

**OTC Clear Clearing Rules**

**Chapter 1 Definitions and Interpretation**

**Definitions**

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

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

108. In the event of any conflict between:

- (1) any definition or provision contained in these Clearing Rules, the Clearing Procedures or any Clearing Notices, unless OTC Clear otherwise determines, the document first listed shall have precedence and shall prevail over the documents listed later, in descending order, as follows:
  - (a) these Clearing Rules;
  - (b) the Clearing Procedures; and
  - (c) the Clearing Notices.
- (2) the Clearing Rules or any Membership Agreement on the one hand and any Client Clearing Agreement, any Security Deed or any Deed of Charge on the other, the Clearing Rules or the Membership Agreement shall prevail.
- (3) any Client Clearing Agreement and any Security Deed, the Security Deed will prevail over the Client Clearing Agreement.

- (4) the Clearing Rules, the Clearing Procedures, any Client Clearing Agreement or any other agreement between all or any of the parties to an SSM Tripartite Agreement on the one hand and any SSM Tripartite Agreement on the other, the SSM Tripartite Agreement will prevail.

## Chapter 7A Sponsored Settlement Member

### General

7A01. To simplify the payments between OTC Clear and a Clearing Member in respect of Contracts and between such Clearing Member and its Client under the Corresponding Client Transactions, and to provide for the continued clearing and performance of Contracts recorded to the Client Position Account of Clients following the occurrence of a DMP Event but prior to Porting of the relevant Contracts to a Replacement Clearing Member (or their termination if Porting does not occur) in order to manage risks relating to such DMP Event, OTC Clear may approve certain Clients to become Sponsored Settlement Members. A Sponsored Settlement Member may settle SSM Payment Amounts with OTC Clear in respect of the Client Clearing Category 1 Accounts relating to such Sponsored Settlement Member, as set out in the Clearing Procedures, and in the case of Sponsored Settlement Members incorporated in England or France, on the terms and subject to the conditions set out in the SSM Tripartite Agreement to which that Sponsored Settlement Member, OTC Clear and the relevant Clearing Member are party. Each relevant sponsoring Clearing Member which is incorporated in Hong Kong and OTC Clear agree that:

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

For the avoidance of doubt, the relevant Clearing Member shall remain liable to OTC Clear for all its obligations in respect of the Contracts and Client Accounts registered in its name as further set out in Clearing Rule 817. In the event of a failure to pay all or part of any SSM Payment Amount by the Sponsored Settlement Member to OTC Clear, the Clearing Member shall remain liable to pay any such unpaid amount.

7A02. A Clearing Member may submit for OTC Clear's approval any of its Clients to act as its Sponsored Settlement Member in respect of the Client Clearing Category 1 Accounts relating to such Client upon satisfaction of the following eligibility criteria ("**SSM Eligibility Criteria**"):

- (1) the relevant sponsoring Clearing Member is incorporated in Hong Kong, England or France;
- (2) the relevant Client is validly incorporated and existing under the laws of its jurisdiction of incorporation, (if relevant in such jurisdiction) is in good standing and is an Authorized Institution;
- (3) the relevant Client satisfies OTC Clear's internal credit assessment metrics applicable to a Sponsored Settlement Member;
- (4) the relevant Client complies with all relevant payment settlement operational arrangements applicable to a Sponsored Settlement Member to the satisfaction of OTC Clear, including,

without limitation, being a member of, and having the operational capability to settle cash payments through, the RTGS system; and

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

A Client may be a Sponsored Settlement Member in respect of one or more of its Clearing Members at any given time. Notwithstanding the SSM Eligibility Criteria, OTC Clear retains the sole right and discretion in determining whether to approve a Client to be a Sponsored Settlement Member of a Clearing Member and shall issue a notice of approval to the Clearing Member and the relevant Sponsored Settlement Member if it decides to approve the relevant application.

7A03. Each sponsoring Clearing Member agrees that each of its Clients who is its Sponsored Settlement Member may settle SSM Payment Amounts with OTC Clear in respect of the Client Clearing Category 1 Accounts relating to such Sponsored Settlement Member in accordance with the Clearing Procedures.

7A04. Each sponsoring Clearing Member shall have procedures in place to notify the Sponsored Settlement Members approved by OTC Clear in relation to such Clearing Member of the ongoing requirements applicable to Sponsored Settlement Members in the Clearing Rules and Clearing Procedures from time to time (including, without limitation, any amounts to be paid by those Sponsored Settlement Members to OTC Clear pursuant to any SSM Tripartite Agreement), and shall procure the Sponsored Settlement Member's compliance with OTC Clear's directions or requests for information from time to time. Failure by any Sponsored Settlement Member to satisfy the SSM Eligibility Criteria and the ongoing requirements relating to Sponsored Settlement Members (including the requirement to comply with OTC Clear's directions or requests for information) at all times may result in termination by OTC Clear of its status as Sponsored Settlement Member.

## **Chapter 8 Clearing by OTC Clear**

817. A Clearing Member providing Client Clearing Services to its Clients shall be liable to OTC Clear and be responsible for all its obligations as principal in respect of the Contracts and Client Accounts registered in its name. Each Clearing Member acknowledges that, save and except for the Client's right to receive (i) any Client Entitlement directly from OTC Clear under Clearing Rules 1309 or 1309A (in the case of a Clearing Member who is a Rule-Based Clearing Member) or pursuant to a Security Deed (in the case of a Clearing Member who is a Non Rule-Based Clearing Member) or (ii) amounts equal to (and in the same currency as) SSM Payment Amounts directly from OTC Clear (in the case of a Client which is a Sponsored Settlement Member of a sponsoring Clearing Member which is incorporated in England or France under the terms of a relevant SSM Tripartite Agreement which governs payment of those amounts), OTC Clear owes no obligation towards any Client or any other Person that is not a Clearing Member whatsoever in respect of the Contracts or any Client Accounts. It is the responsibility of the Clearing Member (and not OTC Clear) to ensure its own compliance with Applicable Laws relating to conduct of business, client money and segregation of client assets. Subject to the provisions of these Clearing Rules, Client Clearing Services may be provided by a Clearing Member to its Clients on whatever terms the Clearing Member decides should apply, provided that each Clearing Member must, prior to providing Client Clearing Services to a Client:

- (1) in the case of a Clearing Member who is a Non Rule-Based Clearing Member, enter into a Security Deed in favour of that Client which is legal, valid, binding and enforceable, in accordance with its terms, and provide written confirmation to OTC Clear that it has complied with Clearing Rule 818 in respect of that Security Deed;
- (2) provide written confirmation to OTC Clear showing that it has delivered the Client Clearing Services Notice to such Client, and has undertaken to do all such things as OTC Clear may from time to time reasonably require to ensure that such Client is informed of the nature, costs and risks of the Client Clearing Services (including each Client Clearing Category);
- (3) in the case of a Client that is to become a Sponsored Settlement Member of a sponsoring Clearing Member which is incorporated in England or France, such sponsoring Clearing Member must, prior to that Client becoming a Sponsored Settlement Member, enter into a legal, valid, binding and enforceable SSM Tripartite Agreement with that Client and OTC Clear; and
- (4) enter into a Client Clearing Agreement with that Client that incorporates provisions with the following effect:
  - (a) in the case of a Clearing Member who is a Rule-Based Clearing Member, the Clearing Member confirms that the positions and Collateral held in the relevant Client Account(s) by the Clearing Member as well as any Client Entitlement calculated by OTC Clear in respect thereto each relate to the corresponding positions between the Client and the Clearing Member and that, pursuant to the power of OTC Clear to make rules under section 40(2A) of the SFO, following an Event of Default of the Clearing Member, in the case of a Non-Porting Client such Client Entitlement shall be returned by OTC Clear directly to that Client pursuant to Clearing Rules 1308A and 1309 and in the case of a Porting Client such Client

Entitlement shall be returned by OTC Clear directly to that Client pursuant to Clearing Rules 1308B and 1309A;

- (b) in the case of a Clearing Member who is a Non Rule-Based Clearing Member, each of the Clearing Member and the Client confirms that the positions and Collateral held in the relevant Client Account(s) by the Clearing Member as well as any Client Entitlement calculated by OTC Clear in respect thereto each relate to the corresponding positions between the Client and the Clearing Member and, following an Event of Default of the Clearing Member, in the case of a Non-Porting Client such Client Entitlement shall be returned by OTC Clear to that Client pursuant to Clearing Rule 1309 and the terms of the Security Deed entered into by the Defaulting Clearing Member in favour of such Client and in the case of a Porting Client such Client Entitlement shall be returned by OTC Clear to that Client pursuant to Clearing Rule 1309A and the terms of the Security Deed entered into by the Defaulting Clearing Member in favour of such Client;
- (c) Corresponding Client Transactions shall be transacted pursuant to the terms of the Client Clearing Agreement and be segregated (contractually or otherwise) from any other transactions entered into between the Clearing Member and the Client;
- (d) upon the occurrence or designation of an Early Termination Date in respect of the Clearing Member following an Event of Default, any Corresponding Client Transaction with the Defaulting Clearing Member must either (i) be automatically terminated and re-established with, transferred or novated to a Replacement Clearing Member or (ii) the Client must have the right to terminate such transaction and re-establish, transfer or novate such transaction to a Replacement Clearing Member;
- (e) if a Corresponding Client Transaction is terminated following such Early Termination Date, the net replacement value of the Corresponding Client Transaction shall be equal to the value attributed by OTC Clear to the Contract to which the Corresponding Client Transaction relates following such Early Termination Date;
- (f) any non-cash collateral in respect of Corresponding Client Transactions shall be provided by way of full title transfer from the Client to the Clearing Member;
- (g) that "two way payments" arise in the event of a termination of all Corresponding Client Transactions, the substantive effect of which is that either a Clearing Member or a Client will be entitled to receive payment under the relevant termination provisions if the net replacement value of all terminated Corresponding Client Transactions effected under the Client Clearing Agreement is in its favour;
- (h) an acknowledgement from the Client that the provision of Client Clearing Service by the Clearing Member to it will not give rise to any liability owed by OTC Clear to the Client (other than, in the case of a Client which is a Sponsored Settlement Member of a sponsoring Clearing Member which is incorporated in England or France, in respect of amounts payable by OTC Clear to that Sponsored Settlement Member as provided for in an SSM Tripartite Agreement with that Sponsored Settlement Member);

- (i) the Clearing Member shall have the right in the event of a Rates and FX Clearing Termination Event relating to OTC Clear, to terminate the Corresponding Client Transaction;
- (j) upon the request of a Transferee Clearing Member to OTC Clear to port to the Transferee Clearing Member a Client's portfolio of Contracts registered with the Transferor Clearing Member in the relevant Client Position Account in full pursuant to Clearing Rule 830 or in part pursuant to Clearing Rule 831 from the Transferor Clearing Member to the Transferee Clearing Member, the Transferor Clearing Member shall have the right to (i) terminate the relevant Corresponding Client Transaction with such Client and/or (ii) have the relevant Corresponding Client Transaction re-established with, transferred or novated to the Transferee Clearing Member;
- (k) in the event that OTC Clear exercises its right under section 3.19 of the Clearing Procedures to vary the Economic Terms of a Standard Cross-currency Rates Derivatives Contract, the relevant Affected Clearing Member shall have the right to vary the terms and conditions of the relevant Corresponding Client Transaction to reflect such variation;
- (l) the Clearing Member shall only accept from the Client, as collateral for the Corresponding Client Transactions, the same types of Collateral which OTC Clear accepts from the Clearing Member in respect of the relevant Client Position Account to which Contracts relating to such Corresponding Client Transactions are recorded;
- (m) no margin financing or collateral transformation services shall be provided by the Clearing Member to the Client under the Client Clearing Agreement; and
- (n) in the case of a Client Clearing Agreement with a Client that is a Sponsored Settlement Member of such Clearing Member, the Clearing Member and such Sponsored Settlement Member shall agree that (i) payment by OTC Clear to such Sponsored Settlement Member of amounts corresponding to (and in the same currency as) any SSM Payment Amounts in respect of one or more Contracts shall (to the extent of such payment) satisfy and discharge the Clearing Member's obligation to pay the corresponding amount to such Sponsored Settlement Member under the Corresponding Client Transactions relating to those Contracts; and (ii) payment by such Sponsored Settlement Member to OTC Clear of amounts corresponding to (and in the same currency as) any SSM Payment Amounts in respect of one or more Contracts shall (to the extent of such payment) satisfy and discharge the Sponsored Settlement Member's obligation to pay the corresponding amount to the Clearing Member under the Corresponding Client Transactions relating to those Contracts,

and to the extent there is no Client Clearing Agreement in full force and effect or there is any deficiency in the Client Clearing Agreement, the Clearing Member and the Client will be deemed to have entered into a binding agreement into which the terms set out in this Clearing Rule 817(3) shall be deemed to have been incorporated. Any changes made to the terms of a Contract by OTC Clear shall be deemed to be reflected in the Corresponding Client Transaction.

## **Chapter 13 Default Procedures**

1305. Upon the occurrence of an Automatic Early Termination Event or delivery of a Notice of Default with respect to a Defaulting Clearing Member, OTC Clear may take such steps with respect to such Defaulting Clearing Member as in the circumstances appear to it, in its absolute discretion, best calculated:

- (1) to discharge the Defaulting Clearing Member's rights, obligations and liabilities under or in respect of one or more or all Contracts to which the Defaulting Clearing Member is party;
- (2) to minimize losses or the potential for losses to OTC Clear as a result of the default of the Defaulting Clearing Member; or
- (3) without the need for any prior notice to or consent of such Defaulting Clearing Member:
  - (a) (where an Automatic Early Termination Event has not occurred) to terminate any Contract of the Defaulting Clearing Member by designating an Early Termination Date in respect of such Contract;
  - (b) to apply any Collateral in the form of cash, and arranging for the liquidation of any non-cash Collateral and applying the proceeds of the realization of non-cash Collateral, for the absorption of losses incurred by OTC Clear as a result of the default of the Defaulting Clearing Member;
  - (c) to obtain any advice or assistance from the Defaulting Clearing Member and/or any third party as OTC Clear may deem necessary for any matter arising out of or in connection with an Event of Default and at the expense of the Defaulting Clearing Member, and/or
  - (d) to complete the process set out in Clearing Rules 1306, 1306A, 1306B, 1306C and 1307 in relation to such Defaulting Clearing Member,

in each case, acting in consultation with the Default Management Group and in accordance with the Default Management Process.

Upon the occurrence of any of (i) an Automatic Early Termination Event, (ii) the delivery of a Notice of Default in respect of a Clearing Member or (iii) any failure to pay by a Clearing Member (except, for the avoidance of doubt, to the extent that such payment is discharged by a Sponsored Settlement Member), OTC Clear shall not be obliged to: (a) pay any Notional Exchange Failure Adjustment Amount payable by it in respect of such Clearing Member; or (b) make any further payments or deliveries in respect of any Contract registered in the name of such Clearing Member, in either case which would otherwise have fallen due on or after such time, and upon the occurrence of an Early Termination Date in respect of such Contracts, any obligations to pay such Notional Exchange Failure Adjustment Amount or to make such further payments or deliveries and any amounts that are due but unpaid in respect of such Contracts shall be satisfied by the payment by, or to, the Defaulting Clearing Member of a single net sum to be determined in accordance with Clearing Rules 1306, 1306A, 1306B, 1306C and 1307, provided that if a Rates and FX Clearing Termination Event occurs at any time prior to the completion of the Default Management Process with respect to a Defaulting Clearing Member, no net sum shall be payable in accordance with Clearing Rules 1306, 1306A, 1306B, 1306C and 1307 and the applicable termination amounts shall instead be determined in accordance with Clearing Rules 1531 to 1540.



## **Chapter 15A Default relating to a Sponsored Settlement Member**

### **Default relating to a Sponsored Settlement Member**

- 15A01. If a potential Event of Default occurs in respect of a Clearing Member as a result of a Sponsored Settlement Member failing to pay amounts equal to (and in the same currency as) any SSM Payment Amount to OTC Clear (a “**SSM Failure to Pay Event**”):
- (1) if OTC Clear determines that the relevant Sponsored Settlement Member is not insolvent or likely to become insolvent and (other than an SSM Failure to Pay Event) no Event of Default has occurred or is likely to occur in respect of the relevant Clearing Member, then OTC Clear may decide at its sole discretion not to deliver a Notice of Default in respect of the Clearing Member for a period of up to 5 OTC Clear Clearing Days (“**SSM Payment Failure Grace Period**”), provided that OTC Clear may charge the relevant Clearing Member default interest on the due but unpaid SSM Payment Amount and any costs, fees and expenses incurred by OTC Clear during the SSM Payment Failure Grace Period attributable to such failure to pay;
  - (2) if an early termination date (howsoever described) occurs in respect of the relevant Client Clearing Agreement between a Clearing Member and a Client and the transfer of Contracts is effected under Clearing Rule 836(1), and the SSM Failure to Pay Event is continuing, OTC Clear may decide at its sole discretion not to deliver a Notice of Default in respect of the Clearing Member for a period of up to 5 OTC Clear Clearing Days from the date of the termination of the Client Clearing Agreement (“**Early Termination Grace Period**”), provided that the aggregate of any SSM Payment Failure Grace Period (if applicable) and Early Termination Grace Period does not exceed a period of 5 OTC Clear Clearing Days; and
  - (3) if OTC Clear determines that the SSM Payment Failure Grace Period has expired and the SSM Failure to Pay Event is continuing, then such failure to pay shall constitute an Event of Default in respect of the Clearing Member.
- 15A02. If a potential Event of Default has occurred or is likely to occur in respect of a sponsoring Clearing Member that has one or more Clients who are Sponsored Settlement Members, but OTC Clear determines that the relevant Sponsored Settlement Member is not insolvent or likely to become insolvent, OTC Clear may deliver a Notice of Default in respect of the relevant Clearing Member and the Default Management Process shall apply, except that OTC Clear may (prior to any porting or termination of the relevant Contracts in accordance with the Default Management Process) continue to pay to the Sponsored Settlement Member amounts equal to (and in the same currency as) the SSM Payment Amounts payable by OTC Clear to the Clearing Member in accordance with Clearing Rule 7A01 (or any SSM Tripartite Agreement with that Sponsored Settlement Member and Clearing Member where applicable) for so long as the Sponsored Settlement Member has paid to OTC Clear amounts equal to (and in the same currency as) the SSM Payment Amounts due to OTC Clear pursuant to Clearing Rule 7A03 (or any SSM Tripartite Agreement with that Sponsored Settlement Member and Clearing Member where applicable).