

CHAPTER 6

CLEARING GUARANTEE FUND

6.1 ESTABLISHMENT OF CLEARING GUARANTEE FUND

- 6.1.1 The Clearing House shall establish and maintain, in accordance with the Rules, a fund to be called the Clearing Guarantee Fund. The Clearing Guarantee Fund shall only be applied in accordance with the Rules and shall comprise of Contributions, appropriations from the resources of the Clearing House and such other resources as deemed appropriate by the Clearing House.
- 6.1.2 The Clearing House may, in consultation with the Commission, prescribe Operational Procedures pertaining to the Clearing Guarantee Fund.

6.2 CONTRIBUTIONS BY TRADING CLEARING PARTICIPANTS

- 6.2.1 Each Trading Clearing Participant shall pay an amount to the Clearing House as its contribution to the CGF that will comprise a fixed contribution and a variable contribution. The Clearing House shall credit the Contributions by Trading Clearing Participant to the Clearing Guarantee Fund.
- 6.2.2 Where applicable, a Trading Clearing Participant shall be deemed to represent and warrant in favour of the Clearing House that it has title to and authority over its Contributions, free from all liens, charges, encumbrances, equities and other third party rights of any nature whatsoever.
- 6.2.3 Subject to Rule 6.13 and Rule 6.14, the amount of contribution from time to time assessed by the Clearing House and required to be made by each Trading Clearing Participant to the CGF shall be determined by reference to the criteria specified in the Operational Procedures as may be considered appropriate by the Clearing House from time to time.

6.3 FIXED CONTRIBUTION

- 6.3.1 The fixed contribution to be made by each Trading Clearing Participant shall be such amount as may from time to time be specified by the Clearing House. The fixed contribution shall be made by each Trading Clearing Participant for each participantship held by such Trading Clearing Participant in an Exchange, and shall be made in cash.
- 6.3.2 A Trading Clearing Participant acquiring participantship of any other stock exchange recognised by the Clearing House would be required to pay to the Clearing House an additional fixed contribution pursuant to Rule 6.3.1 within three (3) Market Days from the date on which notice of approval of the Exchange (in respect of the participantship of that Trading Clearing Participant) is given.

6.4 VARIABLE CONTRIBUTIONS

- 6.4.1 The variable contribution to be made by each Trading Clearing Participant in addition to the fixed contribution required to be made under Rule 6.3 shall be in such amount as may be specified by the Clearing House from time to time and in cash only.

6.5 REVIEW OF CONTRIBUTIONS

- 6.5.1 The contribution required from each Trading Clearing Participant for the CGF shall be reviewed on a quarterly basis.
- 6.5.2 At the beginning of each quarter, each Trading Clearing Participant will be advised of the amount of contribution required from that Trading Clearing Participant for the CGF, for that quarter.

6.6 COLLECTION AND RETURN OF CONTRIBUTIONS FOLLOWING REVIEWS

- 6.6.1 The Clearing House will notify Trading Clearing Participants of any additional amount required from Trading Clearing Participants as contribution to the CGF as a result of a review described in Rule 6.5 and the Trading Clearing Participant shall pay such amount to the Clearing House immediately, in the form specified in Rule 6.4.
- 6.6.2 Similarly, following a review pursuant to Rule 6.5, should a Trading Clearing Participant's required contribution to the CGF be less than its existing Contribution, the Clearing House may in respect of any Contribution in excess of the fixed contribution or the variable contribution, upon an application by the Trading Clearing Participant, return to the Trading Clearing Participant the surplus amount.
- 6.6.3 [Deleted]

6.7 INTEREST ACCRUING TO CONTRIBUTION

- 6.7.1 Interest on or other sums accruing to the fixed contribution will be appropriated by the Clearing House to the Clearing Guarantee Fund. Interest on or other sums accruing to Contributions made in cash in excess of the fixed contribution may be paid to the appropriate Trading Clearing Participant as determined by the Clearing House.
- 6.7.2 [Deleted]

6.8 APPROPRIATIONS FROM RESOURCES OF THE CLEARING HOUSE

- 6.8.1 The Clearing House may, from time to time appropriate any of its resources to the Clearing Guarantee Fund and in respect of the amounts so appropriated from its resources to the Clearing Guarantee Fund which are surplus to the requirements of the Clearing Guarantee Fund, the Clearing House may from time to time, appropriate such amounts out of the Clearing Guarantee Fund, either temporarily or permanently.

6.9 ADDITIONAL RESOURCES TO CLEARING GUARANTEE FUND

- 6.9.1 The Clearing House may from time to time establish such additional arrangements, including but without limitation, bank facilities and policies of insurance, as it may from time to time consider appropriate for the purposes of providing additional

resources to the Clearing Guarantee Fund. Such arrangements may be terminated by the Clearing House from time to time at its discretion.

- 6.9.2 The costs and expenses of establishing such arrangements shall be payable out of the interest or other sums accruing to the Clearing Guarantee Fund. Further, the Clearing House may require Trading Clearing Participants to reimburse it in respect of such costs and expenses which are in excess of the amounts payable out of the interest or other sums accruing to the Clearing Guarantee Fund, pro-rata to the amount of their respective Contributions required under Rule 6.3 or in such other manner as the Clearing House considers fair and appropriate.

6.10 REVIEW OF CLEARING GUARANTEE FUND

- 6.10.1 With reference to the requirements of the Clearing Guarantee Fund, the Clearing House shall, on a quarterly basis, review the size of the Clearing Guarantee Fund in light of the market conditions then existing, including turnover levels.
- 6.10.2 Notwithstanding Rule 6.10.1, the Clearing House may review the Clearing Guarantee Fund at any other time or times at its sole and absolute discretion.
- 6.10.3 If following such review under Rule 6.10.1 or Rule 6.10.2, as the case may be, the Clearing House alters the size of the Clearing Guarantee Fund, Rules 6.2 to 6.7 shall apply. The Clearing House shall obtain the approval of the Commission for such alteration to the Clearing Guarantee Fund.

6.11 INVESTMENT OF ASSETS OF CLEARING GUARANTEE FUND

- 6.11.1 The Clearing House may invest the assets of the Clearing Guarantee Fund in such manner as is approved and in accordance with the Rules.
- 6.11.2 Interest or any other sums accruing to the assets of the Clearing Guarantee Fund shall, unless otherwise provided in the Rules, be appropriated by the Clearing House to the Clearing Guarantee Fund.

6.12 APPLICATION OF CLEARING GUARANTEE FUND

- 6.12.1 Without prejudice to other provisions of the Rules, the Clearing Guarantee Fund shall be applied in respect of the obligations and liabilities of the Clearing House arising out of Novated Contracts (including, but not limited to the costs and expenses incurred in relation to making recoveries from Trading Clearing Participants and in relation to risk management measures effected by the Clearing House with respect to Novated Contracts).
- 6.12.2 If the Clearing House applies any resources of the Clearing Guarantee Fund pursuant to this Rule, it shall promptly notify the Commission.

6.13 ORDER OF APPLICATION OF CLEARING GUARANTEE FUND

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

- (a) first, the Contributions made by the Trading Clearing Participants in default (if applicable);
- (b) secondly, the Contributions made by all other Trading Clearing Participants (or all Trading Clearing Participants if sub-paragraph (a) above is not applicable) and the amount appropriated by the Clearing House from its resources into the Clearing Guarantee Fund pursuant to Rule 6.8.1, on a pro rata basis according to the proportion contributed by the Trading Clearing Participants pursuant to Rule 6.2 and the Clearing House pursuant to Rule 6.8 to the Clearing Guarantee Fund; and
- (c) lastly, additional resources such as bank facilities and policies of insurance secured pursuant to Rule 6.9.1.
- (e) [Deleted]

6.13.2 The Clearing House shall notify the Trading Clearing Participant concerned in the case of an application under paragraph (a) of Rule 6.13.1 and shall notify all Trading Clearing Participants in the case of an application under paragraph (b) of Rule 6.13.1.

6.14 REPLENISHMENT OF CONTRIBUTIONS

6.14.1 Whenever the Contribution of a Trading Clearing Participant is applied in accordance with Rule 6.13, the Clearing House shall pursuant to a notice given under Rule 6.13.2 require the Trading Clearing Participant to promptly replenish the deficiency of its Contribution as a result of such application. A Trading Clearing Participant's liability to replenish the deficiency of its Contribution will not be affected by the issue of any prior notice of termination of participation in the services provided by the Clearing House, whether voluntary or involuntary.

6.14.2 For the avoidance of doubt, the Clearing House may require Trading Clearing Participants to provide additional amounts as its contribution to the CGF in respect of any pending applications thereof pursuant to Rule 6.13.

6.15 OPTING OUT OF CONTRIBUTIONS EXCEEDING LIMIT

6.15.1 Notwithstanding Rule 6.14, and subject to Rule 2.12(c), a Trading Clearing Participant may, immediately upon receiving notice under Rule 6.14.1 from the Clearing House (in any event within two (2) Market Days) of an application of the Contributions pursuant to paragraph (b) of Rule 6.13.1, give notice in writing to the Clearing House pursuant to Rule 2.12(b) of its election to terminate its participation in the services provided by the Clearing House.

6.15.2 Without prejudice to Rule 2.13 (and for the avoidance of doubt, without prejudice to the Clearing House's right to immediately cease to act for a Trading Clearing Participant) and in relation to a Trading Clearing Participant who gives notice in writing to the Clearing House pursuant to Rule 2.12(b) to terminate its participation in the services provided by the Clearing House or in relation to a Trading Clearing Participant who receives notice in writing from the Clearing House pursuant to Rule 2.12(a) or Rule 2.13 on the termination of its participation in the services provided by the Clearing House, as the case may be, after such Trading Clearing Participant has received notice from the Clearing House of an application of the Contributions pursuant to Rule 6.13.1(b), such Trading Clearing Participant's aggregate liability to the Clearing House to replenish its contribution to the CGF, in respect of such application and all other applications of the Contributions made under Rule 6.13.1(b) thereafter by reason of events occurring before the termination of its participation in the services provided by the Clearing House, shall not exceed an amount equal to its required contribution to the CGF at the date of receipt by the Clearing House of such

notice from the Trading Clearing Participant in accordance with Rule 2.12(b) or at the date of receipt by the Trading Clearing Participant of such notice from the Clearing House in accordance with Rule 2.12(a) or Rule 2.13.

- 6.15.3 If at the time of notice from the Clearing House of an application of the Contributions under Rule 6.13.1(b), a Trading Clearing Participant shall have already given notice to terminate its participation in the services provided by the Clearing House pursuant to Rule 2.12(b) or a Trading Clearing Participant shall have already been given notice by the Clearing House on the termination of its participation in the services provided by the Clearing House pursuant to Rule 2.12(a), such Trading Clearing Participant's aggregate liability to the Clearing House to replenish its contribution to the CGF in respect of such application and all applications of the Contributions under Rule 6.13.1(b) by reason of events occurring before the termination of its participation in the services provided by the Clearing House, shall not exceed an amount equal to its required contribution to the CGF at the date of the notice by the Clearing House of an application of the Contributions.

6.16 RECOVERY OF SUMS

- 6.16.1 If any amount paid out of the Clearing Guarantee Fund pursuant to Rule 6.12 is subsequently recovered by the Clearing House in whole or in part, the Clearing House shall, in the absence of any obligation of the Clearing House to deal with the amounts so recovered in any other way, credit the amount so received to the Clearing Guarantee Fund (and where Contributions by Trading Clearing Participants were used, the amount so received shall be credited to their Contributions in the appropriate manner, having regard to Rule 6.13).
- 6.16.2 For the avoidance of doubt, a defaulting Trading Clearing Participant shall be liable to reimburse the Clearing House in full for any amount paid out of the Clearing Guarantee Fund as a result of its default.

6.17 INFORMATION ON ASSETS AND RESOURCES OF CLEARING GUARANTEE FUND

- 6.17.1 The Clearing House shall maintain a separate record of all amounts standing to the credit of and all guarantees, facilities or policies enuring for the benefit of the Clearing Guarantee Fund from time to time.
- 6.17.2 The Clearing House shall notify Trading Clearing Participants, the Exchange and the Commission (on an annual basis) of the assets and resources available to the Clearing Guarantee Fund.

6.18 RETURN OF CONTRIBUTIONS

- 6.18.1 For the avoidance of doubt, once the Contributions made by Trading Clearing Participants are credited to the Clearing Guarantee Fund, the Contributions shall be dealt with in accordance with the Rules and will not be returned to Trading Clearing Participants except in accordance with the Rules.
- 6.18.2 Three (3) months after the termination of a Trading Clearing Participant in the participation in the services provided by the Clearing House, provided that all liabilities of such Trading Clearing Participant to the Clearing House at the time of termination, actual and contingent, shall have been satisfied or provided for in full, the Clearing House may, in its absolute discretion return to the Trading Clearing Participant the balance of its Contribution (taking into account any pending and previous application of the CGF at the time of such termination).

6.19 DISSOLUTION OF CLEARING GUARANTEE FUND

6.19.1 If at any time it appears in the opinion of the Clearing House to be in the interests of Trading Clearing Participants or in the interests of the operations of the services of the Clearing House, the Clearing House may, with the approval of the Commission, dissolve the Clearing Guarantee Fund. Unless otherwise provided in the Rules, the Clearing House shall be entitled to adopt such procedures in relation to the dissolution of the Clearing Guarantee Fund, as it shall deem appropriate.

6.20 APPLICATION UPON DISSOLUTION OF CLEARING GUARANTEE FUND

6.20.1 Upon dissolution of the Clearing Guarantee Fund, the Clearing House may apply the Clearing Guarantee Fund in respect of one or more of the following matters :-

- (a) in payment of all sums to be paid out of the Clearing Guarantee Fund;
- (b) in payment of the costs and expenses of and incidental to the administration and management of the dissolution of the Clearing Guarantee Fund;
- (c) at the discretion of the Clearing House, the balance of the Contributions may be returned to Trading Clearing Participants pro-rata to their required Contributions; and
- (d) with the approval of the Commission, for use in such manner as the Clearing House considers appropriate, including but not limited to the transfer to a new fund having similar objectives as the Clearing Guarantee Fund of all amounts standing to the credit of and all guarantees, facilities or policies enuring for the benefit of the Clearing Guarantee Fund.