

## Chapter 21J Default Procedures

### Defaulting Special Clearing House Participant

21J01. The Special Clearing House Participant 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, the Clearing Link Agreement, the Collateral Management Agreement and/or one or more Contracts to which it is party.

21J02. Subject to the expiry of any applicable Tolerance Period, OTC Clear may, by a notice in writing to the Special Clearing House Participant, declare the Special Clearing House Participant as the Defaulting Special Clearing House Participant, in the event of any one or more of the following events or circumstances occurring (each a “**SHCH Event of Default**”):

- (1) failure by the Special Clearing House Participant to pay or deliver any amounts when due under this Part VA, Chapter 11 of the Clearing Procedures and/or the Clearing Link Agreement, including without limitation, any failure to pay or deliver the Collateral in respect of the Inter-CCP SHCH Margin Amount when due; or
- (2) the Special Clearing House Participant voluntarily commences a procedure for 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 the Special Clearing House Participant by any other person.

21J03. Upon the declaration of the Special Clearing House Participant as the Defaulting Special Clearing House Participant pursuant to Clearing Rule 21J02, OTC Clear shall not be obliged to make any further payments or deliveries in respect of any Contract registered in the name of the Special Clearing House Participant, and the Special Clearing House Participant shall promptly return to OTC Clear all cash deposited into, and standing to the credit of, the PRC Collateral Account. In addition, OTC Clear may take such steps with respect to the Special Clearing House Participant as in the circumstances appear to it, in its absolute discretion, best calculated:

- (1) to discharge the Special Clearing House Participant's rights, obligations and liabilities under or in respect of one or more or all Contracts to which the Special Clearing House Participant is a party;
- (2) to minimize losses or the potential for losses to OTC Clear as a result of the default of the Special Clearing House Participant; or
- (3) without the need for any prior notice to or consent of the Special Clearing House Participant:
  - (a) to terminate any Contract of the Special Clearing House Participant by designating an Early Termination Date in respect of such Contract;
  - (b) to apply any Collateral posted as the Inter-CCP SHCH Margin Amount for the absorption of losses incurred by OTC Clear as a result of the default of the Special Clearing House Participant;
  - (c) to obtain any advice or assistance from the Special Clearing House Participant and/or any third party as OTC Clear may deem necessary for any matter arising out of or in connection with an SHCH Event of Default and at the expense of the Special Clearing House Participant; and/or

(d) to withdraw any Collateral posted as the Inter-CCP OTCC Margin Amount.

21J04. Without prejudice to the right of OTC Clear to take any step pursuant to Clearing Rule 21J03, OTC Clear may, upon declaring the Special Clearing House Participant as the Defaulting Special Clearing House Participant:

- (1) issue a cautionary notice to the Special Clearing House Participant including such directions and requirements to be complied with by the Special Clearing House Participant within such time period as OTC Clear may think fit;
- (2) commence proceedings against the Special Clearing House Participant for any General Losses and Unpaid Amounts that remain undischarged after the application of resources available to OTC Clear pursuant to these Clearing Rules; and/or
- (3) withdraw the Clearing Link Services, by:
  - (a) declaring the occurrence of a Contract Termination Event in respect of all Contracts between OTC Clear and all Non-Defaulting Clearing Members in whole as Identified Contracts; and
  - (b) declaring the termination of the Clearing Link Services,

where, for the avoidance of doubt, the Identified Contracts shall be terminated as of the Final Settlement Cycle Determination Date for such Contract Termination Event as determined pursuant to section 10.5.2 of the Clearing Procedures and the Contract Termination Net Payment will be calculated by OTC Clear.

#### **Termination of the Participantship of the Special Clearing House Participant**

21J05. Following the termination of the Clearing Link Agreement, the Participantship of the Special Clearing House Participant and the Clearing Link Services shall terminate with effect from the Participantship Termination Date designated by OTC Clear.

#### **Calculations of Net Payment for the Defaulting Special Clearing House Participant**

21J06. Following the declaration of the Special Clearing House Participant as the Defaulting Special Clearing House Participant, for the purposes of Part 5 of Schedule 3 to the SFO, the single net sum payable by OTC Clear to the Special Clearing House Participant, or by the Special Clearing House Participant to OTC Clear, shall be determined as follows:

- (1) OTC Clear will determine the aggregate close-out value in respect of all of the Contracts in the Special Clearing House Participant's House Position Account using curves constructed by the Special Clearing House Participant based on the market data obtained at or around 16:00 hours China Standard Time on the Early Termination Date, provided that if such curves are not constructed by the Special Clearing House Participant on the Early Termination Date, the aggregate close-out value shall be determined by OTC Clear. Such aggregate close-out value may be zero, positive or negative. A positive aggregate close-out value indicates an overall sum being payable by OTC Clear to the Special Clearing House Participant in respect of such capacity; and a negative aggregate close-out value indicates an overall sum being payable by the Special Clearing House Participant to OTC Clear in respect of such capacity; and
- (2) if the aggregate close-out 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 comprising the Margin Balance of the Special

Clearing House Participant, each as at the Early Termination Date, reflecting the application of such resources available to OTC Clear towards Unpaid Amounts and General Losses pursuant to these Clearing Rules. If the aggregate close-out 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 comprising the Margin Balance of the Special Clearing House Participant, each as at the Early Termination Date.

21J07. Following the determination of the net sum pursuant to Clearing Rule 21J06(2):

- (1) if the net sum determined is a positive number, then OTC Clear shall pay such net sum to the Special Clearing House Participant, and if the net sum determined is a negative number, then the Special Clearing House Participant shall pay such net sum to OTC Clear;
- (2) any property which has been provided by the Special Clearing House Participant as market collateral shall cease to be market collateral (for the purpose of this sub-paragraph (2), the term “market collateral” bears the meaning set out in section 18 of the SFO); and
- (3) OTC Clear shall certify the net sum referred to in this Clearing Rule 21J07 as being payable by OTC Clear to the Special Clearing House Participant or by the Special Clearing House Participant to OTC Clear, or, if there is no such net sum, OTC Clear shall certify that fact.

#### **General Provisions relating to the Special Clearing House Participant**

21J08. 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 the Special Clearing House Participant. 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.

21J09. A receiver, liquidator or other similar official appointed in respect of the Special Clearing House Participant must comply with any directions given by OTC Clear (or by any Person appointed by OTC Clear) pursuant to these Clearing Rules.

#### **Indemnity**

21J10. The Special Clearing House Participant shall indemnify OTC Clear, its Affiliates and any recognized exchange controller which is the controller of OTC Clear, and keep OTC Clear, its Affiliates and any recognized exchange controller which is the controller of OTC Clear indemnified, from and against any loss, cost (including hedging costs, costs of enforcement) or interests which OTC Clear, its Affiliate or a recognized exchange controller which is the controller of OTC Clear incurred as a direct consequence of any SHCH Event of Default.

#### **OTC Clear Default**

21J11. If OTC Clear fails to make, when due, any payment to the Special Clearing House Participant arising from a Contract, the Special Clearing House Participant may, subject to consultation with the PBOC, and subject to the expiry of any applicable Tolerance Period, provide a notice in writing to OTC Clear formally informing OTC Clear of such failure pursuant to this Clearing Rule 21J11.

- 21J12. An “**OTC Clear Failure to Pay SHCH Event**” shall be deemed to occur upon the receipt of the notice specified in Clearing Rule 21J11 by OTC Clear.
- 21J13. Upon the occurrence of an OTC Clear Failure to Pay SHCH Event or an OTC Clear Insolvency Event, the Special Clearing House Participant may, subject to consultation with the PBOC, deliver a notice to OTC Clear to designate an Early Termination Date with respect to all Contracts then registered in the name of the Special Clearing House Participant.
- 21J14. In the event that the Special Clearing House Participant delivers a notice to OTC Clear to terminate all of its Contracts then registered with OTC Clear pursuant to Clearing Rule 21J13 as a result of the occurrence of an OTC Clear Insolvency Event or OTC Clear Failure to Pay SHCH Event, then all Contracts of the Special Clearing House Participant will be terminated with effect from such date as determined by the Special Clearing House Participant (such day being the “**Early Termination Date**” for the purpose of this Clearing Rule 21J14) and Clearing Rule 21J15 will apply.

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

- 21J15. Upon the designation of an Early Termination Date with respect to all Contracts then registered in the name of the Special Clearing House Participant pursuant to Clearing Rule 21J14:
- (1) all obligations of OTC Clear and the Special Clearing House Participant 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 by the Special Clearing House Participant by reference to curves constructed by the Special Clearing House Participant based on the market data obtained at or around 16:00 hours China Standard Time on that Northbound Clearing Day;
  - (2) the Margin Balance of the Special Clearing House Participant then held by OTC Clear in respect of the Special Clearing House Participant shall be returned to the Special Clearing House Participant;
  - (3) the Special Clearing House Participant shall on, or as soon as reasonably practicable after, the Early Termination Date, calculate a net sum payable by or to OTC Clear. In determining such net sum, the Special Clearing House Participant 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 Special Clearing House Participant or which is due to the Special Clearing House Participant from OTC Clear under these Clearing Rules or the Clearing Link Agreement, in each case, whether future, liquidated or unliquidated, actual or contingent. The Special Clearing House Participant will determine any such net sum payable by or to OTC Clear in CNY; and
  - (4) if, pursuant to sub-paragraph (3) above, a net sum is determined to be payable by OTC Clear to the Special Clearing House Participant (expressed as a negative number), the Special Clearing House Participant shall apply the balance standing to the credit of the PRC Collateral Account (expressed as a positive number) against such net sum. If, pursuant to sub-paragraph (3) above, a net sum is determined to be payable by the Special Clearing House Participant to OTC Clear (expressed as a positive number) or zero, such net sum shall be aggregated with the balance standing to the credit of the PRC Collateral Account (expressed as a positive

number). After application of the balance standing to the credit of the PRC Collateral Account:

- (a) if a net sum is determined to be payable by the Special Clearing House Participant to OTC Clear, the Special Clearing House Participant will, as soon as reasonably practicable, notify OTC Clear of such net sum, and the Special Clearing House Participant shall pay such net sum to OTC Clear; or
- (b) if there remains a net sum payable by OTC Clear to the Special Clearing House Participant, the Special Clearing House Participant will, as soon as reasonably practicable, notify OTC Clear of such net sum and OTC Clear shall pay such net sum to the Special Clearing House Participant.

The obligations of the Special Clearing House Participant to pay any amounts due and payable to OTC Clear pursuant to this Part VA, Chapter 11 of the Clearing Procedures and the Clearing Link Agreement shall survive the Participantship Termination Date relating to the Special Clearing House Participant.

Upon termination of the Contracts registered in the name of the Special Clearing House Participant in accordance with sub-paragraph (1), OTC Clear may declare the occurrence of a Contract Termination Event in respect of all Contracts between OTC Clear and all Non-Defaulting Clearing Members in whole as Identified Contracts. For the avoidance of doubt, the Identified Contracts shall be terminated as of the Final Settlement Cycle Determination Date for such Contract Termination Event as determined pursuant to section 10.5.2 of the Clearing Procedures and the Contract Termination Net Payment will be calculated by OTC Clear.

21J16. OTC Clear will, as soon as reasonably practicable, inform the SFC of the occurrence of an OTC Clear Failure to Pay SHCH Event.