

CHAPTER SIX

CLEARING FUND

600.00

The Clearinghouse shall maintain a Clearing Fund, which shall be made up of cash contributions by Clearing Members with respect to the Open Contracts they have registered in their Accounts and sub-accounts, in accordance with the Provisions, Regulations and Operating Manual.

601.00

In order for a Clearing Member to record, clear and settle Transactions, it must make a cash contribution prior to trading, in the amount determined by the Sub-committee on Admission and Risk Management. The Clearinghouse shall make use of said resources to cover contributions to the Clearing Fund, up until the time at which the amount required on the basis of the Open Contracts registered in the Accounts of that Clearing Member exceeds the amount of the pre-trading contribution, at which time the Clearing Member must make additional contributions.

602.00

Clearing Members must create and daily replenish their contributions to the Clearing Fund on the basis of any increase or reduction in Open Contracts in each of their Accounts and sub-accounts.

603.00

The individual contributions of each Clearing Member to the Clearing Fund shall be used to cover any obligations that were not covered at the time the settlements provided for in the Regulations are not made, and when the application of their Contributions Fund is insufficient under the terms of Chapter Nine of the Regulations.

The above paragraph notwithstanding, and exclusively in the case of Clearing Members belonging to the same financial group, contributions to the Clearing Fund from a Proprietary Position Clearing Member may be used to cover pending obligations of defaulting Clients of a Third-Party Position Clearing Member, after applying the Margins and contributions to the Clearing Fund of that Third-Party Position Clearing Member.

604.00

In addition to what is established in article 603.00, all Clearing Members' contributions to the Clearing Fund may be used on a pro rata basis to cover the pending obligations of a Clearing Member in conditions of default, at the time when the resources available in the Contributions Fund and the Clearing Fund have been exhausted.

605.00

The amount of the contribution of a Clearing Member to the Clearing Fund shall be the higher of the following:

a) The pre-trading contribution referred to in Article 601.00

b) The percentage determined by the Sub-Committee on Admission and Risk Management with respect to the average Margin maintained over the past 30 (thirty) Business Days by the Clearing Member with the Clearinghouse, or over the number of Business Days that have transpired since the start date of the Transactions in the Clearinghouse when this is less than 30 (thirty) Business Days.

c) The percentage determined by the Sub-Committee on Admission and Risk Management with respect to the Margins maintained by the Clearing Member with the Clearinghouse during the day on which the calculation is performed.

The Sub-Committee on Admission and Risk Management has the right to modify the percentages referred to in the preceding points at any time, and must in all cases indicate the date on and conditions under which the new percentages will take effect.

The preceding paragraphs notwithstanding, individual contributions by the Clearing Member to the Clearing Fund may in no case be less than established in the Regulations.

606.00

The Clearinghouse shall daily update the amount of contributions from each Clearing Member to the Clearing Fund, and when necessary shall require that it submit additional resources or shall return to them the excess resources as part of their settlement.

The Clearinghouse shall generate and deliver to each Clearing Member the reports informing them of their contributions to the Clearing Fund.

607.00

In emergency situations, the Clearinghouse shall have the right to make partial or total use of the contributions to the Clearing Fund, in which case the charge shall be made on a pro rata basis. The Clearinghouse must notify all Clearing Members of the amount charged to their individual contributions to the Clearing Fund and the reasons for doing so. These resources may only be used in accordance with Chapter Nine of the Regulations.

608.00

The Chairman or, in his absence, the Chief Executive Officer, may require Clearing Members to make contributions in order to restore the Clearing Fund to the amount it contained at the time its resources were partially or totally used. The Clearinghouse may require a total replenishment of the Clearing Fund up to two consecutive occasions without the need for authorization from the Technical Committee, but must seek such authorization if requesting a third or further consecutive restoration of the Clearing Fund during a period of thirty Business Days.

Contributions to restore the Clearing Fund must be made by Clearing members by the end of the Business Day following the date on which the corresponding request is made.

609.00

If the Clearinghouse recovers all or part of the amounts it has used of the Clearing Fund, it must return them to Clearing Members in the same proportion in which the Clearinghouse made use of those amounts.

610.00

In accordance with the provisions issued by the Authorities, the Technical Committee shall define the way in which the resources that make up the Clearing Fund shall be invested, placing a priority on criteria of security and liquidity above that of yield. The yields obtained on those resources must be credited to the respective Clearing Member.

611.00

The obligation to create and restore the Clearing Fund and to cover the Daily Settlement amounts is single and indivisible. Any failure to comply with these obligations, whether total or partial, shall result in the expulsion of the Clearing Member under the terms of Chapter Eleven.

The Clearinghouse shall only release contributions to the Clearing Fund and their yields when all the obligations of the Clearing Member that are intended to be covered by said Fund are settled, or shall partially release them when they are higher than the amount required by the Clearinghouse.

612.00

When a Clearing Member ceases to exist as such, the Clearinghouse shall maintain the amount it has contributed to create the Clearing Fund during a period of 6 (six) months, after which time it shall return them.

The amount referred to in the preceding paragraph shall be returned once the Clearing Member has settled all its obligations relating to its activities as a Clearing Member and after the above-mentioned term has transpired.