

Chapter 17 Porting

Porting

1701. An Affected Contract will not be subject to Hedging, and will not form part of the Auction Book, until such time as OTC Clear has determined that the Affected Contract in question will not be ported as described in this Chapter 17.
1702. In respect of each Client Position Account established by a Defaulting Clearing Member with OTC Clear, OTC Clear shall:
- (1) calculate the balance of the Client Collateral Account in respect of such Client Position Account;
 - (2) in respect of each Client Clearing Category 1 Client who has appointed a Replacement Clearing Member, in the absence of an Event of Default with respect to such Replacement Clearing Member, provide to the Replacement Clearing Member details relating to the Affected Contracts registered in the name of such Defaulting Clearing Member in respect of such Client, and the balance of the Client Collateral Account relating to each such Client; and
 - (3) in respect of all Client Clearing Category 2 Clients sharing one single Client Clearing Category 2 Position Account, provided that all such Client Clearing Category 2 Clients have appointed the same Replacement Clearing Member, provide to the Replacement Clearing Member details relating to the Affected Contracts and the balance of the related Client Clearing Category 2 Collateral Account registered in the name of the Defaulting Clearing Member.
1703. In respect of all Affected Contracts registered in the name of a Defaulting Clearing Member in respect of a Client Clearing Category 1 Position Account relating to a Client, provided that OTC Clear is reasonably satisfied that (i) the Replacement Clearing Member has been appointed prior to the occurrence of the relevant DMP Event, (ii) it has received completed Porting Instructions by 5:00pm (Hong Kong time) on the OTC Clear Clearing Day immediately following the occurrence of such DMP Event, (iii) it has further received the consent of the appointed Replacement Clearing Member to accept the porting of all such Affected Contracts by 5:00pm (Hong Kong time) on the OTC Clear Clearing Day immediately following the occurrence of such DMP Event, (iv) no DMP Event has occurred with respect to the Replacement Clearing Member at the time of purported porting, and (v) the relevant margin and credit check relevant to the purported porting is successfully passed:
- (1) if the relevant DMP Event with respect to the Defaulting Clearing Member is not an Automatic Early Termination Event, OTC Clear shall terminate and close-out such Affected Contracts at their market value (as determined by OTC Clear in its discretion) and enter into new Contracts on the same terms to such Affected Contracts with the appointed Replacement Clearing Member;
 - (1A) if the relevant DMP Event with respect to the Defaulting Clearing Member is an Automatic Early Termination Event:
 - (a) in respect of all such Affected Contracts that are Non-Porting AET Contracts:
 - (i) OTC Clear will determine the aggregate trade value in respect of all such Non-Porting AET Contracts as at the relevant Early Termination Date. Such aggregate trade value may be zero, positive or negative. A positive

aggregate trade value indicates a net sum being payable by OTC Clear to the Defaulting Clearing Member in respect of such Non-Porting AET Contracts; and a negative aggregate trade value indicates a net sum being payable by the Defaulting Clearing Member to OTC Clear in respect of such Non-Porting AET Contracts;

- (ii) if the aggregate trade value determined pursuant to sub-paragraph (i) above is a positive number, such value shall be netted against any losses incurred by OTC Clear relating to such Non-Porting AET Contracts as a result of the default of the Defaulting Clearing Member. If the aggregate trade value determined pursuant to sub-paragraph (i) above is zero or a negative number, such value shall be aggregated with any such losses;
 - (iii) if the net sum determined pursuant to sub-paragraph (ii) is a negative number, the Outright Transfer Margin Balance, if any, relating to the relevant Client Clearing Category 1 Position Account and, if necessary, any proceeds of enforcement of any non-cash Collateral comprising the Margin Balance of the corresponding Collateral Account (and any income and redemption proceeds thereon that have not already been paid to or withdrawn by the Defaulting Clearing Member) shall be reduced by an amount equal to the absolute value of such net sum; and
 - (iv) if the net sum determined pursuant to sub-paragraph (ii) is a positive number, such net sum shall form part of the Client Entitlement to be returned to the relevant Client pursuant to Clearing Rule 1309A; and
- (b) in respect of all such Affected Contracts that are Porting AET Contracts, OTC Clear shall enter into new Contracts with the appointed Replacement Clearing Member on the same terms as such Porting AET Contracts;
- (2) pursuant to the terms of the Client Clearing Agreement between the Defaulting Clearing Member and such Client, OTC Clear shall transfer, on account of such Client, the Client Clearing Category 1 Account Balance relating to such Client (excluding any Collateral recorded in the Client Clearing Category 1 Collateral Account relating to such Client that is subject to a Deed of Charge between the Defaulting Clearing Member and OTC Clear in respect of the Client Collateral Account(s)) to the appointed Replacement Clearing Member;
- (3) the amount due to be returned to the Defaulting Clearing Member in respect of such Client Clearing Category 1 Position Account and related Client Clearing Category 1 Collateral Account shall be reduced by an amount equal to the Client Clearing Category 1 Account Balance referred to in sub-paragraph (2) above; and
- (4) in respect of any Collateral recorded in the Client Clearing Category 1 Collateral Account relating to such Client that is subject to a Deed of Charge between the Defaulting Clearing Member and OTC Clear in respect of the Client Collateral Account(s), porting shall be effected as follows:
- (a) any equities of redemption held by the Defaulting Clearing Member in respect of that Collateral shall be assigned absolutely to the Replacement 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 Replacement Clearing Member and OTC Clear; and

- (b) OTC Clear shall release that Collateral from the security interests granted in favour of OTC Clear pursuant to the relevant Deed of Charge between the Defaulting Clearing Member and OTC Clear, such that the Replacement Clearing Member becomes entitled to redeem that Collateral pursuant to any equities of redemption assigned to it pursuant to sub-paragraph (a) above.

1704. In respect of all Affected Contracts registered in the name of a Defaulting Clearing Member in respect of a Client Clearing Category 2 Position Account, provided that OTC Clear is reasonably satisfied that (i) the Replacement Clearing Member has been appointed by all Clients identified as sharing such Client Clearing Category 2 Position Account prior to the occurrence of the relevant DMP Event, (ii) all such Clients have appointed the same Replacement Clearing Member, (iii) it has received completed Porting Instructions from all of the Clients identified as sharing such Client Clearing Category 2 Position Account by 5:00pm (Hong Kong time) on the OTC Clear Clearing Day immediately following the occurrence of such DMP Event, (iv) OTC Clear has further received the consent of the appointed Replacement Clearing Member to accept the porting of all such Affected Contracts by 5:00pm (Hong Kong time) on the OTC Clear Clearing Day immediately following the occurrence of such DMP Event, (v) no DMP Event has occurred with respect to the Replacement Clearing Member at the time of purported porting, and (vi) the relevant margin and credit check relevant to the purported porting is successfully passed:

- (1) if the relevant DMP Event with respect to the Defaulting Clearing Member is not an Automatic Early Termination Event, OTC Clear shall terminate and close-out such Affected Contracts at their market value (as determined by OTC Clear in its discretion) and enter into new Contracts on the same terms to such Affected Contracts with the appointed Replacement Clearing Member;

(1A) if the relevant DMP Event with respect to the Defaulting Clearing Member is an Automatic Early Termination Event:

- (a) in respect of all such Affected Contracts that are Non-Porting AET Contracts:

- (i) OTC Clear will determine the aggregate trade value in respect of all such Non-Porting AET Contracts as at the relevant Early Termination Date. Such aggregate trade value may be zero, positive or negative. A positive aggregate trade value indicates a net sum being payable by OTC Clear to the Defaulting Clearing Member in respect of such Non-Porting AET Contracts; and a negative aggregate trade value indicates a net sum being payable by the Defaulting Clearing Member to OTC Clear in respect of such Non-Porting AET Contracts;

- (ii) if the aggregate trade value determined pursuant to sub-paragraph (i) above is a positive number, such value shall be netted against any losses incurred by OTC Clear relating to such Non-Porting AET Contracts as a result of the default of the Defaulting Clearing Member. If the aggregate trade value determined pursuant to sub-paragraph (i) above is zero or a negative number, such value shall be aggregated with any such losses;

- (iii) if the net sum determined pursuant to sub-paragraph (ii) is a negative number, the Outright Transfer Margin Balance, if any, relating to the relevant Client Clearing Category 2 Position Account and, if necessary, any proceeds of enforcement of any non-cash Collateral comprising the Margin Balance of the corresponding Collateral Account (and any income and redemption proceeds thereon that have not already been paid to or withdrawn by the Defaulting Clearing Member) shall be reduced by an amount equal to the absolute value of such net sum; and
 - (iv) if the net sum determined pursuant to sub-paragraph (ii) is a positive number, such net sum shall form part of the Client Entitlement to be returned to the relevant Client pursuant to Clearing Rule 1309A; and
 - (b) in respect of all such Affected Contracts that are Porting AET Contracts, OTC Clear shall enter into new Contracts with the appointed Replacement Clearing Member on the same terms as such Porting AET Contracts;
- (2) pursuant to the terms of the Client Clearing Agreement between the Defaulting Clearing Member and each such Client, OTC Clear shall transfer, on account of all such Clients sharing the same Client Clearing Category 2 Position Account, the aggregate Client Clearing Category 2 Account Balances of such Clients (excluding any Collateral recorded in the Client Clearing Category 2 Collateral Account relating to that Client Clearing Category 2 Position Account that is subject to a Deed of Charge between the Defaulting Clearing Member and OTC Clear in respect of the Client Collateral Account(s)) to the appointed Replacement Clearing Member;
- (3) the amount due to be returned to the Defaulting Clearing Member in respect of such Client Clearing Category 2 Position Account and such Client Clearing Category 2 Collateral Account shall be reduced by an amount equal to the Client Clearing Category 2 Account Balances referred to in sub-paragraph (2) above; and
- (4) in respect of any Collateral recorded in such Client Clearing Category 2 Collateral Account that is subject to a Deed of Charge between the Defaulting Clearing Member and OTC Clear in respect of the Client Collateral Account(s), porting shall be effected as follows:
 - (a) any equities of redemption held by the Defaulting Clearing Member in respect of that Collateral shall be assigned absolutely to the Replacement 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 Replacement Clearing Member and OTC Clear; and
 - (b) OTC Clear shall release that Collateral from the security interests granted in favour of OTC Clear pursuant to the relevant Deed of Charge between the Defaulting Clearing Member and OTC Clear, such that the Replacement Clearing Member becomes entitled to redeem that Collateral pursuant to any equities of redemption assigned to it pursuant to sub-paragraph (a) above.

1704A. A Defaulting Clearing Member agrees to waive any of its rights or entitlements to object to the Affected Contracts registered in its name to be ported. In respect of each Affected Contract being ported at a Client's request and pursuant to these Clearing Rules, the

Defaulting Clearing Member and the relevant Replacement Clearing Member shall cooperate with OTC Clear and the Client(s) and facilitate such porting arrangement, including:

- (1) if the relevant DMP Event with respect to the Defaulting Clearing Member is not an Automatic Early Termination Event, closing-out each Affected Contract and re-establishing a new Contract on the same terms as the relevant Affected Contract with the relevant Replacement Clearing Member; or
- (2) if the relevant DMP Event with respect to the Defaulting Clearing Member is an Automatic Early Termination Event, OTC Clear entering into new Contracts with the relevant Replacement Clearing Member on the same terms as such Affected Contracts that are Porting AET Contracts,

and any associated movement of Collateral relating to such Affected Contracts.

1704B. In respect of the porting of a Client's portfolio of Contracts registered with the Defaulting Clearing Member in the relevant Client Position Account from the Defaulting Clearing Member to the Replacement Clearing Member, no amounts shall be payable between and amongst the Defaulting Clearing Member, the Replacement Clearing Member and the Client solely as a result of the change in the net present value of such Contracts.

1705. OTC Clear is entitled to rely on the Porting Instructions or any other document relating thereto reasonably believed by it to be genuine, correct and appropriately authorised, and OTC Clear shall be deemed to have acted in good faith if it has conducted the porting in accordance with the Porting Instructions.

1706. It is the obligation of a Clearing Member to duly advise and inform its Clients that:

- (1) if no Replacement Clearing Member has been appointed (or, in the case of a Client Clearing Category 2 Position Account, if all of the Clients identified as sharing such Client Clearing Category 2 Position Account have not appointed the same Replacement Clearing Member or if that Replacement Clearing Member does not accept porting of all of the Clients identified as sharing such Client Clearing Category 2 Position Account), then following designation of such Clearing Member as a Defaulting Clearing Member, any Affected Contracts registered in the name of such Clearing Member will not be ported; and
- (2) if a Replacement Clearing Member has been appointed in respect of all Affected Contracts registered in the name of such Clearing Member in respect of a Client Position Account, subsequent to such Clearing Member becoming a Defaulting Clearing Member, whilst OTC Clear will, in accordance with Clearing Rule 1703, arrange for all such Affected Contracts to be ported, whether or not such Affected Contracts will be successfully ported is dependant on whether the Replacement Clearing Member will accept the porting of all such Affected Contracts, or, in the case of a Client Clearing Category 2 Position Account, whether all of the Clients identified as sharing such Client Clearing Category 2 Position Account have appointed the same Replacement Clearing Member or whether the Replacement Clearing Member will accept porting of all of the Clients identified as sharing such Client Clearing Category 2 Position Account. OTC Clear may deem the purported porting of any Affected Contract to the relevant Replacement Clearing Member as having failed if such porting cannot be completed for any reason on or before the last Portfolio Novation Cycle on the second OTC Clear Clearing Day following the

occurrence of such DMP Event. Any Affected Contract that has not been successfully ported will form part of the Auction Book.

OTC Clear 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 a failure to port an Affected Contract registered in the name of the Defaulting Clearing Member.

1707. Each of the Defaulting Clearing Member and the Replacement Clearing Member shall jointly and severally 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 instruction.
1708. Clients in respect of whom porting has been successfully carried out pursuant to this Chapter 17 are referred to as “**Porting Clients**”; and Clients in respect of whom porting are not, or have not been successfully, carried out pursuant to this Chapter 17 are referred to as “**Non-Porting Clients**”, and “**Porting Client**” and “**Non-Porting Client**” shall be construed accordingly.
1709. Pursuant to the power of OTC Clear to make rules under section 40(2A) of the SFO, if an Affected Contract has been successfully ported to the Replacement Clearing Member pursuant to this Chapter 17, any Corresponding Client Transaction corresponding to such Affected Contract may at the option of the Client be terminated with the Defaulting Clearing Member, re-established with, transferred or novated to the Replacement Clearing Member.
1710. References to Affected Contracts being “ported” pursuant to this Chapter 17 shall mean:
- (1) in respect of Affected Contracts other than Affected AET Contracts, such Affected Contracts being terminated and OTC Clear entering into new Contracts on the same terms as such Affected Contracts with the relevant Replacement Clearing Member pursuant to Clearing Rule 1703(1) or Clearing Rule 1704(1); or
 - (2) in respect of Porting AET Contracts, OTC Clear entering into new Contracts with the relevant Replacement Clearing Member on the same terms as Porting AET Contracts pursuant to Clearing Rule 1703(1A)(b) or Clearing Rule 1704(1A)(b).