



## **INSTRUCTION A09/2014**

**Defaults**

24.June.2014

## **Versions Index**

**24.Jun.2014**

Initial Version

### **DISCLAIMER**

The English language text below is not an official translation and is provided for information purposes only. The original text of this document is in the Portuguese language (available in [www.omiclear.eu](http://www.omiclear.eu)) and it was registered by the Portuguese Securities Market Commission (Comissão do Mercado de Valores Mobiliários). In the event of any discrepancies between the English translation and the Portuguese original, the Portuguese original shall prevail. Whilst every effort has been made to provide an accurate translation we are not liable for the proper and complete translation of the Portuguese original and we do not accept any liability for the use of, or reliance on, the English translation or for any errors or misunderstandings that may derive from the translation.

This document is available in [www.omiclear.eu](http://www.omiclear.eu)

© Copyright/ 2014  
OMIClear, C.C., S.A.

Pursuant to its Rulebook, OMIClear approves this Instruction that implements the procedures to be adopted in the event of a default by a Participant.

### General Provisions

1. Under the OMIClear Rulebook, the default of a Participant may be due, among other situations, to:
  - a) The breach of procedures to be adopted in the relationship with OMIClear;
  - b) The breach of procedures to be adopted in the relationship with other Participants, as is the case of clients with the Clearing Members;
  - c) The deterioration of legal, economical, financial or operational conditions;
  - d) Facts or situations which may occur to the Participant with no direct connection to OMIClear or the Services provided by OMIClear, but which are likely to have a negative impact on the Participant's position with OMIClear, such as the verification of any fact that, under the law, is indicative of the Participant's insolvency.
2. A default may have originated in a specific Service or in the violation of general relationship conditions with OMIClear.
3. Regardless of whether the source of the default has originated in a specific Service or in general or cross-sectional procedures, OMIClear can consider that the default is extended to all or just a part of the Services in which the Participant is involved, regardless of its status therein.
4. Pursuant to the preceding paragraph, OMIClear is responsible for assessing the extent of the default, which does not have to affect, at the same time, all the functions and Services in which the Participant operates. As such, OMIClear notifies the Participant to clearly identify which Services and functions are affected by the said default.
5. The procedures to be adopted for each Service, function or activity are specified in the applicable Rules and in the OMIClear Rulebook.

### Communications

6. The default notice sent to the Participant:
  - a) Is followed by a notice sent to the CMVM and, if applicable, to any other supervisory entity of the Participant;
  - b) Is communicated to the Market Operators or similar Entities that relate to OMIClear as part of the Services provided by the latter and having participants directly affected by the default;
  - c) Can be communicated to OMIClear's Participants directly affected, including clients or other Clearing Members, as defined in the applicable rules of the Services concerned;
  - d) Can be communicated to other CCPs with which OMIClear has entered into information exchange agreements;
7. Under the preceding paragraph and Article 38(5) of EMIR, OMIClear publicly discloses all the breaches to the criteria to which Article 37(1) refers and to the requirements defined in Article 38(1) of EMIR committed by Clearing Members, if CMVM feels that such disclosure does not threaten the financial stability or the confidence of markets, and does not seriously affect the financial markets or cause disproportionate damages to the parties involved.

### Guarantees

8. The use of Guarantees by OMIClear to solve the default is defined in a specific Instruction.
9. When the default is established, all amounts owed by the Participant to OMIClear become due and immediately payable. These amounts must be paid in full and there will be no right of return of the amounts paid in that capacity.
10. Any positive balances resulting from the resolution of the default in a given Service and the related surplus Guarantees will only be returned to the Participant when all the procedures arising from the default are entirely concluded.
11. OMIClear can clear the Participant's balances in various Services, functions or activities. Balances will only be released to the Participant when, following the previous clearing process and the procedures to solve the default are completed, there is a positive balance for the Participant.

### Entry into Effect

12. This Instruction has been registered with CMVM on 8 May 2014 and enters into effect on 24 June 2014.

*The Board of Directors*