

## Chapter 13 Default Procedures

### Clearing Member Event of Default

1301. In these Clearing Rules, an “**Event of Default**” shall mean any event or circumstance which leads OTC Clear to determine that a Clearing Member is or appears to be unable, or likely to become unable, to meet its obligations in respect of the Clearing Documentation and/or one or more Contracts to which it is party. Without prejudice to the generality of the immediately foregoing, OTC Clear may take the occurrence of any one or more of the following events or circumstances as sufficient ground for determining that a Clearing Member is or appears to be unable, or likely to become unable, to meet such obligations:

- (1) failure by a Clearing Member to pay or deliver any amounts when due under the Clearing Documentation, including, without limitation, failure by a Clearing Member to pay any Remaining Balance in accordance with the time frame set out in, and under, Clearing Rule 1534 or failure by a Successful Bidder to pay any Auction Payment or Margin required following the completion of the auction of the relevant Auction Portfolio under Clearing Rule 1923;
- (2) failure by a Clearing Member to comply with the Regulatory Capital Requirement;
- (3) failure by a Clearing Member to maintain Capital in an amount not less than the Minimum Capital Requirement and such failure continues and is existing upon the expiry of the Minimum Capital Requirement Breach Period and the related Non-Default Unwind is not completed within 10 OTC Clear Business Days following the expiry of the Minimum Capital Requirement Breach Period;
- (4) a Clearing Member makes a material misstatement or omission (whether in the Membership Agreement or otherwise) or misleads or attempts to mislead OTC Clear, a recognized exchange controller which is the controller of OTC Clear or their respective employees or officers;
- (5) failure by a Clearing Member, within any required time period, to take any action required by OTC Clear to ensure compliance with the Clearing Documentation, including, without limitation, failure by a Clearing Member who is subject to disciplinary proceedings to commence the Non-Default Unwind following the expiry of the relevant Appeal Period pursuant to the terms of Clearing Rule 1409(1);
- (6) in respect of a Clearing Member which is also a participant or member of any clearing and settlement system operated by HKEX or any of its Affiliates:
  - (a) failure to meet any obligation owed by it to the central counterparty or operator of such system;
  - (b) breach of the rules or terms of participation or membership of such system;

- (c) declaration of default by, or suspension or expulsion from participation or membership of such system;
- (7) the occurrence of a default, event of default or other similar condition or event (however described) in respect of the Clearing Member under one or more agreements or instruments relating to Indebtedness;
- (8) breach of the rules or regulations of a Regulatory Authority to which it is subject or its authorization, licence or approval by a Regulatory Authority is suspended or withdrawn;
- (9) the occurrence of Insolvency Proceedings with respect to a Clearing Member;
- (10) the occurrence of a Financial Emergency with respect to a Clearing Member;
- (11) a Clearing Member is convicted of any criminal offence relating to fraud, dishonesty or any act of bad faith under any Applicable Laws;
- (12) a Clearing Member fails to comply with any actions prescribed by OTC Clear under Clearing Rule 1223;
- (13) breach of any obligations, undertakings or representations by a Clearing Member under the Membership Agreement to which it is a party; or
- (14) the occurrence of any of the above events in respect of (a) any Affiliate of the Clearing Member which in the opinion of OTC Clear has a material adverse effect on the ability of the Clearing Member to meet its obligations under the Clearing Documentation and/or one or more Contract to which it is a party, or (b) a person who has guaranteed or provided an indemnity in favour of OTC Clear in respect of any of the obligations of the Clearing Member.

For the events described in sub-paragraphs (1), (8) and (9) above and, to the extent analogous to sub-paragraphs (8) and (9) above, the event described in sub-paragraph (14) above, OTC Clear may, in its own right, determine whether or not an Event of Default has occurred pursuant to the relevant provisions. In all other cases, in determining whether an Event of Default has occurred with respect to a Clearing Member, OTC Clear will endeavour to consult the Risk Management Committee. Where OTC Clear endeavours to consult the Risk Management Committee but the Risk Management Committee is not available or cannot be convened sufficiently promptly in the circumstances, OTC Clear will consult the chief executive of OTC Clear, provided that if 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.

1302. A Clearing Member shall immediately give notice to OTC Clear if it is, or if it suspects that it is likely to become, unable to meet its obligations under the Clearing Documentation and/or one or more Contracts to which it is party.

#### **Termination following a Clearing Member Event of Default**

1303. OTC Clear may from time to time notify Clearing Members specific criteria (including but not limited to the jurisdiction of incorporation of a Clearing

Member) according to which the occurrence of an event described in paragraph (1), (3), (4), (5), (6) or, to the extent analogous thereto, (8) under the definition of Insolvency Proceedings with respect to a Clearing Member will constitute an **“Automatic Early Termination Event”** in respect of such Clearing Member. Where an Automatic Early Termination Event has occurred with respect to a Clearing Member as a result of an event described in paragraph (1), (3), (5), (6) or, to the extent analogous thereto, (8) under the definition of Insolvency Proceedings, an Early Termination Date in respect of all Contracts then registered in the name of such Clearing Member shall occur immediately upon the occurrence of the relevant event; and where an Automatic Early Termination Event has occurred with respect to a Clearing Member as a result of an event described in paragraph (4) or, to the extent analogous thereto, (8) under the definition of Insolvency Proceedings, an Early Termination Date in respect of all Contracts then registered in the name of such Clearing Member shall occur immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition, and in each case, without the need for any other or prior notice or determination by OTC Clear. With effect from, and including, the date on which an Early Termination Date occurs with respect to all Contracts registered in a name of a Clearing Member as a result of an Automatic Early Termination Event, such Clearing Member shall become a Defaulting Clearing Member.

1304. Where an Event of Default has occurred and is continuing with respect to a Clearing Member but such Event of Default does not constitute an Automatic Early Termination Event, OTC Clear may exercise such rights it may have under these Clearing Rules (including without limitation any rights of suspension of Membership) and/or may send to the relevant Clearing Member a default notice declaring such Event of Default (the **“Notice of Default”**). With effect from, and including, the date on which such Clearing Member receives the Notice of Default, the Clearing Member shall become a Defaulting Clearing Member. OTC Clear will notify Non-Defaulting Clearing Members, the SFC and also members of the public following the occurrence of an Automatic Early Termination Event or declaration of an Event of Default with respect to a Clearing Member.
1305. Upon the occurrence of an Automatic Early Termination Event or delivery of a Notice of Default with respect to a Defaulting Clearing Member, OTC Clear may take such steps with respect to such Defaulting Clearing Member as in the circumstances appear to it, in its absolute discretion, best calculated:
- (1) to discharge the Defaulting Clearing Member’s rights, obligations and liabilities under or in respect of one or more or all Contracts to which the Defaulting Clearing Member is party;
  - (2) to minimize losses or the potential for losses to OTC Clear as a result of the default of the Defaulting Clearing Member; or
  - (3) without the need for any prior notice to or consent of such Defaulting Clearing Member:
    - (a) (where an Automatic Early Termination Event has not occurred) to terminate any Contract of the Defaulting Clearing Member by

designating an Early Termination Date in respect of such Contract;

- (b) to apply any Collateral in the form of cash, and arranging for the liquidation of any non-cash Collateral and applying the proceeds of the realization of non-cash Collateral, for the absorption of losses incurred by OTC Clear as a result of the default of the Defaulting Clearing Member;
- (c) to obtain any advice or assistance from the Defaulting Clearing Member and/or any third party as OTC Clear may deem necessary for any matter arising out of or in connection with an Event of Default and at the expense of the Defaulting Clearing Member, and/or
- (d) to complete the process set out in Clearing Rules 1306, 1306A, 1306B, 1306C and 1307 in relation to such Defaulting Clearing Member,

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

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

#### **Calculations of Net Payment following a Clearing Member Event of Default**

1306. Where the Defaulting Clearing Member has one House Position Account and one or more Client Position Account(s), each Position Account of the Defaulting Clearing Member shall constitute a separate "capacity" pursuant to Part 5 of Schedule 3 to the SFO so that no Client Position Account of the Defaulting Clearing Member shall be combined with any other Position Account of the Defaulting Clearing Member, and the process set out in Clearing Rules 1306A, 1306B, 1306C and 1307 shall be applied to each such capacity separately.

1306A Subject to Clearing Rules 1530 to 1540, subsequent to the completion of the Default Management Process with respect to a Defaulting Clearing Member

(including, for the avoidance of doubt, the processes described in Clearing Rules 1516(1), 1516(2) and 1914) and the occurrence of an Early Termination Date in respect of all of the Defaulting Clearing Member's Contracts, for the purposes of Part 5 of Schedule 3 to the SFO, the single net sum payable by OTC Clear to such Defaulting Clearing Member, or by such Defaulting Clearing Member to OTC Clear, in respect of each capacity of the Defaulting Clearing Member relating to the House Account(s) and the Client Accounts of Non-Porting Clients shall be determined as follows:

- (1) OTC Clear will determine the aggregate trade value in respect of all of the Contracts in the relevant Position Account in accordance with Clearing Rule 1307. Such aggregate trade value may be zero, positive or negative. A positive aggregate trade value indicates an overall sum being payable by OTC Clear to the Defaulting Clearing Member in respect of such capacity; and a negative aggregate trade value indicates an overall sum being payable by the Defaulting Clearing Member to OTC Clear in respect of such capacity;
- (2) if the aggregate trade value determined pursuant to sub-paragraph (1) above is a negative number, such value shall be netted against the value (expressed as a positive number) of all Collateral (including the proceeds of the realization of such Collateral) held by OTC Clear in respect of such capacity as Initial Margin, Additional Margin, Routine Intra-day Variation Margin and Ad Hoc Intra-day Variation Margin in respect of the relevant Position Account and comprising the Margin Balance of the corresponding Collateral Account and any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by the Defaulting Clearing Member, each as at the Early Termination Date, reflecting the application of such resources towards (i) Unpaid Amounts in respect of the relevant Position Account pursuant to Clearing Rules 1516(1)(a) or 1516(2)(a), as applicable, (ii) the Auction Losses and/or Contract Termination Losses relating to the relevant Position Account pursuant to Clearing Rule 1914(1) and (iii) in the case of the House Position Account, General Losses pursuant to Clearing Rule 1516(1)(a). If the aggregate trade value determined pursuant to sub-paragraph (1) above is zero or a positive number, such value shall be aggregated with the value (expressed as a positive number) of all Collateral (including any proceeds of the realization of such Collateral) held by OTC Clear in respect of such capacity as Initial Margin, Additional Margin, Routine Intra-day Variation Margin and Ad Hoc Intra-day Variation Margin in respect of the relevant Position Account and comprising the Margin Balance of the corresponding Collateral Account and any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by the Defaulting Clearing Member, each as at the Early Termination Date;
- (3) if the net sum determined pursuant to sub-paragraph (2) above in respect of the House Position Account is a positive number (a "**House Credit**"), such House Credit shall be used to set off against each negative net sum determined pursuant to sub-paragraph (2) above for a Client Account of Non-Porting Client(s) (a "**Non-Porting Client Deficit**"),

by applying such House Credit to each Non-Porting Client Deficit in the proportion that the absolute value of the Non-Porting Client Deficit of each particular Client Account bears to the absolute value of the aggregate of the Non-Porting Client Deficits for all Client Accounts of Non-Porting Clients of the Defaulting Clearing Member; and

- (4) if the net sum determined pursuant to sub-paragraphs (1) to (2) above for a Client Account of a Non-Porting Client(s) is a positive number, such amount (the **“Non-Porting Client Credit”**) shall form part of the Client Entitlement to be returned to the Client(s) pursuant to Clearing Rule 1309. If the net sum determined pursuant to sub-paragraph (3) above for a Client Account of a Non-Porting Client(s) remains a negative number (a **“Remaining Non-Porting Client Deficit”**), such amount shall be further netted as set out in Clearing Rule 1306B below. At the end of the processes referred to in sub-paragraphs (1) to (3) above, in respect of each Client Account of Non-Porting Client(s), OTC Clear shall certify a single net sum as being payable by OTC Clear to the Defaulting Clearing Member (in the case of Client Accounts with a Non-Porting Client Credit) or by the Defaulting Clearing Member to OTC Clear (in the case of Client Accounts with a Remaining Non-Porting Client Deficit) or, if there is no such net sum (in the case of Client Accounts where a Non-Porting Client Deficit becomes zero), OTC Clear shall certify that fact.

1306B. If the net sum determined pursuant to Clearing Rule 1306A(2) in respect of the House Position Account is a negative number or, in the case of a Client Account with a Remaining Non-Porting Client Deficit:

- (1) such negative sum shall then be further netted against the value (expressed as a positive number) of all Collateral (including the proceeds of the realization of such Collateral) held by OTC Clear as,
- (a) the Rates and FX Contribution Balance recorded in such Defaulting Clearing Member’s GF Account as at the Early Termination Date to the extent that any Rates and FX Losses are allocated to such Defaulting Clearing Member in accordance with Clearing Rules 1516(1)(b), 1516(2)(b) 1914(2) and 1916(2), and in the amount of such Rates and FX Losses allocated; and
  - (b) any remaining Rates and FX Contribution Balance relating to such Defaulting Clearing Member that is not allocated pursuant to sub-paragraph (1)(a) above after taking into account any application of such remaining Rates and FX Contribution Balance by OTC Clear pursuant to Clearing Rule 1548,

so as to produce a single net sum (if any) payable by or to the Defaulting Clearing Member;

- (2) (i) the net sum of the House Account and each Client Account of Non-Porting Client(s) determined pursuant to sub-paragraph (1) above and (ii) any unused Rates and FX Contribution Balance recorded in such Defaulting Clearing Member’s GF Account after being applied pursuant to Clearing Rules 1516(1)(b), 1516(2)(b) and 1914(2) and taking into account the operation of Clearing Rule 1548 shall be aggregated to

arrive at a further net sum. If the further net sum determined is a positive number, then OTC Clear shall pay such net sum to the Defaulting Clearing Member, and if the further net sum determined is a negative number, then the Defaulting Clearing Member shall pay such net sum to OTC Clear;

- (3) any property which has been provided by the Defaulting Clearing Member as market collateral shall cease to be market collateral (for the purpose of this sub-paragraph, the term “market collateral” bears the meaning set out in section 18 of the SFO); and
- (4) OTC Clear shall certify the net sum referred to in this Clearing Rule 1306B as being payable by OTC Clear to the Defaulting Clearing Member or by the Defaulting Clearing Member to OTC Clear, or, if there is no such net sum, OTC Clear shall certify that fact.

1306C. If the net sum determined pursuant to Clearing Rule 1306A(2) in respect of the House Position Account is zero, if there is a House Credit and no Non-Porting Client Deficits or, if there is a surplus after applying the House Credit to each Non-Porting Client Deficit pursuant to Clearing Rule 1306A(3), then:

- (1) such amount shall then be aggregated with the value (expressed as a positive number) of all Collateral (including the proceeds of the realization of such Collateral) held by OTC Clear as,
  - (a) the Rates and FX Contribution Balance recorded in such Defaulting Clearing Member’s GF Account as at the Early Termination Date to the extent that any Rates and FX Losses are allocated to such Defaulting Clearing Member in accordance with Clearing Rules 1516(1)(b), 1516(2)(b), 1914(2) and 1916(2), and in the amount of such Rates and FX Losses allocated; and
  - (b) any remaining Rates and FX Contribution Balance relating to such Defaulting Clearing Member that is not allocated pursuant to sub-paragraph (1)(a) above after taking into account any application of such remaining Rates and FX Contribution Balance by OTC Clear pursuant to Clearing Rule 1548,

so as to produce a single net sum (if any) payable to the Defaulting Clearing Member.

Any property which has been provided by the Defaulting Clearing Member as market collateral shall cease to be market collateral (for the purpose of this sub-paragraph, the term “market collateral” bears the meaning set out in section 18 of the SFO); and

- (2) OTC Clear shall certify the net sum referred to in this Clearing Rule 1306C as being payable by OTC Clear to the Defaulting Clearing Member or, if there is no such net sum, OTC Clear shall certify that fact.

1307. Subject to Clearing Rules 1914(1)(c) and 1914(1)(d), the aggregate trade value in respect of all Contracts in a Position Account for the purposes of Clearing Rule 1306A(1) above shall be an amount equal to the aggregate of the following (without double-counting): (i) the aggregate Auction Payments relating to that

Position Account (if any), (ii) minus the aggregate Auction Losses relating to that Position Account (if any), (iii) plus the Unpaid Amounts due from OTC Clear to the Defaulting Clearing Member in respect of all Contracts in that Position Account (if any), (iv) minus the Unpaid Amounts due from the Defaulting Clearing Member to OTC Clear in respect of all Contracts in that Position Account (if any), (v) plus the Unsettled VM Amount in respect of the Auction Contracts and Auction Failed Positions of that Position Account (to the extent that such Unsettled VM Amount is payable by OTC Clear to the Defaulting Clearing Member (if any)), (vi) plus the aggregate Contract Termination Net Payments payable by Non-Defaulting Clearing Members to OTC Clear as a result of a Contract Termination Event relating to that Position Account (if any), (vii) minus the aggregate Contract Termination Losses as a result of a Contract Termination Event relating to that Position Account (if any), and (viii) in the case of the House Position Account only, minus the aggregate General Losses relating to that Position Account (if any).

OTC Clear will determine such aggregate trade value in the Base Currency, and for the purpose of the calculations under Clearing Rule 1306 to Clearing Rule 1309, OTC Clear may convert any amounts denominated in other currencies into the Base Currency at such rate prevailing at the time of the calculation as it shall reasonably select.

A certificate issued by OTC Clear under Clearing Rules 1306A, 1306B and 1306C in respect of a separate capacity of the Defaulting Clearing Member shall be conclusive as to the discharge of the Defaulting Clearing Member's rights and liabilities in respect of the Contracts registered in its name in such capacity, and OTC Clear and the Defaulting Clearing Member shall duly pay any net sums certified under Clearing Rules 1306A, 1306B and 1306C to each other at the time and in such manner prescribed in these Clearing Rules. If OTC Clear does not have sufficient Base Currency to satisfy any net sum payable under Clearing Rules 1306A, 1306B and 1306C, OTC Clear may satisfy such net sum payable to the Defaulting Clearing Member in any other Eligible Currency such that the overall payment made by OTC Clear to the Defaulting Clearing Member will be equal to the Base Currency value determined pursuant to Clearing Rules 1306A, 1306B and 1306C. Pursuant to Clearing Rule 823(2) and section 3(c) of Part 5 of Schedule 3 to the SFO, a Clearing Member's House Credit may be applied by OTC Clear to set-off any liabilities of that Clearing Member to OTC Clear, including such Clearing Member's Non-Porting Client Deficits.

The process described in Clearing Rules 1306A, 1306B and 1306C with respect to each Defaulting Clearing Member and each of their capacities will only be performed upon the expiry of the Capped Liability Period relating to the relevant DMP Event. Upon the completion of the process in Clearing Rules 1306A, 1306B and 1306C, OTC Clear will make a report as required by section 47(1)(a) of the SFO.

1308. [DELETED]

1308A. In respect of each Non-Porting Client of a Defaulting Clearing Member, OTC Clear will determine the Client Entitlement in accordance with Clearing Rule



1309. In respect of a Rule-Based Clearing Member, OTC Clear recognises that the Client Entitlement relates to the positions corresponding to the Affected Contracts that are entered into between the Defaulting Clearing Member and such Non-Porting Client and, pursuant to the power under section 40(2A) of the SFO, OTC Clear makes rules for the taking of proceedings or other action in respect of the Client Entitlement under Clearing Rule 1309(3). Following an Event of Default in respect of the Clearing Member, OTC Clear shall return the Client Entitlement directly to such Client pursuant to Clearing Rule 1309(3).

1308B. In respect of each Porting Client of a Defaulting Clearing Member, OTC Clear will determine the Client Entitlement in accordance with Clearing Rule 1309A. In respect of a Rule-Based Clearing Member, OTC Clear recognises that the Client Entitlement relates to the positions corresponding to the Contracts recorded in the relevant Client Position Account, and pursuant to the power under section 40(2A) of the SFO, OTC Clear makes rules for the taking of proceedings or other action in respect of the Client Entitlement under Clearing Rule 1309A(3). Following an Event of Default in respect of the Clearing Member, OTC Clear shall return the Client Entitlement directly to such Client pursuant to Clearing Rule 1309A(3).

1309. OTC Clear will determine the Client Entitlement in respect of each Non-Porting Client in accordance with the following:

- (1) the Client Entitlement relating to each Client Clearing Category 1 Position Account to which Contracts relating to a Non-Porting Client are recorded shall be an amount equal to (i) the Non-Porting Client Credit in respect of such Client Position Account to which Contracts relating to such Non-Porting Client is recorded (if any) as determined in accordance with Clearing Rule 1306A or (ii) (following the occurrence of a Rates and FX Clearing Termination Event) the Limited Recourse Applicable Percentage of the Limited Recourse CM Receivable in respect of such Client Position Account as determined in accordance with Clearing Rule 1538.
- (1A) the Client Entitlement relating to each Client Clearing Category 2 Position Account to which Contracts relating to a Non-Porting Client are recorded shall be the greater of zero and an amount equal to the product of:
  - (a) the hypothetical Initial Margin with respect to the Affected Contracts of such Non-Porting Client (calculated on a portfolio margining basis assuming that all Affected Contracts of such Non-Porting Client were booked into a single separate hypothetical position account assigned solely to such Non-Porting Client) divided by the aggregate of the hypothetical Initial Margin with respect to the Affected Contracts relating to all Non-Porting Clients of such Client Clearing Category 2 Position Account (each such hypothetical Initial Margin for each individual Non-Porting Client being calculated on a portfolio margining basis assuming that the Affected Contracts of each individual Non-Porting Client were booked into a single separate hypothetical position account assigned solely to such individual

Non-Porting Client), in each case, such Initial Margin being calculated during the Portfolio Novation Cycle immediately preceding the occurrence of the relevant DMP Event; and

- (b) (i) the Non-Porting Client Credit in respect of such Client Position Account to which Contracts relating to such Non-Porting Clients are recorded (if any) as determined in accordance with Clearing Rule 1306A or (ii) (following the occurrence of a Rates and FX Clearing Termination Event) the Limited Recourse Applicable Percentage of the Limited Recourse CM Receivable in respect of such Client Position Account as determined in accordance with Clearing Rule 1538.
- (2) OTC Clear will make any determination pursuant to Clearing Rules 1308A and 1309 using its own records based on the information provided to it by the Defaulting Clearing Member. OTC Clear shall be entitled to rely on such records without conducting any independent verification in respect of the same. Notwithstanding the immediately foregoing, OTC Clear may, in its absolute discretion (i) adjust such records to reflect any factors reasonably taken into consideration when performing such valuation and/or (ii) withhold delivery of any Client Entitlement until such time as the Defaulting Clearing Member or its representative provides to OTC Clear any information requested by OTC Clear.
  - (3) Following the calculation of a Client Entitlement, where the relevant Client instructs OTC Clear to pay an amount to it equal to the Client Entitlement due to be returned in respect of it to the Defaulting Clearing Member, then 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 the Client Entitlement to the Client), OTC Clear shall determine in its sole and absolute discretion, the period of time during which it will give effect to instructions received from its Client pursuant to Clearing Rule 1309(3) and, within such period of time, pay the Client Entitlement directly to the Client instead of returning the same to the Defaulting Clearing Member.

If the relevant Client fails to enter into relevant documentation with OTC Clear and/or, if applicable, provide OTC Clear with appropriate documentation, each as required under this Clearing Rule 1309(3), OTC Clear shall reserve the right to withhold the delivery of any Client Entitlement until such time such relevant documentation has been properly entered into with OTC Clear and/or, if applicable, such appropriate documentation has been properly provided to OTC Clear.

1309A. OTC Clear will determine the Client Entitlement in respect of each Porting Client in accordance with the following:

- (1) if the relevant DMP Event with respect to the Defaulting Clearing Member is not an Automatic Early Termination Event:

- (a) the Client Entitlement relating to each Client Clearing Category 1 Position Account to which Contracts (including, for the avoidance of doubt, any Non-Porting Contracts) relating to a Porting Client are (or, immediately prior to the relevant scheduled Termination Date or Settlement Date, as the case may be, were) recorded shall be the aggregate of all amounts that have become due and payable by OTC Clear to the Defaulting Clearing Member on or after the date the relevant DMP Event in respect of any Contracts (including, for the avoidance of doubt, any Non-Porting Contracts) recorded in the relevant Client Position Account which have not already been paid (without prejudice to, and after giving effect to, any rights of set-off, netting and/or currency conversion under the Clearing Rules); and
- (b) the Client Entitlement relating to each Client Clearing Category 2 Position Account to which Contracts (including, for the avoidance of doubt, any Non-Porting Contracts) relating to a Porting Client are (or, immediately prior to the relevant scheduled Termination Date or Settlement Date, as the case may be, were) recorded shall be the greater of zero and an amount equal to the product of:
  - (i) an amount equal to:
    - (A) the hypothetical net amount payable by OTC Clear to the Defaulting Clearing Member in respect of all amounts that have become due and payable by OTC Clear to the Defaulting Clearing Member or by the Defaulting Clearing Member to OTC Clear, in each case on or after the date the relevant DMP Event occurs in respect of any Contracts (including, for the avoidance of doubt, any Non-Porting Contracts) relating to such Porting Client recorded in the relevant Client Position Account which have not already been paid (calculated on a hypothetical basis after giving effect to any rights of set-off or netting under the Clearing Rules and after converting any amounts denominated in other currencies into the Base Currency at such rate prevailing at the time of the calculation as OTC Clear shall reasonably select) (to the extent such hypothetical net sum is a positive number, such amount a **“Porting Client Hypothetical Net Receivable”**); divided by
    - (B) the sum of all Porting Client Hypothetical Net Receivables for each of the Porting Clients sharing the relevant Client Clearing Category 2 Position Account; and
  - (ii) the aggregate of all amounts that have become due and payable by OTC Clear to the Defaulting Clearing Member on or after the date the relevant DMP Event occurs in respect of any Contracts (including, for the avoidance of doubt, any Non-Porting Contracts) recorded in the relevant Client Position Account which have not already been paid (without prejudice to, and after giving

effect to, any rights of set-off, netting and/or currency conversion under the Clearing Rules).

- (1A) if the relevant DMP Event with respect to the Defaulting Clearing Member is an Automatic Early Termination Event:
- (a) the Client Entitlement relating to relating to a Porting Client which is a Client Clearing Category 1 Client shall be the positive net sum (if any) determined in accordance with Clearing Rule 1703(1A)(a)(ii) in respect of that Porting Client; and
  - (b) the Client Entitlement relating to a Porting Client which is a Client Clearing Category 2 Client shall be the greater of zero and an amount equal to the product of:
    - (i) the hypothetical Initial Margin with respect to the Non-Porting AET Contracts of such Porting Client (calculated on a portfolio margining basis assuming that all Non-Porting AET Contracts of such Porting Client had not terminated and were booked into a single separate hypothetical position account assigned solely to such Porting Client) divided by the aggregate of the hypothetical Initial Margin with respect to the Non-Porting AET Contracts relating to all Porting Clients of the relevant Client Clearing Category 2 Position Account (each such hypothetical Initial Margin for each individual Porting Client being calculated on a portfolio margining basis assuming that the Non-Porting AET Contracts of each individual Porting Client were not terminated and were booked into a single separate hypothetical position account assigned solely to such individual Porting Client), in each case, such Initial Margin being calculated during the Portfolio Novation Cycle immediately preceding the occurrence of the relevant DMP Event; and
    - (ii) the positive net sum (if any) determined in accordance with Clearing Rule 1704(1A)(a)(ii) in respect of the relevant Client Clearing Category 2 Position Account.
- (2) OTC Clear will make any determination pursuant to Clearing Rules 1308B and 1309A using its own records based on the information provided to it by the Defaulting Clearing Member. OTC Clear shall be entitled to rely on such records without conducting any independent verification in respect of the same. Notwithstanding the immediately foregoing, OTC Clear may, in its absolute discretion (i) adjust such records to reflect any factors reasonably taken into consideration when performing such valuation and/or (ii) withhold delivery of any Client Entitlement until such time as the Defaulting Clearing Member or its representative provides to OTC Clear any information requested by OTC Clear.
- (3) Following the calculation of a Client Entitlement, where the relevant Client instructs OTC Clear to pay an amount to it equal to the Client Entitlement due to be returned in respect of it to the Defaulting Clearing Member, then 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 the Client Entitlement to the Client), OTC Clear shall determine in its sole and absolute discretion, the period of time during which it will give effect to instructions received from its Client pursuant to Clearing Rule 1309A(3) and, within such period of time, pay the Client Entitlement directly to the Client instead of returning the same to the Defaulting Clearing Member.

If the relevant Client fails to enter into relevant documentation with OTC Clear and/or, if applicable, provide OTC Clear with appropriate documentation, each as required under this Clearing Rule 1309A(3), OTC Clear shall reserve the right to withhold the delivery of any Client Entitlement until such time such relevant documentation has been properly entered into with OTC Clear and/or, if applicable, such appropriate documentation has been properly provided to OTC Clear.

1310. For the purpose of the processes set out in Clearing Rule 1306 to 1309, OTC Clear may take into account any Client's interest in any Collateral or proceeds thereof forming part of its Client Entitlement pursuant to Clearing Rules 1308A and 1309 and, if applicable, any relevant Security Deed, and the operations of section 56(1) shall be modified by this Clearing Rule 1310, as permitted under section 56(2) of the SFO.

#### **Termination of the Membership of a Defaulting Clearing Member**

1311. The Membership of a Defaulting Clearing Member shall terminate with effect from the Membership Termination Date designated by OTC Clear following the completion of the Default Management Process with respect to such Defaulting Clearing Member. Upon the completion of the Default Management Process with respect to a Defaulting Clearing Member, OTC Clear shall promptly notify all Clearing Members of the completion of the relevant Default Management Process. In addition, OTC Clear shall notify the Defaulting Clearing Member of its Membership Termination Date, which shall fall no later than five OTC Clear Business Days after the completion of the Default Management Process.

#### **General Provisions relating to Clearing Member Event of Default**

1312. OTC Clear may appoint any Person to take or assist it in taking any step under these Clearing Rules and to complete or assist it in completing the process set out in Clearing Rules 1306, 1306A, 1306B, 1306C and 1307. OTC Clear may at any time consult with any Person, and act in reliance upon advice received, in relation to any action it takes.
1313. Without prejudice to the right of OTC Clear to take any step pursuant to Clearing Rule 1305, OTC Clear may, upon determining that an Event of Default has occurred, issue a cautionary notice to the Defaulting Clearing Member including such directions and requirements to be complied with by the Defaulting Clearing Member within such time period as OTC Clear may think fit.
1314. The exercise by OTC Clear of any of its rights under these Clearing Rules is without prejudice to and shall not preclude OTC Clear from exercising any other rights (including the right to take disciplinary action) in respect of any default by a Clearing Member. Furthermore, no delay or omission on the part of OTC Clear in

exercising any right, power or remedy shall impair such right, power or remedy or operate as any kind of waiver.

1315. A receiver, liquidator or other similar official appointed in respect of a Clearing Member must comply with any directions given by OTC Clear (or by any Person appointed by OTC Clear) pursuant to these Clearing Rules.

### **Indemnity**

1316. 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:

- (1) incurred or suffered as a consequence of such Clearing Member's conduct, or a breach of any of such Clearing Member's obligations under the Clearing Documentation or the terms of a Contract or any Applicable Laws, including as a consequence of OTC Clear acting upon the instructions of a Clearing Member's Designated Person(s) in connection with any Original Transaction submitted by such Designated Person(s) on behalf, and in the name, of the Clearing Member;
- (2) incurred or suffered directly in connection with OTC Clear's ensuring the settlement of a Contract in the case of a DMP Event relating to any other Clearing Member, whether or not OTC Clear takes any steps pursuant to Clearing Rule 1305 or any other steps under these Clearing Rules, provided that the aggregate amount indemnified by any Non-Defaulting Clearing Member in respect of each Capped Liability Period shall not exceed its Maximum Current Liability and shall be satisfied by application of its Rates and FX Contribution Balance in accordance with Clearing Rule 1549; or
- (3) incurred or suffered in connection with any actions taken by OTC Clear or any actions that OTC Clear is required to take to comply with any obligations relating to the Tax Information Exchange Framework (or fails to take relating to Withholding Tax obligations) with respect to such Clearing Member.

### **OTC Clear Default**

#### **OTC Clear Failure to Pay Event**

1317. If OTC Clear fails to make, when due, any payment to a Clearing Member (other than a Defaulting Clearing Member) (the "**Relevant Clearing Member**") arising from a Contract, the Relevant Clearing Member may provide written notification (the "**Failure to Pay Notice**") to OTC Clear formally informing OTC Clear of such failure pursuant to this Clearing Rule 1317.

1318. An "**OTC Clear Failure to Pay Event**" shall be deemed to occur if after the receipt of the Failure to Pay Notice by OTC Clear, OTC Clear has not made all relevant payments to the Clearing Member by the end of the relevant OTC Clear Failure to Pay Grace Period, provided that no OTC Clear Failure to Pay Event shall occur if

(1) such failure to pay arises as a result of technical or administrative reasons beyond the control of OTC Clear; or (2) during the OTC Clear Failure to Pay Grace Period, OTC Clear has exercised its powers under Clearing Rule 1320(1) and/or 1320(2). During the OTC Clear Failure to Pay Grace Period, the Relevant Clearing Member shall continue to be obliged to pay when due all amounts required by OTC Clear in accordance with the Clearing Documentation and shall satisfy in full all its other obligations under the Clearing Documentation.

1319. Upon the occurrence of an OTC Clear Failure to Pay Event, the Relevant Clearing Member may terminate and liquidate all its outstanding Contracts (each a **“Relevant CM Contract”**) by delivering a notice to OTC Clear.

1320. During the OTC Clear Failure to Pay Grace Period, OTC Clear may take the following action or actions:

- (1) designate an Early Termination Date in respect of all the Relevant CM Contracts by delivering a notice to the Relevant Clearing Member whereupon all the Relevant CM Contracts shall be novated with effect from the day that falls on the second OTC Clear Clearing Day following the date of delivery of such notice by OTC Clear. Upon the delivery of such notice, the Relevant Clearing Member agrees that OTC Clear shall novate all the Relevant CM Contracts on the designated Early Termination Date by terminating such Relevant CM Contracts and registering in the name of any other Clearing Member (other than a Defaulting Clearing Member) Contracts on substantially similar terms as any Relevant CM Contract with the agreement of such other Clearing Member, and the provisions as set out in Clearing Rule 1324 shall apply; or
- (2) declare, and notify all Clearing Members of the occurrence of, a Rates and FX Clearing Termination Event pursuant to the terms set out in Clearing Rule 1530, whether or not OTC Clear has, prior to such declaration of Rates and FX Clearing Termination Event, exercised its power pursuant to sub-paragraph (1) above. Upon the occurrence of a Rates and FX Clearing Termination Event, the Rates and FX Clearing Services will be wound down in accordance with Clearing Rules 1531 to 1540.

1321. In the event that the Relevant Clearing Member delivers a notice to OTC Clear to terminate all the Relevant CM Contracts pursuant to Clearing Rule 1319, OTC Clear shall:

- (1) terminate all the Relevant CM Contracts on the day that falls on the second OTC Clear Clearing Day following the date of delivery of such notice by the Relevant Clearing Member (such day being the **“Early Termination Date”** for the purpose of this Clearing Rule 1321) by registering in the name of any other Clearing Member (other than a Defaulting Clearing Member) one or more Contracts on substantially similar terms as any Relevant CM Contract with the agreement of such other Clearing Member on the Early Termination Date and Clearing Rule 1324 shall apply; or
- (2) declare, and notify all Clearing Members of the occurrence of, a Rates and FX Clearing Termination Event, upon which the Rates and FX Clearing Services will be wound down in accordance with Clearing Rules 1531 to 1540.

### **OTC Clear Insolvency Event**

1322. An “**OTC Clear Insolvency Event**” shall occur if OTC Clear voluntarily commences a procedure seeking or proposing liquidation, administration, receivership, judicial management or a scheme of arrangement, or other similar relief with respect to itself or its debts under any bankruptcy, insolvency, regulatory, supervisory or similar law, or if any of the foregoing case or procedure is commenced in relation to OTC Clear by any other person and either:
- (1) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for OTC Clear’s winding-up or liquidation; or
  - (2) such case or procedure is not dismissed, discharged, stayed or restrained in each case within 21 OTC Clear Business Days of the institution or presentation thereof.

Upon the occurrence of an OTC Clear Insolvency Event, a Non-Defaulting Clearing Member may designate an Early Termination Date for the termination and liquidation of all Contracts then registered in its name.

1323. In the event that a Non-Defaulting Clearing Member delivers a notice to OTC Clear to terminate all of its Contracts then registered with OTC Clear pursuant to Clearing Rule 1322 as a result of the occurrence of an OTC Clear Insolvency Event, then all Contracts of all Clearing Members will be terminated with effect from (and including) the day that falls on the second OTC Clear Clearing Day following the date of delivery of such notice by the Non-Defaulting Clearing Member (such day being the “**Early Termination Date**” for the purpose of this Clearing Rule 1323) and Clearing Rule 1324 will apply to each Clearing Member. Upon receipt of a notice from a Non-Defaulting Clearing Member declaring the occurrence of an OTC Clear Insolvency Event, OTC Clear will notify all Clearing Members of (1) the occurrence of such event and (2) the Early Termination Date with respect to all outstanding Contracts registered in the name of all Clearing Members.

### **Calculations of Net Payment following OTC Clear Default**

1324. Upon the designation of an Early Termination Date with respect to all Contracts then registered in the name of a Clearing Member pursuant to Clearing Rule 1320(1), 1321(1) or 1323:
- (1) all obligations of OTC Clear and such Clearing Member in respect of any such Contract between them shall cease to exist and be replaced with the obligation to pay the termination amounts determined under sub-paragraph (3) below. The close-out value for each Contract shall be determined in accordance with section 10.1(ii) of the Clearing Procedures, provided that OTC Clear may also take into account any unpaid amounts that have become due and payable in respect of any Contract on or prior to the designation of the Early Termination Date;
  - (2) any unused Margin Balance and any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by the Clearing Member(s) then held by OTC Clear in respect of one or more Clearing Members shall be returned to the relevant Clearing Members in accordance with sub-paragraph (6) below; and any unused Rates and FX Contribution Balance then held by OTC Clear in respect of one or more



Clearing Members shall be returned to the relevant Clearing Members in accordance with sub-paragraph (8)(d) below;

- (3) OTC Clear shall on, or as soon as reasonably practicable after, the Early Termination Date, calculate a net sum payable by or to each Clearing Member separately in relation to each Position Account registered in the name of such Clearing Member. In determining such net sum, OTC Clear will take into account the close-out values established for each Contract pursuant to sub-paragraph (1) above, and the value of all other amounts which is due to OTC Clear from the Clearing Member under these Clearing Rules or which is due to it from OTC Clear (other than OTC Clear's obligation to return any unused Margin Balance, any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by the relevant Clearing Member or Former Clearing Member and/or Rates and FX Contribution Balance to the relevant Clearing Member or Former Clearing Member), in each case, whether future, liquidated or unliquidated, actual or contingent. There shall be no combining or set-off between any House Position Account and Client Position Account(s), or between two or more Client Position Accounts. OTC Clear will determine any such net sum payable by, or to, a Clearing Member in the Base Currency. For the purpose of the determination under this sub-paragraph (3), OTC Clear may convert any amounts denominated in any other currency into the Base Currency at such rate prevailing at the time of the calculation as it shall reasonably select;
- (4) If, pursuant to sub-paragraph (3) above, a net sum is determined to be payable by a Clearing Member to OTC Clear with respect to one or more of its Position Accounts, OTC Clear shall reduce each such sum by application of the Outright Transfer Margin Balance, if any, relating to the relevant Position Account. With respect to each Clearing Member and each of its Position Account(s), after application of the Outright Transfer Margin Balance relating to the relevant Position Account:
  - (a) if there remains a balance payable by the Clearing Member to OTC Clear for such Position Account (the "**CM Payable Balance**"), OTC Clear will, as soon as reasonably practicable, notify the relevant Clearing Member of the CM Payable Balance, and the relevant Clearing Member shall pay OTC Clear the CM Payable Balance within three OTC Clear Business Days following receipt of such notification; and
  - (b) if the Clearing Member fails to pay the CM Payable Balance within the time frame set out in sub-paragraph (4)(a) above, OTC Clear may declare an Event of Default in respect of such Clearing Member. OTC Clear may, in satisfaction of any due but unpaid CM Payable Balance in respect of a Position Account, apply the proceeds of enforcement of any non-cash Collateral comprising the Margin Balance of the corresponding Collateral Account and any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by such Clearing Member;

- (5) if, pursuant to sub-paragraph (3) above, a net sum is determined to be payable by OTC Clear to a Clearing Member with respect to one or more of its Position Accounts, each such sum shall form part of an OTC Clear Default CM Receivable with respect to the relevant Position Account;
- (6) with respect to each Clearing Member and each of its Position Account(s), taking into account (if applicable) the operation of sub-paragraph (4) above:
  - (a) any unused Outright Transfer Margin Balance and, if applicable, any remaining proceeds of enforcement of non-cash Collateral further to the application of sub-paragraph (4)(b) above for such Position Account shall be returned to the Clearing Member; and
  - (b) any non-cash Collateral provided to OTC Clear on a security interest basis and comprising the Margin Balance of the Collateral Account corresponding to such Position Account and any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by the Clearing Member shall be redelivered to the Clearing Member in accordance with the relevant security document;
- (7) following the completion of the processes described in sub-paragraphs (4) to (6) above:
  - (a) OTC Clear shall, with respect to each Position Account (without regard to its obligation to return any unused Rates and FX Contribution Balance to the relevant Clearing Member or Former Clearing Member), determine the resulting net sum payable by a Clearing Member to OTC Clear for such Position Account (such sum, an "OTC Clear Default Interim CM Payable"), or the resulting net sum payable by OTC Clear to a Clearing Member for such Position Account (such sum, an "**OTC Clear Default CM Receivable**");
  - (b) OTC Clear shall notify the relevant Clearing Member of its OTC Clear Default Interim CM Payable(s) or OTC Clear Default CM Receivable(s). Each Clearing Member that receives a notice to pay any OTC Clear Default Interim CM Payable shall pay each such amount to OTC Clear in full within three OTC Clear Business Days following receipt of such notification;
  - (c) if a Clearing Member fails to pay any OTC Clear Default Interim CM Payable in full within the time frame set out in sub-paragraph (7)(b) above, regardless of whether such OTC Clear Default Interim CM Payable arises out of a House Position Account or Client Position Account belonging to such Clearing Member, OTC Clear may apply any unused Rates and FX Contribution Balance then held by OTC Clear in respect of such Clearing Member against the unpaid OTC Clear Default Interim CM Payable;
  - (d) with respect to a Clearing Member and each of its Position Account(s) with an OTC Clear Default Interim CM Payable, following the application of any unused Rates and FX Contribution Balance

as described in sub-paragraph (7)(c) above, OTC Clear shall determine the final net sum payable by the Clearing Member, if any (each a “**OTC Clear Default Final CM Payable**”) with respect to such Position Account, and notify such Clearing Member of the same. Each Clearing Member that receives a notice to pay any OTC Clear Default Final CM Payable shall pay each such amount to OTC Clear in full at or prior to the time specified by OTC Clear; and

- (e) for the avoidance of doubt, a Clearing Member may have an OTC Clear Default Interim CM Payable or OTC Clear Default Final CM Payable in respect of one Position Account registered in its name, but an OTC Clear Default CM Receivable in respect of another Position Account registered in its name;
- (8) with respect to each Clearing Member who has an OTC Clear Default CM Receivable, and each Clearing Member or Former Clearing Member with any unused Rates and FX Contribution Balance (taking into account the operation of sub-paragraph (7)(c) above), OTC Clear shall pay each such Clearing Member or Former Clearing Member in proportion to the value of their respective claims on OTC Clear under sub-paragraph (7) above in the following manner:
- (a) OTC Clear shall, until the time specified in sub-paragraph (9) below, take reasonable steps to recover any unpaid OTC Clear Default Final CM Payables. and may deduct from such amounts any reasonable costs in connection with such recovery;
  - (b) following receipt of all or some (if any Clearing Member defaults in its payment of the relevant OTC Clear Default Final CM Payable) OTC Clear Default Final CM Payables, OTC Clear will calculate a percentage (“**OTC Clear Default Applicable Percentage**”) equal to the lesser of:
    - (A) 100%; and
    - (B) (I) the aggregate value of (i) the Rates and FX Guarantee Resources then held by OTC Clear, (ii) any Margin Balance and any income and redemption proceeds on any non-cash Collateral that have not already been paid to or withdrawn by the Clearing Members or Former Clearing Members applied pursuant to Clearing Rules 1324(3) and/or 1324(4)(b) and (iii) all OTC Clear Default Final CM Payables received; divided by
      - (II) the aggregate value representing the sum of (i) all OTC Clear Default CM Receivables and (ii) any unused Rates and FX Contribution Balance then held by OTC Clear in respect of all Clearing Members or Former Clearing Members (taking into account the operation of subparagraph (7)(c) above);

- (c) OTC Clear shall pay each Clearing Member with an OTC Clear Default CM Receivable an amount equal to the OTC Clear Default Applicable Percentage of such OTC Clear Default CM Receivable;
  - (d) OTC Clear shall pay each Clearing Member or Former Clearing Member with unused Rates and FX Contribution Balance an amount equal to the OTC Clear Default Applicable Percentage of such unused Rates and FX Contribution Balance, provided that the aggregate sum payable by OTC Clear in respect of unused Rates and FX Contribution Balance for all Clearing Member(s) and Former Clearing Member(s) shall never exceed the value of the Rates and FX Guarantee Resources then held by OTC Clear. Once the Rates and FX Guarantee Resources have been exhausted, the unpaid balance of any unused Rates and FX Contribution Balance shall be extinguished; and
  - (e) all payments made under this sub-paragraph (8) shall be made in the Base Currency provided that if OTC Clear does not have sufficient Base Currency to satisfy such payment, it may satisfy such payment obligation in any other Eligible Currency. For this purpose OTC Clear shall be entitled to convert any amounts denominated in the Base Currency into any other Eligible Currency (or vice versa) at such rate prevailing at the time of settlement as it shall reasonably select;
- (9) if OTC Clear determines that no further amounts in respect of any OTC Clear Default Final CM Payables are likely to be recovered and notifies the same to the relevant Clearing Member(s) and Former Clearing Member(s), then the unpaid balance of any OTC Clear Default CM Receivable and/or unused Rates and FX Contribution Balance shall thereafter be extinguished and the relevant Clearing Member(s) and Former Clearing Member(s) 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; and
  - (10) OTC Clear will, as soon as reasonably practicable, inform the SFC of the occurrence of an OTC Clear Failure to Pay Event or OTC Clear Insolvency Event upon becoming aware of the same.
1325. The obligations of a Clearing Member to pay any amounts due and payable to OTC Clear pursuant to the Clearing Documentation shall survive the Membership Termination Date relating to such Clearing Member.