

Chapter 4 Legal Obligations

Continuing Obligations

401. Each Clearing Member shall at all times:

- (1) adhere strictly to, and be bound by, the Clearing Documentation and any conditions stipulated in the notice of approval of its Membership;
- (2) comply with the decisions, directions, directives, determinations, findings of fact and/or interpretation of the OTC Clear in the exercise or performance of any right, power, privilege, discretion, function, duty or obligation conferred on it by or pursuant to the Clearing Documentation;
- (3) be validly incorporated and existing under the laws of its jurisdiction of incorporation which is a jurisdiction acceptable to OTC Clear, (if relevant in such jurisdiction) be in good standing and have all the necessary approvals, licences and authorisations in place for the carrying on of its business in all jurisdictions;
- (4) have established a place of business in Hong Kong and be a Licensed Corporation or an Authorized Institution, provided that:
 - (a) a Licensed Corporation or an Authorized Institution which is not incorporated in Hong Kong may become a Clearing Member; and
 - (b) OTC Clear may admit any Person that is neither a Licensed Corporation nor an Authorized Institution (a “**Remotely Regulated Entity**”)* as a Clearing Member subject to such Person having in place, in its country of incorporation and any other jurisdiction in which it conducts business, all regulatory authorizations, licenses, permissions and approvals which OTC Clear reasonably determines to be necessary for the Clearing Member to carry out its business as a Clearing Member in the relevant jurisdictions and subject to the provision of such opinions or other information as OTC Clear may require from time to time,

and provided further that in each case, the relevant Clearing Member satisfies the obligations set out in section 2.1.8 of the Clearing Procedures;
- (5) act in good faith in its dealings with OTC Clear;
- (6) maintain Capital in an amount not less than the Minimum Capital Requirement and comply with all applicable Regulatory Capital

* Note: Introduction of remote membership is being considered by HKEX at the moment, and is not intended to be available during the initial phase of establishment of OTC Clear.

Requirement and related obligations evidencing compliance with such requirements;

- (7) pay when due all amounts required by OTC Clear in accordance with the Clearing Documentation, including, without limitation, its Margin requirement, its Rates and FX Liability and cash payment obligations, including but not limited to fees, levies, duties, charges and fines;
- (8) hold an account or accounts (as necessary) for settlement purposes as prescribed under the Clearing Procedures;
- (9) have, to the satisfaction of OTC Clear, adequate personnel, operational capability, systems, facilities, equipment and controls in place to ensure that:
 - (a) it is able to support the proper performance of its business as a Clearing Member, including such computer hardware and software systems as may be specified by OTC Clear for gaining access to the Rates and FX Clearing System used or managed by OTC Clear;
 - (b) it has an effective management and organisational structure to enable it to conduct its business in a sound, efficient and effective manner;
 - (c) it has adequate risk management systems that are applied appropriately;
 - (d) it is able to continuously monitor communication facilities for receipt of communications from OTC Clear; and
 - (e) it is able to promptly review Clearing Notices and other communications delivered or made available to the Clearing Member or its Representatives by OTC Clear, and ensure that such personnel, operational capability, systems, facilities equipment and controls are properly maintained;
- (10) have in place sufficient procedures providing for business continuity reasonably satisfactory to OTC Clear;
- (11) satisfy OTC Clear that it has a sufficient level of knowledge about the types of Contracts that it intends to clear and any risks involved in relation to the same;
- (12) maintain accurate daily records of all Contracts to which it is or has been party and make such regular financial returns as may from time to time be prescribed by OTC Clear, including but not limited to those required pursuant to Clearing Rule 504 and the Clearing Procedures;
- (13) undertake to certify on an annual basis that the information or representations provided or given in its Application Form, Membership Agreement or otherwise in connection with its application of Membership is true, complete and accurate;

- (14) if such Clearing Member is providing Client Clearing Services to its Clients, comply with the provisions relating to Client Clearing Services in Chapter 8 of these Clearing Rules;
- (14A) if such Clearing Member is a U.S. Person, limit its submission of Original Transactions to OTC Clear for registration to those transactions in which one of the counterparties is: (i) such Clearing Member; (ii) a Client of such Clearing Member who is not a U.S. Person; or (iii) a Client of such Clearing Member who is a U.S. Person that falls within such Clearing Member's "proprietary account", as that term is defined in CFTC Regulation 1.3(y) (17 C.F.R. § 1.3(y));
- (14B) if such Clearing Member is not a U.S. Person, limit its submission of Original Transactions to OTC Clear for registration on behalf of Clients who are U.S. Persons to those U.S. Persons that fall within such Clearing Member's "proprietary account", as that term is defined in CFTC Regulation 1.3(y) (17 C.F.R. § 1.3(y));
- (14C) if such Clearing Member is registered with the CFTC as a futures commission merchant (an "FCM"), limit its submission of Original Transactions to OTC Clear for registration to those transactions in which one of the counterparties is either: (i) such FCM; or (ii) a Client of such FCM who is a U.S. Person that falls within such Clearing Member's "proprietary account", as that term is defined in CFTC Regulation 1.3(y) (17 C.F.R. § 1.3(y));
- (14D) if such Clearing Member submits Original Transactions to OTC Clear for registration on behalf of Clients who are Affiliates that are registered with the CFTC as FCMs, limit its submission of such Original Transactions to those transactions in which one of the counterparties is one of such FCMs;
- (15) if such Clearing Member is providing Client Clearing Services to its Clients, undertake to disclose to OTC Clear (i) the identity of its Clients which are its Affiliates and (ii) the Client Accounts which are held by such Clearing Member for the benefit of its Affiliates;
- (16) if such Clearing Member is providing Client Clearing Services to its Clients, undertake not to comingle positions and Collateral held on behalf of its Affiliates with positions and Collateral held on behalf of Clients who are not its Affiliates;
- (17) have registered with OTC Clear:
 - (a) a Person, having director, general partner, trustee or senior officer status at the Clearing Member (or a Person occupying a similar status or performing similar functions) who is acceptable to OTC Clear and is both responsible for the clearing operations of the Clearing Member and authorized to act on behalf of the Clearing Member in respect of all transactions with or involving OTC Clear; and
 - (b) an alternate Person that satisfies the requirements set out in sub-paragraph (a) above and who is authorized to act on behalf

of the Clearing Member in the event that the first Person is incapable or unable to act;

- (18) in the event that OTC Clear in its reasonable discretion so directs, allow formal audits, inspection (including on-site inspection) or system tests related to its business with OTC Clear at the expense of the Clearing Member;
 - (19) participate in the implementation of the Default Management Process, including participation in regular fire drills, in accordance with the Clearing Documentation;
 - (20) comply with any procedures or enter into any documentation from time to time prescribed by OTC Clear and which relate to the business of OTC Clear;
 - (21) be fit and proper, have sufficient qualities of financial responsibility, reputation and competence as OTC Clear, in its discretion, considers necessary or appropriate and satisfy OTC Clear that its directors, officers and Representatives also satisfy such tests;
 - (22) not be subject to Insolvency Proceedings;
 - (23) ensure and undertake, at all times, that it will not cause OTC Clear to violate any Applicable Laws as a result of the provision of Client Clearing Services to its Clients by the Clearing Member;
 - (24) (a) be subject to Applicable Laws relating to money laundering and terrorist financing that requires it to undertake due diligence and identity verification measures on its Clients to the extent that it provides Client Clearing Services, (b) comply with all Applicable Laws relating to its status, the conduct of its business and the performance of its obligations as a Clearing Member, including, for the avoidance of doubt, all Applicable Laws relating to the prevention of bribery, money laundering, financial crimes and terrorist financing and (c) not be subject to any sanctions promulgated or imposed by the United Nations or any Governmental Authority relevant to it or its clearing activities;
 - (25) have all necessary authorisations, licences, permissions, approvals or equivalent in respect of each Regulatory Authority required to enter into and clear Original Transactions, including, where relevant, Original Transactions with or on behalf of Clients, through OTC Clear; and
 - (26) be able to demonstrate, to the satisfaction of OTC Clear, the ability to comply with the above.
402. Subject to the Maximum Current Liability applicable in respect of a Clearing Member's Rates and FX Guarantee Liability, OTC Clear may from time to time impose on any Clearing Member new, additional or special capital, margin, financial, or operational requirements, including but not limited to requirements to change the personnel, facilities or other aspects of the internal operations of such Clearing Member. Each Clearing Member shall comply with any such requirements within the time frame and in accordance with any instructions specified by OTC Clear in connection with such requirements.

Capital Requirement

403. Each Clearing Member must at all times maintain Capital:
- (1) in an amount not less than the Minimum Capital Requirement and comply with the applicable Regulatory Capital Requirement; and
 - (2) at a level such that the Capital requirements set out in section 2.3.1 of the Clearing Procedures will be satisfied.
404. In the event that a Clearing Member fails to maintain Capital in an amount not less than the Minimum Capital Requirement, OTC Clear may determine that such failure constitutes an Event of Default in accordance with Clearing Rule 1301, provided that OTC Clear shall not make such determination in the case where:
- (1) the relevant Clearing Member remedies such breach within 10 OTC Clear Business Days following the receipt of a notification of such breach (the "**Minimum Capital Requirement Breach Period**"); or
 - (2) such breach continues and is existing upon the expiry of the Minimum Capital Requirement Breach Period, but the relevant Clearing Member has given notice of resignation in accordance with Clearing Rule 608 prior to the expiry of such Minimum Capital Requirement Breach Period and the related Non-Default Unwind is completed within 10 OTC Clear Business Days following the expiry of the Minimum Capital Requirement Breach Period, provided that the Clearing Member is at all relevant times in full compliance with its obligations set out in Clearing Rules 608 and 609.

Transfer of Membership

405. Unless the prior written approval of the OTC Clear Board, in consultation with the Risk Management Committee, has been obtained, Membership shall not be capable of being transferred and no Clearing Member shall attempt to sell or transfer its Membership.
406. A Clearing Member shall not pledge or mortgage, or create any trust, charge, lien or other Encumbrance over, its Membership.
407. Save and except for, in the case of a Clearing Member who is a Rule-Based Clearing Member, the right of its Client to receive any Client Entitlement from OTC Clear under Clearing Rules 1308A, 1308B, 1309 and 1309A and, in the case of a Non Rule-Based Clearing Member, any Encumbrance created pursuant to a Security Deed, a Clearing Member shall not assign any of its rights, benefits, privileges or obligations as a Clearing Member and such rights, benefits and privileges shall be incapable of assignment.
408. OTC Clear shall not be bound or in any way compelled to recognize (even if it has notice of the same) any purported dealing or disposition made in contravention of Clearing Rule 405, 406 or 407.

Reporting Obligation

409. Each Clearing Member shall notify OTC Clear and provide OTC Clear with the following information upon submitting an Original Transaction for registration which it, its Affiliate or its CM Branch, pursuant to CFTC rules and regulations,

either voluntarily reports or is required to report, to a swap data repository registered with the CFTC:

- (1) the unique swap identifier for each such Original Transaction;
 - (2) the name of each swap data repository to which each such Original Transaction was reported; and
 - (3) any other information set out in Clearing Notices issued from time to time by OTC Clear in order for OTC Clear to comply with its reporting obligations under the Dodd-Frank Wall Street Reform and Consumer Protection Act and any related rules or regulations issued by the CFTC or any other applicable Governmental Authority.
410. Upon acceptance of each Original Transaction for registration and the creation of the relevant Contracts, each Clearing Member or its Affiliate or CM Branch who has reporting obligations under the Part 45 rules issued by the CFTC to implement Section 2(a)(13)(G) of the Commodity Exchange Act shall report the termination of such Original Transaction to the relevant swap data repository to whom the primary economic terms data was originally reported.
411. In order to avoid duplicative reporting, neither a Clearing Member nor its Affiliates and CM Branches shall report to any swap data repository registered with the CFTC any details of the Contracts created upon acceptance of an Original Transaction for registration.
412. Each Clearing Member at all times represents and warrants to OTC Clear that the provision of information by such Clearing Member to OTC Clear pursuant to Clearing Rule 409, and the reporting of such information by OTC Clear in order for OTC Clear to comply with its reporting obligations under the Dodd-Frank Wall Street Reform and Consumer Protection Act and any related rules or regulations issued by the CFTC or any other applicable Governmental Authority, would not result in any breach of any Applicable Law.