

## **Chapter 8**

### **Settlement**

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### **801. Settlement**

801.1 Each Contract is to be settled in full on the Settlement Date in accordance with these Rules. Each Member shall settle all Contracts on a timely basis and in accordance with these Rules.

### **802. Settlement Date**

802.1 The date of settlement for any Contract ("**Settlement Date**") shall be as prescribed from time to time by the Exchange and/or the Book Depository. Notwithstanding that the final settlement of a Contract shall be on the Settlement Date, each Member shall make such payments by the dates and times specified by the Exchange and/or the Book Depository, and where applicable, shall ensure Immobilisation of the Physical Diamond in the Singapore Vault by the dates and times specified by the Exchange and/or Book Depository from time to time.

### **803. Settlement Statement**

803.1 For each Trading Day, the Book Depository shall send to each Member a settlement statement (the "**Settlement Statement**") setting out:

- (a) the particulars of each Contract or a summary thereof entered into by the Member on that Trading Day;
- (b) the Net Settlement Amounts payable or receivable for all the Contracts entered into by the Member on that Trading Day, and the date and time by which payment shall be made. For Approved Suppliers and Proprietary Trading Members, the Settlement Statement shall reflect only one Net Settlement Amount for all Contracts allocated to its House Account. For Broker Members, the Settlement Statement shall reflect two Net Settlement Amounts; one Net Settlement Amount for all Contracts allocated to its House Account and one Net Settlement Amount for all Contracts allocated to its Customer Account;
- (c) the book-entries to be made in relation to the Products to which such Contracts relate and the date and time (if applicable) by which the Physical Diamond is to be Immobilised in the Singapore Vault.

803.2 The Settlement Statement shall specify for each Contract whether the amounts due or payable under such Contract are allocated to the House Account, or the Customer Account of the relevant Member.

803.3 Each Member shall examine and verify each and every Settlement Statement and unless the Book Depository receives a written notification on the date of the Settlement Statement from the Member regarding any error or irregularity on the Settlement Statement, such Member shall be deemed conclusively to have accepted all the matters contained in such Settlement Statement as true and accurate in all respects and shall not dispute particulars of the Account or the Transactions as stated in such Settlement Statement, which shall be conclusive evidence as against it of the contents therein, save for manifest error.

803.4 Without prejudice to Rule 803.3, each Member shall prior to placing any Order or executing any trades on the Exchange Trading System, use due care to reconcile the positions in the Accounts (including the credits and debits in the Depository Accounts) with the actual positions undertaken by the Member, and to only place an Order or execute a trade on the Exchange Trading System where the Member is entitled to do so. Where the Member is aware (or should have been aware on the basis of a reconciliation) that there are certain positions in the Accounts which have not been reconciled with the actual positions undertaken by the Member, the

Member (i) shall promptly notify the Book Depository and (ii) shall not place any sell Order or execute any sell trade on the Exchange Trading System on the basis of any credits in the Depository Accounts which have not been reconciled with the actual positions undertaken by the Member.

803.5 For the avoidance of doubt and as an independent stipulation, the Net Settlement Amount for all Contracts allocated to a Member's Customer Account shall not be netted or otherwise applied in any manner against the Net Settlement Amount for all Contracts allocated to the Member's House Account.

#### **804. Novation**

804.1 An Original Contract shall be novated to the Book Depository immediately after the Original Contract is formed (as specified in the records of the Exchange) ("**Novation**").

804.2 The Novation to the Book Depository shall immediately result in:

- (a) the Original Contract being discharged; and
- (b) concurrently, the establishment of two separate and distinct contracts (the "**Novated Contracts**"); comprising one contract between the Book Depository and the Member who is the Purchaser under the Original Contract ("**Buying Member Transaction**"), and the other contract between the Book Depository and the Member who is the Vendor under the Original Contract ("**Selling Member Transaction**").

804.3 The Buying Member Transaction shall be on the same terms as the Original Contract (including in respect of price, quality and quantity) except that Clause 10 of the Original Contract (as set out in Attachment B of Chapter 7) shall not apply to the Buying Member Transaction and the following terms shall apply to the Buying Member Transaction:

- (a) the payment obligations of the Purchaser to the Vendor under the Original Contract shall be replaced by a corresponding payment obligation of the Purchaser to the Book Depository;
- (b) the obligation of the Book Depository in relation to any transfer of title, property, rights and interest shall only be that of transferring such title, property, rights and interest to the relevant Product from the Vendor to the Purchaser and such obligation shall solely entail recording the transfer of such title, property, rights and interest to the relevant Product by means of a book-entry in the Register, and the transfer of such title, property, rights and interest to the relevant Product shall occur immediately upon the recording of such transfer by the Book Depository;
- (c) each of the Exchange and the Book Depository expressly excludes all warranties, conditions and other terms implied by statute or common law, subject to mandatory law, and no condition is made or to be implied nor is any warranty given or to be implied as to the quality or condition of the Product or that the Product will be suitable for any particular purpose or use under any specific conditions, notwithstanding that such purpose or conditions may be known or made known to the Exchange or the Book Depository; and

- (d) the Purchaser shall act as and be responsible as principal vis-à-vis the Book Depository (and in this connection, notwithstanding any references elsewhere in these Rules to a Member placing or executing orders, acting as broker or performing or doing any act, for the benefit of the Customer, or to warranties or obligations of a Broker Member in relation to the Customer, the Purchaser confirms and agrees that the Buying Member Transaction is entered into by the Purchaser as principal vis-à-vis the Book Depository and that the Purchaser shall be responsible for such Buying Member Transaction vis-à-vis the Book Depository as principal. The Purchaser warrants that it has the full right and authority to make the respective Order, offer and to enter into the Original Contract as principal, enter into the Buying Member Transaction as principal and that the Purchaser acts as and shall be responsible as principal for the respective Order, offer, Original Contract and Buying Member Transaction).

804.4 The Book Depository shall be deemed to have made all disclosures in relation to the transfer of title, property, rights and interest to the relevant Product from the Vendor prior to the Novation, and the Purchaser shall read and shall in any event be deemed to have knowledge of all disclosures as set out in the Depository Account Rules and the Conditions of Original Contract (as set out in Attachment B of Chapter 7).

804.5 In the event of any inconsistency between the terms set out above and the terms set out in the Original Contract, the terms set out above shall prevail to the extent of such inconsistency with respect to such Buying Member Transaction.

804.6 The Selling Member Transaction shall be on the same terms as the Original Contract (including in respect of price, quality and quantity) except that Clause 10 of the Original Contract (as set out in Attachment B of Chapter 7) shall not apply to the Selling Member Transaction and the following terms shall apply to the Selling Member Transaction:

- (a) the Vendor shall look solely to the Book Depository to receive payment in relation to the sale of the Product, and the Purchaser shall have no payment obligations to the Vendor;
- (b) title, property, rights and interest to the relevant Product shall be transferred by the Vendor directly to the Purchaser, immediately upon the Book Depository recording the transfer of such title, property, rights and interest to the relevant Product in accordance with these Rules; and
- (c) the Vendor shall act as and be responsible as principal vis-à-vis the Book Depository (and in this connection, notwithstanding any references elsewhere in these Rules to a Member placing or executing orders, acting as broker or performing or doing any act, for the benefit of the Customer, or to warranties or obligations of a Broker Member in relation to the Customer, the Vendor confirms and agrees that the Selling Member Transaction is entered into by the Vendor as principal vis-à-vis the Book Depository and that the Vendor shall be responsible for such Selling Member Transaction vis-à-vis the Book Depository as principal. The Vendor warrants that it has the full right and authority to make the respective Order, offer and to enter into the Original Contract as principal, enter into the Selling Member Transaction as principal, and that the Vendor acts as and shall be responsible as principal for the respective Order, offer, Original Contract and Selling Member Transaction).

- 804.7 In the event of any inconsistency between the terms set out above and the terms set out in the Original Contract, the terms set out above shall prevail to the extent of such inconsistency with respect to such Selling Member Transaction.
- 804.8 Notwithstanding any term in these Rules, at no time shall title, property, interest and risk of loss and damage to any Product pass to the Exchange or the Book Depository. Title, property, interest and risk of loss and damage to any Product shall pass in accordance with these Rules.
- 804.9 Each Original Contract that is novated in accordance with this Rule and the Buying Member Transaction and Selling Member Transaction arising therefrom shall be allocated by the Book Depository, based on instructions of each relevant Member, to a Depository Account maintained by such Member with the Book Depository, subject to and in accordance with Rules 709.1(c) and 712.2.
- 804.10 The Exchange and the Book Depository shall not be obliged to recognise any interest of any person other than the Member in respect of each Depository Account opened by the Member (whether the Account is established as a House Depository Account or Customer Depository Account). The Book Depository merely keeps records of the fact that the relevant account is a Customer Account, and such records are kept solely for administrative purposes. Each Vendor and Purchaser agrees that nothing in these Rules shall impose on the Book Depository any responsibility or notice of any trust (express, implied or constructive) or other arrangement (including in each case but not limited to, any trust or interest arising between the Broker Member and its customers), and agrees that no liabilities shall be affected by anything done in pursuance of these Rules by reason of, and the Book Depository shall not be affected with notice of, any trust or other arrangement of the Vendor or, as the case may be, Purchaser. Each Vendor and Purchaser agrees that it shall only have rights against the Book Depository as principal. At no time shall any rights or entitlements arise directly in favour of a Customer in respect of such Accounts. At no time shall the Exchange or Book Depository be required to act on any instructions of a Customer of a Member.

## **805. Cash Settlement**

- 805.1 All Contracts are entered into in reliance of the fact that at any time, the entering into of Original Contracts on the Market on a Trading Day by a Member shall in accordance with this Rule only result in a single net amount obligation (i.e. the Net Settlement Amount) in relation to Contracts allocated to its House Account on that Trading Day and a single net amount obligation (i.e. the Net Settlement Amount) in relation to Contracts allocated to its Customer Account on that Trading Day payable or subject to a claim by the Member. The single net amount obligations described above shall be determined on the Trading Day on which the Original Contracts have been entered into, subject to adjustments (if any) by the Book Depository for Payment Defaults or Delivery Defaults, in which event the single net amount obligations of Members shall be as set out in the new settlement figures issued by the Book Depository further to such adjustments. The Net Settlement Amount will be an amount equal to the sum of (1) all Buying Member Transactions in relation to the Member for its House Account or its Customer Account, as the case may be (expressed as a negative amount) and (2) all Selling Member Transactions in relation to the Member for its House Account or its Customer Account, as the case may be (expressed as a positive amount). Where the Net Settlement Amount in the Settlement Statement is a negative number, this reflects a net sum payable by a Member (the "**Net Debit Amount**"), and the Member shall settle its obligations to the Book Depository by making payment of the Net Debit Amount to the Book Depository's account held with the Settlement

Bank by the date and time set out in the Settlement Statement or as may be prescribed by the Book Depository. The failure to make payment of the Net Debit Amount in full and/or by such time shall be regarded as payment default (“**Payment Default**”) and the Member shall be in default of its obligations under this Rule.

- 805.2 Where the Net Settlement Amount in the Settlement Statement is a positive number, this reflects a net sum payable to the Member (the “**Net Credit Amount**”), the Net Credit Amount is payable to the Member from the Book Depository’s account held with the Settlement Bank on the Settlement Date.
- 805.3 On a Settlement Date, for the relevant Original Contracts entered into by a Member and due for settlement on that Settlement Date, when the Book Depository appropriates the relevant Net Debit Amount for payment by each relevant Member and the Book Depository credits the relevant Net Credit Amount to each relevant Member who is entitled to the same, each Purchaser shall be deemed to have made payment for the relevant Original Contracts it has entered into and which are due for settlement on that Settlement Date, and each Vendor shall be deemed to have received payment for the relevant Original Contracts it has entered into and which are due for settlement on that Settlement Date.
- 805.4 The Book Depository’s settlement account held with the Settlement Bank is a trust account, where moneys are held on trust for Members. The Book Depository shall not commingle moneys in the settlement account with its own moneys. Amounts received by the Book Depository on account of the Members may be commingled and deposited in the same settlement account with the Settlement Bank.
- 805.5 Before opening the settlement account, the Book Depository shall inform the Settlement Bank that:
- (a) the moneys deposited in the settlement account are held on trust by the Book Depository for the Members and the Settlement Bank cannot exercise any right of set-off against the moneys for any debt owed by the Book Depository to the Settlement Bank; and
  - (b) the account is designated as a settlement trust account and is maintained separately from any other account that the Book Depository deposits its own moneys.
- 805.6 Notwithstanding any provision of this Rule 805, each obligation of the Book Depository to credit the Net Credit Amount to a relevant Member is further subject to the condition precedent that no Adverse Event has occurred and is continuing in respect of the Member. In the event of an Adverse Event occurring, the Exchange and/or the Book Depository shall be entitled to exercise any powers under Chapter 9.
- 805.7 All Contracts are entered into in reliance of the fact that there would be a Net Settlement Amount in relation to Contracts allocated to the House Account and a Net Settlement Amount in relation to Contracts allocated to the Customer Account in accordance with the terms of the Rules set out herein and the parties would not otherwise enter into any Contract.

## **806. Physical Settlement**

- 806.1 (a) **If the Vendor is not Consigning the Product which is the subject matter of the Original Contract (a “Non-Consigning Vendor”)**, such Vendor shall not enter into any Original Contract to sell the relevant Product on the Exchange Trading System unless, and shall ensure that, the Product which is the subject matter of the Original Contract is standing to the credit of the Depository Account to which the transaction is

allocated (the “**Delivery Account**”) on the Settlement Date, or that the Vendor has entered into a purchase contract for the purchase of the Product on the Exchange Trading System so that its Delivery Account will be credited with the Product on or by the Settlement Date for the Original Contract.

In entering into any Original Contract, a Non-Consigning Vendor warrants that the foregoing condition is or will be fulfilled.

Where the Product which is the subject matter of the Original Contract is standing to the credit of the Delivery Account on the date the Original Contract is made or at any time prior to the Settlement Date for the Original Contract, the relevant Product shall, on and from the day on which the Original Contract is made, be earmarked in the Delivery Account and the Vendor will not be able to effect any further or additional transactions (including withdrawals of Physical Diamonds) thereafter in respect of such Product.

(b) **If the Vendor is a Consigning Approved Supplier**, such Vendor shall not enter into any Original Contract to sell the relevant Product on the Exchange Trading System unless, and shall ensure that:

- (i) on the date the Original Contract is made, the Product which is the subject matter of the Original Contract is Consigned in a Vault, and such Vendor will deliver such Product into the Singapore Vault to be received by the Physical Depository no later than the second Business Day after the date the Original Contract is made or such other time as may be prescribed by the Exchange and/or the Book Depository;
- (ii) such Product is Immobilised in the Singapore Vault on the second Business Day after the date the Original Contract is made or such other time as may be prescribed by the Exchange and/or the Book Depository; and
- (iii) where such Product is a Diamond Basket representing an undivided share in a particular Pool, such Product would be delivered to the Pool in the Singapore Vault on the second Business Day after the date the Original Contract is made or such other time as may be prescribed by the Exchange and/or the Book Depository,

in each case, in accordance with the Depository Account Rules.

In entering into any Original Contract, a Vendor who is a Consigning Approved Supplier warrants that the foregoing conditions are and (in respect of delivery to the Singapore Vault) will be fulfilled.

(c) By entering into the Original Contract, the Vendor irrevocably authorises and instructs the Book Depository, on Settlement Date, to debit its Delivery Account and to credit the Purchaser’s Depository Account with the Product.

(d) The Book Depository shall record the transfer of title, property, rights and interest to the Product by crediting the Product to the Purchaser’s Depository Account with the Book Depository to which the relevant Contract is allocated for purposes of settlement, so that the Purchaser shall be recorded on the Register as: where the Product is a Single Stone or a specific Diamond Basket, the owner of the Product in place of the Vendor; where the Product is a specified quantity of Diamond Baskets representing an undivided share in a Pool, an owner in common of an undivided share in such Pool, such share being the proportion that the quantity of Diamond Baskets sold to the Purchaser bears to the total quantity of Diamond Baskets recorded by the Book

Depository as forming the Pool for the time being.

- (e) Once the book-entry is made by the Book Depository under Rule 806.1(d), all of the Vendor's title, property, rights, interests and the risk of loss and damage to the Product which is the subject of the book-entry made by the Book Depository shall pass to the Purchaser without any need for further action. The Vendor agrees that on and from the Settlement Date, the Vendor has no further title, property, rights or interests to such Product and the Book Depository shall hold such Product for the account of the Purchaser as bailee.
- (f) The Purchaser agrees that from the time that the relevant Product is credited to the Purchaser's Depository Account and for so long as such Product is standing to the credit of the Purchaser's Depository Account, the Book Depository acts as bailee for the Purchaser.
- (g) To give effect to the relevant Contracts (excluding the Buying Member Transaction) and to ensure the performance of the covenants, conditions, undertakings and obligations on the part of the Vendor contained in these Rules, the Vendor irrevocably appoints the Purchaser (save in respect of the Selling Member Transaction) and the Book Depository (each an "**Attorney**") severally to be its true and lawful attorney and in the Vendor's name or otherwise to do any act, matter or thing which any Attorney considers necessary or desirable for the protection, preservation or enjoyment of that Attorney's respective rights and interest in the Product and/or which ought to be done under the covenants, conditions, undertakings and obligations on the part of the Vendor contained in these Rules (in each case subject to the provisions of these Rules), including (without limitation) in relation to the respective rights and interests of each Attorney in the Product, any or all of the following, at any time after the occurrence of any Default Event:
  - (A) to do every other act or thing which the Vendor is obliged to do under these Rules or which that Attorney may otherwise consider to be necessary, proper or expedient for fully and effectually vesting or transferring the title, property, rights and interest to the relevant Product under the Contract to the Purchaser or to any other person or persons entitled to the benefit thereof (as the case may be) in the same manner and as fully and effectually in all respects as the Vendor could have done under these Rules;
  - (B) to exercise all the powers of the Vendor in relation to such Contract including for the avoidance of doubt to demand, sue for and receive all monies due and payable under the Contract.

Each of the Attorneys may delegate to one or more persons all or any of the powers referred to above on such terms as it thinks fit and may revoke any such delegation at any time. Each Attorney shall have the power by writing under its hand by an officer of the Attorney from time to time to appoint a substitute who shall have the power to act on behalf of the Vendor as if that substitute shall have been originally appointed Attorney by this power of attorney (including, without limitation, the power of further substitution) and/or to revoke any such appointment at any time without assigning any reason therefor. The Vendor hereby agrees at all times to ratify and confirm whatsoever the said Attorney or its attorneys shall lawfully do or cause to be done in and concerning the Contracts (excluding the Buying Member Transaction) by virtue of this power of



attorney. The powers and authorities given by this Rule shall remain in full force and effect for a period of 6 years from the date of each Original Contract.

- (h) If a Vendor purports to enter into an Original Contract for a sale of a Product which (in the case of a Non-Consigning Vendor) is or will not be standing to the credit of its Delivery Account on the Settlement Date, or (in the case where the Vendor is a Consigning Approved Supplier) is or will not be Immobilised in the Singapore Vault on the second Trading Day after the date the Original Contract is made, in accordance with the Depository Account Rules, the Vendor shall be deemed to be in default of, *inter alia*, Rule 806.1(a) or Rule 806.1(b) (as the case may be), and such default shall be regarded as a “**Delivery Default**”. For the avoidance of doubt, a Vendor shall not be entitled to payment under Rule 805.2 if there is a Delivery Default.

806.2 Notwithstanding any provision of this Rule 806, each obligation of the Book Depository to record the transfer of title, property, rights and interest to a Product from or to a relevant Member is further subject to the condition precedent that no Adverse Event has occurred and is continuing in respect of the Member. In the event of an Adverse Event occurring, the Exchange and/or the Book Depository shall be entitled to exercise any powers under Chapter 9.

## **807. Re-Novation**

807.1 The Novated Contracts shall be re-novated to the Vendor and the Purchaser immediately after the Book Depository appropriating the relevant Net Debit Amount for payment by the relevant Members and crediting the relevant Net Credit Amount to the relevant Members who are entitled to the same on Settlement Date under Rule 805.3 or effecting the book entries under Rule 806.1(d), whichever is later (“**Re-Novation**”). Each Re-Novation shall result in the relevant Novated Contracts being discharged and replaced in its entirety with a contract between the Vendor and Purchaser (“**Re-Novated Contract**”), on the same terms as the Original Contract (including in respect of price, quality and quantity).

807.2 Upon the occurrence of any Re-Novation where the Book Depository has effected physical settlement in accordance with Rule 806:

- (a) the Vendor shall be regarded as having sold the Product to the Purchaser;
- (b) the Purchaser shall be regarded as having paid the purchase consideration for the Product to the Vendor;
- (c) title, property, rights and interest to the Product shall have been transferred from the Vendor to the Purchaser on the Settlement Date, and the Book Depository has no further obligations to the Vendor or the Purchaser (other than acting as a bailee for the Purchaser in accordance with these Rules);
- (d) upon the occurrence of the Re-Novation and without prejudice to paragraph (c) above, each of the Purchaser and the Vendor:
  - (i) acknowledges and agrees that as of the occurrence of Re-Novation, the Indemnitees shall not have, and shall be discharged and released from, any obligations, duties, claims or liabilities (including any obligations, duties, claims or liabilities that arose or accrued prior to the occurrence of Re-Novation) arising out of or in connection with the Novated Contracts or with respect to the offer and/or sale, delivery and purchase of any of the Products;
  - (ii) hereby waives and releases the Indemnitees from any and all Losses pursuant to, relating to or arising out of the Re-Novated Contract or the sale, supply or

delivery of the Product, and from Losses of any kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with the Re-Novated Contract or any Contract. Without limiting the generality of the foregoing, the foregoing waiver and release will apply to, and each such Member agrees that it shall have no right to, any action or claim in contract, tort, restitution or otherwise for any of the following against the Indemnitees: (i) any indirect, incidental, consequential, special or exemplary costs, claims, expenses, loss or damages; or (ii) downtime costs, loss of revenues, profits, business opportunities, anticipated savings or goodwill.

- 807.3 Notwithstanding the foregoing, where it is not in the view of the Book Depository reasonably possible to settle the then unsettled Novated Contracts in accordance with the other provisions of these Rules, the parties agree that the Book Depository may at its sole discretion discharge any and/or all the then unsettled Novated Contracts whereupon all rights accrued till then shall be discharged, or require re-novation of the Novated Contracts to the original Vendor and original Purchaser in any other circumstances and upon such terms as it may deem fit, including but not limited to an Adverse Event occurring in respect of any Member.

#### **808. Liability of Members**

- 808.1 Each Member hereby acknowledges and accepts full responsibility and liability for any and all Losses arising out of or in connection with such Member's breach of and/or its inability to fulfil any of these Rules, the Original Contract, the Novated Contracts, the Re-Novated Contract and/or the related documents. Each Member shall compensate other affected Members and/or the Book Depository in respect of any and all Losses arising out of or in connection with such Member's breach of and/or its inability to fulfil any of these Rules, the Original Contract, the Novated Contracts, the Re-Novated Contract and/or the related documents.

#### **809. Liability of the Exchange and the Book Depository**

- 809.1 The Indemnitees are not and shall not be construed as an agent of any Member.
- 809.2 The Indemnitees (other than the Exchange and the Book Depository) may themselves participate in the Exchange Trading System by offering, or bidding, for Listed Products, in such event they are no different from any other Member selling or bidding for Products on the Exchange Trading System and shall abide by and be subject to the same terms and conditions contained herein.
- 809.3 The Indemnitees are not responsible for monitoring, screening, censoring or otherwise controlling any activity, content or material of the Members on the Exchange Trading System.
- 809.4 The Indemnitees are not responsible for procuring or warranting that the Purchaser or the Vendor shall comply or have complied, fully or otherwise, with the terms and conditions of these Rules, the Original Contract, the Re-Novated Contract and/or the related documents. Moreover, the Indemnitees cannot and do not know if any Member will perform any promise made to another Member, or if any Member will perform any promise made to another Member with reasonable care.
- 809.2 None of the Indemnitees makes any representation or warranty nor undertakes any liability or responsibility with respect to the following:
- (a) no condition is made or to be implied nor is any warranty given or to be implied as to:

- (i) the quantity, quality and description of the Product; (ii) the compliance of the Product in all respects with the Product Specifications, the description contained in the supporting documents and information and/or the conditions imposed by the Book Depository; and (iii) the suitability of the diamonds for any particular purpose or use under any specific conditions, notwithstanding that such purpose or conditions may be known or made known to Members;
  - (b) the authenticity, validity or accuracy of any document or instrument given, issued, delivered, submitted or lodged by the Physical Depository, any Laboratory, any Member at any time, whether for purposes of execution, settlement, Novation or Renovation. The Book Depository merely acts as a conduit for the onward transmission of documents or instruments between the Physical Depository, a Laboratory, and Members, and merely performs the role of crediting and debiting the relevant Accounts for purposes of settlement of a Contract, and shall not be liable or responsible in any way for any negligence, misconduct, fraud, wilful default or any other default, wrongdoing or breach of duty howsoever caused and however serious of the Physical Depository, any Laboratory, or any Member or any other person responsible for the issuance, transmission, lodgement, preparation, or delivery of any document or instrument pursuant to or arising out of these Rules;
  - (c) the availability, suitability, efficiency or competence of the Physical Depository, any Laboratory, any delivery facility approved by the Book Depository, and any of their respective agents. The Book Depository shall not be liable or responsible in any way for the condition, availability, suitability or efficiency of any such Physical Depository, Laboratory, or delivery facility, or any of their respective agents.
- 809.3 Whilst the Exchange and Book Depository will use reasonable care in the appointment of the Physical Depository, and/or approving the use of specified Laboratories, none of the Exchange nor the Book Depository shall be liable for any Losses suffered or incurred by a Member arising out of or in connection with any act, inaction, omission, fraud, negligence or insolvency of the Physical Depository and/or the Laboratory.

## **810. Pledge**

- 810.1 As continuing security for the due, punctual and complete payment and discharge by each Member of its Obligations, each Member, as legal and/or beneficial owner, hereby declares, acknowledges and agrees that subject to Rules 810.2 and 810.3 below:
- (a) the Book Depository shall have a lien over all or any of the Member Specific Diamonds in relation to that Member that, at any time, is or has been delivered (whether actually or constructively) by, upon the instruction of or on behalf of, that Member, to and into the possession (whether actual or constructive) of the Book Depository;
  - (b) the Book Depository shall have a pledge over all or any of the Member Specific Diamonds in relation to that Member that, at any time after they shall have been released from the possession of the Book Depository before the Secured Obligations of that Member have been paid or discharged (in relation to those released Member Specific Diamonds, the “**Transfer Time**”), are re-delivered (whether actually or constructively) by, upon the instruction of or on behalf of, that Member, to and into the

possession (whether actual or constructive) of the Book Depository, and for the purposes of this Rule 810:

- (i) the Member Specific Diamonds in relation to a Member and the security created by that Member pursuant to this Rule 811 shall be deemed to have been delivered to, received by and/or into the possession of the Book Depository if they are or have been delivered to and received in the possession of and stored by a Physical Depository in a Vault and are held by that Physical Depository as bailee exclusively for, on behalf of and to the benefit of the Book Depository only; and
  - (ii) any delivery to, or into the possession and receipt of possession and storage in a Singapore Vault by, a Physical Depository (to be held by that Physical Depository as bailee exclusively for, on behalf of and to the benefit of the Book Depository only) of any Member Specific Diamonds in relation to a Member at any time after the Transfer Time to which those Member Specific Diamonds relates shall be deemed to be for the purpose of creating, and shall be effective upon such delivery and/or receipt by such Physical Depository to create, a pledge over such Member Specific Diamonds in favour of the Book Depository;
- (c) the security created pursuant to this Rule 810 over any Member Specific Diamonds in relation to a Member shall constitute and be a continuing security for the due, punctual and complete performance by each Member of all of the Secured Obligations in relation to that Member and shall be in addition to and shall not be in any way prejudiced or affected by any collateral or other agreement, security, guarantee, indemnity, right, remedy or lien of whatever nature which a Member may now or at any time hereafter have or any judgment or order obtained by the Book Depository for all or any part of such Secured Obligations, nor shall any such collateral or other agreement, security, guarantee, indemnity, right, remedy or lien or judgment or order or the liability of that Member or any others not parties hereto for all or any part of such Secured Obligations be in any way prejudiced or affected by this Rule 810;
- (d) the security created pursuant to this Rule 810 over any Member Specific Diamonds in relation to a Member shall not be discharged or affected by:
- i. any time, indulgence, concession, waiver or consent at any time given to that Member or any other person;
  - ii. any amendment or supplement to any of the Rules, the Depository Account Rules, any other Secured Obligation or any other agreement, security, guarantee, indemnity, right, remedy or lien;
  - iii. the making or absence of any demand on that Member or any other person for payment;
  - iv. the enforcement or absence of enforcement of any Rules, Depository Account Rules, any other Secured Obligation or any other agreement, security, guarantee, indemnity, right, remedy or lien;
  - v. the taking, existence or release of any Rules, Depository Account Rules, any other Secured Obligation or any other agreement, security, guarantee,

- indemnity, right, remedy or lien (including the release of any of the Member Specific Diamonds in relation to that Member);
- vi. the insolvency, winding-up, bankruptcy, amalgamation, reconstruction or reorganisation of that Member or any other person (or the commencement of any of the foregoing);
  - vii. (vii) (the illegality, invalidity or unenforceability of or any defect in any provision of any Rules, Depository Account Rules any other Secured Obligation or any other agreement, security, guarantee, indemnity, right, remedy or lien or any of the obligations of any of the parties thereunder;
  - viii. any other Secured Obligation or any other agreement, security, guarantee, indemnity, right, remedy or lien not being executed by or binding upon any other person; or
  - ix. any other matter or thing whatsoever;
- (e) the security created pursuant to this Rule 810 over any Member Specific Diamonds to which that Member relates shall become immediately enforceable and all the rights and remedies arising thereunder, and all the powers conferred on the Book Depository by, the Rules and Depository Account Rules shall be immediately exercisable upon the failure by that Member of any of its obligations and undertakings under or in relation to any of these Rules or the Depository Account Rules whereupon the Book Depository may without notice to or further consent of that Member or any other person, withhold delivery of and otherwise retain any of the Member Specific Diamonds to which that Member relates and/or sell, assign, deliver or otherwise dispose of such Member Specific Diamonds in such manner and generally on such terms and conditions and for such consideration as the Book Depository may in its absolute discretion think fit without being under any liability or responsibility whatsoever to that Member, the Exchange or any other person; and
- (f) the Book Depository may apply the proceeds of the sale or other disposal of such Member Specific Diamonds in or towards the payment and/or discharge of the Secured Obligations in relation to that Member, whether or not then due, and any costs incurred whether or not then due and payable in such order as the Book Depository may in its absolute discretion determine and the residue, if any, after such application, shall be paid to that Member or to its order.
- 810.2 Rule 810.1 shall not apply to an Approved Supplier in respect of any Member Specific Diamonds in relation to the Approved Supplier where such Member Specific Diamonds had been Consigned by, and continue to be reflected as credited to the House Depository Account of, the Approved Supplier without any intervening trade in such Member Specific Diamonds on the Exchange Trading System. For the avoidance of doubt, Rule 810,1 shall apply to all Member Specific Diamonds in relation to an Approved Supplier bought by the Approved Supplier on the Exchange Trading System, even where such Member Specific Diamonds had been originally Consigned by the Approved Supplier.
- 810.3 The Book Depository and the Exchange may exempt a Member from the requirements of this Rule at its discretion and shall notify all Members of such exemption by way of a Circular. Such exemption may be subject to the terms and conditions as may be specified in the Circular.

**811. Deemed Assignment**

811.1 It is the express intent of the parties that the Novated Contracts shall be re-novated to the Vendor and the Purchaser in the circumstances and manner set out in Rule 807, where such Re-Novation shall result in the Novated Contracts being discharged and replaced in its entirety with the Re-Novated Contract. If, however, notwithstanding the intent of the parties, the provisions of Rule 807, the Re-Novation and/or Re-Novated Contract are ever finally determined by a court of competent jurisdiction to be void, invalid or unenforceable and/or not effective, the Book Depository shall from the date of such determination be deemed to have assigned the benefit of the Selling Member Transaction to the Purchaser so that any unperformed obligations and residual benefits under the terms of the Selling Member Transaction shall accrue to and be enforceable by and between the Purchaser and the Vendor against one another, and the Vendor irrevocably agrees that it shall have no claim whatsoever against the Book Depository or the Exchange, and that the sole rights of claim under the Selling Member Transaction accrue to the Purchaser and the Vendor to the exclusion of the Book Depository and the Exchange.

**812 Definition and Interpretation**

812.1 References in this Chapter to “**Account**” shall mean the Account (whether the House Account or Customer Account), or where the context so requires, the Depository Account (whether the House Depository Account or Customer Depository Account) held by or for the relevant Member and to which the relevant Contract is allocated for purposes of settlement.