

CHAPTER 2 ADMINISTRATION

PART A CLEARING HOUSE'S GENERAL POWERS

2.01 Exercise of powers

- (1) Subject to the provisions of the Securities Laws, the Clearing House may exercise its powers in such manner and on such terms as it considers necessary or expedient.
- (2) The powers of the Clearing House includes:
  - (a) making new rules;
  - (b) adding to, repealing, enforcing, waiving or modifying compliance with a Rule;
  - (c) administering, managing and formulating policies in relation to these Rules;
  - (d) issuing Directives for the purposes of or in connection with any of these Rules;
  - (e) interpreting conclusively any provision in these Rules and any Directives having regard to the spirit, intention, purpose and the substance of such Rules;
  - (f) granting, suspending or revoking the rights of any Clearing Participant or Registered Person;
  - (g) imposing terms and conditions in relation to any decision, approval or act done by the Clearing House in connection with these Rules at any time and subsequently at any time revoke, vary or amend such terms and conditions;
  - (h) enforcing directions given by the Commission;
  - (i) taking such actions as it may determine necessary in connection with the failure of any Clearing Participant to maintain the financial requirements pursuant to Chapter 3 of these Rules or to fully discharge any of its obligations to the Clearing House when due;
  - (j) determining the variables used to calculate the Performance Bond for all or any Clearing Participants;
  - (k) requiring a Clearing Participant or its Relevant Person to provide reports, information, Documents, Books and Records to the Clearing House in relation to any matter under these Rules;  
*[Refer to Directive No. 2.01(2)-001]*
  - (l) pursuant to a finding from any inspection or investigation on a Clearing Participant, requiring the Clearing Participant to take appropriate action against any of its employees or agents if such person caused the Clearing Participant to violate these Rules;
  - (m) undertaking a readiness audit on a Clearing Participant or requiring a Clearing Participant to carry out its own readiness audit, with the scope, criteria and manner to be determined by the Clearing House;  
*[Refer to Directive No. 2.01(2)-002]*
  - (n) imposing charges, fees (including clearing fees), expenses, disbursements or any other amount due to the Clearing House;

- (o) referring any act or conduct of a Clearing Participant or Registered Person to an appropriate authority;
  - (p) appointing a committee, sub-committee, officers of the Clearing House or an agent to exercise the Clearing House's powers under these Rules, where appropriate;
  - (q) requiring a Clearing Participant to provide on demand assurances in such form, to such extent and in such manner as is determined by the Clearing House to be appropriate by reference to, among other things, the level of exposure of such Clearing Participant to the Clearing House or such other matter as the Clearing House considers appropriate;
  - (r) limiting the Clearing House's exposure to all or any Clearing Participants;  
*[Refer to Directive No. 2.01(2)-003]*
  - (s) consolidating all Open Positions of a Seller or Buyer, whether held by the same Clearing Participant or different Clearing Participants, in such manner as it deems fit;  
*[Refer to Directive No. 2.01(2)-004]*
  - (t) undertaking any further, ancillary or consequential action pursuant to an initial decision or action taken by the Clearing House, the Commission or the Exchange in relation to a Clearing Participant or Registered Person;
  - (u) exercising all such other powers as may be necessary for purposes of monitoring compliance with and enforcement of these Rules and Directives;
  - (v) rectifying any error made in the provision of any of its services, facilities or operations;  
*[Refer to Directive No. 2.01(2)-005]*
  - (w) releasing the findings and results of any inspection or investigation, or testimony or documentation in connection with a disciplinary proceeding or appeal to the Commission, Exchange or any other relevant body or authority (in Malaysia or outside of Malaysia) as the Clearing House considers fit, or to such parties as the Clearing House considers fit for the purposes of the Clearing House's investigation, enforcement or both; and
  - (x) exercising any power and taking any action (including preventive or pre-emptive action) which in the opinion of the Clearing House is necessary to protect the integrity of the Clearing House.
- (3) The exercise of any specific powers conferred on the Clearing House in any other provision in these Rules does not prejudice or waive the exercise of any power by the Clearing House under Rule 2.01(2).
- (4) Where any provision of these Rules empowers, authorises or enables the Clearing House to do or enforce the doing of any act or thing, the Clearing House has all such powers or rights as may be necessary or reasonably incidental to the Clearing House doing or enforcing the doing of the act or thing.
- (5) A Clearing Participant and Registered Person must comply with and give effect to any Directives the Clearing House issues in exercising the powers under these Rules.

## **2.02 Disapplication of disciplinary proceedings in Chapter 12**

- (1) The disciplinary proceedings stipulated in Chapter 12 do not apply to any action described under these Rules as taken "summarily" by the Clearing House ("the Relevant Rules").

- (2) In taking any of the actions under the Relevant Rules, the Clearing House need not give a Clearing Participant or a Registered Person a prior opportunity to be heard.
- (3) Where an action is taken under the Relevant Rules a Clearing Participant or a Registered Person may make representations to the Clearing House to discontinue the action taken. The Clearing House may, after considering the representations made, discontinue with the action taken or take any other action it considers necessary in the circumstances. However, such discontinuance is not to be construed as an omission or error of any kind on the part of the Clearing House in taking the action under the Relevant Rules in the first place.
- (4) The Clearing House's decision after considering the representations made is final and binding on the Clearing Participant or Registered Person.

### **2.03 Validity of actions**

- (1) Any amendments to these Rules do not affect:
  - (a) the accrued rights of the Clearing House and the accrued obligations of Clearing Participants and Registered Persons under these Rules which are effective prior to the amendments; and
  - (b) any conditions, undertakings, decisions, waivers, act or thing imposed on or given by or done by Clearing Participants and Registered Persons prior to the amendments.
- (2) Any action proposed to be taken or is in the process of being taken or has been taken by the Clearing House in relation or pursuant to any earlier provisions of these Rules which have been subsequently amended will not be invalidated by any amendments to these Rules, even if the action is taken on or after the effective date of the amendments.
- (3) The Clearing House may apply the new penalties, rules and procedures on actions applicable from the effective date of the amendments.

### **2.04 Powers of the Exchange Holding Company**

- (1) Where any provision of these Rules confers a right or power on the Clearing House to do any act or thing, such right or power is also conferred on the Exchange Holding Company to do such act or thing on behalf of the Clearing House.
- (2) An applicant, a Clearing Participant, a Registered Person and other persons to whom these Rules are directed must comply with, observe or give effect to any action of the Exchange Holding Company pursuant to Rule 2.04(1).

### **2.05 Decisions of the Clearing House and right of appeal**

- (1) Any decision of the Clearing House is final and binding.
- (2) A person may only appeal against any action or decision taken or made by the Clearing House under these Rules if the right of appeal is expressly provided for under the relevant provisions of these Rules.
- (3) The Clearing House may affirm, vary or set aside the decision appealed against.

### **2.06 Parties affected by actions taken by the Clearing House**

A Clearing Participant and Registered Person must ensure that a proxy, agent, nominee or other person acting in concert with the Clearing Participant, Registered Person or Clients of a Clearing Participant complies with any direction issued by the Clearing House.

**PART B      PROTECTION OF CLIENT, PUBLIC AND CLEARING HOUSE'S INTEREST**

**2.07      Summary powers**

The Clearing House may summarily take such action that the Clearing House thinks fit against a Clearing Participant or Registered Person to protect the interests of Clients, the public or the Clearing House.

*[Refer to Directive No. 2.07-001]*

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**PART C EMERGENCY SITUATIONS**

**2.08 Circumstances upon which the Clearing House may take action**

Without prejudice to Rule 2.12, in order for the Clearing House to ensure an orderly and fair market or the orderly, clear and efficient clearing and settlement arrangements for Market Contracts, the Clearing House may take any or all of the actions specified in Rule 2.09 in the event of an emergency situation. An emergency situation includes:

- (a) a situation that threatens, or may threaten, the integrity or the liquidity of the market of the Exchange or any Market Contract;
- (b) a situation that threatens, or may threaten, the financial integrity of the Clearing House or its Clearing Participants;
- (c) any internal or external factors which are likely to have direct and adverse effect on the Clearing House;
- (d) a situation where the operations of the Clearing House are severely and adversely affected by the occurrence of any major incidents such as fire, power failure or computer malfunction; and
- (e) any other situation likely to have an adverse impact on the operation of an orderly and fair market or the orderly, clear and efficient clearing and settlement arrangements for Market Contracts.

**2.09 Actions**

- (1) The Clearing House may take any or all of the following actions in the situations referred to in Rule 2.08:
  - (a) suspend any of the provisions of these Rules or make or impose new temporary rules ("Emergency Rules") to ensure an orderly and fair market or the orderly, clear and efficient clearing and settlement arrangements for Market Contracts;
  - (b) direct any or all Clearing Participants to lodge additional cash or collateral with the Clearing House in respect of all or particular Open Contracts;
  - (c) reject or refuse to register Market Contracts, or place such conditions as it deems appropriate upon acceptance by the Clearing House of Market Contracts for registration;
  - (d) suspend the Participantship of any Clearing Participant whose financial condition or business conduct jeopardises or may jeopardise the financial integrity or the reputation of the Clearing House;
  - (e) suspend the whole or any part of the operations of the Clearing House's facilities or services available to the Clearing Participants for such duration as it sees fit;
  - (f) liquidate by cash settlement such Open Contracts as may be determined by the Clearing House at a price determined by the relevant Exchange or failing that, at a price determined by the Clearing House; or
  - (g) any other action which in its absolute discretion deems appropriate and which is consistent with these Rules.
- (2) All Emergency Rules made and imposed by the Clearing House are binding on all Clearing Participants and Relevant Persons for such period and in accordance with the terms and conditions stipulated by the Clearing House.

**PART D            LIABILITY AND INDEMNITY**

**2.10    Immunity**

- (1) A Clearing Participant does not have any cause of action against the following persons in respect of any act or decision taken in good faith in the discharge of such persons' duties pursuant to these Rules:
- (a) the Clearing House or the Exchange Holding Company;
  - (b) any person acting on behalf of the Clearing House or the Exchange Holding Company, including:
    - (i) any member of the board or committee or sub-committee of the Clearing House or the Exchange Holding Company;
    - (ii) any officer of the Clearing House or Exchange Holding Company;
    - (iii) any agent of, or any person acting under the direction of the Clearing House or Exchange Holding Company.
- (2) Rule 2.10(1) is in addition to and does not substitute any immunity or defence available under statute or law.

**2.11    Force Majeure**

- (1) Without affecting the generality of Rule 2.10, the Clearing House is not liable for any failure, hindrance or delay in the following matters if such failure, hindrance or delay arises out of causes beyond the Clearing House's control:
- (a) the provision of services to or in giving effect to any instructions from the Clearing Participant with respect to its clearing and settlement or other services; or
  - (b) the performance in whole or in part of its obligations under these Rules or under any Open Contract.
- (2) Such causes may include military authority, embargoes, fire, flood, explosion, accidents, labour disputes, mechanical breakdowns, computer or system failure, defects in computer or system software, interruptions of power supply or other utilities or service, any law, decree, regulations or orders of government or courts.
- (3) Rule 2.11(1) is in addition to and does not substitute any immunity or defence available under statute or law.

**2.12    Limitation of liability**

- (1) The Clearing House is not liable for any damage, loss, cost or expense of whatever nature suffered or incurred by a Clearing Participant or any third party arising from or in connection with a Clearing Participant's failure to comply with or observe these Rules or the obligations of a Clearing Participant to any third party nor does the Clearing House assume under these Rules or under any Open Contract any liability or obligation to any person other than a Clearing Participant in accordance with these Rules.
- (2) Liability of the Clearing House to a Clearing Participant is limited to losses directly resulting from its non-performance to such Clearing Participant of its contractual obligations in accordance with these Rules under Open Contracts to which that Clearing Participant is counterparty.

- (3) Despite anything else contained in these Rules, except Rule 2.12(2), the Clearing House is not liable in anyway whatsoever to Clearing Participants for an act or omission of the Clearing House or its employees, officers or agents unless such act or omission is due to the negligence, willful misconduct or fraud of the Clearing House or its employees, officers or agents.
- (4) For the avoidance of any doubt, the Clearing House is not liable for any special, indirect or consequential losses or damages or for the loss of business, revenue, goodwill, bargain or loss of profit suffered by any Clearing Participant, even if the Clearing House has been notified of the possibility of these damages being incurred.
- (5) The Clearing House is also not liable for any damage, loss, cost or expense of whatever nature suffered or incurred by a Clearing Participant or any third party arising from or in connection with the following:
- (a) the exercise or non-exercise by the Clearing House of any discretion or decision making power under these Rules;
  - (b) the insolvency or the acts or omission of the Exchange;
  - (c) the insolvency or the acts or omission of the Clearing House's Settlement Bank(s);
  - (d) the inaccuracy of any information supplied to and relied on by the Clearing House (including but not limited to any error in the establishment of a settlement price made by the Exchange) or the Exchange;
  - (e) the inability of the Clearing House to perform its function as a result of the invalidity or cancellation of any insurance or assurance, provided that the effecting of such insurance or assurance and the selection of the insurer by the Clearing House is not unreasonable at the time of selection; and
  - (f) any erroneous instruction, statement or report issued by the Clearing House as a result of any processing of or reliance on any erroneous instruction, report or statement issued to the Clearing Participant with respect to any service, facility or operations provided by the Clearing House or with respect to any rectification of any such erroneous report or statement issued by the Clearing House.
- (6) This Rule 2.12 is in addition to and should not affect the generality of Rule 2.10.

### **2.13 Indemnity**

Each Clearing Participant must indemnify the Clearing House, its agents, representatives, directors, officers and employees and hold each of them harmless against all costs, fees, expenses, liabilities, taxes, assessment, damages and losses of any nature suffered or incurred by the Clearing Participant directly or indirectly as a result of or in connection with the following matters:

- (a) the participation in any of the services or facilities of the Clearing House by the Clearing Participant or the Clearing Participant's activities in any of the services or facilities and all matters relating to such participation or activities as contemplated in these Rules;
- (b) the failure by the Clearing Participant to comply with the provisions of any laws, these Rules and any agreement (including without limitation the representations and warranties contained therein) or to comply with any conditions imposed on the Clearing Participant;
- (c) the actions and omissions by the Clearing House, its agents, nominees, employees, directors, officers and representatives in reliance on any instructions or communication believed in good faith by any of them to have been given by or on behalf of the Clearing Participant, or the failure of the Clearing Participant to give instruction to the Clearing House as contemplated in these Rules; and

- (d) the exercise or non-exercise by the Clearing House of its powers under these Rules in particular the exercise or non-exercise of powers under Chapters 2, 9, 10 and 12, or the determination by the Clearing House of the satisfaction or non-satisfaction of any condition for the exercise of such powers.

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**PART E      DISCLOSURE OF INFORMATION**

**2.14 Disclosure of information regarding Clearing Participants**

- (1) The Clearing House may, where it considers appropriate, publish or disclose information regarding its Clearing Participants and their activities to the following persons:
- (a) the Commission;
  - (b) the Exchange;
  - (c) a central depository established pursuant to the Securities Industry (Central Depositories) Act 1991;
  - (d) a clearing house approved under the Act;
  - (e) any other statutory body, governmental agency or regulatory authority;
  - (f) the Clearing Participants; and
  - (g) any person if the Clearing House feels that such disclosure is in the general interest of the Clearing House or its Clearing Participant or is necessary or desirable for the proper performance of the Clearing House's functions.
- (2) For the purposes of this Rule, the information that the Clearing House may publish or disclose includes:
- (a) all information or documents relating to transactions in respect of any contract traded on the Approved Market or any transactions cleared through the Clearing House or relating to any Clearing Participant or Client in respect of such contract or transaction; or
  - (b) any action taken against a Clearing Participant or Registered Person by the Clearing House under these Rules.

[End of Chapter]