

Chapter 2 General Provisions

Amendment

201. Subject to the SFO and the Articles of Association of OTC Clear:

- (1) the OTC Clear Board, after consultation with the Risk Management Committee, shall have the power to amend this Clearing Rule 201, or to add to, vary or waive any of these Clearing Rules set out in Chapter 3, Chapter 4, Chapter 6, Chapter 12, Chapter 13, Chapter 15 and Chapter 16 to Chapter 21 of these Clearing Rules; and
- (2) the OTC Clear Board shall have the power to amend, add to, vary or waive any of the remaining Clearing Rules which are not referred to in sub-paragraph (1) above without first consulting the Risk Management Committee.

Without prejudice to the foregoing, OTC Clear recognizes that circumstances may arise which may require OTC Clear to make ad hoc or urgent decisions on a case specific basis or where a meeting of the OTC Clear Board and/or the Risk Management Committee cannot be convened in a timely manner. Accordingly, the OTC Clear Board may delegate its powers under sub-paragraphs (1) and (2) above to the chief executive or such other senior executives of OTC Clear as it considers appropriate, provided that in respect of matters referred to sub-paragraph (1) above, the chairman of the Risk Management Committee shall be consulted before a decision is made.

Liability

202. A Clearing Member shall be liable for any Damage incurred or suffered by OTC Clear or any of its officers or employees as a consequence of such Clearing Member's breach of any of its obligations under the Clearing Documentation or the terms of a Contract or any Applicable Laws.

203. Except as otherwise expressly provided in these Clearing Rules, OTC Clear, its Affiliates, a recognized exchange controller which is the controller of OTC Clear, or any of their respective Representatives shall not be liable to any Clearing Member or to any other Person in respect of anything done or omitted to be done by it in good faith in connection with the operations of the Rates and FX Clearing Services, the provision of such services and facilities available thereunder, and all other matters as contemplated in these Clearing Rules, including but not limited to any civil liability, whether arising in contract, tort, defamation, equity or otherwise for any Damage suffered or incurred directly or indirectly by a Clearing Member or any other Person as a result of or in connection with the following matters:

- (1) any error, interruption, failure or malfunction of, or inability to use any systems, communication lines or facilities or technology supplied, operated or used (directly or indirectly) by OTC Clear for purposes of operating its Rates and FX Clearing System and/or providing its services;
- (2) any action or omission by any of them in connection with the operation of the Rates and FX Clearing System, the provision of services and

facilities available thereunder, and all other matters as contemplated in these Clearing Rules;

- (3) any suspension, restriction or closure of OTC Clear or its services or any relevant over-the-counter derivatives market;
 - (4) any act or omission, including any delay on the part, of any Clearing Member, any Client or any other third party;
 - (5) any dispute relating to the validity, existence or terms of any Contract;
 - (6) a failure by a Clearing Member to comply with any Clearing Documentation;
 - (7) the taking of action or the omission of taking of actions by OTC Clear authorized, permitted or contemplated in the Clearing Documentation;
 - (8) the inability of OTC Clear to perform as a result of the invalidity or cancellation of any insurance or assurances effected by OTC Clear or the insolvency of such insurers or assurers (provided that the selection of such insurance, assurances or insurers by OTC Clear shall not have been unreasonable at the time of selection);
 - (9) any act or omission by OTC Clear in accordance with the directions of any Governmental Authority, or an order made or directions given by a court in exercise of its proper jurisdiction, where it is required to do so by Applicable Law;
 - (10) any failure by OTC Clear to obtain appropriate warranties, certificates or other commitments from any system's supplier or a failure to take any steps to enforce the same;
 - (11) any acts or omissions, or delay on the part, of the owners and licensees of all hardware and software operated or used by the OTC Clear for the purposes of providing the Rates and FX Clearing Services (or any acts or omissions of the employees or agents of those owners and licensees);
 - (12) any proceeding or investigation brought by or on behalf of any Governmental Authority, self-regulatory organization, or other regulatory authority exercising any disciplinary functions to which one or more Clearing Member is subject;
 - (13) any acts or omissions, including any delay on the part, of OTC Clear's own banker, or any other custodians, sub-custodians, depositaries, clearing systems, if any, appointed or used by OTC Clear in relation to Collateral, or the occurrence of an Insolvency Proceedings with respect to such Persons (provided that the selection by OTC Clear of such Persons shall not have been unreasonable); and
 - (14) any inability by any Clearing Member or any other Person to use any programme or system for purposes of accessing the Rates and FX Clearing Services.
204. OTC Clear reserves the right to act in accordance with the directions of any Governmental Authority, or an order made or directions given by a court in exercise of its proper jurisdiction, where it is required to do so by Applicable Law.

205. OTC Clear, its Affiliates, a recognized exchange controller which is the controller of OTC Clear, or any of their respective Representatives shall not be liable to any Clearing Member or to any other Person in respect of any information and statistics (including but not limited to market prices, numbers of Contracts cleared and risk management assumptions) provided or made available by OTC Clear in good faith in connection with the operations of the Rates and FX Clearing Services, the provision of such services and facilities available thereunder, and all other matters as contemplated in these Clearing Rules, including but not limited to any civil liability, whether arising in contract, tort, defamation, equity or otherwise for any Damage suffered or incurred directly or indirectly by a Clearing Member or any other Person.

Force Majeure Events and Illegality

206. Neither OTC Clear (its Affiliates, a recognized exchange controller which is the controller of OTC Clear, or any of their respective Representatives) nor a Clearing Member will under any circumstances be liable for any failure, hindrance or delay in the performance in whole or in part of its obligations under these Clearing Rules or under any Contract if such failure, hindrance or delay arises as a result of the occurrence of a Force Majeure Event or Illegality. Without limiting the generality of the immediately foregoing, if the Force Majeure Event or Illegality occurs with respect to OTC Clear only, the exclusion of liability provided for OTC Clear (its Affiliates, a recognized exchange controller which is the controller of OTC Clear, or any of their respective Representatives) under this Clearing Rule 206 shall extend to any civil liability, whether arising in contract, tort, defamation, equity or otherwise for any Damage to any Clearing Member or to any other Person.
207. A Clearing Member shall immediately notify OTC Clear if it becomes aware that an event that could be a Force Majeure Event or Illegality has occurred or is likely to occur with respect to it.
208. In respect of the occurrence of events that may give rise to a Force Majeure Event or Illegality with respect to OTC Clear and/or a Clearing Member, such determination will be made by the OTC Clear Board, and to the extent practicable, having consulted with the Risk Management Committee. If OTC Clear is unable to convene a meeting of the OTC Clear Board sufficiently promptly in the circumstances, the relevant determination will be determined by the chief executive of OTC Clear. In the event that the chief executive of OTC Clear is unavailable at the time for any reason, any Representative of OTC Clear designated by the OTC Clear Board from time to time for purposes of the applicable determination may make such determination. If the relevant determination is being made by the chief executive or a Representative of OTC Clear, OTC Clear shall convene a meeting of the OTC Clear Board as soon as practicable thereafter to ratify such determination, rescind such determination (only where such rescission is possible or practicable) or where rescission is desired but not possible or practicable, to amend such determination as appropriate.

Without prejudice to any potential rescission of, or amendment to, a determination made by the chief executive or Representative(s) of OTC Clear pursuant to this Clearing Rule 208, decisions made by the OTC Clear Board, the

chief executive of OTC Clear or a Representative of OTC Clear pursuant to this Clearing Rule 208 shall be final and binding against all Clearing Members for the purposes of these Clearing Rules and not be subject to challenge by any such Clearing Members or any other Person under these Clearing Rules or otherwise.

209. If, pursuant to Clearing Rule 208, it is determined that a Force Majeure Event or Illegality has occurred, either with respect to one or more Clearing Members or OTC Clear itself, OTC Clear shall declare the occurrence of such Force Majeure Event or Illegality and notify all Clearing Members of such occurrence.

210. Upon the declaration of the occurrence of a Force Majeure Event or Illegality, as the case may be, with respect to one or more Clearing Member or OTC Clear itself by OTC Clear pursuant to Clearing Rule 209:

- (1) OTC Clear shall be entitled to perform Emergency Close-Out in respect of:
 - (a) any Contract affected by such Force Majeure Event or Illegality;
 - (b) the Contract with equal but opposite terms which was created from the same Original Transaction or otherwise that corresponds to the Contract referred to in sub-paragraph (a) above; and
 - (c) any other Contract associated with the Contracts referred to in sub-paragraphs (a) and (b) above for the purpose of ensuring OTC Clear is risk-neutral overall,

in each case, in accordance with this Clearing Rule 210, and each Clearing Member who is party to such Contract agrees to such Emergency Close-Out as may be selected by OTC Clear. OTC Clear may designate an Early Termination Date in case of an Emergency Close-Out;

- (2) OTC Clear shall be entitled to require Clearing Members to comply with any directions issued by OTC Clear regarding the performance of, or otherwise in respect of, such affected Contracts as are specified by OTC Clear;
- (3) if the Force Majeure Event or Illegality occurs with respect to a Clearing Member only but not OTC Clear, and such Force Majeure Event or Illegality affects the relevant Clearing Member's ability to perform its payment obligation under a Contract, OTC Clear shall have the right to suspend any payment obligations OTC Clear has towards another Clearing Member under a related Contract whose terms are equal but opposite to the affected Contract, until receipt of the relevant payments from the affected Clearing Member. Any suspension of payment by OTC Clear pursuant to this sub-paragraph (3) shall not constitute failure to pay on the part of OTC Clear;
- (4) in the event the Force Majeure Event or Illegality occurs only with respect to one or more Clearing Members but not OTC Clear itself, OTC Clear shall be entitled to commence the Default Management Process (with such adjustments as OTC Clear, in consultation with the Risk

Management Committee, deem appropriate in applying such process in respect of a Force Majeure Event or Illegality);

- (5) if a Force Majeure Event occurs with respect to OTC Clear, OTC Clear shall be entitled to suspend the whole or any part of the operations of the Rates and FX Clearing Services. OTC Clear shall notify all Clearing Members as soon as practicable upon a decision to either suspend or resume any operation of the Rates and FX Clearing Services pursuant to this sub-paragraph (5);
 - (6) if a Force Majeure Event or Illegality has occurred with respect to a Clearing Member, such Clearing Member shall use all reasonable endeavours to mitigate the effects of the same upon its ability to perform its obligations to OTC Clear; and
 - (7) each Clearing Member affected by the Force Majeure Event or Illegality shall notify OTC Clear immediately as soon as its ability to perform is no longer affected by the Force Majeure Event or Illegality (or, if OTC Clear is the person affected by the Force Majeure Event or Illegality, OTC Clear shall notify all Clearing Members in relation to the cessation of the Force Majeure Event or Illegality).
211. In exercising its powers under Clearing Rule 210, OTC Clear shall act in good faith and have regard to its duties as a recognized clearing house under the SFO. Any decisions made pursuant to, and any exercise of powers under, Clearing Rule 210 shall be final and binding against all Clearing Members for the purposes of these Clearing Rules and not be subject to challenge by any such Clearing Members or any other Person under these Clearing Rules or otherwise.

Disclosure of Information

212. All information provided to or in the possession of OTC Clear regarding past or current positions carried by OTC Clear for a Clearing Member, Margin payments between OTC Clear and a Clearing Member or deliveries made by or to a Clearing Member and any financial statements submitted to OTC Clear by any Clearing Member shall be kept confidential by OTC Clear in accordance with such procedures or policies as OTC Clear may from time to time determine. Notwithstanding the foregoing, OTC Clear may disclose any information described in the immediately preceding sentence, any information received from a Clearing Member and any other information in connection with a Clearing Member at any time:
- (1) with the written consent of the Clearing Member involved;
 - (2) to HKEX and any of its Affiliates and any Representatives, committees, auditors or advisers of HKEX or any Affiliate of OTC Clear which is a recognized exchange company or a recognized clearing house under the SFO;
 - (3) pursuant to any requirement or request of any Governmental Authority, including, but not limited to, the SFC, HKMA and the Inland Revenue Department of the Hong Kong government; or to any Person required by or in accordance with the Tax Information Exchange Framework;
 - (4) pursuant to any order of a court of competent jurisdiction;

- (5) as expressly permitted by the Clearing Documentation, including, without limitation, to one or several Clearing Members, to the extent that such disclosure is necessary for the proper management of an Event of Default and the implementation by OTC Clear and Clearing Members of settlement of any Contract provided that where OTC Clear discloses any information to any Clearing Member in such circumstances, the receiving Clearing Member shall treat such information as confidential information and shall not make the information known or available to any other Person or use the information for any purpose other than that for which it has been disclosed by OTC Clear;
- (6) to any insurer, insurance broker or banker in connection with any arrangement in support of the Rates and FX Guarantee Resources;
- (7) to any professional advisers, auditors or consultants of OTC Clear;
- (8) as required by any Applicable Law;
- (9) to any trade repository or Governmental Authority (whether in Hong Kong or elsewhere) with whom OTC Clear or HKEX has entered into an information sharing arrangement or reporting service agreement or pursuant to the Tax Information Exchange Framework, such trade repository or Governmental Authority may use, handle, store, transfer and disclose such information in accordance with the terms of any such information sharing arrangement, reporting service agreement or pursuant to the Tax Information Exchange Framework;
- (10) to any service provider or third party contractor whom OTC Clear has engaged to provide data processing or other similar services for OTC Clear, provided that any such persons shall be bound by confidentiality obligation or undertaking;
- (11) to any Person if the information comes into the public domain, other than as a result of a breach of this Clearing Rule 212 by OTC Clear or any of its Representatives; or
- (12) to any Client or Designated Person to which the information relates,

provided that, in any such case other than under sub-paragraphs (1), (3), (4), (5), (9) and (11) above, the confidentiality of the information is made known to the recipient (it being understood that, if more than one sub-paragraph of this sentence applies to a particular disclosure and that include any of sub-paragraph (1), (3), (4), (5), (9) or (11) above, then the confidentiality of the information need not be made known to the recipient).

Each Clearing Member agrees that OTC Clear has the power to publish aggregated trade information in respect of Contracts cleared and settled through OTC Clear, whether relating to data on open positions, trade volumes, types of Contracts cleared and settled by OTC Clear, provided that the identity of Clearing Members or Clients cannot reasonably be determined from the data, statistics or other materials so published.

- 213. OTC Clear may direct a Clearing Member to provide it with any information requested by a trade repository or Governmental Authority (whether in Hong

Kong or elsewhere) with whom OTC Clear or HKEX has entered into an information sharing or reporting service agreement or arrangement or pursuant to the Tax Information Exchange Framework.

214. To the extent that the information to be provided by a Clearing Member to OTC Clear under Clearing Rule 213 or pursuant to any other obligations under the Clearing Rules constitutes personal data as defined in the Personal Data (Privacy) Ordinance, the Clearing Member shall:
- (1) ensure that the disclosure of personal data by the Clearing Member or its Representatives to OTC Clear is in all respects and in each case lawful;
 - (2) ensure that the Clearing Member has obtained (and if requested by OTC Clear, provide) all necessary consents from the data subject prior to the disclosure of such personal data to OTC Clear, such consent to be sufficient to allow disclosure by OTC Clear of such personal data to any trade repository or Governmental Authority (whether in Hong Kong or elsewhere) upon request or as required by Applicable Law or the terms of any information sharing or reporting service agreement or arrangement that OTC Clear or HKEX has entered into or pursuant to the Tax Information Exchange Framework and to allow any subsequent use, handling, storage, transfer and disclosure by any such trade repository or Governmental Authority in accordance with the terms of any such information sharing or reporting service agreement or arrangement or pursuant to such Tax Information Exchange Framework;
 - (3) ensure that the Clearing Member has fully complied with its obligations as a data user under the Personal Data (Privacy) Ordinance;
 - (4) take all practicable steps to ensure that all personal data collected from relevant data subjects and disclosed to OTC Clear is accurate in all material respects;
 - (5) where a Clearing Member provides Client Clearing Services to its Clients who are individuals, obtain from such Client a duly attested consent confirmation in the form prescribed by OTC Clear (from time to time) so as to ensure that personal data of such Client may be disclosed, transferred or provided by OTC Clear to any trade repository or Governmental Authority (whether in Hong Kong or elsewhere) upon request or as required by Applicable Law or the terms of any information sharing or reporting service agreement or arrangement that OTC Clear or HKEX has entered into or pursuant to the Tax Information Exchange Framework, and thereafter be used, handled, stored, transferred and disclosed by such trade repository or Governmental Authority in accordance with the terms of any such information sharing or reporting service agreement or arrangement or pursuant to such Tax Information Exchange Framework;
 - (6) where a data subject withdraws, revokes or modifies any consent as described in sub-paragraph (2) above, the Clearing Member shall immediately inform OTC Clear of the same.

For the purpose of this Clearing Rule 214, the terms “**personal data**”, “**data subject**” and “**data user**” shall have the meanings given to them under the Personal Data (Privacy) Ordinance.

Governing Law

215. Except as otherwise expressly provided in these Clearing Rules, these Clearing Rules shall be governed by, and construed in accordance with, the laws of Hong Kong.
216. Each Clearing Member irrevocably agrees for the benefit of OTC Clear that the courts of Hong Kong shall have exclusive jurisdiction to hear and determine any action or dispute which may arise out of or in connection with these Clearing Rules. Each Clearing Member irrevocably submits to the exclusive jurisdiction of Hong Kong courts and agree to waive any objection it might otherwise have to such jurisdiction, save that this submission to the exclusive jurisdiction of the courts of Hong Kong shall not (and shall not be construed so as to) limit the right of OTC clear to take proceedings in any other court of competent jurisdiction, nor shall the taking of action in one or more jurisdictions preclude OTC Clear from taking action in any other jurisdiction, whether concurrently or not.
217. Any definitions or documents incorporated by reference by these Clearing Rules and any Contracts shall be governed by and construed in accordance with the laws of Hong Kong.
218. Each Clearing Member irrevocably waives, to the extent permissible by Applicable Laws, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from:
- (1) suit or proceedings;
 - (2) jurisdiction of any court or arbitral tribunal;
 - (3) relief by way of injunction or order for specific performance or recovery of property;
 - (4) attachment of its assets (whether before or after judgment or award), any effort to confirm, enforce, or execute any decision, settlement, award, judgment, service of process, execution order or attachment that results from any judicial or administrative proceedings; and
 - (5) execution or enforcement of any judgment or award to which it or its revenues or assets might otherwise be entitled in any proceedings before an arbitral tribunal or in the courts of any jurisdiction.

Each Clearing Member irrevocably agrees, to the extent permitted by law, that it will not claim any such immunity, or assert a defence of sovereign immunity, in any proceedings. The rights and obligations of a Clearing Member under these Clearing Rules and in relation to any Contract are of a commercial and not a governmental nature.

Notice

219. Except as otherwise expressly provided in these Clearing Rules, all notices, requests, demands or other communications from OTC Clear to Clearing

Members may be given orally or in writing, in person or by post, by electronic or wire transmission (including authenticated SWIFT), by telephone or facsimile, by posting on the HKEX website, or by any means of computer data transmission. Notwithstanding the immediately foregoing, in respect of any Notice of Default, Notice of Disciplinary Appeals Committee Hearing, Notice of Disciplinary Committee Hearing, or any other notices relating to suspension of Membership, or designation of an Early Termination Date in respect of the Contract(s) registered in the name(s) of some (but not all) Clearing Members, OTC Clear shall deliver such notices to the relevant Clearing Member(s) by post, electronic or wire transmission or facsimile.

220. In the case of communications sent by post to the address last specified by a Clearing Member as its address, the communications from OTC Clear shall be deemed to have been received by the Clearing Member on the following OTC Clear Business Day if the address is in Hong Kong and, if the address is outside Hong Kong, on such day as OTC Clear may from time to time specify with reference to the time the communications would be delivered to such address in the ordinary course of post. If the communications are delivered in person to such address, the communications will be deemed to have been received by the Clearing Member at the time of delivery made to such address.
221. In the case of communications made by OTC Clear to a Clearing Member by electronic or wire transmission, by telephone or facsimile, by posting on the HKEX website or any other instantaneous means, the communications shall be deemed to have been received by the Clearing Member immediately.
222. Unless otherwise provided in these Clearing Rules, all notices from Clearing Members to OTC Clear shall be given in writing and delivered in person or sent by post, or by facsimile transmission to the address of OTC Clear (as OTC Clear may from time to time notify Clearing Members) or by authenticated SWIFT.
223. Notice by Clearing Members to OTC Clear shall be deemed to have been given at the time of receipt by OTC Clear.

Process Agent

224. Where an entity not incorporated or registered in Hong Kong is admitted as a Clearing Member, such Clearing Member shall appoint and maintain an agent in Hong Kong to act as its agent to accept service of process issued out of the courts of Hong Kong in relation to any proceedings in connection with any Clearing Documentation and shall deliver to OTC Clear a copy of the agreement relating to such appointment countersigned by such agent. No Clearing Member shall give any notice of revocation to, or otherwise terminate the appointment of, any such agent unless prior to such termination it has validly appointed a replacement agent in Hong Kong to accept service of process issued out of the courts of Hong Kong in relation to any proceedings in connection with any Clearing Documentation, and has delivered to OTC Clear an agreement relating to the appointment of such replacement agent and countersigned by such replacement agent. If for any other reason any agent appointed under this Clearing Rule 224 ceases to be such an agent, the Clearing Member shall forthwith appoint a replacement agent in Hong Kong, and deliver to OTC Clear a copy of the new agent's acceptance of that appointment within 10 OTC Clear Business Days of such appointment. Nothing in the Clearing Documentation or

any Contract shall affect the right of OTC Clear to serve process in any other manner permitted by law.

Time Reference

225. Where reference is made in the Clearing Documentation to a time or deadline, it shall mean Hong Kong time, except as otherwise expressly provided in the Clearing Documentation.

Calculations and Currency

226. The calculations made by OTC Clear pursuant to these Clearing Rules shall be conclusive and binding on all Clearing Members. If a Clearing Member believes that there is any error in OTC Clear's calculations, the Clearing Member shall immediately notify OTC Clear in writing and in any event, no later than 17:00 hours Hong Kong time on the immediately following OTC Clear Clearing Day upon receipt of the relevant calculations.
227. In exercising its right of netting, set-off, consolidation or combination of accounts under these Clearing Rules, OTC Clear may convert any sums subject to such netting, set-off, consolidation or combination into either the Base Currency or the currency in which the other amount is denominated, in each case, at the rate of exchange at which OTC Clear would be able to, acting in a reasonable manner and in good faith, purchase the relevant amount of such currency.

Third Party Rights

228. Unless expressly provided to the contrary in these Clearing Rules, a person who is not OTC Clear or a Clearing Member has no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) to enforce or to enjoy the benefit of any term or provision of these Clearing Rules.