

CHAPTER XVII

DESIGNATED FUTURES CONTRACTS

General

1701. Terms used in this Chapter shall have the meaning given to them in Rule 1717.

1702. Pursuant to the section 392 Notice (reproduced in Rule 1718), certain structured products are regarded as futures contracts for the purpose of certain provisions of the Ordinance. The overall effect of the section 392 Notice is to enable such structured products to:

- (1) constitute a market contract if they are either effected on, or subject to, the rules of a recognized exchange company and cleared and novated through a recognized clearing house, and thereby
- (2) enjoy the insolvency override protections conferred under Division 3 of Part III of the Ordinance.

1703. The structured products which are regarded as futures contracts in the section 392 Notice are referred to as Designated Futures Contracts in this Chapter.

1704. The Exchange is a recognized exchange company and these Rules constitute rules of a recognized exchange company. OTC Clear is a recognized clearing house and has been established to, among others, provide clearing and settlement services for Designated Futures Contracts.

1705. In furtherance to the section 392 Notice, the Exchange hereby sets out the Rules in this Chapter to provide for the clearing and settlement of Designated Futures Contracts. Accordingly, OTC Clear and OTC Clear Clearing Members shall be subject to this Chapter in connection with the clearing and settlement of Designated Futures Contracts.

Authorisation by the Exchange

1706. No Designated Futures Contracts shall be cleared and settled by OTC Clear unless they are authorised for clearing by the Exchange under Rule 1707 or Rule 1708.

1707. The Exchange hereby authorises OTC Clear to accept Designated Futures Contracts which are rates derivatives or foreign exchange derivatives and which, at a minimum, meet the eligibility requirements set out in the table below for clearing and settlement.

For rates derivatives:

<u>Instrument</u>		<u>Currencies</u>	<u>Floating Rate Option</u>	<u>Maximum Residual Term</u>	<u>Designated Maturity</u>
<u>Standard Rates Derivatives Transactions</u>	<u>Single currency interest rate swaps</u>	<u>USD</u>	<u>USD-LIBOR-BBA</u>	<u>10 years (3,660 days)</u>	<u>One month, three months, six months and one year</u>
		<u>EUR</u>	<u>EUR-EURIBOR-Reuters</u> <u>EUR-LIBOR-BBA</u>	<u>10 years (3,660 days)</u>	<u>One month, three months, six months and one year</u>
		<u>HK\$</u>	<u>HKD-HIBOR-HIBOR=</u> <u>HKD-HIBOR-HKAB</u>	<u>10 years (3,660 days)</u>	<u>One month, three months, six months and one year</u>
			<u>CNY (offshore)</u>	<u>CNY-SHIBOR-Reuters</u>	<u>10 years (3,660 days)</u>
	<u>Single currency basis swaps</u>	<u>USD</u>	<u>USD-LIBOR-BBA</u>	<u>10 years (3,660 days)</u>	<u>One month, three months, six months and one year</u>
<u>EUR</u>		<u>EUR-EURIBOR-Reuters</u> <u>EUR-LIBOR-BBA</u>	<u>10 years (3,660 days)</u>	<u>One month, three months, six months and one year</u>	
<u>Non Deliverable Rates Derivatives Transactions</u>	<u>Non-deliverable interest rate swaps</u>	<u>CNY</u>	<u>CNY-CNREPOFIX=C</u> <u>FXS-Reuters</u>	<u>5 years (1,830 days)</u>	<u>Not Applicable</u>

For foreign exchange derivatives:

<u>Reference Currency</u>	<u>Settlement Currency</u>	<u>Maximum Residual Term</u>	<u>Valuation Days Offset</u>
<u>CNY</u>	<u>USD</u>	<u>2 years (740 days)</u>	<u>2 Beijing Business Days</u>
<u>INR</u>		<u>2 years (740 days)</u>	<u>2 Mumbai Business Days</u>
<u>KRW</u>		<u>2 years (740 days)</u>	<u>2 Seoul Business Days</u>
<u>TWD</u>		<u>2 years (740 days)</u>	<u>2 Taipei Business Days</u>

1708. With respect to any Designated Futures Contracts which are not within the scope of Rule 1707 but with respect to which OTC Clear wishes to provide clearing and settlement services, OTC Clear shall obtain the prior authorisation of the Exchange to clear and settle the relevant Designated Futures Contracts. The Exchange shall have regard to the following factors in deciding whether or not to grant the relevant authorisation under this Rule 1708:

- (1) the type of Designated Futures Contracts concerned and whether they are sufficiently standardised for clearing; and
- (2) whether the clearing of the relevant Designated Futures Contracts would complement the Exchange's product range, benefit Exchange Participants or create synergy with HKEx's strategic or business development or that of any company within HKEx's group of companies.

1709. The Exchange reserves the right to withdraw, amend or suspend its authorisation under Rules 1707 and 1708 in respect of the clearing and settlement of Designated Futures Contracts at any time provided that this right shall not be exercised by the Exchange without (1) the prior consent of the Commission; and (2) giving reasonable prior notice to OTC Clear and the OTC Clear Clearing Members, the duration of such prior notice to be subject to approval by the Commission.

1710. Where OTC Clear breaches any obligations under this Chapter, the Exchange is entitled to exercise its power under Rule 1709.

Obligations of OTC Clear Clearing Members

1711. OTC Clear Clearing Members may only submit Designated Futures Contracts for clearing and settlement in accordance with the OTC Clear Clearing Documentation and through trade registration systems approved by OTC Clear.

1712. Each OTC Clear Clearing Member shall undertake to the Exchange through OTC Clear (acting for itself and as the agent of the Exchange) in the OTC Clear Membership Agreement that for as long as the section 392 Notice remains in effect, it will comply with and abide by the Rules in this Chapter as in force from time to time.

1713. Where the Exchange has reasonable cause to suspect or believe that any OTC Clear Clearing Member is in breach of Rule 1711 or the undertaking referred to in Rule 1712, the Exchange shall have the power to require OTC Clear to commence investigation against such OTC Clear Clearing Member for the purpose of considering whether disciplinary proceedings should be taken against such OTC Clear Clearing Member under the Rules of OTC Clear.

The Exchange’s power to publish trade information in respect of Designated Futures Contracts

1714. Without prejudice to any other right it may have to disclose information in its possession, the Exchange may, in such a manner and form and at such intervals as it deems appropriate, publish, disseminate or publicly distribute aggregated trade information in respect of Designated Futures Contracts cleared and settled through OTC Clear, whether relating to data on open positions, trading volumes or types of Designated Futures Contracts cleared and settled by OTC Clear, provided that the identities of OTC Clear Clearing Members and OTC Clear Clearing Member Clients cannot reasonably be determined from the information so published, disseminated or publicly distributed by the Exchange.

Scope of application

1715. The Rules in this Chapter are only applicable to OTC Clear and OTC Clear Clearing Members (in their capacity as such). For the avoidance of doubt, OTC Clear and OTC Clear Clearing Members (in their capacity as such) are not subject to any provisions in any other Chapter of these Rules. Exchange Participants other than OTC Clear Clearing Members (in their capacity as such) are not subject to the Rules in this Chapter.

1716. The Exchange will not be a party, whether as principal, agent or otherwise, to any Designated Futures Contracts submitted to OTC Clear for clearing and settlement, and the Exchange shall have no liability or obligations whatsoever with respect to any such contract or with respect to any OTC Clear Clearing Member.

Definitions

1717. For purposes of this Chapter:-

- (1) the expressions listed in this Rule 1717(1) shall bear the meanings assigned to them in Chapter I of these Rules: “Exchange”, “Exchange Participant”, “group of companies”, “HKEx”, “Ordinance” and “Rules”; and
- (2) unless the context otherwise requires, the following expressions shall bear the following meanings:

<u>“Designated Futures Contract”</u>	<u>means a structured product set out in the schedule to the section 392 Notice;</u>
<u>“futures contract”</u>	<u>has the meaning assigned to it by section 1 of Part 1 of Schedule 1 to the Ordinance;</u>
<u>“market contract”</u>	<u>has the meaning assigned to it by section 1 of Part 1 of Schedule 1 to the Ordinance;</u>

<u>“OTC Clear”</u>	<u>means OTC Clearing Hong Kong Limited;</u>
<u>“OTC Clear Clearing Documentation”</u>	<u>means “Clearing Documentation” as defined in the Rules of OTC Clear;</u>
<u>“OTC Clear Clearing Member”</u>	<u>means any legal entity admitted as a clearing member of OTC Clear and in respect of which OTC Clear has not terminated its clearing membership;</u>
<u>“OTC Clear Clearing Member Clients”</u>	<u>means “Clients” as defined in the Rules of OTC Clear;</u>
<u>“OTC Clear Membership Agreement”</u>	<u>means a “Membership Agreement” as defined in the Rules of OTC Clear;</u>
<u>“recognized clearing house”</u>	<u>means a clearing house recognized by the Commission as such under section 37 of the Ordinance;</u>
<u>“recognized exchange company”</u>	<u>means an exchange company recognized by the Commission as such under section 19 of the Ordinance;</u>
<u>“Rules of OTC Clear”</u>	<u>means the rules and procedures applicable to the clearing services provided by OTC Clear as in force from time to time;</u>
<u>“section 392 Notice”</u>	<u>means the Securities and Futures (Futures Contracts) Notice 2012 made under section 392 of the Ordinance and effective as of 27 June 2012; and</u>
<u>“structured product”</u>	<u>has the meaning assigned to it by section 1 of Part 1 of Schedule 1 to the Ordinance.</u>

Section 392 Notice

1718. The section 392 Notice is reproduced below:

<u>Chapter:</u>	<u>571AK</u>	<u>Securities and Futures (Futures Contracts) Notice 2012</u>	<u>Gazette Number</u>	<u>Version Date</u>
		<u>Empowering section</u>	<u>E.R. 2 of 2012</u>	<u>02/08/2012</u>

(Cap 571, section 392)

(Enacting provision omitted—E.R. 2 of 2012)

[27 June 2012]

(Originally L.N. 81 of 2012)

<u>Section:</u>	<u>1</u>	<u>(Omitted as spent—E.R. 2 of 2012)</u>	<u>E.R. 2 of 2012</u>	<u>02/08/2012</u>
<u>Section:</u>	<u>2</u>	<u>Structured product to be regarded as futures contract</u>	<u>L.N. 81 of 2012</u>	<u>27/06/2012</u>

The structured product set out in the Schedule is to be regarded as a futures contract for the purposes of the following provisions of the Ordinance—

- (a) Division 3 of Part III;
- (b) section 63(1)(b);
- (c) section 71(1)(a)(iii);
- (d) the definition of *clearing house* in section 1 of Part 1 of Schedule 1 in so far as the definition applies to the following provisions of the Ordinance—
 - (i) section 37;
 - (ii) section 43; and
 - (iii) the definition of *clearing participant* in section 1 of Part 1 of Schedule 1; and
- (e) the definition of *market contract* in section 1 of Part 1 of Schedule 1 in so far as the definition applies to the following provisions of the Ordinance—
 - (i) section 18;
 - (ii) Division 3 of Part III;
 - (iii) section 271(9);
 - (iv) section 292(9); and
 - (v) Part 5 of Schedule 3.

<u>Schedule:</u>		<u>Schedule</u>	<u>L.N. 81 of 2012</u>	<u>27/06/2012</u>
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[section 2]

Structured Product to be Regarded as Futures Contract

<u>Item</u>	<u>Description of structured product</u>
<u>1.</u>	<u>Any structured product that—</u> <ul style="list-style-type: none"> (a) <u>does not fall within the definition of <i>securities</i> in section 1 of Part 1 of Schedule 1 to the Ordinance; and</u> (b) <u>is not a contract or an option on a contract made under the rules or conventions of a futures market.</u>

Cap 571AK - Securities and Futures (Futures Contracts) Notice 2012