

Chapter 21N Confidentiality Obligations relating to receipt of DMP Information

Confidentiality

21N01. The Special Clearing House Participant agrees and undertakes that, in consideration of it being provided the DMP Information, it shall (and shall procure that each of its clearing participants whom it provides such DMP Information shall):

- (1) keep all the DMP Information confidential;
- (2) only use the DMP Information for the Permitted Purpose and comply with the provisions of the Default Management Process in respect thereof; and
- (3) upon demand by OTC Clear and to the extent reasonably practicable, promptly return to OTC Clear all or any part of the DMP Information in its possession in whatever form it may be by a secure method of transportation, or, save and except for any electronic back-up copies which are not readily accessible to it or its clearing participants, destroy or procure the destruction of any copies or reproductions of any material, paper, programme or record incorporating the DMP Information including the destruction or expungement thereof from any memory device or medium, provided that it and its clearing participants may retain copies of any DMP Information as required by law.

Upon demand by OTC Clear, the Special Clearing House Participant shall provide to OTC Clear a written confirmation that all the provisions of sub-paragraph (3) above have been fully complied with.

21N02. The Special Clearing House Participant agrees and undertakes that it shall (and shall procure that each of its clearing participants shall) only disclose the DMP Information to its employees, officers, representatives, advisers or Affiliates for the Permitted Purpose (and to that extent only) on a “strictly need to know” basis.

21N03. The Special Clearing House Participant shall (and shall procure that each of its clearing participants shall) establish adequate procedures and mechanisms, including the establishment of Information Barriers, to ensure that the DMP Information is, at all times, solely used for the Permitted Purpose by it and any of its employees, officers, representatives, advisers or Affiliates.

21N04. Nothing in these Clearing Rules shall prohibit disclosure or use of the DMP Information if and to the extent:

- (1) it becomes publicly available otherwise than as a result of a breach of the provisions of these Clearing Rules by the Special Clearing House Participant and/or its clearing participants and in particular the Default Management Process;
- (2) the Special Clearing House Participant and/or its clearing participants is required to do so by order of a court of competent jurisdiction which arises as a result of an application by a third party;
- (3) the Special Clearing House Participant and/or its clearing participants is required or requested to do so by any Regulatory Authority asserting jurisdiction over the Special Clearing House Participant and/or its clearing participants; or
- (4) OTC Clear has given prior written approval to the disclosure.

Term

21N05. In respect of the Special Clearing House Participant and each of its clearing participants, the confidentiality obligations set out in this Chapter 21N shall continue for a period of two years from the date on which the DMP Information is provided by OTC Clear to the Special Clearing House Participant, or by OTC Clear and/or the Special Clearing House Participant to the clearing participants of the Special Clearing House Participant. The immediately foregoing shall not prejudice any other confidentiality obligations imposed on the Special Clearing House Participant or its clearing participants under any Applicable Laws.

Rights to DMP Information

21N06. The parties acknowledge that the DMP Information or any part of it shall remain the property of OTC Clear. None of the Special Clearing House Participant, its clearing participants and any of their employees, officers, representatives, advisers or Affiliates shall be entitled to any right or licence in respect thereof.

Relief

21N07. The Special Clearing House Participant expressly acknowledges and agrees that the DMP Information may contain commercially sensitive information which if used otherwise than in accordance with the Default Management Process or for the Permitted Purpose, may result in irreparable harm to OTC Clear which damages alone may not be an adequate remedy, and will result in it or its clearing participants gaining an unfair commercial advantage over other Clearing Members.

Accordingly, the Special Clearing House Participant acknowledges that OTC Clear may seek injunctive relief, whether interim or final, specific performance, other reliefs or any other combination of these remedies against it in the event of any threatened or actual breach of the terms of use of DMP Information as set out in this Chapter 21N by it, its clearing participants or any of their employees, officers, representatives, advisers or Affiliates, and no proof of special damages will be necessary to enforce OTC Clear's rights to such remedies.

In the event of any threatened or actual breach of the terms of use of DMP Information as set out in this Chapter 21N by a clearing participant of the Special Clearing House Participant or any of its employees, officers, representatives, advisers or Affiliates, the Special Clearing House Participant expressly agrees that it shall (i) take all appropriate actions to prevent and rectify such threatened or actual breach, including seeking injunctive relief, whether interim or final, specific performance, other reliefs or any other combination of these remedies against its clearing participant and (ii) (if OTC Clear elects to take the aforementioned actions) provide all reasonable assistance to OTC Clear in seeking such, and no proof of special damages will be necessary to enforce OTC Clear's rights to such remedies.

21N08. The rights of OTC Clear under Clearing Rule 21N07 shall be in addition to OTC Clear's other rights in law or in equity specific performance, other equitable reliefs or any other combination of these remedies.