

## CHAPTER 7

### DEFAULT PROCEDURES

#### Default

701. In these Options Trading Rules, an "event of default" shall mean any event or circumstance which leads the Exchange to determine that an Options Exchange Participant:-

- (1) is, or appears to be, unable, or likely to become unable, to meet any of its obligations in respect of its Exchange Traded Options Business;
- (2) is, or appears to be, unable, or likely to become unable, to meet any of its obligations to HKSCC where the Options Exchange Participant is also a participant in CCASS;
- (2A) is, or appears to be, unable, or likely to become unable, to meet any of its obligations to HKCC where the Options Exchange Participant is also an HKCC Participant; or
- (3) is not acting, or has not acted, in the best interests of the market in Options Contracts or, more generally, the market in securities administered by the Exchange.

An Options Exchange Participant shall give prompt notice to the Exchange if it is, or if it suspects that it is likely to become, unable to meet any of its obligations in respect of its Exchange Traded Options Business or its obligations to HKSCC where the Options Exchange Participant is also a participant in CCASS or HKCC where the Options Exchange Participant is also an HKCC Participant.

702. Without prejudice to the generality of Options Trading Rule 701, the Exchange may assume that an Options Exchange Participant is or appears to be unable, or likely to become unable, to meet its obligations in respect of its Exchange Traded Options Business:-

- (1) where that Options Exchange Participant, as a direct or indirect result of conducting its Exchange Traded Options Business, is in breach of any of the Exchange Rules, these Options Trading Rules, Clearing Rules, or where that Options Exchange Participant is also a participant in CCASS, the HKSCC Rules;
- (2) where a debit instruction given to a bank designated by that Options Exchange Participant for the purpose of settling its obligations in respect of its Exchange Traded Options Business is rejected;
- (3) where that Options Exchange Participant fails to comply with any of its obligations under Options Trading Rule 302 or 302A as applicable; or
- (4) where the Exchange becomes aware of circumstances affecting a client, associate or affiliate of an Options Exchange Participant which might, in the

opinion of the Exchange, result in that Options Exchange Participant being unable to meet any of its obligations in relation to its Exchange Traded Options Business.

703. Notwithstanding the provisions of Chapter 8 of these Options Trading Rules, if the Exchange in its absolute discretion determines that an event of default has occurred in respect of an Options Exchange Participant, the Exchange may take such steps including, without limitation, any of those set out in Options Trading Rule 704, as in the circumstances appear to it, in its absolute discretion, best calculated to discharge the defaulting Options Exchange Participant's rights, obligations and liabilities in respect of its Exchange Traded Options Business.
704. Steps which may be taken by the Exchange in relation to a defaulting, suspended or resigning Options Exchange Participant include:-
- (1) to direct the Options Exchange Participant to close, give-up, exercise (or not exercise) or allow the expiration of any Contracts to which it is party;
  - (2) to prohibit, or limit, the opening of new Contracts;
  - (3) to direct the Options Exchange Participant to enter into any Contracts, or to enter into, on an exchange or otherwise, any contract for the sale, purchase or other acquisition or disposal of any securities, futures contracts or commodities;
  - (4) to limit (on such terms as it shall think fit), suspend or terminate access of that Options Exchange Participant (if any) to the Options System;
  - (5) in the case of an Options Trading Exchange Participant, to suspend or revoke any Market Maker permit held by that Options Trading Exchange Participant;
  - (6) to arrange, in conjunction with SEOCH, for such steps under the Clearing Rules as the Exchange and SEOCH may consider appropriate in relation to that Options Exchange Participant and, if it is an NCP, any of its designated GCPs, and if it is an Options Broker Exchange Participant, its designated Options Trading Exchange Participant;
  - (7) to direct the Options Exchange Participant to use all reasonable efforts to contact clients, with a view to determining what action, having regard to the default, suspension or resignation, its clients would like to take in relation to Client Contracts to which they are party; and
  - (8) to direct that Options Exchange Participant to submit for approval to the Exchange a plan for the orderly winding down of its Exchange Traded Options Business.

Without prejudice to the right of the Exchange to take any of the steps specified above, the Exchange may, upon determining that an event of default has occurred or may occur, issue a warning to the defaulting Options Exchange Participant, including such

- directions and requirements to be complied with by the Options Exchange Participant within such time period in each case as the Exchange may, in its absolute discretion, think fit.
705. A defaulting, suspended or resigning Options Exchange Participant shall be under a duty to co-operate with the Exchange and, if a SEOCH Participant, with SEOCH in relation to its Exchange Traded Options Business.
706. If the Exchange authorizes or directs any give-up pursuant to Options Trading Rule 704(1), Options Trading Rules 524 to 526A (inclusive) shall apply, to the extent relevant, as if the give-up had arisen from the request of a client (including, in the case of a defaulting Options Trading Exchange Participant which operated an Omnibus Account for an Options Broking Exchange Participant, from the request of that Options Broking Exchange Participant).
707. An Options Exchange Participant accepting a give-up of a Client Contract or an Options Broker Client Contract pursuant to Options Trading Rule 706 shall enter into an Options Client Agreement as required by the SFC Code of Conduct or, as the case may be, an Options Broking Agreement, with that client.
708. If a defaulting, suspended or resigning Options Exchange Participant is unable for any reason to take any action as may be directed by the Exchange or SEOCH pursuant to these Options Trading Rules and the Clearing Rules, the Exchange or SEOCH may act to carry out such action on behalf of the Options Exchange Participant.
709. If a defaulting, suspended or resigning Options Trading Exchange Participant is an NCP, its designated GCP continues to have full responsibility for the rights and obligations of that NCP in relation to OCH Contracts it was designated to clear (notwithstanding the terms of its Clearing Agreement with the NCP). Such GCP shall be entitled in conjunction with the Exchange and/or SEOCH to take such action in relation to those OCH Contracts and related NCP Contracts as it may see fit. For the avoidance of doubt, the GCP shall not be responsible for any Client Contracts to which the NCP is party. Any action taken by the Exchange under Chapter 7 of these Options Trading Rules in relation to a defaulting, suspended or resigning NCP shall be without prejudice to the rights against that NCP of the GCP which has a Clearing Agreement with that NCP.
- 709A. If a defaulting, suspended or resigning Options Exchange Participant is an Options Broker Exchange Participant, its designated Options Trading Exchange Participant will continue to have full responsibility for the rights and obligations of that Options Broker Exchange Participant in relation to OCH Contracts it was designated to execute and clear (notwithstanding the terms of its Options Broking Agreement with the Options Broker Exchange Participant). Such Options Trading Exchange Participant shall be entitled in conjunction with the Exchange and/or SEOCH to take such action in relation to those OCH Contracts and related Options Broker Client Contracts between him and the Options Broker Exchange Participant as it may see fit. For the avoidance of doubt, the Options Trading Exchange Participant shall not be responsible for any Client Contracts between the Options Broker Exchange Participant and its clients. Any action taken by the Exchange under Chapter 7 of these Options Trading Rules in relation to a defaulting, suspended or resigning Options Broker Exchange Participant shall be without prejudice to the rights against that Options Broker Exchange Participant of the Options Trading Exchange Participant which has an Options Broking Agreement with that Options Broker Exchange Participant.

710. Without prejudice to Options Trading Rules 701 to 709A (inclusive), following a determination of an event of default in respect of an Options Exchange Participant, an Options Exchange Participant may lodge an appeal in respect of any such action, in which case the Exchange will supply to the Options Exchange Participant in written form an account of its reasons for such determination.

### **General**

711. The exercise by the Exchange of any right pursuant to these Options Trading Rules contained in this Chapter is without prejudice to and shall not preclude the Exchange from exercising any other rights (including the right to take disciplinary action) in respect of any default by an Options Exchange Participant. Furthermore, no delay or omission on the part of the Exchange in exercising any right, power or remedy shall impair such right, power or remedy or operate as any kind of waiver.

### **Indemnity**

712. A defaulting Options Exchange Participant shall indemnify and keep indemnified the Exchange, SEOCH, HKFE, a recognized exchange controller which is the controller of the Exchange, an Options System Operator, and their respective employees (and, if an NCP, each of its designated GCPs) from and against any loss, cost (including cost of enforcement), liability (including any tax or other fiscal liability), claim or damage which any of such indemnified persons incurs or suffers as a consequence of the use of the Options System by that Options Exchange Participant or any default by that Options Exchange Participant, including in relation to any action taken by any of the indemnified persons pursuant to these Options Trading Rules and/or the Clearing Rules.

### **Suspension or Cancellation of Options Exchange Participantship**

713. If an Options Exchange Participant, in its capacity as an Exchange Participant, voluntarily suspends its Exchange Participantship or is suspended from Exchange Participantship or accessing the System by the Board or the Chief Executive, its Options Exchange Participantship shall immediately be suspended and the provisions of Options Trading Rule 715 shall apply.
714. The Board may in its absolute discretion suspend or cancel the Options Exchange Participantship of any Options Exchange Participant which is the subject of any event of default, which is under any disciplinary investigation, or which has had any disciplinary action taken against it by giving written notice to that Options Exchange Participant. The Chief Executive, in consultation with the Chairman of the Exchange, may suspend the Options Exchange Participantship of any Options Exchange Participant which is the subject of any event of default.
715. Where the Options Exchange Participantship of an Options Exchange Participant is suspended or cancelled:-
- (1) all monies due to the Exchange shall remain due and payable by the Options Exchange Participant as if its Options Exchange Participantship had not been suspended or cancelled;
  - (2) unless otherwise determined by the Exchange, all of the rights and privileges of Options Exchange Participantship shall be extinguished in relation to that

Options Exchange Participant and the access of that Options Exchange Participant to the Options System shall be suspended or cancelled;

- (3) the suspension or cancellation shall not in any way affect the validity or enforceability of any Contract or other agreement or arrangement to which that Options Exchange Participant was party prior to the suspension or cancellation (whether entered into by that Options Exchange Participant or on its behalf); and
  - (4) the Exchange may take such action pursuant to these Options Trading Rules as it, in its absolute discretion, sees fit.
716. Until such time as the rights and liabilities of an Options Exchange Participant whose Options Exchange Participantship has been suspended or cancelled have been discharged and prior to the effective date of the cancellation of its Options Exchange Participantship, it shall continue to be bound by these Options Trading Rules.
717. Notice of suspension or cancellation of the Options Exchange Participantship of any Options Exchange Participant will be given by the Exchange as soon as practicable to all other Options Exchange Participants, HKFE, SEOCH, HKSCC and the Commission.

**Default Procedures Prevail**

718. The Options Trading Rules contained in this Chapter are without prejudice to, but in the case of any conflict take precedence over, any other provision of these Options Trading Rules, the Exchange Rules, the Operational Trading Procedures, any disciplinary proceedings or the terms and conditions of any Contract.