC Participant to close out all the open positions held by it at the date of revocation or to effect the transfer to another HKCC Participant (subject to the approval of the Clearing House) of its open positions, together with the money or non-cash collateral standing to the credit of that account in respect of those open positions and shall notify the Clearing House in writing of such appointment or transfer immediately; and
  - (v) shall remain bound by the HKCC Rules until such time as all Contracts held by that HKCC Participant have been closed out or transferred.
- (c) Where an HKCC Participant is required by the Clearing House pursuant to Rule 519(b)(iv) to close out or transfer any open positions held by the HKCC Participant, the Clearing House shall be entitled to close out or transfer such open positions on behalf of the HKCC Participant (to the exclusion of the HKCC Participant if the Clearing House considers appropriate). Such HKCC Participant shall indemnify and hold the Clearing House, the Exchange and a recognized exchange controller which is the controller of the Clearing House harmless in respect of any costs or other expenses arising by reason of such closing out or transfer and shall indemnify the Clearing House, the Exchange and a recognized exchange controller which is the controller of the Clearing House in respect of any loss suffered by the Clearing House in respect of such closing out or transfer.

- (d) The HKCC Participant shall be entitled to reimbursement, without interest, of an amount in respect of its HKCC Participant's Deposit and for the purpose of calculating the amount to be reimbursed, the HKCC Participant shall be deemed to have given, on the date on which the revocation takes effect, an irrevocable Resignation Notice and the provisions of Rule 217(c) (but no other provisions of Rule 217) shall be applied accordingly. All references in Rule 217(c), howsoever phrased, to the effective date of termination of its HKCC Participantship shall be construed as references to the date on which the revocation takes effect. Reimbursement shall be made two months after the Clearing House has determined the remaining balance standing to the credit of the HKCC Participant's Deposit of the HKCC Participant. Reimbursement of HKCC Participant Additional Deposit will be made in accordance with the Clearing House Procedures.
- (e) In addition to any other grounds for revocation, the Clearing House shall have the power to revoke any HKCC Participantship if, in the opinion of the Clearing House, the HKCC Participant is not suitable to remain as an HKCC Participant.

#### Disciplinary action against an HKCC Participant

- 520. Subject to the provisions of Rules 509 and 510 and without prejudice to the powers of the Clearing House to take action against an HKCC Participant as provided for in the Rules, allegations of Rule violations shall be investigated by the Compliance Department and shall be adjudicated by the Designated Compliance Department Staff and the Disciplinary Committee, and the exercise of disciplinary powers herein shall where appropriate be dealt with, in accordance with the Rules set out in this Chapter V and such other rules and procedures as may from time to time be prescribed by the Board.
- 521. If the Compliance Department is of the opinion that grounds exist for the exercise of disciplinary action against an HKCC Participant, the Compliance Department shall give notice (the "Notice") thereof to the HKCC Participant identifying the grounds upon which such opinion is based.
- 522. The HKCC Participant may, within such period as may be specified in the Notice, submit to the Clearing House an explanation of its conduct in regard to the matter, together with any supporting documentary evidence.
- 523. If, having considered the submissions made by the HKCC Participant in response to the Notice, or in the absence of any such submissions from the HKCC Participant within the time specified in the Notice, the Compliance Department remains of the opinion that grounds exist for the exercise of disciplinary action, the Compliance Department shall:
  - (a) prepare a Report specifying the matter(s) in respect of which the Compliance Department is of the opinion that disciplinary powers



should be exercised against the HKCC Participant and the evidence upon which the Compliance Department will rely in presenting the case to the Designated Compliance Department Staff or the Disciplinary Committee (as the case may be); and

- (b) determine whether the offence in question is a Non-serious Offence.

Disciplinary matters referred to the Designated Compliance Department Staff

524. If an offence is determined by the Compliance Department to be a Non-serious Offence, the Compliance Department shall refer the matter to the Designated Compliance Department Staff and shall serve on the HKCC Participant and the Designated Compliance Department Staff a copy of the Report referred to in Rule 523(a).
525. The Designated Compliance Department Staff may at any time request the production of such documents as the Designated Compliance Department Staff deems appropriate. Copies of all such documents produced shall be served on both the Compliance Department and the HKCC Participant.
526. Where the disciplinary matter is referred to the Designated Compliance Department Staff pursuant to Rule 524, the Designated Compliance Department Staff shall, on the basis of the Report and any other documents which may be requested to be produced by the Designated Compliance Department Staff pursuant to Rule 525, adjudicate the matter(s) specified in the Report and, subject to Rule 527, impose such sanctions on the HKCC Participant as the Designated Compliance Department Staff may consider appropriate.
527. In respect of Non-serious Offences, the Designated Compliance Department Staff shall be entitled to exercise the disciplinary powers set out in Rules 517 (iii), (v) and (vi) provided that the Designated Compliance Department Staff shall not have any powers to impose on an HKCC Participant any fine which is in excess of HK\$25,000 for each Non-serious Offence or which is in excess of HK\$100,000 in aggregate if more than one Non-serious Offence is involved. Any offence which will or is likely to subject an HKCC Participant to a fine of more than HK\$25,000, or, if more than one offence is involved, any offences which in aggregate will or are likely to subject an HKCC Participant to a fine of more than HK\$100,000, shall be adjudicated by the Disciplinary Committee.
528. Subject to any decision on appeal made by the Chairman pursuant to Rule 537(h), any decision made by the Designated Compliance Department Staff pursuant to Rule 526 shall be final and binding on the HKCC Participant.

Disciplinary matters referred to the Disciplinary Committee

529. If an offence is determined by the Compliance Department not to be a Non-serious Offence, the Compliance Department shall refer the matter to the

Disciplinary Committee and shall serve on the HKCC Participant and the Disciplinary Committee a copy of the Report referred to in Rule 523(a).

530. Where the disciplinary matter is referred to the Disciplinary Committee pursuant to Rule 529, the Disciplinary Committee shall meet for the adjudication of the disciplinary matter, adjourn and otherwise regulate its meetings in accordance with following procedures, these Rules and such other rules and procedures as may from time to time be prescribed by the Board:
- (a) Upon receipt by the HKCC Participant of the Report, the HKCC Participant may, within such period as may be specified in the Report, make further submissions and provide further documentary evidence to the Disciplinary Committee in respect of the matter(s) specified in the Report. Copies of all such further submissions and documentary evidence shall be served on the Compliance Department.
  - (b) The Disciplinary Committee may at any time request the production of such documents as the Disciplinary Committee deems appropriate to any paper or oral hearing. Copies of all such documents produced shall be served on both the Compliance Department and the HKCC Participant.
  - (c) The Disciplinary Committee shall adjudicate the disciplinary matter on the basis of the Report, any further submissions or documentary evidence provided pursuant to Rule 530(a), and any other documents which may be required by the Disciplinary Committee to be produced pursuant to Rule 530(b) (i.e., as a paper hearing) unless in the opinion of the Disciplinary Committee, it is inappropriate for the disciplinary matter to be adjudicated by way of a paper hearing. At any paper or oral hearing, a legal counsel of the Clearing House may attend for the purpose of giving legal advice to the Disciplinary Committee.
  - (d) If the Disciplinary Committee decides that it is inappropriate for a disciplinary matter to be adjudicated by way of a paper hearing, the Disciplinary Committee shall fix a date and time for an oral hearing and notify the Compliance Department and the HKCC Participant of the date and time of the hearing.
  - (e) At any oral hearing, the HKCC Participant and any Compliance Department staff shall have the right to attend and make submissions. The HKCC Participant may be accompanied by its legal counsel at any oral hearing provided that notice of the intention of the HKCC Participant to be accompanied by its legal counsel is given to the Disciplinary Committee at least ten Business Days before the hearing date giving such details in relation to the legal counsel as the Disciplinary Committee may require, including his qualifications.

- (f) The Disciplinary Committee may at any time request the attendance of such persons as the Disciplinary Committee deems appropriate at any oral hearing.
- (g) If the HKCC Participant or any other person(s) requested by the Disciplinary Committee to attend an oral hearing fails to appear at the oral hearing, the Disciplinary Committee may, upon proof of service on the HKCC Participant or the other person of the notice of the hearing, proceed to hear and determine the proceedings in its/his absence.
- (h) Rules of evidence do not apply to the conduct by the Disciplinary Committee of any disciplinary hearing. The Disciplinary Committee may attach such weight as it thinks appropriate to any material produced to it, notwithstanding that such material may not be admissible in civil or criminal proceedings.
- (i) The Disciplinary Committee shall, on the basis of the Report, any further submissions or documentary evidence which may be provided by the HKCC Participant, any other documents which may be requested to be produced by the Disciplinary Committee and any evidence as may be given by any persons who may be requested to attend an oral hearing by the Disciplinary Committee, adjudicate the matter(s) specified in the Report and impose such sanctions on the HKCC Participant as it considers appropriate provided that no member of the Disciplinary Committee shall participate in the adjudication of the matter(s) if he has a personal or financial interest in the case or is materially interested in the outcome of the case.
- (j) The Disciplinary Committee shall submit its findings to the Clearing House after any decision has been made, specifying any sanction to be imposed on the HKCC Participant. The Clearing House shall as soon as practicable after receipt of the decision of the Disciplinary Committee notify the HKCC Participant in writing of the Disciplinary Committee's decision.
- (k) Subject to any decision on appeal made by the Disciplinary Appeals Committee pursuant to Rule 537(h), any decision made by the Disciplinary Committee shall be final and binding on the HKCC Participant.

#### Disciplinary Appeals Committee

531. Subject to the provisions of Rule 533, a Disciplinary Appeals Committee consisting of such persons as the Board of the Exchange thinks fit shall be appointed by the Board of the Exchange from time to time to determine a particular disciplinary appeal or disciplinary appeals.

532. (deleted)

533. No individual shall be eligible to serve on a Disciplinary Appeals Committee if he has a personal or financial interest in the case, is materially interested in the outcome of the case or has been involved in any prior consideration or determination of the case.

Appeal procedures

534. (a) The Disciplinary Appeals Committee shall be the appellate body in respect of any decisions made by the Chairman pursuant to Rule 510;
- (b) the Chairman shall be the appellate body in respect of any decisions made by the Designated Compliance Department Staff pursuant to Rule 526; and
- (c) the Disciplinary Appeals Committee shall be the appellate body in respect of any decisions made by the Disciplinary Committee pursuant to Rule 530(i).
535. An HKCC Participant may, by giving notice in writing to the Clearing House within ten Business Days of service thereon of the written notice of any decision referred to in Rule 534, appeal to the Chairman (in the case of a decision made by the Designated Compliance Department Staff pursuant to Rule 526) or the Disciplinary Appeals Committee (in the case of a decision made by the Chairman pursuant to Rule 510 or the Disciplinary Committee pursuant to Rule 530(i)) against that decision on grounds falling within one or more of the following categories only:
- (a) the Chairman, the Designated Compliance Department Staff or the Disciplinary Committee (as the case may be) materially misdirected or misconducted himself/itself contrary to the Rules so as to cause prejudice to the HKCC Participant;
- (b) the decision of the Chairman, the Designated Compliance Department Staff or the Disciplinary Committee (as the case may be) was wholly irrational;
- (c) the decision of the Chairman, the Designated Compliance Department Staff or the Disciplinary Committee (as the case may be) was based on a serious error of law or misinterpretation of the Rules; and
- (d) the penalty imposed on the HKCC Participant was manifestly excessive.

Such notice of appeal shall set out full details of the grounds of the appeal, including the reasons why the HKCC Participant considers that it was aggrieved by the decision being appealed against and the relief which the HKCC Participant is seeking.

536. The Chairman or the Disciplinary Appeals Committee (as the case may be) may refuse to entertain any appeal it deems to be frivolous or without merit.
537. Where a notice of appeal is given by an HKCC Participant to the Clearing House pursuant to Rule 535, the Chairman or the Disciplinary Appeals Committee (as the case may be) shall consider the appeal, adjourn and otherwise regulate its meetings in accordance with the following procedures, these Rules and such other rules and regulations as may from time to time prescribed by the Board. For the purpose of this Rule 537, the Chairman or the Disciplinary Appeals Committee appointed shall be referred to as the “Relevant Appellate Body”.
- (a) An appeal hearing shall not be a full review of the matter. No new evidence shall be considered by the Relevant Appellate Body unless such evidence is introduced to substantiate whether any of the grounds referred to in Rule 535 upon which the appeal is based are meritorious.
  - (b) The Relevant Appellate Body shall consider the appeal as a paper hearing unless in the opinion of the Relevant Appellate Body, it is inappropriate for the appeal to be considered by way of a paper hearing or unless the HKCC Participant requests that the appeal be considered by way of an oral hearing. At any paper or oral hearing, a legal counsel of the Clearing House may attend for the purpose of giving legal advice to the Relevant Appellate Body.
  - (c) If the Relevant Appellate Body decides that it is inappropriate for the appeal to be considered by way of a paper hearing or if the HKCC Participant requests an oral hearing, the Relevant Appellate Body shall fix a date and time for an oral hearing and notify the involved parties of the date and time of the hearing.
  - (d) At any oral hearing, the HKCC Participant, the Compliance Department and the Chairman, the Designated Compliance Department Staff or any member of the Disciplinary Committee (as the case may be) shall have the right to attend and, subject to the restriction on the introduction of evidence referred to in Rule 537(a) above, make submissions concerning the grounds upon which the appeal is based. The HKCC Participant may be accompanied by its legal counsel at any oral hearing provided that notice of the intention of the HKCC Participant to be accompanied by its legal counsel is given to the Disciplinary Appeals Committee at least ten Business Days before the hearing date giving such details in relation to the legal counsel as the Disciplinary Appeals Committee may require, including his qualifications.
  - (e) The Relevant Appellate Body may at any time request the attendance of such persons as the Relevant Appellate Body deems appropriate at any oral hearing.

- (f) If the HKCC Participant or any other person(s) requested by the Relevant Appellate Body to attend an oral hearing fails to appear at the oral hearing, the Relevant Appellate Body may, upon proof of service of the notice of the hearing, proceed to consider the appeal in its/his absence.
- (g) Rules of evidence do not apply to the conduct of any appeal hearing. The Relevant Appellate Body may attach such weight as it thinks appropriate to any material presented before it, notwithstanding that such material may not be admissible in civil or criminal proceedings.
- (h) The Relevant Appellate Body shall, on the basis of any evidence presented to it pursuant to Rule 537(a) above, and such submissions as may be given by any persons requested to attend an oral hearing by the Relevant Appellate Body pursuant to Rule 537(e) above, consider the appeal and exercise any of the powers set out in Rule 517 as it may consider appropriate under the circumstances.
- (i) The Relevant Appellate Body shall announce its decision to the Clearing House dismissing or allowing the appeal, confirming, varying or revoking any decision made or sanctions imposed on the HKCC Participant by the Chairman, the Designated Compliance Department Staff or the Disciplinary Committee (as the case may be) or specifying such additional sanctions on the HKCC Participant as the Relevant Appellate Body shall consider appropriate. The Clearing House shall as soon as practicable after receipt of the decision of the Relevant Appellate Body notify the HKCC Participant in writing of the Relevant Appellate Body's decision.
- (j) The decision of the Relevant Appellate Body shall be conclusive and binding on the HKCC Participant.

538. Pending the outcome of any appeal to the Chairman or the Disciplinary Appeals Committee (as the case may be), the decision being appealed against shall remain in force and be valid and binding upon the HKCC Participant.

#### Co-operation

539. During the course of any disciplinary proceedings or appeals, the HKCC Participant concerned shall offer its fullest co-operation to the Clearing House, the Chairman, the Compliance Department, the Designated Compliance Department Staff, the Disciplinary Committee, the Disciplinary Appeals Committee or any other committee or other body or person to whom the task of investigation or adjudication of any disciplinary matter or consideration of any appeal may be entrusted, and shall supply to them such information and documents in its possession or under its control as any of them may require.

### Settlement

540. At any time prior to the issuance of a decision by the Disciplinary Committee, the HKCC Participant that is the subject of the disciplinary matter may submit an offer of settlement to the Compliance Department for its acceptance, subject to approval by the Disciplinary Committee of such offer. The Compliance Department may, but is not obliged to, submit any such offer to the Disciplinary Committee if it does not accept the terms of the offer. In the event that an offer of settlement is not submitted to the Disciplinary Committee or if it is not approved by the Disciplinary Committee, adjudication procedures shall proceed in accordance with the applicable Exchange Rules.

### Principles of natural justice

541. The Clearing House shall have regard to the principles of natural justice in the application of these Rules.

### Liability of the Clearing House, the Exchange and a recognized exchange controller which is the controller of the Clearing House

542. The Clearing House, the Exchange, a recognized exchange controller which is the controller of the Clearing House, and their respective officers, directors, employees, agents or representatives or any other person or entity associated with the Clearing House, the Exchange or a recognized exchange controller which is the controller of the Clearing House shall have no liability whatsoever for any losses, damages, claims, legal costs or other expenses that the HKCC Participant may suffer or incur, whether directly or indirectly (including any loss of profit or any damage to reputation) by reason of any action taken in respect of an event of default or disciplinary proceedings instituted or disciplinary measures taken pursuant to these Rules or applicable Exchange Rules.

### Notice of decisions

543. (a) Promptly after any action is taken in respect of any event of default or any decision is made in respect of any disciplinary proceedings instituted against an HKCC Participant, notification of the default action or disciplinary decision and any sanctions imposed shall be sent to the HKCC Participant. Except where the offence concerned is a Non-serious Offence, a copy of the notice shall also be sent by the Secretary to:
- (i) the Commission;
  - (ii) the Exchange; and
  - (iii) any other person who, in the Chairman's opinion, should be sent a copy of such notice.

- (b) Where the HKCC Participanship, right to access DCASS and/or CCMS or other rights of an HKCC Participant are suspended or revoked, in addition to any other notice given by the Secretary pursuant to this Rule, notice thereof may be sent by the Secretary to all HKCC Participants in the manner specified by the Chairman from time to time, including by publication in any newspapers or circulars or via electronic or computer data transmission to HKCC Participants. An HKCC Participant shall have no cause of action against the Chairman, the Secretary, the Clearing House, the Exchange, a recognized exchange controller which is the controller of the Clearing House or any other person associated with the Clearing House, the Exchange or a recognized exchange controller which is the controller of the Clearing House in respect of any such publication or notification.

#### Transitional provision

##### 544. Notwithstanding

- (i) that HKCC Members are deemed to be or became HKCC Participants with effect from the Scheme Effective Date (as defined in the Exchange Rules) and the substitution of the terms “Member” and “HKCC Member” in these Rules in force prior to the Scheme Effective Date by the term “HKCC Participant” or “Participant of the Clearing House” in these Rules;
- (ii) the amendments that were made to these Rules with effect from the Scheme Effective Date; and
- (iii) that an HKCC Member has ceased to be an HKCC Participant

all investigations, disciplinary proceedings and actions instigated against any person (including without limitation an HKCC Participant which was an HKCC Member prior to the Scheme Effective Date) in respect of any violation of Rules then prevailing (including those which may have been amended or repealed with effect from the Scheme Effective Date) may be instituted, continued, enforced and adjudicated in accordance with the procedures set forth in these Rules.

#### HKCC Failure to Pay Event

545. Notwithstanding Rule 310, if the Clearing House fails to make, when due, any payment to an HKCC Participant (other than a Defaulter) under an open Contract, the relevant HKCC Participant may provide written notification (the “Failure to Pay Notice”) to the Clearing House formally informing the Clearing House of such failure pursuant to this Rule 545.
546. An “HKCC Failure to Pay Event” shall be deemed to occur if after the receipt of the Failure to Pay Notice by the Clearing House, the Clearing House has not



made all relevant payments to the HKCC Participant by the end of the relevant HKCC Failure to Pay Grace Period, provided that no HKCC Failure to Pay Event shall occur if (1) such failure to pay arises as a result of technical or administrative reasons beyond the control of the Clearing House; or (2) during the HKCC Failure to Pay Grace Period, the Clearing House has exercised its powers under Rules 547(a) and/or 547(b). The exercise by the Clearing House of its rights pursuant to the Loss Distribution Process, a Clearing Service Termination Event or contract termination pursuant to Rule 515A shall not constitute an HKCC Failure to Pay Event. During the HKCC Failure to Pay Grace Period, the relevant HKCC Participant shall continue to be obliged to pay when due all amounts required by the Clearing House in accordance with the Rules and Clearing House Procedures and shall satisfy in full all its other obligations under the Rules and Clearing House Procedures.

547. During the HKCC Failure to Pay Grace Period, the Clearing House may take the following action or actions:
- (a) designate an Early Termination Date in respect of all the open Contracts of the relevant HKCC Participant (each a “Relevant CP Contract”) by delivering a notice to the relevant HKCC Participant whereupon all the Relevant CP Contracts shall be novated with effect from the day that falls on the second Business Day following the date of delivery of such notice by the Clearing House. Upon the delivery of such notice, the relevant HKCC Participant agrees that the Clearing House shall novate all the Relevant CP Contracts on the designated Early Termination Date by terminating such Relevant CP Contracts and registering in the name of any other HKCC Participant (other than a Defaulter) Contracts on substantially similar terms as any Relevant CP Contract with the agreement of such other HKCC Participant, and the provisions as set out in Rules 552 to 555 shall apply; or
  - (b) declare and notify all HKCC Participants of the occurrence of a Clearing Service Termination Event pursuant to the terms set out in Rule 1101, whether or not the Clearing House has, prior to such declaration of Clearing Service Termination Event, exercised its power pursuant to subparagraph (a) above. Upon the occurrence of a Clearing Service Termination Event, the clearing and settlement services in relation to Futures/Options Contracts, including the Relevant CP Contracts, will be wound down in accordance with Rules 1101 to 1104.
548. Upon the occurrence of an HKCC Failure to Pay Event, if the Clearing House has not taken any action under Rule 547(a) or Rule 547(b) above, the relevant HKCC Participant may terminate and liquidate all the Relevant CP Contracts by delivering a notice to the Clearing House.
549. In the event that the relevant HKCC Participant delivers a notice to the Clearing House to terminate all the Relevant CP Contracts pursuant to Rule 548, the Clearing House shall:

- (a) terminate all the Relevant CP Contracts on the day that falls on the second Business Day following the date of delivery of such notice by the relevant HKCC Participant (such day being the “Early Termination Date” for the purpose of this Rule 549) by registering in the name of any other HKCC Participant (other than a Defaulter) one or more Contracts on substantially similar terms as any Relevant CP Contract with the agreement of such other HKCC Participant on the Early Termination Date and Rules 552 to 555 shall apply; or
- (b) declare and notify all HKCC Participants of the occurrence of a Clearing Service Termination Event, upon which the clearing and settlement services in relation to Futures/Options Contracts, including the Relevant CP Contracts, will be wound down in accordance with Rules 1101 to 1104.

#### HKCC Insolvency Event

550. An “HKCC Insolvency Event” shall occur if the Clearing House voluntarily commences a procedure seeking or proposing liquidation, administration, receivership, judicial management or a scheme of arrangement, or other similar relief with respect to itself or its debts under any bankruptcy, insolvency, regulatory, supervisory or similar law, or if any of the foregoing case or procedure (other than one that is frivolous or vexatious in nature) is commenced in relation to the Clearing House by any other person and either:
- (a) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for the winding-up or liquidation of the Clearing House; or
  - (b) such case or procedure is not dismissed, discharged, stayed or restrained in each case within 21 Business Days of the institution or presentation thereof.

Upon the occurrence of an HKCC Insolvency Event, a non-defaulting HKCC Participant may by written notice to the Clearing House declare the HKCC Insolvency Event and designate an Early Termination Date for the termination and liquidation of all open Contracts then registered in its name.

551. In the event that a non-defaulting HKCC Participant delivers a notice to the Clearing House to terminate all of its open Contracts then registered with the Clearing House pursuant to Rule 550 as a result of the occurrence of an HKCC Insolvency Event, then all open Contracts of all HKCC Participants will be terminated with effect from (and including) the day that falls on the second Business Day following the date of delivery of such notice by the non-defaulting HKCC Participant (such day being the “Early Termination Date” for the purpose of this Rule 551) and Rules 552 to 555 will apply to each HKCC Participant. Upon receipt of a notice from a non-defaulting HKCC Participant declaring the occurrence of an HKCC Insolvency Event, the Clearing House will notify all HKCC Participants of (1) the occurrence of

such event and (2) the Early Termination Date with respect to all open Contracts registered in the name of all HKCC Participants.

Calculations of Net Payments under an HKCC Failure to Pay Event or an HKCC Insolvency Event

552. Upon the designation of an Early Termination Date pursuant to either Rule 547(a) or Rule 549(a) in respect of an HKCC Failure to Pay Event or pursuant to Rule 550 in respect of an HKCC Insolvency Event, every open Contract between the Clearing House and the relevant HKCC Participant shall be terminated and all prevailing obligations of the Clearing House and such HKCC Participant in respect of each such Contract between them (including the obligations to deliver any underlying commodities or instruments under such Contract) shall cease and be replaced with the obligation of the Clearing House or the relevant HKCC Participant, as the case may be, to pay the other party with respect to each clearing account registered in the name of such HKCC Participant a net sum which shall take into account the termination value and any unpaid amounts of each such Contract registered in the relevant clearing account as determined by the Clearing House under this Rule and section 8.1 of the Clearing House Procedures. The termination value for each open Contract shall be determined based on the Closing Quotation determined in accordance with section 2.3 of the Clearing House Procedures on the Early Termination Date, or if such Closing Quotation is not available, the price shall be such price as the Clearing House may reasonably determine. The Clearing House may also take into account any unpaid amounts that have become due and payable in respect of any Contract on or prior to the designation of the Early Termination Date.
553. Following the payment by each relevant HKCC Participant of the HKCC Default Interim CP Payable or HKCC Default Final CP Payable with respect to each clearing account of each relevant HKCC Participant arising from such Contracts, the Clearing House shall pay an amount equal to the Margin Balance in respect of an HKCC Participant to such HKCC Participant in accordance with section 8.1 of the Clearing House Procedures; and the Clearing House shall pay an amount equal to the Reserve Fund Deposits Balance in respect of an HKCC Participant or Former HKCC Participant to such HKCC Participant or Former HKCC Participant in accordance with section 8.1 of the Clearing House Procedures.
554. The Clearing House will, as soon as reasonably practicable, inform the Commission of the occurrence of an HKCC Failure to Pay Event or HKCC Insolvency Event upon becoming aware of the same.

Liability of the Clearing House under an HKCC Failure to Pay Event or an HKCC Insolvency Event

555. Notwithstanding the provisions of Rule 310, settlement (by payment, set-off or otherwise) of the HKCC Default CP Receivable with respect to the clearing

accounts of each relevant HKCC Participant arising from such Contracts pursuant to Rule 552 and section 8.1 of the Clearing House Procedures discharges in full the obligations of the Clearing House in respect of these Contracts and no HKCC Participant or client of an HKCC Participant shall have any recourse against the Clearing House or to any fund or other entity, including without limitation any affiliate or recognized exchange controller which is the controller of the Clearing House in relation to any Contract once the resources available to the Clearing House including those available to be applied under Rules 510(e), 510(g) and 706 have been exhausted. In particular, no HKCC Participant or client of an HKCC Participant shall be entitled to instigate any action for the winding-up or the appointment of a receiver or manager over any property of the Clearing House.