

**CHAPTER 9 CLEARING FUND**

**9.01 Establishment of Clearing Fund**

- (1) The Clearing House will establish and maintain a Clearing Fund for the purpose of indemnifying the Clearing House against losses arising in the circumstances stated in Rule 9.06.
- (2) The Clearing House will determine the size of the Clearing Fund having regard to the obligations of and performance risk undertaken by the Clearing House in respect of Open Contracts, market volume, price volatility and such other matters as the Clearing House may consider relevant.

**9.02 Clearing Fund contributions**

- (1) The Clearing House may at any time require a Clearing Participant to make such payment to the Clearing Fund as it considers fit in accordance with these Rules.
- (2) Subject to Rules 9.02(8) and 9.09(3), each Clearing Participant must make payment to the Clearing Fund and maintain its Clearing Fund Contribution in accordance with the Clearing House's requirements.
- (3) A Clearing Participant's contribution to the Clearing Fund consists of:
  - (a) the fixed and variable contributions to the Clearing Fund required under Rule 9.02(4) and reflected in its most recent Clearing Fund Statement; plus
  - (b) all amounts (if any) requested from such Clearing Participant in accordance with Rule 9.02(1), subsequent to the issue of the most recent Clearing Fund Statements and up to 100% of the amount referred to in Rule 9.02(3)(a); plus
  - (c) all contributions (if any) received from such Clearing Participant in accordance with Rule 9.02(1), subsequent to the issue of the most recent Clearing Fund Statements and above 100% of the amount referred to in Rule 9.02(3)(a); less
  - (d) the share of loss, if any, calculated in accordance with Rule 9.08 or Rule 9.09(4), subsequent to the issue of the most recent Clearing Fund Statements.
- (4) A Clearing Participant must contribute to the Clearing Fund:
  - (a) a fixed amount to be determined by the Clearing House up to a maximum of RM1.75 million; and
  - (b) a variable amount calculated in the manner determined by the Clearing House.
- (5) The Clearing House will revalue any contribution to the Clearing Fund lodged with it pursuant to Rule 9.02(1) at such times as the Clearing House determines.
- (6) If due to such revaluation under Rule 9.02(5), a Clearing Participant's Clearing Fund Contribution is less than the amount the Clearing Participant must contribute to the Clearing Fund, the Clearing Participant must pay such shortfall to the Clearing House within such time the Clearing House specifies.
- (7) If a Clearing Participant's Clearing Fund Contribution exceeds the amount the Clearing Participant must contribute to the Clearing Fund, the Clearing Participant may request the Clearing House to pay out such excess upon giving notice in the form and time the Clearing House specifies.

- (8) If a Clearing Participant has served notice of resignation pursuant to Rule 3.31 prior to a claim being made on the Clearing Fund, such Clearing Participant need not make any further contributions to the Clearing Fund in response to a request made pursuant to Rule 9.02(1) in connection with such claim.

### **9.03 Clearing Fund statement**

The Clearing House will issue a Clearing Fund Statement to each Clearing Participant, at such times as may be determined by the Clearing House, containing information relating to the following:

- (a) the fixed and variable contribution to the Clearing Fund calculated in accordance with Rule 9.02(4);
- (b) the amount of contribution comprised in such Clearing Participant's fixed and variable contributions to the Clearing Fund determined by the Clearing House; and
- (c) any further contributions required in accordance with Rule 9.02(1) or any excess that can be recovered by the Clearing Participant pursuant to Rule 9.02(7).

### **9.04 Appropriations from the Clearing House's resources**

- (1) The Clearing House may appropriate any of its resources to the Clearing Fund.
- (2) If the amounts appropriated from the Clearing House's resources to the Clearing Fund are surplus to the requirements of the Clearing Fund, the Clearing House may appropriate such amounts out of the Clearing Fund, either temporarily or permanently.

### **9.05 Additional resources to the Clearing Fund**

- (1) The Clearing House may establish such additional arrangements, bank facilities and policies of insurance, as it considers appropriate for the purposes of providing additional resources to the Clearing Fund.
- (2) The Clearing House may terminate such arrangements at any time.
- (3) The costs and expenses of establishing such arrangements shall be payable out of the interest or other sums accruing to the Clearing Fund.
- (4) The Clearing House may require Clearing Participants to reimburse it in respect of such costs and expenses of establishing such arrangements, which amount shall be in excess of the amounts payable out of the interest or other sums accruing to the Clearing Fund, pro-rata to the amount of their respective contributions required under Rule 9.02(4) or in such manner as the Clearing House considers fair and appropriate.

### **9.06 Purpose of Clearing Fund**

The Clearing House may draw on the Clearing Fund, on one or more occasions, to meet losses or anticipated losses if:

- (a) any Clearing Participant fails to discharge any of its obligations to the Clearing House when due; or
- (b) any financial institution or clearing house organisation fails to perform any obligation to the Clearing House when due because of its insolvency, receivership, indefinite suspension of operations or the suspension of payments or because of any similar event.

**9.07 Application of Clearing Fund**

Without affecting the Clearing House's right to draw on other resources available to the Clearing Fund and subject to the terms of any guarantees, facilities, policies or other assets forming part of the resources of the Clearing Fund, the Clearing Fund may be applied in the following order of priority:

- (a) first, the contributions made by the Clearing Participant in default (if applicable);
- (b) secondly, the amount appropriated by the Clearing House from its resources into the Clearing Fund pursuant to Rule 9.04;
- (c) thirdly, contributions made by all other Clearing Participants (or all Clearing Participants if Rule 9.07(a) is not applicable) in the proportion set out in Rule 9.08; and
- (d) lastly, additional resources such as bank facilities and policies of insurance secured pursuant to Rule 9.05.

**9.08 Distribution of losses**

- (1) If the Clearing Fund is drawn upon pursuant to Rule 9.07, the proportion of the total amount required by the Clearing House after drawing on the funds referred to in Rule 9.07 will be charged against all Clearing Participants other than the Clearing Participant in default in the manner specified by the Clearing House (hereinafter referred to as "share of loss").
- (2) The Clearing House will issue a statement advising the Clearing Participant of its share of loss.
- (3) Subject to Rules 9.02(8) and 9.09(3) the Clearing Participant must pay into the Clearing Fund its share of loss within such time as determined by the Clearing House.
- (4) Immediately after the expiration of the time allowed for payment to be made in accordance with Rule 9.08(2) the Clearing House will recalculate the Clearing Participant's contribution to the Clearing Fund.

**9.09 Limitation of Clearing Participant's liability to Clearing Fund**

- (1) The amount charged against a Clearing Participant in accordance with Rule 9.08(1) must first be paid out of that Clearing Participant's Clearing Fund Contribution.
- (2) Subject to Rules 9.02(8) and 9.09(3), if the Clearing Participant's Clearing Fund Contribution is insufficient to pay out its share of loss, the Clearing Participant is liable to make good such shortfall to the Clearing Fund.
- (3) A Clearing Participant will not be liable to make good more than an additional 100% of the current amount of its fixed and variable contributions to the Clearing Fund as set out in its most recent Clearing Fund Statement if:
  - (a) within one Business Day of being notified by the Clearing House of its share of loss, the Clearing Participant notifies the Clearing House in writing that it is terminating its Participantship;
  - (b) no Futures Contract or Option is presented to the Clearing House for Registration after the giving of such notice except contracts for immediate liquidation by offset; and
  - (c) the Clearing Participant closes out or transfers its Open Position as promptly as possible.

- (4) If a Clearing Participant exercises its right under Rule 9.09(3), the balance of its share of loss (referred to in this paragraph as “deficiency”) will be charged against each remaining Clearing Participant in the proportion of the deficiency calculated in the manner determined by the Clearing House, and the provisions of this Rule will apply to each remaining Clearing Participant in relation to its liability to pay such proportion of the deficiency.
- (5) A Clearing Participant who has exercised its right under Rule 9.09(3) is ineligible to be readmitted to Participantship unless it agrees to reimburse the other Clearing Participants for the deficiency at the time of applying for re-admission or such other amount as the Clearing House considers fair and equitable in the circumstances.

#### **9.10 Notice to Clearing Participants**

Whenever any charge is made against a Clearing Participant's Clearing Fund Contribution in accordance with Rule 9.08 or 9.09(4), the Clearing House must promptly notify that Clearing Participant of the amount of the charge.

#### **9.11 Power to pledge Clearing Fund**

- (1) The Clearing House may pledge the Clearing Fund, in whole or in part, as security for borrowings if:
  - (a) a Clearing Participant has defaulted on its obligations and the Clearing House is unable to obtain prompt delivery of or to convert promptly to cash any asset of such Clearing Participant or any other asset of the Clearing House; or
  - (b) the Clearing House sustains a loss pursuant to Rule 9.06 and elects to borrow funds in lieu of charging such loss to the Clearing Fund.
- (2) Borrowings pursuant to Rule 9.11(1) must not exceed the amount necessary to meet the Clearing House's obligations to Clearing Participants and other clearing house organisations and must be repaid by the Clearing House as promptly as possible.
- (3) Borrowings pursuant to Rule 9.11(1) will not be charged against the Clearing Fund and do not affect the amount or timing of any charges otherwise required to be made against a Clearing Participant's Clearing Fund Contribution.

#### **9.12 Refund of contributions**

- (1) If a Clearing Participant ceases to be a Clearing Participant, whether as a result of resignation or otherwise, subject to Rules 9.12(2) and 9.12(3) a sum equivalent to its Clearing Fund Contribution must be returned.
- (2) The Clearing House may return the Clearing Participant's Clearing Fund Contribution if:
  - (a) the Clearing Participant's obligations to the Clearing House have been fulfilled; or
  - (b) with the Clearing House's approval, another Clearing Participant has agreed to assume such Clearing Participant's obligations to the Clearing House; or
  - (c) the Clearing Participant has presented to the Clearing House such indemnities and guarantees as the Clearing House in its sole discretion considers satisfactory.
- (3) The Clearing House may withhold or deduct from any amount returnable to the Clearing Participant under this Rule 9.12:
  - (a) all charges against the Clearing Participant's Clearing Fund Contribution on account of transactions made by the Clearing Participant; and

- (b) all amounts due and payable by the Clearing Participant to the Clearing House.

**9.13 Recovery of loss**

- (1) If a charge is made against the Clearing Fund Contributions of Clearing Participants in accordance with Rule 9.08 or 9.09 and the amount is later recovered by the Clearing House, whether in whole or in part, the amount recovered must be paid to the Clearing Participants less any expenses or costs incurred by the Clearing House in recovering that amount.
- (2) The amount payable to each Clearing Participant will be in proportion to the amounts contributed by the Clearing Participant relative to the amounts contributed by all Clearing Participants in respect of the event which caused such charge to be made against Clearing Participants under Rule 9.08.

**9.14 Investment of Clearing Fund**

The Clearing House may invest, manage and mobilise cash in the Clearing Fund in such manner as the Clearing House considers fit or expedient.

[End of Chapter]