



INSTRUCTION B18/2014

Procedures in Case of Default

17.April.2018

Versions Index

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13.May.2016

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

02.Nov.2017

Definition of the procedures regarding the registration of transactions by clients of defaulting Clearing Members.

24.Nov.2017

Instruction update following the inclusion of the Service on Natural Gas Derivatives Contracts registered in OMIClear through OMIP Derivatives Market.

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Update of the Instruction following the extension of the Service on Natural Gas Derivatives Contracts to MIBGAS Derivatives Market.

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Pursuant to its Rulebook, OMIClear approves this Instruction, which sets the provisions regarding the procedures to be adopted in the event of default by a Registration Agent, a Client or a Clearing Member and where this entails an intervention on the Positions and Guarantees held or managed by these participants under the Service on Power Derivatives Contracts and the Service on Natural Gas Derivatives Contracts.

Scope and General Provisions

1. Establishment of the procedures to be adopted by OMIClear and the various Participants regarding the following defaults:
 - a) Default of a Registration Agent or of a Client, hereinafter referred to as clearing clients (CC), with which a Clearing Member has entered into a Clearing Agreement, or who are directly related to the Clearing Member, when the latter takes on the role of Registration Agent, and when there is no default by the Clearing Member;
 - b) Default of a Registration Agent with respect to a Client with Clearing Accounts with Individual Segregation (CAIS), to a set of clients with Clearing Accounts with Omnibus Segregation (CAOS), or to a client with General Omnibus Clearing Accounts (GOCA);
 - c) Default of a Clearing Member, when the CC holds a CAIS or a CAOS;
 - d) Default of a Clearing Member, when the CC holds a General Omnibus Clearing Accounts.
2. These procedures supplement and do not compromise the terms established by OMIClear in an Instruction on the procedures resulting from defaults in other Services.
3. The procedures described in this Instruction are based on the default relating to Positions in Futures Contracts, and apply, *mutatis mutandis*, when the default occurs with respect to other types of contracts.
4. Taking into account the exceptional situation set by a default, OMIClear may adopt, among others, the following decisions:
 - a) Convert defaulting Positions with physical delivery into Positions in equivalent Contracts with financial delivery, namely by converting physical Futures into financial Futures, or by converting Forwards into Swaps, in the Services where there is such possibility;
 - b) Close positions in the delivery and/or the trading period of Contracts.

Default of a CC – General Provisions

5. Regarding paragraphs (1)(a) and (1)(b), a CC is considered to be in default with the Clearing Member when:
 - a) The Clearing Member informs OMIClear of such fact;
 - b) In the Service on Natural Gas Derivatives Contracts, the CC loses the physical settlement capacity, under the terms established in paragraph 25.
6. A CC in default with a Clearing Member does not imply that it is in default with another Clearing Member.
7. OMIClear may:
 - a) Notify the CC's default to all Clearing Members with which the CC has entered into Clearing Agreements;

- b) In the specific case of the Service on Natural Gas Derivatives Contracts, notify the Physical Settlement Agent concerned of the CC default;
- c) In the specific case of the Service on Natural Gas Derivatives Contracts, notify the CC and the Clearing Member concerned of the Physical Settlement Agent's loss of capacity of making notifications in the PVB-ES;
- d) Determine the close-out of all Positions of a CC;
- e) Prevent or limit the registration of Positions by or on behalf of the CC.

Default of a CC with Positions cleared in a General Omnibus Clearing Account

8. The notification referred to in paragraph 5.a) must meet the following requirements:
 - a) Conform to the specific Model (C19), provided on the Website, and be sent by the means foreseen in the OMIClear Rules;
 - b) When the Positions cleared in a Clearing Account related to the default belong to more than one CC, the Clearing Member must specify:
 - i. If all the Positions will be processed in the same way as those of the defaulting CC;
 - ii. Or if only the Positions of the defaulting CC will be affected, and, in this case, the Clearing Member must specify them to OMIClear upon the communication.
 - c) Specify, if applicable, the details for the transfer of Transactions and/or Positions;
 - d) Be signed by a Clearing and Settlement Manager of the Clearing Member.
9. For all intents and purposes, the communication is deemed to have been received by OMIClear:
 - a) When dated the same day, if received up to 90 minutes before the close of the Open Phase of that Clearing Session;
 - b) Dated the following Clearing Day, if received after such time.
10. Until the Clearing Day following the receipt of the default communication referred to in the preceding paragraph, OMIClear shall promote the transfer of the balance of the transactions in the Registration Accounts indicated relating to the Contracts being traded, to a Registration Account held by the Clearing Member, according to the following price conditions:
 - a) For the Positions that have already been subject to an adjustment of gains and losses , at the Settlement Price used in the last adjustment made;
 - b) For the Positions not yet adjusted in accordance with the preceding subparagraph, at the price of their respective trades.
11. In respect of Positions in Contracts in delivery:
 - a) The associated transactions continue to be registered in the Registration Account concerned until they are settled, and the respective defaulting CC shall not be allowed to use that account;
 - b) If the Clearing Member wishes to convert a physical settlement into a purely financial settlement (in the Services where there is such possibility), it must notify OMIClear, who shall make the necessary changes.
12. In respect of target Registration Accounts for the management of Transactions in Contracts being traded, the Clearing Member may:
 - a) Indicate an existing Registration Account/existing Registration Accounts it holds;

- b) Open a new Registration Account(s);
- c) Open new Registration Accounts with a Registration Agent;
- d) Exclusively for the purpose of managing the default, be admitted temporarily as Registration Agent, opening a Registration Account for that purpose;
- e) Use the Registration Account(s) affected if it is clear that only he shall be able to register, change or close Positions therein;

The Registration Accounts mentioned in the previous subparagraphs must be compatible with the type of Contracts to be managed.

- 13. If the Clearing Member is not a Registration Agent, or does not intend to take over the function, it may request OMIClear to manage the close-out of positions of the CC, by means of clear instructions, assuming all the losses that may arise therefrom.
- 14. In the situation referred to in the preceding paragraph, OMIClear uses a Registration Account, in its custody, to exclusively manage the Positions of the defaulting CC.
- 15. OMIClear shall ensure the conditions for the transfer of Positions to the target Registration Accounts on the Clearing Day defined in paragraph (9), but shall only make the actual transfer when said target Registration Accounts are available.
- 16. In accordance with the paragraphs above, from the moment when a default of a CC is communicated, the Clearing Member shall manage the Positions concerned, and be responsible for depositing sufficient Guarantees with OMIClear to cover the responsibilities of the defaulting Positions, as well as those that, although not in this situation, may be affected, in particular in the situation identified in paragraph 8(b)(ii).

Default of the CC with Positions cleared in a CAIS or CAOS

- 17. In addition to the other provisions set in OMIClear Rules regarding the default of Clients, the Clients of a CAIS or a CAOS shall be in default if they fail to provide sufficient Guarantees to cover all the responsibilities relating to the Positions registered in the CAIS or CAOS in question, and it is up to the Clearing Member to report the default to OMIClear.
- 18. In the circumstances specified in the preceding paragraph, after reporting its Client's default to OMIClear, the Clearing Member may:
 - a) Promote the closure of the affected Positions;
 - b) Withdraw the rights attached to the type of segregation and portability of the positions and guarantees associated to the CAIS or the CAOS;
 - c) Undertake to manage the guarantees associated to the CAIS or the CAOS.
- 19. If the Guarantees attached to a CAIS or a CAOS are not sufficient to cover all the responsibilities related to the Positions registered therein, the Clearing Member's Guarantees shall automatically and under any circumstance cover the responsibilities not covered of the CAIS or the CAOS, even if the Member declares the default of the Client in question.

Default of a Registration Agent in relation to a Client with positions cleared in a CAIS, CAOS or GOCA

- 20. If OMIClear has notified the default of a the Registration Agent holding the Registration Account associated to the CAIS and CAOS, in addition to the provisions in paragraphs 7 to 19, the provisions in the two following paragraphs shall apply.

21. The Registration Agent loses the right to refuse the portability of Transactions associated to its Registration Account.
22. OMIClear notifies the Clients or their representatives of the registration accounts of that Agent, who fulfil the necessary conditions, to exercise the portability of their transactions, indicating the deadline for exercising the portability. This deadline, however, may not be less than 3 hours as from between 9:00 and 18:00 of Clearing Days, in respect of which the following situations may occur:
 - a) If the Clients fail to exercise, within the established period, the right of portability: the Positions of those Clients shall be managed, in particular, closed, by the Clearing Member, in articulation with the Positions under the responsibility of the Registration agent, using, for that purpose, the Guarantees inherent to its CAIS or CAOS, but shall nevertheless not be able to use them to settle the Positions of the Registration Agent or of other Clients;
 - b) The Positions of Clients who exercise their right of portability on time and already have another Registration Account available shall be transferred to that account and, if appropriate, shall operate in the sphere of the new Registration Agent;
 - c) The balance of transactions of Clients who exercise on time their right of Portability but who do not own an available Registration Account shall be transferred to a Registration Account held and managed directly by the Clearing Member.
23. The provisions in paragraphs 20 to 22 shall apply, *mutatis mutandis*, if a Registration Agent enters into default in relation to a clearing client with a GOCA.

Default of CC relating to its loss of physical settlement capacity in the Service on Natural Gas Derivatives Contracts

24. Under the scope of the Service on Natural Gas Derivatives Contracts, in case the CC loses its physical settlement capacity, OMIClear:
 - a) Notifies the parties involved including the CC itself, the Clearing Member concerned (when different from CC) and the Physical Settlement Agent (when different from CC);
 - b) Concedes to CC a time period of 3 hours, as from the moment of the Notification referred to in the preceding subparagraph, in order to demonstrate again the physical settlement capacity in that Service.
25. In case the CC does not comply with the terms set paragraph (24) (b), OMIClear declares the default of this CC, immediately notifying the Clearing Member concerned.
26. Under the terms defined in the preceding paragraph OMIClear applies, *mutatis mutandis*, in particular the ones resulting from the implementation of procedures foreseen in paragraphs 11 and 12 of Instruction B19/2017 - Notification of Positions in PVB-ES NG Physical Futures, the procedures referred to in paragraphs 8 to 23.

Default of a Clearing Member – General Provisions

27. Regarding paragraphs (1)(c) and (1)(d), in case a Clearing Member enters into default, and if this implies the intervention on the Positions registered with OMIClear:
 - a) OMIClear notifies the CCs of the Clearing Member, indicating the deadline for exercising the portability or to request the transfer of Positions; this deadline, however, may not be less than 3 Clearing hours between 9:00 and 18:00 of Clearing Days;

- b) OMIClear notifies the Market Operators affected by the default.
 - c) A sanction is imposed on the Clearing Member, in the form of a warning, a financial penalty, a suspension or even exclusion, depending on the severity of the situation.
28. When solving the default of a Clearing Member, and pursuant to the OMIClear Rulebook, the Positions of CCs that have not been transferred are processed in the exact same way as own Positions, using, for this purpose, the set of Guarantees of the Clearing Member intended for the Positions of its CCs and, if necessary, of the Clearing Member's own guarantees.

Default of a Clearing Member – Processing the Positions and Guarantees Associated to a CAIS or a CAOS

29. If OMIClear has notified the default of a Clearing Member holder of a CAIS or CAOS, the provisions of the two following paragraphs shall apply.
30. The Clearing Member loses the right to refuse the portability of Positions and Guarantees associated to the CAIS or CAOS;
31. OMIClear notifies the Clients or the representatives of the CAIS or CAOS of that Member, to gather the conditions necessary to exercise the portability of the Positions and Guarantees, within the deadline referred to in the default notice. This deadline, however, may not be less than 3 hours between 9:00 and 18:00 of the Clearing Days, in respect of which the following situations may occur:
- a) If the Clients fail to exercise the right of portability within the prescribed period,:
 - i. The Positions of those Clients shall be managed, in particular, closed, by OMIClear in articulation with the Positions under the responsibility of the Clearing Member, using, for that purpose, the Guarantees inherent to its CAIS or CAOS, but shall nevertheless not be able to use them to settle the Positions of the Clearing Member or of other Clients. OMIClear reserves the right to accept that those Clients register new transactions as long as it does not represent an increase of the global risk assumed by the CCP;
 - ii. If, within the default management process, the Guarantees of the CAIS or CAOS are not sufficient, OMIClear shall use the Guarantees of the Clearing Member concerned.
 - iii. After the default is resolved, if there are surplus guarantee amounts attached to the CAIS or CAOS, these amounts shall be returned to the Clients concerned.
 - b) The Positions and Guarantees of Clients who exercise their right of portability on time and already have a Clearing Agreement shall see their Positions and Guarantees transferred and shall operate in the sphere of the new Clearing Member;
 - c) The provisions of the preceding subparagraph shall apply to the Clients who exercise the right of portability within the prescribed period, but who do not have a Clearing Agreement with the new Clearing Member, with the following exceptions:
 - i. Clients may deliver the said Clearing Agreement within (3) three Clearing days as from the time of notification mentioned in this paragraph;
 - ii. The target Clearing Account shall have to be a CAIS or a CAOS;
 - iii. Until the Clearing Agreement is delivered, in accordance with subparagraph (i), Clients shall be unable to increase exposure and the responsibilities with OMIClear, and to reduce the guarantees of the CAIS or CAOS;

- iv. Upon opening the new CAIS or CAOS, the Clearing Member concerned accepts that the account shall be processed specifically, namely in accordance with subparagraph (iii) and subparagraph (iv) of this paragraph, until the Clearing Agreement is delivered.
- d) Portability shall be refused to Clients who exercise the right of portability on time, but do not ensure within the prescribed period all the conditions referred to in the previous subparagraph, and shall be processed in the same way as those who do not exercise this right in accordance with subparagraph (a);
- e) With regard to Clients who exercise the right of portability but fail to submit within the period prescribed in subparagraph (c)(i) the Clearing Agreement, OMIClear, despite having transferred their Positions and Guarantees:
 - i. Declares the default of the Clients;
 - ii. Reverses the transfer of existing Positions at the time of the reversal, and of existing Guarantees at the time of the initial transfer, to the original Clearing Member;
 - iii. Shall, from that moment on, treat the Clients in the exact same way as to those referred to in subparagraphs (a) and (d).
 - iv. Considers that settlements occurred during the period in which the Positions and Guarantees were transferred are firm and final, not subject to reversal, therefore the Clearing Member affected may be compensated for possible losses with the Clients without using the Guarantees transferred.

Default of a Clearing Member – Processing the Positions and Guarantees of a CC with a GOCA

32. If OMIClear has notified the default of a Clearing Member pursuant to paragraph (27), the CCs concerned may request OMIClear the transfer of their Positions, registered to date, to another Clearing Member, provided that the following conditions are met:
- a) The CC's default situation has not been notified by the Clearing Member concerned, in accordance to paragraph (5);
 - b) The identification of the CC holder of the Registration Account has not taken place within the 5 Clearing Days prior to the default notification referred to in paragraph (27);
 - c) The Clearing Account where the Positions are cleared does not include the clearing of the Positions of other CCs or, by contrast, the transfer request is asked for all the positions included in that account;
 - d) The CC has already entered into a Clearing Agreement with another Clearing Member;
 - e) The new Clearing Member of the CC has set up sufficient Guarantees to cover the responsibilities arising from the Positions subject to Transfer;
 - f) The request for the transfer of Positions is made within the time period mentioned in the default notification referred to in paragraph (27).
33. For the Clients that fail to exercise the right of portability within the prescribed period OMIClear reserves the right to accept that those Clients register new transactions as long as it does not represent an increase of the global risk assumed by the CCP.
34. For the purpose of the preceding paragraph, the notification by the CC must observe the following conditions:
- a) Be made in accordance with Model C37 provided on the Website;
 - b) Be addressed to OMIClear by the CC directly related to the Clearing Member, and the Registration Agent must ensure that the CC is represented;

- c) Be sent through the means foreseen in the OMIClear Clearing Rules;
 - d) Be signed by a manager of the Registration Agent or, if applicable, by the client itself;
 - e) Include all documents and authorisations necessary for using the Clearing Account and eventual target Registration Accounts to which the Positions shall be transferred;
35. Following the reception of the notification referred to in the preceding paragraph, OMIClear notifies the defaulting Clearing Member.
36. Pursuant to paragraph (32)(e), the transfer of Positions only takes place if it is confirmed that the new Clearing Member has deposited the necessary Guarantees:
- a) To cover the new set of Positions for which it shall be responsible;
 - b) To cover the defaulting Clearing Member's aggravated exposure as a result of the transfer process, if the Clearing Account affected shows a net responsibility with a positive value on the Clearing Platform.
37. For the purpose of paragraph (35)(b), the Guarantees deposited by the new Clearing Member shall remain segregated from its other Guarantees, although subject to the same regime, being used exclusively to solve the default of the original Clearing Member and returned, in cash, according to the terms and quantities resulting to such resolution.
38. For the purpose of the two preceding paragraphs and of paragraph (32)(e), the responsibilities of Positions registered in the Clearing Account under intervention are measured by the Margins required and by the value of the financial settlements due.
39. If OMIClear approves the Transfer of Positions, the Clearing Members and Registration Agents involved shall be informed of this and, if affected, so shall the Market Operators, bearing in mind the Market security and stability.
40. However, pursuant to paragraph 50(b), should OMIClear be forced to close the positions of the defaulting Member, in accordance with the procedures set forth in that paragraph, the positions transferred under paragraphs (32) to (39) shall be the first ones to be affected.
41. The Guarantees attached to the general omnibus client accounts shall only be transferred if all the positions covered by the respective collateral are transferred within the period prescribed in the notification referred to in paragraph (27).
42. In accordance with the preceding paragraph, the value of the guarantees to be transferred shall always be limited to a maximum corresponding to the value of the responsibilities of the clearing accounts.
43. If the conditions referred to in paragraph (41) are not in place, the guarantees shall be available for closing or hedging the positions associated to them. The guarantees shall only be returned after the default relating to all the positions associated to it is solved.
44. The transfer and return referred to in paragraphs (41) and (43) shall only be made to the clients of the Clearing Member that are properly identified with OMIClear, who shall have to prove they are entitled to receive the amounts claimed within the deadline prescribed by OMIClear.
45. After the default is solved, the value of the remaining guarantees attached to the clients' general omnibus clearing account shall be distributed on a pro-rata basis and limited to the value of the responsibilities attached to the clearing accounts in question.
46. If, pursuant to the preceding paragraph, these guarantees are not used, the remaining value shall be returned to the clearing member.

Default of a Clearing Member – Processing of Own Positions

47. Pursuant to the OMIClear Rulebook, when a Clearing Member is in default, OMIClear may take over the management of its own Positions, adopting the following procedures:
 - a) The Positions are transferred to OMIClear's accounts, specific for this purpose;
 - b) The Guarantees deposited by the Clearing Member to cover own Positions are all intended for managing the default;
 - c) To manage defaulting Positions, OMIClear may also:
 - i. Request the support of the Crisis Sub-Committee of the Risk Committee;
 - ii. Promote the total or partial closure of Positions;
 - iii. Promote the total or partial coverage of Positions;
 - iv. Choose to proceed with the delivery of the Positions.
48. To ensure the total or partial closure or coverage of Positions, OMIClear may, in a first phase:
 - a) Close or cover own Positions of the Clearing Member with the Positions of its CCs with no individual segregation and no omnibus segregation that have not been transferred;
 - b) Give instructions to the Market Operators with which has signed an agreement to insert orders on OMIClear's behalf in the Trading System during the normal trading phase in continuous trading or auction mode;
 - c) Insert orders in the Trading System of the Market Operations with which has signed an agreement during the normal trading phase in continuous trading or auction mode;
 - d) Give instructions to the Market Operators with which has signed an agreement to register Bilateral Transactions through a broker acting on the such Markets;
 - e) Call for a special auction through the Market Operators with which has signed an agreement, with the following adaptations:
 - i. The Positions may be auctioned in one or more auctions, simultaneously or sequentially;
 - ii. The minimum notice to Market members for the first auction is 60 minutes;
 - iii. Each auction shall last at least 15 minutes;
 - iv. If more than one auction procedure is promoted, the minimum interval between the publication of results and the beginning of the next auction is 15 minutes.
49. If the use of procedures referred to in the preceding paragraph is not sufficient to manage the Positions of the defaulting Clearing Member, OMIClear may close them, allocating the Positions managed by other Participants in accordance with the conditions set in the two paragraphs below regarding the selection of allocated Positions and their closing price.
50. In accordance with the preceding paragraph, after defining the Positions of the defaulting Clearing Member that are subject to intervention, the following basic criteria shall be adopted to choose the Positions managed by other Clearing Members:
 - a) The closure procedure uses the open Positions of other Clearing Members and their CCs that are strictly necessary to close the defaulting Positions;
 - b) Pursuant to the preceding subparagraph, the first to be affected are the Positions of CCs of the defaulting Clearing Member arising out of general omnibus accounts that have been transferred to other Clearing Members.
 - c) Then, the Positions of other Clearing Members and their CCs are affected, on a pro-rata basis, according to their net balance of opposite sign, buyers if the Positions to be closed are sellers and vice-versa, in each Registration Account.

51. Pursuant to the two preceding paragraphs, the closing price of Positions is determined by OMIClear based on criteria set forth in the subparagraphs below, in order not to exceed the amounts available in the Clearing Fund.

- a) First, the close price limit is defined (CPL) for each product or Contract:
 - i. For each product or Contract that has been closed through the market mechanisms referred to in paragraph (48), the CPL corresponds to its average price achieved at the close of Positions,
 - ii. For the products or Contracts for which it has not been possible to close Positions based on the market procedures identified in paragraph (48), the following steps must be taken to determine their CPL:
 1. Calculation, for each product or Contracts identified in subparagraph (i) of the ratio, in absolute value, between its CPL and the last Settlement Price, for the Positions being traded or the Clearing Reference Price for the Positions in delivery;
 2. Based on ratios obtained in the preceding subparagraph above, the calculation of an average ratio (AR), taking into account the notional values, in euros, underlying the contributing transactions for each of the ratios;
 3. For each product or Contracts for which there has been no set closing price in the market, then a CPL is established, by applying the average ratio (AR) to its last Settlement Price, for the Positions that are being traded, or the Clearing Reference Price for the Positions in delivery.
- b) In a second step, the closing prices of Positions still open belonging to the defaulting Clearing Member are then defined based on the CPLs established under the preceding paragraph, to which a uniform percentage is added or deducted, depending on whether they are buying or selling defaulting Position, respectively, so as not to exceed the funds available in the Clearing Fund.

52. The conditions referred to in the four preceding paragraphs express the principles that should guide the closing of Positions in extreme situations, adaptable by OMIClear to the circumstances of each situation.

53. Further to the procedures set forth in the five preceding paragraphs, OMIClear provides the following information to the Crisis Sub-Committee of the Risk Committee and to the CMVM prior to initiating any of these procedures:

- a) The number of Positions placed for auction and their reserve price, in accordance with paragraph (47)(c);
- b) The number of open Positions for each Contract, referred to in paragraph (47);
- c) The reference prices and the prices at which the Positions are closed, defined for each product, in accordance with paragraph (51).

Resources Used for the Resolution of Defaults

54. Without prejudice to any action in exceptional cases, OMIClear is called to intervene directly in the resolution of Clearing Members' defaults, using a set of resources and mechanisms foreseen in the Instruction B12/2014 - Default Waterfall.

Communication to the Supervisory Entity

55. OMIClear shall inform CMVM before initiating the procedures foreseen for a default situation.

Final Provision

56. The transfer of Positions resulting from a default situation entails the payment of registration and clearing fees applicable to the registration of Bilateral Transactions, as defined in OMIClear's Price List.

Entry into Effect

57. This Instruction has been registered with CMVM on April, 5th 2018 and enters into effect on April, 17th 2018.

The Board of Directors