

## Chapter 8 Default Rules

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#### **8.1 Prevalence of Default Rules**

- (A) These Default Rules are without prejudice to other Rules relating to Market Contracts, but in the event of any inconsistency between these Default Rules and any other such Rule or the terms of any Exchange Contract or any other Market Contract, these Default Rules shall prevail.
- (B) Neither the Board nor any designated official empowered under Chapter 4 to take action in the event of any Emergency will be prevented from doing so as a result of action being taken under these Default Rules.
- (C) These Default Rules apply only in respect of Market Contracts and do not apply to contracts in the terms of Exchange Contracts to which the Clearing House is a party, which will be subject to the default rules of the Clearing House.
- (D) The Board's determination as to whether any contract in the terms of an Exchange Contract is a Market Contract for the purposes of any action taken under these Default Rules shall be final and binding on each party to such contract.
- (E) For the purposes of Article 38 of the Personal Property Law and Section 7.1 of the Insolvency Regulations, these Default Rules are intended to relate to the finality of acquisitions and dispositions effected pursuant to these Rules.

#### **8.2 Consultation with the Clearing House and co-operation with other bodies**

- (A) Before taking any action under these Default Rules in respect of any default, the Board will, where possible, consult with the Clearing House to establish a co-ordinated approach to managing that default.
- (B) The Board may consult with any other relevant person before or after taking any action under these Default Rules, including (without limitation) the DFSA, any other regulatory or government body, any Authorised Market Institution or Recognised Body or any exchange or clearing house otherwise approved by the DFSA or by any other regulatory body or any relevant office-holder.
- (C) The Board may disclose any details or pass any information in its possession relating to a Defaulter or in connection with any default proceedings contemplated or carried out under

these Default Rules to, and otherwise co-operate with, the Clearing House, the DFSA, any other regulatory or government body, any Authorised Market Institution or Recognised Body or any exchange or clearing house approved by the DFSA or by any other regulatory body or any relevant office-holder.

### **8.3 Default Committee**

- (A) The Board may delegate all or any of its duties and powers under these Default Rules, to a committee (the **Default Committee**) consisting of such employees or officers of the Exchange as the Board considers fit and proper.
- (B) The Board or the Default Committee may engage the services of any professional advisor to assist and advise it in taking any action under these Default Rules.

### **8.4 Designated Non-Members**

- (A) Seat Lessees and Guaranteed Customers are designated as Designated Non-Members for the purposes of these Default Rules in respect of contracts in the terms of Exchange Contracts which arise or to which they become a party pursuant to Rule 6.25 or otherwise under the Rules as a result of acting as a Seat Lessee or Guaranteed Customer.
- (B) All contracts that are formed as a result of Rule 6.25 are subject to the Default Rules and all Members (including Clearing Members) and Designated Non-Members are subject to these Rules in making such contracts.
- (C) The Board:
  - (1) may from time to time designate any person or description of persons as a Designated Non-Member or Designated Non-Members or withdraw any such designation;
  - (2) shall take such steps to notify any such person of any such designation or withdrawal as it considers appropriate to ensure prompt notification;
  - (3) where it designates or withdraws any description of persons as Designated Non-Members, shall take such steps to ascertain which persons fall within such description as it considers appropriate; and
  - (4) where it has made any such designation, shall keep the appropriateness and suitability of that designation under review.
- (D) In determining whether to designate (or withdraw the designation) of any person or description of persons, the Board shall consider whether failure by any such person or description of persons to meet its obligations under one or more Market Contracts would be likely adversely to affect the operation of the Exchange.
- (E) If the Board considers that such failure by any such person or description of persons would be unlikely adversely to affect the operation of the Exchange, it may not so designate or allow to remain so designated any such person or description of persons.

### **8.5 Declaration of a default**

- (A) If an Event of Default occurs or has occurred in relation to a Member or Designated Non-Member and the Board considers (in its discretion) that it should take action under these Default Rules in respect of such Member or Designated Non-Member in the interests of the market, it shall declare such Member or Designated Non-Member to be a Defaulter.
- (B) Once the Board has declared a Member or Designated Non-Member to be a Defaulter pursuant to this Rule 8.5, that declaration shall remain in full force and effect until withdrawn by the Board.

- (C) No Member or Designated Non-Member may enter into any contract in the terms of an Exchange Contract with a Defaulter while a declaration of default is in force in relation to that Defaulter, and no Defaulter may enter into any such contract with any person at such time, other than in accordance with an instruction to do so given by the Board under these Default Rules.
- (D) As soon as reasonably practicable after a declaration of a default or a decision is made or action is taken under these Default Rules in respect of a Defaulter, the Board shall take such steps as it considers appropriate to notify:
  - (1) the Defaulter and each other party to any unsettled Market Contract to which the Defaulter is party as principal of the default, such declaration and of any decision or action taken under these Default Rules in respect of any such unsettled Market Contract; and
  - (2) where the Defaulter acted as agent for a principal in respect of any unsettled Market Contract, the parties to such unsettled Market Contract (including such principal) of the default, such declaration and each other's identities.

## 8.6 Event of Default

- (A) In these Default Rules an **Event of Default** means, without limitation, any event or circumstance in relation to a Member or Designated Non-Member which in the Board's opinion has the effect that such Member or Designated Non-Member would be, or would appear to be, unable or likely to become unable to discharge any of its obligations under or in respect of any Market Contract.
- (B) Without prejudice to the generality of the foregoing, the Board may consider the occurrence of any of the following in relation to a Member or Designated Non-Member as an Event of Default:
  - (1) failure by a Member or Designated Non-Member to discharge, perform or comply with any obligation (including but not limited to any obligation to make payment or make or accept delivery) under the terms of a Market Contract;
  - (2) failure by a Member or Designated Non-Member to satisfy any obligation to provide margin to any person in connection with a Market Contract;
  - (3) an Insolvency Event occurring in relation to a Member or Designated Non-Member except where such event occurs for the purposes of a reconstruction or amalgamation by such Member or Designated Non-Member, the terms of which have been previously approved by the Board in writing;
  - (4) the Member or Designated Non-Member failing to comply with any financial requirements or limits imposed on them under the Rules or the Clearing House Rules, as the case may be;
  - (5) the Member or Designated Non-Member being, or being declared, in default or a Defaulter under the Clearing House Rules, the rules of any Authorised Market Institution or Recognised Body or the rules of any other investment exchange or clearing house or body which provides clearing or settlement services;
  - (6) the Member or Designated Non-Member being declared in breach of the Rules or the Clearing House Rules, the rules of any Authorised Market Institution or Recognised Body or the rules of any other investment exchange or clearing house or body which provides clearing or settlement services or being refused an application for membership of or suspended or expelled from membership of any such exchange or clearing house;
  - (7) the Member or Designated Non-Member being refused membership of, or being suspended or expelled from membership of, or authorisation by, a regulatory body or a regulatory body taking or threatening to take any action in relation to it or taking or

threatening to exercise any powers it has to restrict or prohibit the Member or Designated Non-Member from entering into transactions or carrying on its business or dealing with its assets;

- (8) any licence, authorisation, consent or registration at any time necessary to enable a Member or Designated Non-Member to comply with his obligations to any person in respect of its activities on the Exchange, including without limitation to DME, to the Clearing House or to any other Member or Designated Non-Member or to carry on its business in the normal course being revoked, withheld or materially amended or failing to be granted or perfected or ceasing to remain in full force and effect;
- (9) a Member, Seat Lessee or Guaranteed Customer failing to satisfy the Board (or the Default Committee) at any time that it meets any minimum financial resources or other financial requirement upon it; or
- (10) a Clearing Member failing to satisfy the Clearing House Board at any time that it meets any minimum financial resources or other financial requirement for membership of the Clearing House,

and where any such event or circumstance occurs in relation to a person who is a partner in a partnership or otherwise part of an unincorporated association, it shall be taken to have occurred in relation to such partnership or association.

## **8.7 Default proceedings**

- (A) If a Member or Designated Non-Member is declared to be a Defaulter in accordance with Rule 8.5, the Board take any one or more of the actions referred to in Rule 8.8 as it considers appropriate in its absolute discretion.
- (B) The Board shall exercise its powers under paragraph (A) of this Rule 8.7 with a view to ensuring that, in respect of each unsettled Market Contract to which the Defaulter and another person are each party as principal:
  - (1) all rights and liabilities are discharged between the Defaulter and such other person and that a Default Settlement Amount is determined in accordance with these Default Rules in respect of each such unsettled Market Contract;
  - (2) all such Default Settlement Amounts are aggregated in accordance with Rule 8.9 to produce a Net Default Settlement Amount (if any) payable between the Defaulter and such person, by one to the other; and
  - (3) each Net Default Settlement Amount, once determined, is certified by the Board in accordance with Rule 8.9.
- (C) The Board shall not be required (but may determine) to take any step under Rule 8.8 in respect of margin or arising from a failure by a party to a Market Contract to perform its obligations under such contract.

## **8.8 Actions which may be taken on a default**

- (A) The actions which the Board may take under paragraph (A) of Rule 8.7 are set out in paragraphs (B) to (I) of this Rule 8.8 and, for the avoidance of doubt, the Board may take more than one such action in respect of the same unsettled Market Contract.
- (B) **Prohibition.** The Board may prohibit a Defaulter from entering into any Market Contracts at any time from the date on which the Board declares such person to be a Defaulter until such time as the Board may determine and may prohibit Members and Designated Non-Members from entering into any further Market Contracts with such Defaulter.
- (C) **Performance.** The Board may direct (where appropriate with the consent of the Relevant Office-Holder) that any or all unsettled Market Contracts to which a Defaulter is a party as

principal is or are settled by performance of the rights and obligations of the parties in accordance with the terms of such contracts.

- (D) **Transfer of Positions.** The Board may direct, to facilitate the transfer to a Member or Designated Non-Member of any position constituted by any unsettled Market Contract between a Defaulter and another party, each acting as principal, that:
- (1) the position be closed out in accordance with paragraph (F) of this Rule 8.8; and
  - (2) there be made or deemed to be made:
    - (a) a contract (**new contract**) on the same terms as the unsettled Market Contract between such Member or Designated Non-Member and such other party (where each such party consents) at such price or premium as the Board may determine; and
    - (b) where the position is to be transferred to a Member which is not a Clearing Member, an additional contract (an **additional contract**) on the same terms as the new contract between the relevant Member and a Clearing Member (which agrees to act as such), save that if the Member acts as buyer or seller in respect of the new contract, the Clearing Member shall act as such in respect of the additional contract.
- (E) **Exercise/Expiry of Options.** The Board may direct that any Market Contract in the terms of an Option between a Defaulter and another party, each acting as principal:
- (1) be (or be deemed to be) exercised, where such Option is exercisable by or on behalf of the Defaulter, on a Trading Day on which such Market Contract may be exercised under its terms; or
  - (2) shall expire without being (or being deemed to be) exercised.
- (F) **Close-out.** The Board may direct that any position constituted by an unsettled Market Contract between a Defaulter and another party, each acting as principal, may be closed-out by:
- (1) the making of a Corresponding Contract (or of a Spread comprising two (2) or more Corresponding Contracts) between the Defaulter and such other party (executed in accordance with the Rules by a Member and then allocated to such Defaulter); or
  - (2) by a reversal of entries in the Defaulter's books of account at a price or premium (if any) to be determined by the Board in its absolute discretion and in determining any such price or premium the Board may have regard (without limitation) to any of:
    - (a) the current market price or premium for contracts in the terms of the relevant unsettled Market Contract which is being closed out (or the current differential for any Spread constituted by two (2) or more such unsettled Market Contracts) or for any Future, Option or Spread which would be required to close out any such position;
    - (b) the most recent Settlement Price or Settlement Premium for any such contract;
    - (c) any price or premium at which any contract in the terms of an Exchange Contract between the Defaulter and the Clearing House, which matches or corresponds to the relevant Market Contract, has been closed out by the Clearing House under the Clearing House's default arrangements (or any relevant average of any such prices or premia in respect of two or more such Market Contracts); and
    - (d) any other price, premium or factor which the Board considers appropriate having regard to market conditions.

- (G) **Set-off.** The Board may direct that any unsettled Market Contracts between a Defaulter and another party, each acting as principal and in the same capacity (for the purposes of Rule 8.15), where such contracts are on the same terms save as to price, may be settled (in whole or in part) by setting off such contracts against each other.
- (H) **Further or Other Action.** The Board may take any further or other action in respect of any Market Contract to which a Defaulter is a party as principal, to achieve any of the purposes set out in Rule 8.7.
- (I) **Default Settlement Amount.** After taking any one or more of the actions set out in this Rule 8.8 in respect of any unsettled Market Contract, the Board may direct that all rights and obligations under such Market Contract be deemed to have been discharged and replaced by an obligation on one party to such Market Contract to pay the other a default settlement amount (**Default Settlement Amount**), as determined by the Board by reference to:
- (1) where such unsettled Market Contract is directed to be performed in accordance with paragraph (C) of this Rule 8.8, the terms of such unsettled Market Contract;
  - (2) where the position constituted by such unsettled Market Contract is closed out in accordance with paragraph (F) of this Rule 8.8, the difference (if any) between:
    - (a) the price or premium in respect of such unsettled Market Contract; and
    - (b) the price or premium of the Corresponding Contract made in relation to it in accordance with paragraph (F)(1) of this Rule 8.8 or the price or premium determined by the Board in accordance with paragraph (F)(2) of this Rule 8.8;
  - (3) where such unsettled Market Contract is set-off against another unsettled Market Contract in accordance with paragraph (G) of this Rule 8.8, the difference (if any) between the prices of such unsettled Market Contracts; and
  - (4) in any other case, such price, premium or factor as the Board may determine in its absolute discretion,

and the Board may take into account the amount of any arbitration award or judgment given in connection with any dispute or claim in respect of such Market Contract, any amounts due and payable but unpaid between the parties to such contract, and provided that, where such parties have entered into a separate agreement which provides that such unsettled Market Contract be terminated and liquidated so that a single sum would be determined or payable in respect of it, the Board may determine the Default Settlement Amount for such unsettled Market Contract as or by reference to such single sum.

- (J) Any Default Settlement Amount determined in relation to an unsettled Market Contract by the Board in accordance with paragraph (I) of this Rule 8.8 shall be final and binding on all parties to such Market Contract.

## **8.9 Calculation and certification of Net Default Settlement Amounts**

- (A) Subject to paragraphs (B) and (C) of this Rule 8.9, the Board shall draw up an account of all unsettled Market Contracts between a Defaulter and each other party to such contracts by:
- (1) including in such account each Default Settlement Amount, determined in accordance with Rule 8.8 in respect of such unsettled Market Contracts;
  - (2) crediting or debiting each such Default Settlement Amount to such account, according to whether such amount was determined to be payable to or by the Defaulter;
  - (3) performing any currency conversion in respect of any such Default Settlement Amount as the Board may consider necessary or desirable at the rate of exchange determined by the Board;

- (4) aggregating and setting off against each other all credits and debits in such account, so as to result in a single net sum (the **Net Default Settlement Amount**) payable to or by the Defaulter by or to other party in respect of all such unsettled Market Contracts, and

the Board shall certify such Net Default Settlement Amount for the purposes of Rule 8.7.

- (B) The Board shall not be required to draw up any account in respect of (or include in any account drawn up under this Rule 8.9) any unsettled Market Contracts of which it does not have actual notice within three (3) months of the date on which the Defaulter is declared to be a Defaulter under Rule 8.5.
- (C) Where any person is party to two (2) or more Market Contracts acting in more than one (1) capacity (for the purposes of Rule 8.15), such Market Contracts entered into in each different capacity shall be regarded as if they were entered into by different persons and, for the avoidance of doubt, a Defaulter, Member or Designated Non-Member acting for an account which is or is required to be segregated or held for the benefit of a Customer or group of Customers shall be regarded as acting in a different capacity to that in which it acts for its proprietary account and the Board shall draw up separate accounts under this Rule 8.9 accordingly.
- (D) Where the Board certifies any Net Default Settlement Amount under this Rule 8.9, it shall note in such certification any dispute or claim of which it has notice in respect of or in connection with any unsettled Market Contract included in the account drawn up for the purposes of certifying such net amount. The Board may direct that such net amount shall not be payable by or to the Defaulter until the resolution of any such dispute or claim unless the Relevant Office-Holder (or, if there is no Relevant Office-Holder, the Defaulter) and the other party to the relevant unsettled Market Contract agree.
- (E) Any Net Default Settlement Amount certified by the Board pursuant to this Rule 8.9 shall be final and binding on all parties to the unsettled Market Contracts in respect of which it is made.
- (F) No action taken by the Board under Rule 8.8 or this Rule 8.9 shall prejudice any dispute or claim referred to arbitration or the court, or any person's right to do so, in respect of any failure by either party to an unsettled Market Contract to perform its obligations under such contract.
- (G) If there is any dispute about whether or not any unsettled Market Contract to which a Defaulter is (or purports to be) a party was made or about the terms of any such contract, the Board may direct that the parties refer such dispute to arbitration in accordance with the Arbitration Rules, and any Default Settlement Amount determined by the Board in respect of such unsettled Market Contract shall be taken into account in any award arising from such arbitration.
- (H) When the Board has completed taking action under these Default Rules and has certified Net Default Settlement Amounts in respect of all unsettled Market Contracts to which the Defaulter is a party as principal, the Board shall withdraw the declaration made under Rule 8.5.

#### **8.10 Notification by Members and Designated Non-Members**

- (A) As soon as any Member or Designated Non-Member becomes aware of the occurrence of any Event of Default in relation to it, it must immediately notify the Board of such Event of Default.
- (B) As soon as a Defaulter becomes aware that any party to an unsettled Market Contract to which such Defaulter is a party (as principal or as agent) disputes or intends to dispute any aspect of such unsettled Market Contract or that any claim has arisen in respect of it which is or is intended to be referred to arbitration or court proceedings, the Defaulter shall immediately notify the Board of such dispute or claim and provide further information as the Board may require.

### **8.11 Powers**

- (A) Any employee, officer or agent of DME authorised by the Board may, for the purposes of implementing these Default Rules at any time and without giving prior notice enter the premises occupied or belonging to any Defaulter to examine, take or copy from any records of such Defaulter (including without limitation computer records, records in paper form, records relating to accounting, internal and external audit and trading and Customer records) and to operate any systems (including accounting or computing systems) of the Defaulter and reproduce data with a view to obtaining:
- (1) names and contact details of Customers of the Defaulter (if the Defaulter acted for any Customers);
  - (2) details of all unsettled Market Contracts to which the Defaulter is a party or which the Defaulter entered into as agent for any other person;
  - (3) details of money and other property held for the account of any customer or Customer; and
  - (4) any other information which the Board considers necessary or desirable for the purposes of implementing these Default Rules.
- (B) The Defaulter shall, and shall ensure that its Customers are required to, co-operate fully at all times with the Board and promptly provide such information as the Board or any such employee, officer or agent may request in connection with any action taken or to be taken under these Default Rules.

### **8.12 Costs**

A Defaulter shall fully indemnify DME for its costs and expenses (including without limitation administrative costs incurred, the costs of engaging any person to assist and advise the Board or the Default Committee or of any professional fees and charges) in taking any action under these Default Rules in respect of that Defaulter's default.

### **8.13 Limitation of Liability**

In the absence of wilful misconduct, none of the Exchange, the Clearing House, the Affiliates or either of them, the members or past members of the Board or the Default Committee or any of their respective officers, directors, members, employees, employers, agents or designees shall have any liability to any person for conduct of the Board pursuant to these Default Rules.

### **8.14 Amendment**

The Board may amend, supplement or revoke any provision of these Default Rules in accordance with the provisions of Rules 4.21 to 4.23. Any such amendment, supplement or revocation shall take effect, unless otherwise expressed, with respect to any default proceedings being conducted at the time.

### **8.15 References to parties to Market Contracts**

- (A) References to a Market Contract to which a person is a party include (unless the context requires otherwise) contracts to which he is party as agent.
- (B) In relation to a Market Contract:
- (1) which is effected as principal by a Member or Designated Non-Member;
  - (2) who is acting for an account which is or is required to be segregated or held for the benefit of a Customer or group of Customers (including, but not limited to, pursuant to applicable client money rules),

such Member or Designated Non-Member shall be regarded as acting in a different capacity to that in which it acts for its proprietary account.