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INSTRUCTION B07/2014



Clearing Fund

24.Nov.2017

Versions Index

24.Jun.2014

Initial Version

14.Mar.2016

Elimination of the numbers referring to the contributions to the clearing fund covered by means of bank guarantees or credit lines.

13.May.2016

Modification of the Service provided by OMIClear from “MIBEL Derivatives Market” to “Service on Power Derivatives Contracts”.

25.Nov.2016

Reduction of the deadline to update the Clearing Members' contributions to the Clearing Fund o after OMIClear's notification regarding the new reference amount.

24.Nov.2017

Instruction update following the inclusion of Service on Natural Gas Derivatives Contracts. Clarification on the purpose of OMIClear's Clearing Fund.

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Pursuant to article 53 of its Rulebook, OMIClear approves this Instruction, which sets the provisions regarding the general operation of the Clearing Fund relating to the registration, clearing and settlement Services provided by OMIClear.

General Provisions

Purpose

1. OMIClear determines a pre-funded Clearing Fund in order to cover losses that exceed the losses to be covered by margin requirements, arising from default situations.
2. The Clearing Fund is determined by the OMIClear in order to support, in extreme but plausible market conditions the insolvency of the Clearing Member to which it has the largest exposures or of the second and third largest Clearing Members, if the sum of their exposures is larger.
3. The Clearing Fund is formed by the contributions of the Clearing Members earmarked for this purpose.
4. The Clearing Fund defined in the Instruction covers the following OMIClear's Services:
 - a) Service on Power Derivatives Contracts;
 - b) Service on Natural Gas Derivatives Contracts.

Reference Value of the Contribution to the Clearing Fund

5. The reference value (RV) of each CM contribution to the Clearing Fund is determined based on the following components:
 - a) The total value of the Clearing Fund (TVCF);
 - b) The share of that total value due to each CM.
6. The TVCF is determined based on the specifications of the paragraphs below and on the concept of OMIClear's value at risk against a given CM, which is defined as follows:

$$R_i = PC_i - C_i$$

Where:

R_i – value at risk of CM_i resulting from its participation in the Services referred in paragraph 4.

PC_i –OMIClear potential costs, assumed here with a positive sign, with the closing of all CM_i Positions in Contracts referring to each Service mentioned in paragraph 4, determined based on extreme but plausible market scenarios, which methodology is established by OMIClear in an internal policy.

C_i – total value of CM_i Collateral, demanded as Initial Margin, Additional Guarantee, Extraordinary Margin for concentration risk, whereas OMIClear may incorporate other types of margins, namely to contemplate products with specific characteristics.

CM_i – Clearing Member i

7. To calculate the TVCF for each Clearing Day (j):
 - a) OMIClear determines the three highest values of R_{ij} : R_{1j} , R_{2j} and R_{3j} ;

- b) Identifies the value of OMIClear's own resources (OR_j) for that day, established by OMIClear Instruction, to address the CM's default;
 - c) Considers the value of the Autonomous Reserve available on that day (AR_j).
8. Based on the values referred to in the preceding paragraph, OMIClear determines, on the same daily basis (j), the TVCF_j as the highest value of the following expressions:
- a) R_{1j}
 - b) R_{2j} + R_{3j}
 - c) R_{1j} + R_{2j} – AR_j – OR_j
 - d) The product of 150,000 (one hundred and fifty thousand) euros by the number of contributing CMs to the Clearing Fund, which is a minimum value of the TVCF.
9. In the first 5 (five) Clearing Days of each month OMIClear:
- a) Determines the TVCF reference value, which corresponds to the maximum (daily) value of the TVCF_j on the previous 60 Clearing Days.
 - b) Calculates the mean value, over the last 60 Clearing Days, of the Initial Margins required to each CM.
 - c) Based on the mean value defined in the preceding subparagraph, OMIClear determines a percentage of each CM's value in relation to the sum of the mean values of all CMs.
 - d) By applying the percentage defined in the preceding subparagraph to the TVCF, OMIClear determines the reference value (RV) of each CM's contribution to the Clearing Fund, with a minimum amount of 150,000 (one hundred and fifty thousand) euros.
10. When, in the course of a given month, under the daily calculations mentioned above it is found that a TVCF_j is higher, i.e., more burdensome than the TVCF in force, the CMs contributions will be updated based on the rules established in the preceding paragraph within 2 (two) Clearing Days after OMIClear's notification, taking into consideration the shares of Initial Margins determined in the last monthly review.
11. At the time of its admission, each Clearing Member will make an initial contribution to the Clearing Fund in the amount of 150,000 (one hundred and fifty thousand) euros, which will form its reference value (RV) until the first monthly review.
12. If Positions are transferred between two CMs, the receiving CM may have to reinforce its contribution to the Clearing Fund according to a new RV communicated by OMIClear, without having to change the RVs of the remaining CMs.
13. Within 2 (two) Clearing Days after the notification of the RV by OMIClear referred to in paragraphs (9) to (12), the RV will be demanded to the CM as a contribution to the Clearing Fund, and will remain valid until a new value is communicated.
14. If the RV has not been deposited by the closing of the Open Phase of the Clearing Session of the 2nd (second) Clearing Day following the notification referred to in the preceding paragraph, the outstanding amount is included in the Daily Financial Settlement of that Clearing Day.
15. The RV responsibilities of each CM before the Clearing Fund are added to the other responsibilities of the CM before OMIClear, and are covered by the Collateral provided in OMIClear Instruction A06-2014 - Management and Evaluation of Guarantees, being subject to the corresponding rules.

Additional Responsibility to the Clearing Fund

16. Each CM will take on an Additional Responsibility (AdR) in an amount equal to its RV, so the value of its total responsibility (TResp) equals to twice the RV.
17. Notwithstanding the subsequent paragraph, the constitution of the AdR is carried out as follows:
 - a) The AdR is a responsibility that a CM assumes that only needs to be covered by Collateral if notified by OMIClear following the execution of the Clearing Fund as a result of a CM's default;
 - b) If a portion of the contribution made by a CM to the Clearing Fund is used, OMIClear requires the refund of that amount up to a maximum value which cannot exceed the AdR;
 - c) The request referred to in the preceding subparagraph may be carried out as many times as necessary to solve the defaults.
18. The use of the CM's AdR by OMIClear, however, has the following limitations:
 - a) A reference period of 30 (thirty) Clearing Days begins upon the first notification to execute the CM contribution to the Clearing Fund, during which the request for Clearing Fund reinforcements cannot exceed the value of AdR;
 - b) The renewal of CM responsibilities before the Clearing Fund, in the amount of TResp, only takes place at the end of the deadline referred to in subparagraph (a) above, and must be notified by OMIClear;
 - c) The recovered values inherent in a previous mobilisation of the Clearing Fund are credited to the CMs contributors and therefore, taken into account in the determination of the overall responsibilities of the respective CMs, becoming available for new defaults;
 - d) If, during the reference period stated above in subparagraph (a), the CM informs OMIClear, under the terms laid down in the Clearing Rules, that it intends to abandon its status of CM, the responsibilities referred to in subparagraph (b) above will not be renewed at the end of the said period;
 - e) The fact that the CM's contribution to the Clearing Fund is mobilised more than a portion during the period referred to in (a) above, the amount of the responsibility of the CM for the purpose of the Clearing Fund will not be affected, and such mobilisations will be subject to the same set of restrictions mentioned in the preceding subparagraphs.
19. A CM making the communication referred to in subparagraph (d) above must at the same time start closing its positions or transfer them to the other CMs, in order to close down its activity within 60 (sixty) Clearing Days after the date of such communication.
20. Notwithstanding the preceding paragraphs, OMIClear may mobilise the amount of the contribution made to the Clearing Fund deposited with OMIClear, as well as demand the constitution of the AdR amount not used, until the CM activity with OMIClear is completely closed.

Execution of the Clearing Fund

21. If the Collateral of a defaulting CM, including Margins, Additional Guarantee and possible Own Collateral in excess, is not sufficient to cover all costs arising out of the default, the Collateral assigned to the Clearing Fund will have to be enforced to cover the difference, hereinafter referred to as defaulting amount, in accordance with the following procedures:
 - a) First, the contribution to the Clearing Fund by the defaulting Clearing Member is mobilised, to the extent necessary to cover the amount due;
 - b) If the contribution referred to in the preceding subparagraph is not sufficient to cover the amount due, the following amounts will be mobilised successively and in the following order:

- i. OMIClear's Autonomous Reserve;
 - ii. OMIClear's own resources (OR), specific for this purpose, as defined by Instruction;
 - iii. The contributions to the Clearing Fund from other CMs, proportionally to the RV of each Member to the Clearing Fund, at the time when the contributions are mobilised;
 - iv. If the amount of contributions to the Clearing Fund referred to in the preceding paragraph is not sufficient to cover the amount due, the non-defaulting CMs will be required to provide the amount due, based on the additional responsibility referred to in paragraph (16) and on the allocation criterion defined in paragraph (21)(b)(iii).
22. In situations where the contributions to the Clearing Fund mentioned in paragraph (21)(b)(iii) have to be mobilised, in an amount less than the RV, all Clearing Members will be notified by OMIClear, and the following provisions will apply:
- a) References:
 - i. A_{req} – amount required of the Clearing Member for the Clearing Fund;
 - ii. B_o - Balance of Own Collateral, defined as the difference between the Own Collateral of the Member and the total amount of its own responsibilities.
 - b) Clearing Members will have their Collateral enforced by the required amount (A_{req});
 - c) Clearing Members will have to replenish the amount (A_{req}) until the closing of the Open Session of the second Clearing Day (D+2) after OMIClear's notification, except if its balance of own collateral (B_o) is greater than or equal to the required amount to replenish, since in this case OMIClear will make an automatic allocation in D;
 - d) If the replenishment referred to above is not made within the time limit, the amount due will be included in the Daily Financial Settlement of that same session.
23. In situations where the contributions to the Clearing Fund have to be mobilised in an amount greater than its reference values (RV), defined in paragraph (21)(b)(iv), all Clearing Members will be notified by OMIClear, and the following provisions will apply, taking into consideration the references specified in paragraph (22)(a):
- a) Clearing Members will have their Collateral enforced by the required amount (A_{req});
 - b) Clearing Members must replenish the difference between their total responsibility (TResp), as provided in paragraphs (16) to (18) and the amount required, (A_{req}) until the closing of the Open Phase of the second Clearing Day (D+2) following the notification of OMIClear, except if its balance of own collateral (B_o) is greater than or equal to the required amount to replenish, since in this case OMIClear will make an automatic allocation in D;
 - c) If the replenishment referred to in the preceding paragraph is not made until the time indicated, the amount due will be included in the Daily Financial Settlement of that session.

Processing and Return of Collateral regarding the Clearing Fund

- 24. Contributions to the Clearing Fund made by means of Financial Settlement, in accordance with the two preceding paragraphs, will be processed in the exact same way as with any Collateral deposited by the respective CM.
- 25. CMs with contributions made to the Clearing Fund mobilised by OMIClear to cover the default of another CM:

- a) Will be credited in the amount of the mobilisation, to be deducted from its total responsibility (TResp) as defined in paragraphs (16) to (18), during the period established in paragraph (18)(a);
 - b) CMs whose securities have been enforced will have those assets converted into cash, in an amount to be reported by OMIClear, and the Collateral will be returned on that basis, pursuant to paragraphs (26) to (28);
 - c) Will no longer earn income on the mobilised money, and such amounts will be included in the inherent costs relating to the defaulting procedure, being recoverable in accordance to paragraphs (26) to (28).
26. When all or part of the outstanding amount of the defaulting Clearing Member is recovered, OMIClear will return it as follows:
- a) First, to the Clearing Members, in proportion to their contributions mobilised to cover such default;
 - b) Secondly, if all the contributions of Clearing Members have been repaid, the contribution of OMIClear's own funds will be returned;
 - c) Thirdly, the income from Collateral will be returned to the Clearing Members, to which they would have been entitled had it not been used to cover the default;
 - d) Fourthly, the Autonomous Reserve of OMIClear is reset, provided that all the contributions referred to in paragraph (26)(a)(b)(c) have been returned.
27. In accordance with the preceding paragraph, the amounts recovered of a defaulting Clearing Member will not be used to reimburse the contributions to the Clearing Fund used to address other defaults.
28. If the debt amount of a defaulting Clearing Member is considered irrecoverable:
- a) The Members whose contributions were mobilised to cover such default will no longer have the right to be reimbursed of the corresponding amounts, as well as of any income as referred to in paragraph (26)(c);
 - b) The contributions of OMIClear's own funds and of the Autonomous Reserve are also considered as definitely lost.

Termination of a Clearing Member

29. Where an Entity terminates its functions in OMIClear in its capacity as a Clearing Member:
- a) The part of the contribution made to the Clearing Fund and not used will be returned;
 - b) The amount of the contribution mobilised by OMIClear is returned when and to the extent that OMIClear is reimbursed by the defaulting Clearing Member(s), the provisions in paragraph (26) to (28) being applicable, *mutatis mutandis*.

Entry into Effect

30. This Instruction has been registered with CMVM on August, 7th 2017 and enters into effect on November, 24th 2017.

The Board of Directors