

## Chapter 24 Product Specific Terms for Non Deliverable FX Derivatives Contracts

### Product Specific Terms for Non Deliverable FX Derivatives Contracts

2401. The terms of a Non Deliverable FX Derivatives Contract shall include the following terms (together, the “**Non Deliverable FX Derivatives Contract Terms**”):

- (1) Clearing Rules 2403 to 2411 (the “**Interpretation Provisions**”);
- (2) the Economic Terms; and
- (3) the General Terms, as set out in Clearing Rules 2418 to 2422,

each as interpreted in accordance with the Interpretation Provisions.

2402. In the event of any inconsistency between the Economic Terms and the General Terms, the General Terms will prevail.

### Interpretation

2403. Sections 8.1 and 8.2 of the ISDA Definitions and the FX Definitions (Sections 8.1 and 8.2 of the ISDA Definitions and the FX Definitions together, the “**ISDA FX Definitions**”), each outstanding as at 30 April 2018, are incorporated by reference into these Non Deliverable FX Derivatives Contract Terms. Unless otherwise specified, capitalized terms used in the Non Deliverable FX Derivatives Contract Terms but not defined in the Clearing Documentation shall have the meanings given to them in the ISDA FX Definitions. In the event of any inconsistency between the ISDA FX Definitions and the Clearing Documentation, the Clearing Documentation will prevail.

2404. Any template terms of a Non Deliverable FX Derivatives Contract outstanding as at 30 April 2018 recommended by EMTA or a recognized successor (the “**EMTA Template**”) are incorporated by reference into the relevant Non Deliverable FX Derivatives Contract Terms.

2405. If the terms of an EMTA Template conflict with the ISDA FX Definitions, the terms of the EMTA Template shall prevail.

2406. In deriving the Economic Terms of the Non Deliverable FX Derivatives Contract from the Transaction Data of the corresponding Original Non Deliverable FX Derivatives Transaction, all references in the ISDA FX Definitions to an “**FX Transaction**” shall be deemed to be references to an “**Original Non Deliverable FX Derivatives Transaction**”.

2407. Subject to subsequent ISDA FX Amendment adopted by OTC Clear pursuant to Clearing Rule 2408, the ISDA FX Definitions and the Non Deliverable FX Derivatives Contract Terms applicable to a Non Deliverable FX Derivatives Contract shall be those applicable as at the Registration Time of such Non Deliverable FX Derivatives Contract.

2408. In case of any amendment to the ISDA FX Definitions, the form of the relevant EMTA Template or publication of any supplement, annex or standard terms relating to the ISDA FX Definitions by ISDA, EMTA or FXC jointly or severally (each, an “**ISDA FX Amendment**”), OTC Clear may, in its sole discretion, determine whether any such ISDA FX Amendment should be adopted for the purpose of interpreting or implementing the Non Deliverable FX Derivatives Contract Terms, the manner of any such adoption and when such adoption shall take effect, and notify all Clearing Members of the same. Any non-receipt of such notice by Clearing Members, shall not invalidate the effectiveness of the adoption of ISDA FX Amendment by OTC Clear.

2409. In respect of any adoption of ISDA FX Amendment by OTC Clear, such adopted ISDA FX Amendment shall govern the Non Deliverable FX Derivatives Contract Terms of each Non Deliverable FX Derivatives Contract then registered with OTC Clear, and any prospective

payment obligations arising out of each such Non Deliverable FX Derivatives Contract shall be construed accordingly.

2410. The Non Deliverable FX Derivatives Contract Terms supplement, form part of, and are subject to these Clearing Rules. In the event of any inconsistency between the Non Deliverable FX Derivatives Contract Terms and these Clearing Rules, these Clearing Rules will prevail.
2411. Except where expressly stated otherwise, all reference to “**Sections**” means Sections in the ISDA FX Definitions.

### **Economic Terms**

2412. The Economic Terms of a Non Deliverable FX Derivatives Contract are derived from the Transaction Data relating to the corresponding Original Non Deliverable FX Derivatives Transaction. The Original Non Deliverable FX Derivatives Transaction submitted to OTC Clear for registration must include information that satisfies each of the Economic Terms fields set out in Clearing Rule 2413.
2413. The Economic Terms fields comprise:
- (1) Trade Date (Section 1.25 of the FX Definitions);
  - (2) Reference Currency (Section 1.19 of the FX Definitions);
  - (3) Reference Currency Notional Amount (Section 1.21 of the FX Definitions);
  - (4) Notional Amount (Section 1.17(b) of the FX Definitions) or Forward Rate (Section 2.1(a) of the FX Definitions);
  - (5) Reference Currency Buyer (Section 1.20 of the FX Definitions);
  - (6) Reference Currency Seller (Section 1.22 of the FX Definitions);
  - (7) Settlement Currency (Section 1.16(b) of the FX Definitions);
  - (8) scheduled Settlement Date (Section 1.24 of the FX Definitions) (without prejudice to the adjustments set out in the relevant EMTA Template);
  - (9) scheduled Valuation Date (Section 1.16(f) of the FX Definitions) (without prejudice to the adjustments set out in the relevant EMTA Template); and
  - (10) in the event that the Currency Pair is not expressed in the format of “**Reference Currency – Settlement Currency**”, or no election is made with respect to which currency is the Reference Currency and which currency is the Settlement Currency, then the Settlement Currency will be deemed to be USD, or any other currency(ies) as specified by OTC Clear and notified to the Clearing Members from time to time.
2414. Pursuant to Clearing Rule 806(1), if Clearing Member 1 was the Reference Currency Seller, and Clearing Member 2 was the Reference Currency Buyer under an Original Non Deliverable FX Derivatives Transaction, then upon registration of the same as two Non Deliverable FX Derivatives Contracts, OTC Clear, in respect of each Non Deliverable FX Derivatives Contract to which it is party pursuant to the corresponding Original Non Deliverable FX Derivatives Transaction, shall be the Reference Currency Buyer and Reference Currency Seller under such Non Deliverable FX Derivatives Contract, respectively.
2415. Pursuant to Clearing Rule 806(2), if the Relevant Client was the Reference Currency Seller and Clearing Member 4 was the Reference Currency Buyer under an Original Non Deliverable FX Derivatives Transaction, then upon registration of the same as two Non Deliverable FX Derivatives Contracts, one between Clearing Member 3 (in respect of its Client Position Account

relating to the Relevant Client) and OTC Clear, and another one between Clearing Member 4 (in respect of its House Position Account) and OTC Clear, OTC Clear shall be the Reference Currency Buyer and Reference Currency Seller under each such Non Deliverable FX Derivatives Contract, respectively.

Pursuant to Clearing Rule 806(2), if the Relevant Client was the Reference Currency Buyer and Clearing Member 4 was the Reference Currency Seller under an Original Non Deliverable FX Derivatives Transaction, then upon registration of the same as two Non Deliverable FX Derivatives Contracts, one between Clearing Member 3 (in respect of its Client Position Account relating to the Relevant Client) and OTC Clear, and another one between Clearing Member 4 (in respect of its House Position Account) and OTC Clear, OTC Clear shall be the Reference Currency Seller and Reference Currency Buyer under each such Non Deliverable FX Derivatives Contract, respectively.

If, pursuant to Clearing Rule 806(2)(c), Clearing Member 3 and Clearing Member 4 are the same Clearing Member, then:

- (1) if such Clearing Member (in respect of its Client Position Account relating to the Relevant Client) was the Reference Currency Seller, OTC Clear will be the Reference Currency Buyer in respect of the Contract between OTC Clear and such Clearing Member (in respect of its Client Position Account relating to the Relevant Client), and Reference Currency Seller in respect of the Contract between OTC Clear and such Clearing Member (in respect of its House Position Account); or
- (2) if such Clearing Member (in respect of its Client Position Account in respect of the Relevant Client) was the Reference Currency Buyer, OTC Clear will be the Reference Currency Seller in respect of the Contract between OTC Clear and such Clearing Member (in respect of its Client Position Account relating to the Relevant Client), and Reference Currency Buyer in respect of the Contract between OTC Clear and such Clearing Member (in respect of its House Position Account).

2416. Pursuant to Clearing Rule 806(3), if Client 1 was the Reference Currency Seller and Client 2 was the Reference Currency Buyer under an Original Non Deliverable FX Derivatives Transaction, then upon registration of the same as two Non Deliverable FX Derivatives Contracts, one between Clearing Member 5 (in respect of its Client Position Account relating to Client 1) and OTC Clear, and another one between Clearing Member 6 (in respect of its Client Position Account relating to Client 2) and OTC Clear, OTC Clear shall be the Reference Currency Buyer and Reference Currency Seller under each such Non Deliverable FX Derivatives Contract, respectively.

Pursuant to Clearing Rule 806(3), if Client 1 was the Reference Currency Buyer and Client 2 was the Reference Currency Seller under an Original Non Deliverable FX Derivatives Transaction, then upon registration of the same as two Non Deliverable FX Derivatives Contracts, one between Clearing Member 5 (in respect of its Client Position Account relating to Client 1) and OTC Clear, and another one between Clearing Member 6 (in respect of its Client Position Account relating to Client 2) and OTC Clear, OTC Clear shall be the Reference Currency Seller and Reference Currency Buyer under each such Non Deliverable FX Derivatives Contract, respectively.

If, pursuant to Clearing Rule 806(3)(c), Clearing Member 5 and Clearing Member 6 are the same Clearing Member, then:

- (1) if such Clearing Member (in respect of its Client Position Account relating to Client 1) was the Reference Currency Seller, OTC Clear will be the Reference Currency Buyer in respect of the Contract between OTC Clear and such Clearing Member (in respect of its

Client Position Account relating to Client 1), and Reference Currency Seller in respect of the Contract between OTC Clear and such Clearing Member (in respect of its Client Position Account relating to Client 2); or

- (2) if such Clearing Member (in respect of its Client Position Account in respect of Client 1) was the Reference Currency Buyer, OTC Clear will be the Reference Currency Seller in respect of the Contract between OTC Clear and such Clearing Member (in respect of its Client Position Account relating to Client 1), and Reference Currency Buyer in respect of the Contract between OTC Clear and such Clearing Member (in respect of its Client Position Account relating to Client 2).

### **General Terms**

2417. Clearing Rules 2418 to 2422 are designated as General Terms of a Non Deliverable FX Derivatives Contract.

### **Clearing Rules**

2418. A Non Deliverable FX Derivatives Contract shall be subject to the Clearing Rules, which shall form a part of its terms. In the event of any inconsistency between these Contract Terms and the Clearing Rules, the Clearing Rules will prevail.

### **Calculation Agent**

2419. OTC Clear shall be deemed the Calculation Agent in respect of each Non Deliverable FX Derivatives Contract.

### **Rounding**

2420. Sections 8.1 and 8.2 of the ISDA Definitions will apply to a Non Deliverable FX Derivatives Contract.

### **Tax Provisions**

2421. Chapter 11 of these Clearing Rules shall form part of the Non Deliverable FX Derivatives Contract Terms as if they were set out in full herein.

### **Governing Law**

2422. Each Non Deliverable FX Derivatives Contract shall be governed by and construed in accordance with the laws of Hong Kong and the parties irrevocably agree for the benefit of OTC Clear that the courts of Hong Kong shall have exclusive jurisdiction to hear and determine any action or dispute which may arise here from. Each Clearing Member hereto irrevocably submits to such jurisdiction and agrees to waive any objection it might otherwise have to such jurisdiction, save that this submission to the jurisdiction of the courts of Hong Kong shall not (and shall not be construed so as to) limit the right of OTC Clear to take proceedings in any other court of competent jurisdiction, nor shall the taking of action in one or more jurisdictions preclude OTC Clear from taking action in any other jurisdiction, whether concurrently or not.