

## **Chapter 8 HKCC Failure to Pay Event and HKCC Insolvency Event**

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

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 with respect to an HKCC Insolvency Event, the Clearing House shall, without prejudice to any other rights under the Rules, terminate the open Contracts between the Clearing House and the relevant HKCC Participant in accordance with Rules 552 to 555.

#### *8.1.1 Calculation of termination value*

The termination value for each 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.

The Clearing House shall on, or as soon as reasonably practicable after, the Early Termination Date, with respect to each clearing account registered in the name of each relevant HKCC Participant, calculate a net sum payable by or to such HKCC Participant. In calculating such net sum, the Clearing House will take into account the termination value determined for each Contract pursuant to Rule 552 and this section of the Clearing House Procedures, and the value of all other amounts which are payable to the Clearing House from the HKCC Participant under the Rules or which are payable to the HKCC Participant from the Clearing House (other than any amounts arising from the obligation of the Clearing House to pay an amount equal to (i) the Margin Balance (ii) any income and redemption proceeds on any non-cash collateral that have not already been paid to or withdrawn by the HKCC Participant and/or (iii) the Reserve Fund Deposits Balance to the relevant HKCC Participant or Former HKCC Participant), whether such amounts are presently payable or not and whether they are liquidated or unliquidated, actual or contingent. Any net sum calculated to be payable by the Clearing House is subject to adjustment in accordance with section 8.1.2.2 below. There shall be no combining or set-off between any house clearing account (including any clearing account which is not of a Client nature) and Client clearing accounts (including any clearing account which is of a Client nature). The Clearing House will determine any such net sum payable by, or to, an HKCC Participant in the Base Currency. For the purpose of the determination under this section of the Clearing House Procedures, the Clearing House may convert any amounts denominated in any other

currency into the Base Currency at such exchange rate determined by the Clearing House from such source and on such basis as it shall consider appropriate.

*8.1.2 Payment of HKCC Default Interim CP Payable, HKCC Default Final CP Payable and HKCC Default CP Receivable*

*8.1.2.1 HKCC Default Interim CP Payable and HKCC Default Final CP Payable*

- (a) If, pursuant to section 8.1.1 above, a net sum is determined to be payable by an HKCC Participant to the Clearing House with respect to one of its clearing accounts, the Clearing House shall deduct all or part of such sum from the Margin Balance consisting of cash in the Base Currency, if any, relating to the relevant clearing account. If, after applying such Margin Balance relating to the relevant clearing account, there remains an amount payable by the HKCC Participant to the Clearing House for such clearing account (the “HKCC Default Interim CP Payable”), the Clearing House will, as soon as reasonably practicable, notify the relevant HKCC Participant of the HKCC Default Interim CP Payable, and the relevant HKCC Participant shall pay the Clearing House the HKCC Default Interim CP Payable within one Business Day following receipt of such notification or within such other time period as may be specified by the Clearing House.
- (b) If the HKCC Participant fails to pay the HKCC Default Interim CP Payable within the time frame set out in sub-paragraph (a) above, the Clearing House may declare such HKCC Participant as a Defaulter. The Clearing House may, in satisfaction of any due but unpaid HKCC Default Interim CP Payable, apply any remaining Margin Balance including any cash in other currencies and the cash proceeds of any non-cash collateral which the Clearing House shall be entitled to liquidate relating to the relevant clearing account, and if the HKCC Default Interim CP Payable of any clearing account of such HKCC Participant is not satisfied in full following such application, regardless of whether such HKCC Default Interim CP Payable arises out of a house clearing account or Client clearing account belonging to such HKCC Participant, the Clearing House may set-off the Reserve Fund Deposits Balance in respect of such HKCC Participant against the unpaid HKCC Default Interim CP Payable.

For the avoidance of doubt, if the unpaid HKCC Default Interim CP Payable arises out of both a house clearing account (or any clearing account which is not of a Client nature) and Client clearing accounts (including any clearing account which is of a Client nature), the Clearing House will set-off the Reserve Fund Deposits Balance in respect of such HKCC Participant against these clearing accounts on a pro-rata basis.

- (c) Following the application by way of set-off of any remaining Margin Balance and any Reserve Fund Deposits Balance as described in sub-paragraph (b) above, the Clearing House shall determine and notify each relevant HKCC Participant of the final net sum payable by the HKCC Participant in respect of its HKCC Default Interim CP Payable, if any (“HKCC Default Final CP Payable”) with respect to each clearing account. Each HKCC Participant that receives a notice to pay any HKCC Default Final CP Payable shall pay each such amount to the Clearing House in full within one Business Day or within such other time period as may be specified by the Clearing House.
- (d) In the event that the Clearing House does not receive any part of the HKCC Default Final CP Payable from an HKCC Participant, the Clearing House shall take reasonable steps to recover such amount. Such HKCC Participant shall be responsible for any costs the Clearing House reasonably incurs in attempting to recover such amounts and accordingly the HKCC Default Final CP Payable actually received from such HKCC Participant shall be deemed to be decreased by an amount equal to such costs, unless such costs are paid by such HKCC Participant.

#### *8.1.2.2 HKCC Default CP Receivable*

Any net sum that is determined to be payable by the Clearing House to an HKCC Participant with respect to one of its clearing accounts pursuant to section 8.1.1 above shall be known as the “Unadjusted HKCC Default CP Receivable” and shall be subject to adjustment. The amount payable by the Clearing House to each relevant HKCC Participant with respect to each such clearing account (the “HKCC Default CP Receivable”) shall be calculated by multiplying the Unadjusted HKCC Default CP Receivable by a percentage (“HKCC Default Applicable Percentage”) which is equal to the lesser of:

- (1) 100%; and

- (2) (A) the aggregate value of (I) the Reserve Fund Resources then held by the Clearing House; (II) any Margin Balance in respect of all clearing accounts applied pursuant to sections 8.1.2.1(a) and 8.1.2.1(b) above; and (III) all HKCC Default Interim CP Payables and/or HKCC Default Final CP Payables received by the Clearing House, divided by
- (B) the aggregate value representing the sum of (I) all Unadjusted HKCC Default CP Receivables and (II) the Reserve Fund Deposits Balance in respect of all HKCC Participants or Former HKCC Participants taking into account the operation of section 8.1.2.1(b) above;

The Clearing House will notify each relevant HKCC Participant of its HKCC Default CP Receivable(s) upon determination.

#### *8.1.2.3 Payment*

The amount of HKCC Default Interim CP Payable, HKCC Default Final CP Payable and HKCC Default CP Receivable will be debited from or credited to (as the case may be) the relevant CCMS Collateral Account of the HKCC Participant. To the extent that the collateral in the HKCC Participant's relevant CCMS Collateral Account is insufficient, funds will be collected via the Direct Margin Debiting System (DMDS). HKCC Participants shall ensure that there are sufficient funds deposited in their DMDS bank accounts for debiting purpose.

All payments made under this section of the Clearing House Procedures shall be made in the Base Currency. To the extent that the Clearing House determines that it is not possible or reasonably practicable to make payment in the Base Currency, the obligations of the Clearing House 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.

#### *8.1.2.4 Liability of the Clearing House*

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 with respect to 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 obligation 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 and where applicable adjusted in accordance with this section of the Clearing House Procedures.

#### *8.1.3 Return of Margin Balance*

With respect to each relevant HKCC Participant and each of its clearing account(s), taking into account (if applicable) the operation of sections 8.1.2.1(a) and 8.1.2.1(b) above, the Clearing House shall pay an amount equal to the Margin Balance for such clearing account to such HKCC Participant in accordance with the Rules.

#### *8.1.4 Return of Reserve Fund Deposits Balance*

With respect to each HKCC Participant or Former HKCC Participant which has a positive Reserve Fund Deposits Balance after payment of the HKCC Default Interim CP Payable or after determination of the HKCC Default CP Receivable for such clearing account, as the case may be, the Clearing House shall pay to each relevant HKCC Participant or Former HKCC Participant an amount equal to its Reserve Fund Deposits Balance multiplied by the HKCC Default Applicable Percentage provided that the aggregate sum payable by the Clearing House in respect of the Reserve Fund Deposits Balance for all HKCC Participants and Former HKCC Participants shall not in any event exceed the value of the Reserve Fund Resources then held by the Clearing House. The Clearing House may deliver or return to an HKCC Participant or Former HKCC Participant assets in such form and in such amount, as the Clearing House deems appropriate, equivalent to the assets recorded as part of its Reserve Fund Deposits Balance. Once the Reserve Fund Resources have been exhausted, the unpaid balance of the Reserve Fund Deposits Balance shall be extinguished and the relevant HKCC Participant(s) and Former HKCC Participant(s) shall have no further recourse to the Clearing House (its affiliates, a recognized exchange controller which is the controller of the Clearing House, or any of their respective Representatives) in respect thereof.