

## PART III CLEARING OPERATIONS

### Chapter 8 Clearing by OTC Clear

#### Acceptance for Registration of Original Transactions

801. Clearing Members (or Designated Person on behalf of the relevant Clearing Member) and Clients may from time to time submit Original Transactions to OTC Clear for registration in accordance with the Clearing Procedures. In order to qualify for registration, an Original Transaction must satisfy the Eligibility Requirements applicable to such Original Transaction. The Eligibility Requirements applicable to an Original Transaction are determined by OTC Clear and will be set out in the Clearing Procedures.
802. Without prejudice to Clearing Rule 801, OTC Clear may at any time reject any Original Transaction submitted for registration if, at the relevant time:
- (1) an Event of Default has occurred, or in OTC Clear's reasonable opinion, is likely to occur, in relation to the relevant Clearing Member;
  - (2) the Original Transaction does not satisfy the applicable Eligibility Requirements; or
  - (3) the Clearing Member in whose name such Original Transaction will be registered has not satisfied its Margin requirements.
803. If OTC Clear determines that an Original Transaction is acceptable for registration, such Original Transaction will be registered in accordance with Clearing Rule 806, provided that OTC Clear may, in its sole discretion, apply any other conditions to the registration of such Original Transaction.
804. In the event that an Original Transaction fails to be accepted for registration pursuant to these Clearing Rules, OTC Clear shall, in accordance with the Clearing Procedures, notify the relevant Clearing Member(s) of its decision.
805. Any Original Transaction that fails to be accepted for registration shall remain in full force and effect as between the two original parties to such Original Transaction pursuant to the terms therein.

#### Creation of Contracts through Submission of Original Transactions by Clearing Members or Clients

806. Any Original Transaction submitted for, and accepted by, OTC Clear for registration by a Clearing Member, a Client or a Designated Person submitting an Original Transaction on behalf of its Clearing Member will result in the novation of the Original Transaction and the formation of two Contracts in its place with effect from the Registration Time, as follows:
- (1) if the Original Transaction is between two Clearing Members, then:
    - (a) one Contract is created between a Clearing Member ("**Clearing Member 1**") who was party to the Original Transaction and OTC Clear (as principal), under which:
      - (A) the rights and obligations of OTC Clear arising from the Economic Terms of such Contract will be the same as those of the other Clearing Member ("**Clearing Member**")

2") who was party to the Original Transaction under the economic terms of the Original Transaction; and

- (B) the rights and obligations of Clearing Member 1 arising from the Economic Terms of such Contract will be the same as those it had under the economic terms of the Original Transaction against Clearing Member 2, except that such rights and obligations are modified by the replacement of OTC Clear as the counterparty to Clearing Member 1,

and are subject to any changes as a result of the operation of the Contract Terms (as supplemented by the Clearing Procedures and the ATRS Guide) for that Contract;

- (b) another Contract is created between Clearing Member 2 with OTC Clear (as principal), under which:

- (A) the rights and obligations of OTC Clear arising from the Economic Terms of such Contract will be the same as those of Clearing Member 1 under the economic terms of the Original Transaction; and

- (B) the rights and obligations of Clearing Member 2 arising from the Economic Terms of such Contract will be the same as those it had under the economic terms of the Original Transaction against Clearing Member 1, except that such rights and obligations are modified by the replacement of OTC Clear as the counterparty to Clearing Member 2,

and are subject to any changes as a result of the operation of the Contract Terms (as supplemented by the Clearing Procedures and the ATRS Guide) for that Contract; and

- (c) in respect of the Original Transaction between two Clearing Members, upon the creation of the two Contracts under subparagraphs (a) and (b) above, the rights and obligations of the parties to the corresponding Original Transaction will be automatically and completely discharged and of no further force or effect, save and except for any amounts which are due and payable (or deliverable) by one party to the other prior to the Registration Time pursuant to the terms of such Original Transaction and which remain unpaid (or undelivered);

- (2) if the Original Transaction is between a Clearing Member and a Client (the "**Relevant Client**"), then:

- (a) one Contract is created between the Clearing Member who provides Client Clearing Services to the Relevant Client ("**Clearing Member 3**") (in respect of its Client Position Account relating to the Relevant Client) and OTC Clear (as principal), under which:

- (A) the rights and obligations of OTC Clear arising from the Economic Terms of such Contract will be the same as those of the Clearing Member (“**Clearing Member 4**”) who was party to the Original Transaction with the Relevant Client under the economic terms of the Original Transaction; and
- (B) the rights and obligations of Clearing Member 3 (in respect of its Client Position Account relating to the Relevant Client) arising from the Economic Terms of such Contract will be the same as those the Relevant Client had under the economic terms of the Original Transaction against Clearing Member 4, except that such rights and obligations are modified by the replacement of OTC Clear as counterparty to Clearing Member 3 (in respect of its Client Position Account relating to the Relevant Client),

and are subject to any changes as a result of the operation of the Contract Terms (as supplemented by the Clearing Procedures and the ATRS Guide) for that Contract;

- (b) one Contract is created between Clearing Member 4 (in respect of its House Position Account) and OTC Clear (as principal), under which:
  - (A) the rights and obligations of OTC Clear arising from the Economic Terms of such Contract will be the same as those of the Relevant Client under the economic terms of the Original Transaction; and
  - (B) the rights and obligations of Clearing Member 4 (in respect of its House Position Account) arising from the Economic Terms of such Contract will be the same as those it had under the economic terms of the Original Transaction against the Relevant Client, except that such rights and obligations are modified by the replacement of OTC Clear as the counterparty to Clearing Member 4 (in respect of its House Position Account),

and are subject to any changes as a result of the operation of the Contract Terms (as supplemented by the Clearing Procedures and the ATRS Guide) for that Contract;

- (c) where Clearing Member 3 and Clearing Member 4 are the same Clearing Member, then for the purposes of this sub-paragraph (2), the Contract created pursuant to sub-paragraph (a) above will be recorded to such Clearing Member’s Client Position Account relating to the Relevant Client, and the Contract created pursuant to sub-paragraph (b) above will be recorded to such Clearing Member’s House Position Account; and

- (d) in respect of the Original Transaction between Clearing Member 4 and the Relevant Client, upon the creation of the two Contracts under sub-paragraphs (a) and (b) above, the rights and obligations of the parties to the corresponding Original Transaction will be automatically and completely discharged and of no further force or effect, save and except for any amounts which are due and payable (or deliverable) by one party to the other prior to the Registration Time pursuant to the terms of such Original Transaction and which remain unpaid (or undelivered); and
- (3) if the Original Transaction is between two Clients (“**Client 1**” and “**Client 2**”), then:
- (a) one Contract is created between the Clearing Member who provides Client Clearing Services to Client 1 (“**Clearing Member 5**”) (in respect of its Client Position Account relating to Client 1) and OTC Clear (as principal), under which:
- (A) the rights and obligations of OTC Clear arising from the Economic Terms of such Contract will be the same as those of Client 2 under the economic terms of the Original Transaction; and
- (B) the rights and obligations of Clearing Member 5 (in respect of its Client Position Account relating to Client 1) arising from the Economic Terms of such Contract will be the same as those of Client 1 under the economic terms of the Original Transaction, except that such rights and obligations are modified by the replacement of OTC Clear as counterparty to Clearing Member 5 (in respect of its Client Position Account relating to Client 1),
- and are subject to any changes as a result of the operation of the Contract Terms (as supplemented by the Clearing Procedures and the ATRS Guide) for that Contract;
- (b) one Contract is created between the Clearing Member who provides Client Clearing Services to Client 2 (“**Clearing Member 6**”) (in respect of its Client Position Account relating to Client 2) and OTC Clear (as principal), under which:
- (A) the rights and obligations of OTC Clear arising from the Economic Terms of such Contract will be the same as those of Client 1 under the economic terms of the Original Transaction; and
- (B) the rights and obligations of Clearing Member 6 (in respect of its Client Position Account relating to Client 2) arising from the Economic Terms of such Contract will be the same as those of Client 2 under the economic terms of the Original Transaction, except that such rights and obligations are modified by the replacement of OTC

Clear as the counterparty to Clearing Member 6 (in respect of its Client Position Account relating to Client 2),

and are subject to any changes as a result of the operation of the Contract Terms (as supplemented by the Clearing Procedures and the ATRS Guide) for that Contract;

- (c) where Clearing Member 5 and Clearing Member 6 are the same Clearing Member, then for the purposes of this sub-paragraph (3), the Contract created pursuant to sub-paragraph (a) above will be recorded to such Clearing Member's Client Position Account relating to Client 1, and the Contract created pursuant to sub-paragraph (b) above will be recorded to such Clearing Member's Client Position Account relating to Client 2; and
  - (d) upon the creation of the two Contracts under sub-paragraphs (a) and (b) above, the rights and obligations of the parties to the corresponding Original Transaction will be automatically and completely discharged and of no further force or effect, save and except for any amounts which are due and payable (or deliverable) by one party to the other prior to the Registration Time pursuant to the terms of such Original Transaction and which remain unpaid (or undelivered).
807. When an Original Transaction is submitted for registration, the relevant party shall specify (i) whether such Original Transaction is being submitted for registration as part of a Clearing Member's Client Clearing Services and (ii) to which of the relevant Clearing Member's Position Account the corresponding Contract(s) should be booked, in accordance with the following:
- (1) each Contract created under Clearing Rule 806(1) or Clearing Rule 806(2)(b) should be booked to the House Position Account of the Clearing Member who was party to the corresponding Original Transaction; and
  - (2) each Contract created under Clearing Rule 806(2)(a), Clearing Rule 806(3)(a) or Clearing Rule 806(3)(b) should be booked to a Client Position Account relating to the relevant Client.

Any Contract arising as a result of submission of an Original Transaction by a Designated Person on behalf, and in the name, of a Clearing Member shall be recorded to such Clearing Member's House Position Account.

808. Each Contract created under Clearing Rule 806 shall be governed by the applicable Contract Terms for that Contract. OTC Clear's obligations and liabilities under any Contract shall be limited to those pursuant to the Clearing Documentation.
809. Each Clearing Member agrees to be bound by each Contract pursuant to the particulars submitted by it or its Designated Person that is entered in such Clearing Member's name as principal and not as agent, and on the terms set out in the Clearing Documentation.

810. The Transaction Register, or such other record as OTC Clear shall accept in its sole discretion, shall constitute conclusive evidence of Contracts which have been validly made unless OTC Clear otherwise determines. The relevant reports published by OTC Clear in reliance on, or on the basis of, the Transaction Register shall be final and conclusive in determining whether a Contract has been registered with, or de-registered by, OTC Clear.
811. Following the creation of a Contract with effect from the Registration Time of such Contract:
- (1) such Contract will be a “market contract” as defined in, and for purposes of, the SFO;
  - (2) each relevant Clearing Member shall, or shall procure its Designated Person, to the extent applicable, to update its books and records to reflect such registration;
  - (3) notwithstanding any non-performance of a party’s obligations under the Original Transaction, or any invalidity, unenforceability, revocation or avoidance of the Original Transaction, the terms and validity of the corresponding Contracts shall remain in full force and effect; and
  - (4) notwithstanding the occurrence of any Insolvency Proceedings with respect to a Clearing Member in whose name a Contract is registered during or prior to the Registration Time of such Contract, and regardless of whether OTC Clear is aware, or could reasonably be expected to be aware, of such occurrence of Insolvency Proceedings, the Contract, once created, shall remain in full force and effect.

#### **Clearing Members’ Representations as at Registration Time**

812. In relation to each Contract, OTC Clear will, and will be entitled to, rely on the following representations and warranties from each Clearing Member proposing to become a party to any Contract (whether in respect of an Original Transaction submitted by such Clearing Member itself or by its Designated Person in the name, and on behalf, of such Clearing Member), which are deemed to arise automatically pursuant to these Clearing Rules immediately prior as at the Registration Time:
- (1) that the Clearing Member is in full compliance with the Clearing Documentation and with all Applicable Laws in respect of such Original Transaction;
  - (2) that the Clearing Member has authorized all data submitted to OTC Clear and such data is complete and correct in all aspects; and
  - (3) any representation that an Original Transaction was, pursuant to CFTC rules and regulations, either voluntarily reported, or required to be reported, to a swap data repository registered with the CFTC.

#### **Creation of Contracts other than through Submission of Original Transaction by Clearing Members or Clients**

813. Contracts may be created by ways other than through submission of Original Transaction by Clearing Members or Clients as described in Clearing Rule 806 if such Contracts arise as a result of the operation of Clearing Rule 210(1),

1320(1), 1321, 1703 or 1921, in each case, with effect from the Registration Time applicable to the relevant Contract.

### **Termination of Contracts relating to Ineligible Original Transactions after Registration**

814. If, subsequent to the registration of an Original Transaction, OTC Clear determines in its sole discretion that such Original Transaction would otherwise have been rejected under Clearing Rule 802 for registration at the Registration Time, or in respect of an Original Transaction submitted as part of a Clearing Member's Client Clearing Services, OTC Clear determines in its sole discretion that the relevant Clearing Member has not been approved of providing client clearing services, or was in breach of one or more conditions or requirements stipulated by OTC Clear in connection with it providing Client Clearing Services, or OTC Clear determines in its sole discretion that any consent provided by the Clearing Member, its Clients or their respective contact persons pursuant to Clearing Rule 212(1), 214(2) or 214(5), as the case may be, respectively, has been revoked, at the Registration Time:

- (1) OTC Clear will terminate the Contracts corresponding to such Original Transaction (each, an "**Error Contract**") as soon as reasonably practicable, and such Error Contracts shall have no further force or effect thereafter;
- (2) any payments made by OTC Clear or a Clearing Member, including, without limitation, for purposes of satisfying any end-of-day Variation Margin requirements (but excluding Initial Margin, Additional Margin, Ad Hoc Intra-day Variation Margin or Routine Intra-day Variation Margin), in connection with such Error Contracts shall be retained by the receiving party thereto; and
- (3) if OTC Clear determines that the value of an Error Contract has changed in between the time when the Variation Margin was last calculated and when such Error Contract was terminated, then a payment representing such difference in value shall be made between the Clearing Members in whose names the Error Contracts were registered. Any payment made pursuant to the immediately foregoing sentence will be made outside of the Rates and FX Clearing System, and shall fully discharge a party's obligations under such Error Contract.

OTC Clear will notify the relevant Clearing Member of any termination of an Error Contract registered in the name of such Clearing Member pursuant to this Clearing Rule 814. Without prejudice to Clearing Rule 203, OTC Clear shall not be liable to any Person in any way whatsoever in consequence of registration of any Original Transaction and the subsequent termination of, any related Error Contracts.

814A. OTC Clear shall have the discretion to avoid Contracts corresponding to an Original Transaction if one or more of such Contracts whether in whole or in part are made or received by OTC Clear subsequent to the institution of a proceeding against the relevant Clearing Member(s) seeking judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights or the presentation of a petition for its

winding-up or liquidation against the relevant Clearing Member(s) (the **“Insolvent Clearing Member”**).

814B. If Contracts corresponding to an Original Transaction are avoided pursuant to Clearing Rule 814A, OTC Clear shall as soon as practicable notify the affected Clearing Members and upon such notification:

- (1) the affected Contracts corresponding to the relevant Original Transaction shall be void ab initio from the time the Contracts are created;
- (2) save for subparagraphs (3), (4) and (5) below, OTC Clear and the affected Clearing Members shall not have any rights, liabilities and obligations under the affected Contracts;
- (3) any payments made by OTC Clear to an affected Clearing Member, including, without limitation, for purposes of satisfying any end-of-day Variation Margin requirements, in connection with an affected Contract corresponding to the relevant Original Transaction shall as soon as practicable be returned by such affected Clearing Member (the **“Paying Clearing Member”**) to OTC Clear without interest;
- (4) if the relevant affected Contract corresponding to the Original Transaction is registered to the House Position Account, any payments made by an affected Clearing Member to OTC Clear, including, without limitation, for purposes of satisfying any end-of-day Variation Margin requirements (but excluding Initial Margin, Additional Margin, Ad Hoc Intra-day Variation Margin or Routine Intra-day Variation Margin which, for the avoidance of doubt, shall form part of the Margin Balance), in connection with such affected Contract shall as soon as practicable be returned by OTC Clear to such affected Clearing Member without interest, provided that the payment obligations of OTC Clear under this subparagraph (4) shall be limited to such amount OTC Clear has actually received from the Paying Clearing Member under subparagraph (3) above;
- (5) if the relevant affected Contract corresponding to the Original Transaction is registered to a Client Position Account of an affected Clearing Member that is not the Insolvent Clearing Member, any payments made by such affected Clearing Member to OTC Clear, including, without limitation, for purposes of satisfying any end-of-day Variation Margin requirements (but excluding Initial Margin, Additional Margin, Ad Hoc Intra-day Variation Margin or Routine Intra-day Variation Margin which, for the avoidance of doubt, shall form part of the Margin Balance), in connection with such affected Contract shall as soon as practicable be returned by OTC Clear to such affected Clearing Member without interest, provided that the payment obligations of OTC Clear under this subparagraph (5) shall be limited to such amount OTC Clear has actually received from the Paying Clearing Member under subparagraph (3) above;
- (6) if the relevant Contract corresponding to the Original Transaction is registered to a Client Position Account of the Insolvent Clearing Member, any payments made by the Insolvent Clearing Member to OTC Clear,



including, without limitation, for purposes of satisfying any end-of-day Variation Margin requirements (but excluding Initial Margin, Additional Margin, Ad Hoc Intra-day Variation Margin or Routine Intra-day Variation Margin which, for the avoidance of doubt, shall form part of the Margin Balance), in connection with such affected Contract shall, subject to entering into relevant documentation between OTC Clear and the relevant Client (which may, without limitation, include an indemnity (secured or otherwise) to OTC Clear in respect of any loss or liability arising from the legal invalidity of any payment of such moneys to the relevant Client), be returned directly by OTC Clear to the relevant Client without interest, provided that the payment obligations of OTC Clear under this subparagraph (6) shall be limited to such amount OTC Clear has actually received from the Paying Clearing Member under subparagraph (3) above. If the relevant Client fails to enter into relevant documentation with OTC Clear, OTC Clear shall reserve the right to withhold payment of such amounts until such time such relevant documentation has been properly entered into; and

- (7) if OTC Clear determines that no further amounts in respect of any amount payable by the Paying Clearing Member under subparagraph (3) are likely to be recovered and notifies the same to the affected Clearing Member and/or the relevant Client (as the case may be), then the unpaid balance of any payment payable by OTC Clear under subparagraphs (4), (5) and (6) above shall thereafter be extinguished and the affected Clearing Member and the relevant Client (as the case may be) shall have no further recourse to OTC Clear (its Affiliates, a recognized exchange controller which is the controller of OTC Clear, or any of their respective Representatives) in respect thereof.

### **Transfers of Contracts**

815. 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, novate, transfer or create any Encumbrance whatsoever in relation to any of its rights, liabilities or obligations under a Contract.

### **Client Clearing**

816. A Clearing Member shall, prior to offering Client Clearing Services to its Clients, obtain relevant approval from OTC Clear. OTC Clear may stipulate any conditions or requirements in connection with a Clearing Member's application to provide Client Clearing Services. Any purported client clearing services provided by a Clearing Member prior to the relevant approval being obtained or in breach of any condition or requirement stipulated by OTC Clear in the relevant approval shall not be considered Client Clearing Services under these Clearing Rules, and the clients of such Clearing Member shall not be considered as Clients under these Clearing Rules. Accordingly, Original Transactions submitted as such Clearing Member's Client Clearing Services shall not be registered as Contracts.

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 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), 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) 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;

- (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 any SSM Payment Amounts in respect of one or more Contracts shall 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) any payment by such Sponsored Settlement Member to OTC Clear of any SSM Payment Amounts in respect of one or more Contracts shall 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.

818. Where any formalities or registration requirements apply in respect of a Security Deed (and any other document which OTC Clear may from time to time determine), a Clearing Member is required to comply with such obligations or to procure by agreement that such requirements are to be complied with.

### **Types of Client Clearing Categories**

819. Client Clearing Services may be provided by a Clearing Member to its Clients, and Contracts will be entered into by a Clearing Member with OTC Clear in respect of such Clients on a Client Clearing Category 1 Account Basis, a Client Clearing Category 2 Account Basis, or any other basis as OTC Clear may decide to introduce from time to time (each a **"Client Clearing Category"**).
820. A Clearing Member that offers Client Clearing Services to one or more Clients shall offer its Clients the choice between the Client Clearing Category 1 Account Basis and the Client Clearing Category 2 Account Basis, and shall inform them of the costs and level of protection associated with each option. The Clearing Member shall procure that each Client confirms its choice in writing. A Client must be allocated to one single Client Clearing Category at any given time, provided that a Client may, at any time but subject to the prior approval by OTC Clear and subject to any conditions that OTC Clear may impose (including without limitation any requirements as to Margin and Rates and FX Liability), elect to change to a different Client Clearing Category. Upon approval by OTC Clear of a Client's request to change the Client Clearing Category to which it belongs and (if applicable) confirmation by OTC Clear that all relevant conditions have been satisfied, the Clearing Member shall be solely responsible for effecting any related adjustments to the relevant Client Account(s). A Clearing Member may operate one or more Client Clearing Category 1 Accounts and/or one or more Client Clearing Category 2 Accounts, but each Client may not be allocated to more than one Client Position Account at any point in time.
821. In respect of any Client Clearing Services provided by a Clearing Member to its Clients, such Clearing Member shall:
- (1) provide OTC Clear with accurate information relating to the identity of the Client(s) in respect of whom Client Clearing Services are being provided. In the event that OTC Clear reasonably requests the provision of any further information relating to the Clearing Member's Client Clearing Services or a Client, the Clearing Member shall, as soon as reasonably practicable, deliver, or procure the delivery of, such information;
  - (2) maintain and regularly update the books and records relating to its Client Clearing Services; the Clearing Member shall provide such information relating to each Client as reasonably requested by OTC Clear, including at the end of each OTC Clear Business Day. In particular, the Clearing Member or its insolvency practitioner shall promptly provide such information to OTC Clear in the event that an Automatic Early

Termination Event occurs or OTC Clear declares an Event of Default in respect of such Clearing Member;

- (3) comply with the terms of the Clearing Documentation and any condition or requirement stipulated in the relevant approval obtained from OTC Clear in its provision of such Client Clearing Services, including but not limited to any trading, risk or credit limits applicable to the Client Account(s) registered in the name of such Clearing Member;
- (4) indemnify and hold OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear harmless against any liability to its Clients as a result of the provision by it of Client Clearing Services to its Clients;
- (5) require each Client to comply with such security obligations as OTC Clear may reasonably request or are otherwise prudent to protect the financial integrity of OTC Clear;
- (6) ensure that any acts or omissions of its Clients will not prevent it from complying with the Clearing Rules;
- (7) require each of its Clients to comply with the following requirements:
  - (a) such Client shall not breach any Applicable Laws or requirements of any Regulatory Authority or any of these Clearing Rules which would be likely to have a material adverse effect on the Client's suitability as a Client in respect of the Client Clearing Services;
  - (b) such Client shall comply with all Applicable Laws relating to its status, the conduct of its business and the performance of its obligations as a Client in relation to the Corresponding Client Transaction, including, for the avoidance of doubt, all Applicable Laws relating to the prevention of bribery, money laundering, financial crimes and terrorist financing and (b) not be subject to any sanctions promulgated or imposed by the United Nations or any Governmental Authority relevant to it or its clearing activities;
  - (c) the use of the Client Clearing Services by such Client shall not cause OTC Clear to be in breach of any Applicable Laws or requirements of any Regulatory Authority;
  - (d) such Client shall not engage in any other practice or take any action which in OTC Clear's opinion is likely to damage the reputation or impair the financial integrity of OTC Clear,

and shall, at the request of OTC Clear, immediately take action to ensure that no further Original Transactions are cleared on behalf of a Client by reducing its Position Limits relating to that Client to zero in the event that OTC Clear reasonably believes such Client is in breach of any of the prohibitions referred to in in this Clearing Rule 821(7);

- (8) only accept from each Client, as collateral for the relevant Corresponding Client Transactions, the same types of Collateral which OTC Clear accepts in respect of the Client Position Account to which Contracts

relating to each relevant Corresponding Client Transactions are recorded; and

- (9) not provide any margin financing or collateral transformation services to the Client under the Client Clearing Agreement.

822. A Clearing Member shall inform each of its Client(s) that:

- (1) should such Client wish to effect porting upon the occurrence of a DMP Event with respect to the Clearing Member, complete Porting Instructions shall be delivered to OTC Clear as soon as reasonably practicable at or after commencement of clearing operations in relation to the Client Account(s) relating to such Client and a Replacement Clearing Member must be appointed prior to the occurrence of a DMP Event with respect to the original Clearing Member;
- (2) subsequent to the submission of Porting Instructions and prior to the occurrence of a DMP Event with respect to the original Clearing Member, a Client who wishes to appoint a different Replacement Clearing Member may deliver, or procure the delivery of, new Porting Instructions appointing another Replacement Clearing Member. The latest Porting Instructions received by OTC Clear in respect of the Client Accounts relating to a Client will be deemed to have superseded and replaced previous Porting Instructions relating to such Client; and
- (3) all Porting Instructions must be received by OTC Clear by 5:00pm (Hong Kong time) on the OTC Clear Clearing Day immediately following the occurrence of a DMP Event with respect to the original Clearing Member.

### **Segregation of Client Accounts**

823. A Clearing Member shall ensure due segregation of Contracts and their related Collateral between its House Account and its Client Account(s). A Clearing Member shall clearly identify the exact type(s) and amount of Collateral provided to OTC Clear in respect of each of its House Collateral Account and Client Collateral Account(s), and retain the same information in its file for record. In particular:

- (1) Collateral held in respect of a Clearing Member's Client Position Account shall never be applied to meet any payment or delivery demands in respect of any other Client Position Account(s) or House Position Account of such Clearing Member; and
- (2) Excess Margin held in respect of a Clearing Member's House Position Account may be applied to meet any payment or delivery demands in respect of one or more Client Position Accounts of such Clearing Member,

provided that this Clearing Rule 823 shall not prejudice the operation of Clearing Rules 1308A and 1309 in the event of the occurrence of a DMP Event.

824. Each Clearing Member represents that it has duly informed each of its Clients that any amounts or monies provided by a Clearing Member to OTC Clear for Margin purposes in respect of its Client Position Account(s) (whether such amounts or monies are provided by the Client or not) are transferred on an

outright basis with the effect that, except for the Client's right to receive any Client Entitlement directly from OTC Clear under Clearing Rules 1308A, 1308B, 1309 and 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) following the default of such Clearing Member, OTC Clear shall have full legal and equitable interest in the amounts or monies so transferred.

### **Porting of Contracts relating to Clients**

825. Contracts recorded in a Client Account of a Clearing Member shall only be ported in a manner permitted under Clearing Rules 825 to 833 and the Clearing Procedures except upon the occurrence of a DMP Event with respect to such Clearing Member. Porting permitted under this Clearing Rule 825 comprises full portfolio porting in accordance with Clearing Rule 830, partial portfolio porting in accordance with Clearing Rule 831 and porting of Contracts and Collateral between Client Accounts of the same Clearing Member in accordance with section 3.18 of the Clearing Procedures. A Clearing Member in respect of whom Contracts in its Client Account is ported to another Clearing Member in accordance with this Clearing Rule 825 shall be a **"Transferor Clearing Member"**, and the Clearing Member nominated by the relevant Client(s) to receive the porting of Contracts from the Transferor Clearing Member in accordance with this Clearing Rule 825 shall be a **"Transferee Clearing Member"**.
826. It is the Transferee Clearing Member's obligation to procure the Transferor Clearing Member to consent to the relevant porting request. OTC Clear shall not be responsible for (i) obtaining consent from a Transferor Clearing Member in relation to the porting of Contracts and Collateral or (ii) determining whether any objection from a Transferor Clearing Member has any merit.
827. OTC Clear shall be authorised and entitled to rely conclusively on the instructions of, and any instruction provided by, the relevant Transferee Clearing Member(s) in connection with the porting of any Contracts and Collateral pursuant to these Clearing Rules 825 to 833, and shall not have any liability 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 Client or any other Person as a result of any porting or failure to port any Contracts and Collateral pursuant to a porting request by OTC Clear in good faith and in accordance with these Clearing Rules.
828. Each Transferee Clearing Member shall indemnify OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear and keep OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear indemnified from and against any loss, cost (including cost of enforcement), interests, liability (including any tax or other fiscal liability), claim or Damage which OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear incurred or suffered in connection with the porting of any Contract and Collateral pursuant to any porting request.
829. In respect of the porting of a Client's portfolio of Contracts registered with the Transferor Clearing Member in the relevant Client Position Account from the Transferor Clearing Member to the Transferee Clearing Member, no amounts



shall be payable between and amongst the Transferor Clearing Member, the Transferee Clearing Member and the Client solely as a result of the change in the net present value of such Contracts.

### **Full Portfolio Porting**

830. Upon the instruction or at the request of any Client Clearing Category 1 Client or a Client Clearing Category 2 Client, a Transferee Clearing Member may request OTC Clear to port to the Transferee Clearing Member the relevant Client's portfolio (and not less than its entire portfolio) of Contracts registered with the Transferor Clearing Member in the relevant Client Position Account and, if also requested, to port the Collateral in respect of such Client recorded in the corresponding Client Collateral Account from the Transferor Clearing Member to the Transferee Clearing Member. Such request shall be made in accordance with and subject to the Clearing Procedures. Any request to port Collateral shall be made in accordance with Clearing Rule 831 below and the Clearing Procedures.

### **Partial Portfolio Porting**

831. Upon the instruction or at the request of any Client Clearing Category 1 Client or Client Clearing Category 2 Client to port a portion of that Client's portfolio of Contracts in the relevant Client Position Account, a Transferee Clearing Member may request OTC Clear to port to the Transferee Clearing Member the relevant portion of that Client's portfolio of Contracts registered with the Transferor Clearing Member in the relevant Client Position Account from the Transferor Clearing Member to the Transferee Clearing Member. Such request shall be made in accordance with and subject to the Clearing Procedures. For the avoidance of doubt, in no circumstances may any Collateral recorded in the relevant Client Collateral Account relating to such Contracts be ported in connection with partial portfolio porting.

### **Porting of Client Collateral**

832. In connection with any full portfolio porting that includes the porting of the corresponding Collateral, the Transferee Clearing Member shall notify OTC Clear of the specific Collateral which should comprise the Collateral to be ported in accordance with the Clearing Procedures, failing which OTC Clear will not proceed with the full portfolio porting. In the event that, for whatever reason, OTC Clear is unable to port such Collateral, OTC Clear will also not proceed with the full portfolio porting.

### **Conditions Precedent to Porting of Contracts relating to Clients**

833. In addition to the requirements set out in the Clearing Procedures, a full portfolio porting and a partial portfolio porting must each satisfy the following conditions precedent:
- (1) such porting would not violate or result in the violation of any Applicable Laws;
  - (2) the porting would not cause the Position Limits applicable to either the Transferee Clearing Member or the Client to be exceeded;
  - (3) the relevant Client(s), the Transferor Clearing Member and the Transferee Clearing Member have each executed all documents

necessary or required by OTC Clear in order to effect such porting (including, where applicable, a Security Deed or Deed of Charge); and

- (4) in the event that the porting will lead to a requirement for the Transferor Clearing Member to post additional Collateral to OTC Clear, the Transferor Clearing Member posts sufficient Collateral to OTC Clear.

By making a full portfolio porting or partial portfolio porting request, both the Transferor Clearing Member and the Transferee Clearing Member shall be deemed to have represented to OTC Clear that all of the relevant conditions to such porting set forth herein and all the requirements set forth in the Clearing Procedures have been satisfied.

### **Completion of Porting**

834. Provided that the conditions in Clearing Rule 833 and all requirements in the Clearing Procedures are satisfied in OTC Clear's sole discretion, OTC Clear shall port the relevant Contracts to be ported (and, if applicable, any Collateral to be ported that is not subject to the Deed of Charge entered into between the Transferor Clearing Member and OTC Clear) into the name of the Transferee Clearing Member in the relevant Client Account of the Client(s) by way of novation of all of the Transferor Clearing Member's rights and obligations in respect of such Contracts and Collateral to the Transferee Clearing Member, at the time and manner set out in the Clearing Procedures.
835. In respect of any Collateral to be ported that is subject to a Deed of Charge entered into between the Transferor Clearing Member and OTC Clear, such porting shall be effected as follows:
- (1) any equities of redemption held by the Transferor Clearing Member in respect of that Collateral shall be assigned absolutely to the Transferee Clearing Member, such that those equities of redemption become subject to the security interests granted in favour of OTC Clear pursuant to the Deed of Charge between the Transferee Clearing Member and OTC Clear; and
  - (2) OTC Clear shall release that Collateral from the security interests granted in favour OTC Clear pursuant to the Deed of Charge between the Transferor Clearing Member and OTC Clear, such that the Transferee Clearing Member becomes entitled to redeem that Collateral pursuant to any equities of redemption assigned to it pursuant to subparagraph (1) above.

### **Transfer of Contracts between Client Accounts and House Accounts**

836. (1) If at any time an early termination date (howsoever described) occurs in respect of the relevant Client Clearing Agreement between a Clearing Member and a Client, and at the time of such early termination date such Clearing Member is not a Defaulting Clearing Member, such Clearing Member may instruct OTC Clear to transfer all Contracts relating to the Corresponding Client Transactions between such Clearing Member and such Client from its Client Position Account relating to such Client to its House Position Account and to transfer the Collateral recorded in the corresponding Client Collateral Account to its House Collateral Account,

and OTC Clear will, subject to Clearing Rule 837 below, arrange such transfer of Contracts and Collateral within 24 hours of its receipt of such instructions together with receipt to its satisfaction of the following documents:

- (a) a copy of the notice from such Clearing Member to the relevant Client or from the relevant Client to such Clearing Member designating the relevant early termination date or, if such early termination date has occurred automatically, evidence of the relevant event of default or termination event;
  - (b) a copy of a notice served by such Clearing Member on the relevant Client alerting that Client of its intention to request a transfer of the relevant Contracts pursuant to this Clearing Rule 836.
- (2) Each Clearing Member shall indemnify OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear and keep OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear indemnified from and against any loss, cost (including cost of enforcement), interests, liability (including any tax or other fiscal liability), claim or Damage which OTC Clear, its Affiliate and a recognized exchange controller which is the controller of OTC Clear, incurred or suffered in connection with any transfer of Contracts and Collateral set out in Clearing Rule 836(1).

837. In the event that the transfer set out in Clearing Rule 836(1) will lead to a requirement for the relevant Clearing Member to post additional Collateral to OTC Clear for the account of its House Collateral Account (after taking into account any Collateral that will be transferred from the relevant Client Collateral Account to the House Collateral Account as part of such transfer), the Clearing Member shall ensure that it has posted sufficient additional Collateral to OTC Clear prior to the transfer set out in Clearing Rule 836(1). If the relevant Clearing Member has failed to post such additional Collateral to OTC Clear by the transfer time specified in Clearing Rule 836(1), OTC Clear will continue to arrange for the transfer of Contracts and Collateral in accordance with Clearing Rule 836(1) but shall have the right to demand for such additional Collateral in accordance with the Clearing Procedures.

### **Multilateral Compression**

838. Clearing Members who have adhered to relevant Compression Documentation with a Compression Service Provider may participate in a Multilateral Compression Cycle in respect of all Eligible Compression Contracts registered to their House Position Account.
839. Contracts registered to a Clearing Member's Client Position Account are not eligible for compression.
840. In respect of each Multilateral Compression Cycle, OTC Clear will effect the compression or decompression of Eligible Compression Contracts by terminating certain offsetting or redundant Contracts, amending the terms of certain Contracts by increasing the notional amount or converting the reference

rate and/or registering one or more new Contracts, all in accordance with the Unwind Proposal generated in respect of that Multilateral Compression Cycle. Any new Contract created pursuant to a Multilateral Compression Cycle is entered into by OTC Clear for the purpose of clearing and settlement of the relevant Compression Clearing Member's House Business. Any Contract, as created, amended or terminated pursuant to a Multilateral Compression Cycle, shall be a "market contract" as defined in, and for the purposes of, the SFO, as described in Clearing Rule 811(1).

841. When OTC Clear intends to run a Multilateral Compression Cycle, it shall nominate a Compression Service Provider to facilitate such Multilateral Compression Cycle. OTC Clear and the relevant Compression Service Provider shall then notify Clearing Members meeting the criteria set out in Clearing Rule 838 above of the Transaction Category(ies) of Eligible Compression Contracts forming part of that Multilateral Compression Cycle and implement the processes set out in the relevant Compression Documentation. For the avoidance of doubt, OTC Clear may, at its sole and absolute discretion, exclude Eligible Compression Contracts in any number of Transaction Category(ies) from a Multilateral Compression Cycle.
842. In any Multilateral Compression Cycle, compression shall only take place in accordance with the terms of an Unwind Proposal which has been accepted by all participating Compression Clearing Members.
843. Each participating Compression Clearing Member agrees and acknowledges that the Compression Service Provider's confirmation to OTC Clear that such Compression Clearing Member has confirmed its acceptance of the Unwind Proposal to the Compression Service Provider, shall constitute a binding acceptance of the Unwind Proposal by such Compression Clearing Member to OTC Clear. Upon a Compression Clearing Member's acceptance of an Unwind Proposal in the manner set out in the relevant Compression Documentation, such Compression Clearing Member shall be irrevocably bound to the terms of that Unwind Proposal and shall be obligated to settle in full by the time set out in the relevant Compression Documentation, such Compression Clearing Member's increased Initial Margin requirements (if applicable), the Compression Cash Settlement Payment due to OTC Clear. The amount of Multilateral Compression Fees payable to OTC Clear shall be payable as part of the fees and interest settlement component published in a settlement report from time to time as described in the Clearing Procedures.
844. Save where the Clearing Procedures require otherwise, Compression Cash Settlement Payments due to OTC Clear must be satisfied by payment in cash in the relevant Contractual Currency(ies) specified in the relevant Unwind Proposal.
845. OTC Clear may, at its sole and absolute discretion, at any time prior to the Compression Time, agree to proceed (or decline to proceed) with the implementation of the accepted Unwind Proposal. For the avoidance of doubt, the irrevocable acceptance of an Unwind Proposal by participating Compression Clearing Members shall not bind or require OTC Clear to implement such Unwind Proposal.

846. Save for the Compression Cash Settlement Payments which shall be due to or payable by OTC Clear as settlement of the unrealised value of the Eligible Compression Contracts that are proposed to be amended, terminated and/or replaced under each accepted Unwind Proposal, OTC Clear shall have no involvement in and accepts no responsibility or liability in relation to any Multilateral Compression-related balancing, termination or ancillary payments or fees that participating Compression Clearing Members may agree between themselves in accordance with the relevant Compression Documentation or otherwise. In the event OTC Clear agrees to participate in the processing of ancillary payments or fees pursuant to the relevant Compression Documentation, OTC Clear accepts no liability to any Compression Clearing Member or third party in connection with or related to the processing of such ancillary payments or fees.
847. Without prejudice to any other provisions of these Clearing Rules, or any Compression Documentation, OTC Clear and its Affiliates shall not have any liability whatsoever to any Compression Clearing Member or to any other person in contract, tort (including, without limitation, negligence), trust, as a fiduciary or under any other cause of action in respect of any damages, losses, costs or expenses of whatsoever nature suffered or incurred by a Compression Clearing Member or any other person, as the case may be:
- (1) as a result of any action OTC Clear takes under the Clearing Rules or the relevant Compression Documentation, whether in accordance with an Unwind Proposal, in reliance on information provided by Compression Clearing Members or any Compression Service Provider or otherwise;
  - (2) in relation to a Multilateral Compression Cycle, as a result of any action or omission of a Compression Service Provider, including, without limitation, any error or omission in the terms of any Unwind Proposal; or
  - (3) in relation to any Multilateral Compression Cycle, as a result of any action or omission of a participating Compression Clearing Member, including, without limitation, any error or omission in the terms of any Unwind Proposal.
848. A Compression Clearing Member who has accepted an Unwind Proposal but who subsequently is unable to make the representations and warranties set out in the relevant Compression Documentation or fails to meet his obligations by the time specified for such processes as set out in the relevant Compression Documentation, including, without limitation, payment obligations, may be precluded from participating in future Multilateral Compression Cycles by OTC Clear, at its sole and absolute discretion.