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CIRCULAR 11-2016-TT-BTC

PROVIDING GUIDELINES ON DECREE 42-2015-ND-CP OF THE GOVERNMENT DATED 5 MAY 2015 ON DERIVATIVE SECURITIES AND THE DERIVATIVE SECURITIES MARKET

DATED 19 JANUARY 2016

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MINISTRY OF FINANCE

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

No. 11-2016-TT-BTC

Ha Noi, 19 January 2016

CIRCULAR
PROVIDING GUIDELINES ON DECREE 42-2015-ND-CP OF THE GOVERNMENT DATED 5 MAY 2015
ON DERIVATIVE SECURITIES AND THE DERIVATIVE SECURITIES MARKET

Pursuant to the *Law on Securities* dated 29 June 2006;

Pursuant to the *Law on Amendment of the Law on Securities* dated 24 November 2010;

Pursuant to Decree 58-2012-ND-CP of the Government dated 20 July 2012 providing detailed regulations and guidelines for implementation of the *Law on Securities* and the *Law on Amendment of the Law on Securities* ["Decree 58"];

Pursuant to Decree 60-2015-ND-CP of the Government dated 26 June 2015 on amendment of Decree 58;

Pursuant to Decree 42-2015-ND-CP of the Government dated 5 May 2015 on derivative securities and the derivative securities market;

Pursuant to Decree 215-2013-ND-CP of the Government dated 23 December 2013 on functions, duties, powers and organizational structure of the Ministry of Finance;

On the proposal of the Chairman of the State Securities Commission ["SSC"];

The Minister of Finance hereby promulgates this Circular providing guidelines on Decree 42-2015-ND-CP of the Government dated 5 May 2015 on derivative securities and the derivative securities market.

CHAPTER I

General Provisions

Article 1 *Governing scope and applicable entities*

1. This Circular provides guidelines on a number of articles of Decree 42-2015-ND-CP of the Government dated 5 May 2015 on derivative securities and the derivative securities market, comprising:
 - (a) Derivative securities ["*derivatives*"] products comprising: index futures contracts [index futures] and Government bonds futures contracts;
 - (b) Arrangement of operation of the derivative securities market comprising trading, clearance and payment for derivatives transactions;
 - (c) Operations of derivatives service business organizations, clearing members, trading members and market-making members [market makers].
2. Applicable entities of this Circular comprise:
 - (a) Stock Exchanges ["SEs"];

- (b) Vietnam Securities Depository Center ["VSD"];
- (c) Derivatives business organizations ["DBO"];
- (d) Organizations providing services of clearance and payment for derivatives transactions;
- (dd) Clearing members, trading members and market-making members;
- (e) Investors and related organizations and individuals.

Article 2 *Interpretation of terms*

In addition to the terms which have been interpreted in Decree 42-2015-ND-CP of the Government dated 5 May 2015 on derivative securities and the derivative securities market (hereinafter referred to as Decree 42), in this Circular, the following terms are construed as follows:

1. *Clearance* means the process of determining a net position in order to calculate financial obligations of trading partners.
2. *Reciprocal transaction* means the opening of a new buy (or sell) position for the purpose of reducing a previously opened sell (or buy) position.
3. *Reference price* means the price determined by an SE and used as the basis for determining the highest price (ceiling price) [and/or] the lowest price (floor price) on any one trading day.
4. *Settlement [payment] price* means the price of matching trading orders in futures contracts between investors via the trading system of an SE.
5. *Daily settlement price* means the price determined at the end of a trading day in order to calculate daily profit and loss of positions.
6. *Final settlement price* means the price determined on the last trading day in order to determine payment obligations when implementing a contract.
7. *Value of escrow deposited assets* comprises the balance in an escrow monetary deposit account and the value of the escrow deposited securities portfolio determined on the basis of the market price and the discount rate in accordance with regulations of the VSD.
8. *Brokerage client* means an investor conducting derivatives transactions via the brokerage activities of a trading member.
9. *Clearance and payment client* means a non-clearing trading member and its brokerage clients who have authorized a designated clearing member to conduct clearance and payment for derivatives transactions.
10. *Open interests* of a given derivative at any one time means the volume of the outstanding derivatives at such time which have not yet been liquidated or closed.
11. *Escrow deposit* means an obligor deposits an amount of money or securities permitted to be used as escrow deposited assets to guarantee the obligation to pay for derivatives transactions of the obligor.
12. *Initial escrow deposit* means an escrow deposit paid prior to implementation of a derivatives transaction.
13. *Value of escrow deposit required to be maintained* means the minimum value escrow deposit which

an obligor must maintain and which is calculated by the VSD in respect of the volume of derivatives on a trading account.

14. *Escrow deposit ratio in cash* means the ratio of the value of escrow deposited assets in cash and the total value of assets required to be escrow deposited.
15. *Securities index futures contract* (hereinafter referred to as *index futures contract*) means a futures contract with underlying assets being securities indices.
16. *Government bond futures contract* means a futures contract with underlying assets being Government bonds or assumed bonds having certain basic characteristics of Government bonds.
17. *Clearance and payment contract* means a contract between a clearing member and the VSD for clearance and payment for derivatives transactions in the name of the clearing member with the VSD.
18. *Derivatives transaction payment bank* (hereinafter referred to as *payment bank*) means a commercial bank which manages the escrow monetary deposit account of the VSD and serves monetary payment activities for derivatives transactions in which the VSD is the central clearing partner.
19. *Trading account* means an account opened at a trading member to conduct the derivatives transactions of the client.
20. *Escrow deposit account* means an account opened for an investor or a clearing member to manage escrow deposited assets and underlying assets for transfer, to conduct cost accounting of daily position profit and loss, and to implement a contract.
21. *Derivatives service business organization* means a securities business organization issued with a certificate of satisfaction of conditions for derivatives trading [*SC Certificate for derivatives trading*]; or a commercial bank or foreign bank branch issued with an SC Certificate for derivatives clearance and payment services [*SC Certificate for derivatives clearing*].
22. *Implementation of contract* means the trading partners to a futures contract purchase or sell underlying assets or pay the difference between the daily settlement price and the payment price or the final settlement price in accordance with the contents of the contract and regulations of the VSD.
23. *Position in the name of a clearing member* comprises the position of an investor and the position of the clearing member, specifically as follows:
 - (a) Position of the clearing member in self-trading and market-making (if any);
 - (b) Position of brokerage clients of the clearing member;
 - (c) Position of clearance and payment entrustment clients.

CHAPTER II

Derivatives Products

Article 3 *Index futures contracts*

1. Underlying assets of an index futures contract means a securities index (hereinafter referred to as

basic index) designed by the SE on the basis of the principles for formation and management of indices issued by the SE upon approval of the SSC.

2. A futures contract which matures shall be implemented in the form of monetary payment in accordance with the regulations issued by the VSD upon approval of the SSC.

Article 4 *Government bond futures contracts*

1. Underlying assets of a Government bond futures contract means:
 - (a) Government bonds currently traded on the market; or
 - (b) Assumed bonds with certain basic characteristics of Government bonds. The SSC shall establish basic characteristics of Government bonds, design assumed bonds, and report same to the Ministry of Finance for approval before implementation.
2. A Government bond futures contract which matures shall be implemented in the form of monetary payment or transfer of assets in accordance with regulations of the VSD. The method of payment must be specified prior to listing.
3. An SE shall co-ordinate with the VSD to determine and publish on its website the following:
 - (a) List of transferable bonds, principles for determination and conversion coefficient of each bond (applicable to a Government bond futures contract with payment in the form of transfer of underlying assets);
 - (b) List of bonds used to determine the final settlement price, principles for determination and ratio of each bond in such list (applicable to a Government bond futures contract with monetary payment).
4. The determination and disclosure of information about bonds prescribed in clause 3 of this article shall be implemented in accordance with regulations of the SE and the VSD. The SE shall co-ordinate with the VSD to determine the deadline for closing the list of bonds which are transferable or are used to determine the final settlement price. After such deadline, the SE and the VSD are not permitted to amend the above list of bonds.

Article 5 *Listing and arrangement of trading of derivatives*

1. The SE shall co-ordinate with the VSD to determine the particulars of derivatives as prescribed in sub-clauses (a) and (b) of article 6.2 of Decree 42, and conduct the listing and arrange trading of derivatives upon approval of the SSC in accordance with law.
2. The SE is permitted to temporarily suspend the trading of one or a number of types of derivatives or temporarily suspend the trading of derivatives on the whole market in any of the following cases:
 - (a) It is impossible to value underlying assets because trading on the primary market is suspended;
 - (b) Trading of underlying securities is temporarily suspended;
 - (c) There occurs a force majeure event such as a natural disaster, fire or technical incident on the trading system or the clearance and payment system;
 - (d) Other cases in accordance with regulations of the SE.

3. The SE shall make a disclosure of information within twenty four (24) hours from the time of occurrence of an event which results in the temporary suspension of trading. Trading must be resumed immediately within twenty four (24) hours from the time when the event causing the temporary suspension of trading has been remedied.
4. If an error arises during trading on the market, such error shall be corrected in accordance with regulations of the SE and the VSD. If the correction results in an excess of the position limit, the trading member or the client must carry out a reciprocal transaction on the following trading day in order to reduce the position in accordance with regulations of the VSD.

CHAPTER III

Activities of Trading and Payment for Derivatives

Article 6 *Derivatives trading activities*

1. In order to conduct trading of derivatives, an investor must open a derivatives trading account at a trading member and an escrow deposit account at a designated clearing member. If the investor has opened a normal securities trading account at a securities company which is also a derivatives trading member, the investor is permitted to use such securities trading account to conduct trading of derivatives after opening an escrow deposit account at a designated clearing member.
2. The trading activities of an investor shall be conducted as follows:
 - (a) Trading orders of the investor are matched on the trading system of an SE. After the orders have been matched, the investor is deemed to have participated in a derivatives contract and has all rights and is solely liable to perform the obligations arising from such contract;
 - (b) Before placing a trading order, during the period of holding a position, and when implementing a contract, the investor must maintain the level of the escrow deposit required by the clearing member in compliance with this Circular;
 - (c) The investor must ensure that the position on the trading account falls within the position limit in accordance with regulations of the VSD. In the case of excess of the position limit, the investor must conduct reciprocal transactions to reduce the position or supplement the escrow deposit (if necessary) within the time-limit stipulated in the regulations of the VSD.

Article 7 *Trading accounts of investors*

1. An investor must sign a contract for opening a derivatives trading account with a trading member. A foreign investor must register a securities trading code in accordance with the law on securities regarding foreign investment activities on the securities market before opening a derivatives trading account.
2. An investor is permitted to open multiple derivatives trading accounts on the principle that each trading member is only permitted to open one trading account; and corresponding to each trading account, the investor is permitted to open an escrow deposit account at a designated clearing member in accordance with article 8 of this Circular. A fund management company is permitted to open a derivatives trading account for each entrusting investor in the name of such company at a trading member.

3. A securities company which has an SC Certificate for derivatives self-trading but is not a derivatives trading member is permitted to open a trading account at a trading member [and/or] an escrow deposit account at a designated clearing member for the purpose of conducting investment in derivatives in accordance with this Circular. A securities company established in a foreign country is permitted to open one account to conduct derivatives self-trading activities and one account to conduct derivatives brokerage activities for other foreign investors.

Article 8 *Escrow deposit accounts of investors*

1. A clearing member shall open for each investor one separate escrow monetary deposit account at a bank and one escrow securities deposit account to manage escrow deposited assets and perform the payment obligations for the position on the trading account of the investor. A non-clearing member or a brokerage client of a non-clearing member shall open an escrow securities deposit account at a general clearing member.
2. The escrow monetary deposit account and the escrow securities deposit account of an investor are only used for the following activities:
 - (a) Receipt and return of escrow deposited assets to the investor;
 - (b) Receipt of interest or payment of loss on a daily basis from the position of the investor; payment made when implementing a contract; receipt of interest paid on the amount of deposit at a bank at the interest rate agreed between the clearing member and the bank;
 - (c) Receipt or transfer of underlying assets when implementing a contract (in the case of payment in the form of transfer of underlying assets) with respect to the position of the investor.
3. When conducting trading of derivatives, an investor must provide an escrow deposit to a clearing member as follows:
 - (a) The investor is responsible to pay fully the initial escrow deposit for all positions proposed to be opened to the clearing member prior to conducting trading, except for reciprocal transactions;
 - (b) The investor must maintain the escrow deposit for its position and must supplement it when the value of escrow deposited assets becomes lower than the value of the escrow deposit required to be maintained or when the balance of the escrow monetary deposit does not ensure the ratio of escrow deposit maintained in cash as required by the clearing member. Depending on the conditions of the market, the clearing member has the right to request the investor to supplement the escrow deposit immediately in a trading session;
 - (c) The investor is permitted to withdraw escrow deposited assets if their value exceeds the value of escrow deposit required to be maintained as stipulated by the clearing member;
 - (d) When providing an initial escrow deposit or supplementing an escrow deposit, the clearing member may request the investor to provide the escrow deposit entirely in cash or permit the investor to use part of escrow deposited assets being securities on the basis of the escrow deposit ratio in cash stipulated by the clearing member but not being lower than the escrow deposit ratio in cash stipulated in the regulations of the VSD.

4. Securities which a clearing member may select to permit an investor to use as escrow deposited assets must ensure the following:
 - (a) Such securities are on the list of securities permitted to be used as escrow deposited assets as published by the VSD in accordance with article 22 of this Circular;
 - (b) Such securities are not secured assets for any transaction in accordance with the civil law on trading secured assets, including shares purchased in any transaction of borrowing for purchase of escrow deposit; and not assets which are blockaded by any State administrative agency or organization in accordance with relevant law or not assets which are lent in accordance with law;
 - (c) Such securities satisfy other criteria provided by the clearing member.

Article 9 *Payment activities of investors*

1. The payment for a derivatives transaction comprises the payment of position profit and loss and the payment made when implementing the contract, specifically as follows:
 - (a) In the case of payment of position profit and loss, the amount of payment of position profits and losses shall be daily determined on the basis of open positions on the trading account of the investor and the difference between the daily settlement price and the daily settlement price of the preceding trading day or the payment price (in the case of a position opened on the day); or the difference between the trading price and the daily settlement price of the preceding trading day (in the case of early closure of a position). The above prices shall be published on the website of the SE;
 - (b) In the case of payment made when implementing a contract:
 - In the case of a contract in which payment is made in cash, the investor shall receive profit or pay losses determined on the basis of the number of contracts implemented and the difference between the final payment price and the daily settlement price of the preceding trading day;
 - In the case of a contract in which payment is made in the form of transfer of underlying assets, the seller investor must transfer underlying assets and the buyer investor must make monetary payment in accordance with the terms of the contract.
2. Payment shall be made on escrow monetary deposit accounts and escrow securities deposit accounts of investors. The VSD and clearing members shall co-ordinate to conduct payment activities in accordance with article 19 of this Circular.

CHAPTER IV

Organizations Trading Derivatives and Providing Derivatives Services

Section 1

Derivatives Business Organizations

Article 10 *Registration of derivatives trading*

1. A securities business organization [SBO] is permitted to conduct derivatives trading after the SSC has issued it with an SC Certificate for derivatives trading. The conditions for issuance of an SC Certificate for derivatives trading are as follows:

- (a) The SBO satisfies the conditions prescribed in article 4.1 of Decree 42;
 - (b) The SBO has established all stipulated reserves and has not suffered loss for the last two years; its liquid capital ratio must have reached at least two hundred and twenty (220) per cent for twelve (12) consecutive months preceding the month in which the application file for issuance of an SC Certificate for derivatives trading is submitted;
 - (c) The financial statements for the most recent financial year have been audited and the most recent semi-annual financial statements have been reviewed by an approved auditing organization. The auditor's opinion on such financial statements must read "approved in total" and must not be subject to any reservation or note.
2. An application file for issuance of an SC Certificate for derivatives trading comprises:
- (a) Request for issuance of an SC Certificate for derivatives trading in accordance with guidelines of the SSC;
 - (b) Minutes of meeting, resolution of the general meeting of shareholders or of the members' council or decision of the owner on derivatives trading;
 - (c) Valid documents evidencing that the SBO satisfies the provisions in clause 1 of this article;
 - (d) List enclosed with the personal files of the director (general director), deputy director (deputy general director) in charge of professional activities and staff for each derivatives business activity in accordance with guidelines of the SSC;
 - (dd) Professional process, internal control process and risk management process applicable to derivatives activities proposed to be conducted;
 - (e) Explanatory statement of material and technical facilities and information technology infrastructure together with appropriate systems (trading system; clearance and payment system) for activities of trading and [provision of] derivatives services.
3. The application file stipulated in clause 2 of this article shall be made in one original set enclosing an electronic file. The original set shall be sent to the SSC directly or by post.
4. Within fifteen (15) days from the date of receipt of a complete and valid file stipulated in clauses 2 and 3 of this article, the SSC shall issue an SC Certificate for derivatives trading. In the case of refusal, the SSC must provide a written reply specifying its reason.
5. After the SSC has issued an SC Certificate for derivatives trading, the SBO is responsible to make amendment of or addition to the provisions in the company charter relating to derivatives trading activities and submit same to the SSC upon approval of the latest general meeting of shareholders or the [latest meeting of] the members' council, or of the owner.

Article 11 *Suspension and termination of derivatives trading activities*

- 1. The SSC shall make a decision on suspension of one or a number of derivatives trading activities for a period of up to twelve (12) months in the cases prescribed in article 5.1 of Decree 42.
- 2. A DBO is only permitted to resume its business activities after it has remedied all acts resulting in the suspension. If it fails to remedy such acts upon expiry of the period of suspension, the DBO shall be subject to compulsory termination of its derivatives trading activities.
- 3. A DBO must terminate its derivatives trading activities when its SC Certificate for derivatives trading

is revoked. The revocation shall be implemented in the cases prescribed in article 5.2 of Decree 42.

4. In the case of voluntary termination of operation, a DBO must submit an application file for termination of derivatives trading activities. Such application file comprises the following documents:
 - (a) Request for termination of derivatives trading activities in accordance with guidelines of the SSC;
 - (b) Minutes of meeting, resolution of the general meeting of shareholders or of the members' council, or decision of the owner on termination of derivatives trading activities and approval of the plan for dealing with related matters;
 - (c) Plan for dealing with effective contracts for derivatives trading, including the plan for dealing with accounts and escrow deposited assets of clients.
5. The application file stipulated in clause 4 of this article shall be made in one original set enclosing an electronic file. The original set shall be sent to the SSC directly or by post.
6. Within fifteen (15) days from the date of receipt of a complete and valid file, the SSC shall provide a letter permitting termination of the derivatives trading activities. In the case of refusal, the SSC shall provide a written reply specifying its reason.
7. A DBO shall be subject to compulsory termination of its derivatives trading activities in the cases stipulated in article 5.4 of Decree 42.
8. Within thirty (30) days from the date on which a DBO is subject to compulsory termination of its derivatives trading activities as prescribed in clause 7 of this article, the SSC shall provide a letter requesting the DBO to carry out the procedures for termination of its derivatives trading activities.
9. From the date of receipt of the letter from the SSC as stipulated in clauses 1, 6 and 8 of this article:
 - (a) Within twenty four (24) hours, the DBO is responsible to disclose information about the suspension or termination of the derivatives activities, and the plan, time-limit and roadmap for dealing with effective contracts. Such time-limit must ensure that an investor is given at least forty five (45) days to deal with the positions and make a bank transfer in respect of escrow deposited assets, but not exceeding sixty (60) days from the date of disclosure of information;
 - (b) Within five days, the DBO shall send a notice to each client of the plan for dealing with the contract signed with the client.
10. During the period of suspension of operation or carrying out the procedures for terminating operation, a securities business organization [SBO] is responsible:
 - (a) To conduct the activities prescribed in article 5.5 of Decree 42;
 - (b) To cease derivatives self-trading, except for reciprocal transactions; or to cease market making transactions (if any);
 - (c) Not to sign any new contract for derivatives trading. In the case of an effective contract for derivatives trading:
 - To stop receiving or implementing trading orders from the client, except for reciprocal transactions; to stop receiving escrow deposited assets from the client, except in the case of supplement of an escrow deposit;
 - To fix the balance and close the account of a client; to liquidate the positions and return

the escrow deposited assets to the client; to reach agreement and handover rights, responsibilities and obligations, and transfer the account and the escrow deposited assets to the replacement member. If the SBO has its operation suspended, it is only required to implement this provision if so requested by the client;

- To implement the transactions as requested by the VSD or the SE to reduce the positions of the client.

(d) To pay in full the unpaid amount of tax; and to continue to pay debts.

11. Within five days from the expiry date of the period of carrying out the procedures for termination of derivatives trading activities, the DBO shall submit a report to the SSC on the results of resolution, comprising the following documents:

(a) List of clients with complete identifying information of clients, their trading account numbers, escrow deposit account numbers and list of escrow deposited assets and positions on each account; reasons for being unable to close or deal with any outstanding accounts (if they have not yet been dealt with);

(b) Minutes of liquidation certified by the replacement clearing member and documents certifying that all accounts or escrow deposited assets (if any) of a client have been handed over to the replacement member;

(c) Decision of the SE (in the case of a trading member) or of the VSD (in the case of a clearing member) on withdrawal of membership.

12. Within ten (10) days from the date of receipt of a file reporting the results as stipulated in clause 11 of this article, the SSC shall provide a letter permitting termination of the derivatives trading activities or issue a decision on revocation of the SC Certificate for derivatives trading. In the case of refusal, the SSC must provide a written reply specifying its reason.

13. Members of the board of management or of the members' council, the company owner, the director or general director and the legal representative of a DBO are responsible for the truthfulness and accuracy of the application file for termination or of the file reporting the results of termination of derivatives trading activities. If the file is inaccurate or forged, such persons must be jointly liable to pay unpaid debts, unpaid taxes and benefits of employees which have not been resolved, and must be personally responsible before the law for any consequences arising within five years from the date of lodgment of the file with the SSC as stipulated in clause 11 of this article.

Section 2

Organizations Providing Services of Clearance and Payment for Derivatives Transactions

Article 12 *Registration of activities to provide services of clearance and payment for derivatives transactions*

1. A securities company, commercial bank or foreign bank branch is permitted to provide services of clearance and payment for derivatives transactions after it has been issued by the SSC with an SC Certificate for derivatives clearing. The conditions for issuance of an SC Certificate for derivatives clearing are as follows:

(a) [Such securities company, commercial bank or foreign bank branch] satisfies the conditions prescribed in article 4.2 of Decree 42 and article 10.1(c) of this Circular;

(b) [Such securities company, commercial bank or foreign bank branch] satisfies the following prudential ratios:

- In the case of a securities company, it has established all stipulated reserves and has not suffered any loss for the last two years; its liquid capital ratio must reach at least two hundred and sixty (260) per cent for twelve (12) months preceding the month of lodging the application file for issuance of an SC Certificate for derivatives clearing;
 - In the case of a commercial bank or foreign bank branch, it must satisfy the prudential ratios stipulated in the law on credit institutions for twelve (12) months preceding the month of lodging the application file for issuance of an SC Certificate for derivatives clearing.
2. An application file for issuance of an SC Certificate for derivatives clearing comprises:
 - (a) Request for issuance of an SC Certificate for derivatives clearing in accordance with guidelines of the SSC;
 - (b) Minutes of meeting, resolution of the general meeting of shareholders or of the members' council or decision of the owner on implementation of activities to provide services of clearance and payment for derivatives transactions;
 - (c) Valid documents evidencing that the securities company, commercial bank or foreign bank branch satisfies the provisions in clause 1 of this article;
 - (d) Professional process, internal control process and risk management process applicable to the activities to provide services of clearance and payment for derivatives transactions proposed to be carried out;
 - (dd) Explanatory statement on material and technical facilities and information technology infrastructure with appropriate systems (clearance and payment systems) for the provision of services of clearance and payment for derivatives transactions.
 3. The application file prescribed in clause 2 of this article shall be made in one original set enclosing an electronic file. The original set shall be sent to the SSC directly or by post.
 4. Within fifteen (15) days from the date of receipt of a complete and valid file prescribed in clauses 2 and 3 of this article, the SSC shall issue an SC Certificate for derivatives clearing. In the case of refusal, the SSC shall provide a written reply specifying its reason.
 5. After the SSC has issued an SC Certificate for derivatives clearing, the securities company or commercial bank is responsible to amend or supplement the provisions in the charter of the company or bank relating to the derivatives activities and submit same to the SSC upon approval of the latest general meeting of shareholders or [the latest meeting of] the members' council or the owner.

Article 13 *Suspension and termination of activities of providing services of clearance and payment for derivatives transactions*

1. The SSC shall make a decision on suspension of activities of providing services of clearance and payment for derivatives transactions for a period of up to twelve (12) months in the following cases:
 - (a) The application file for issuance of an SC Certificate for derivatives clearing contained a forged document or untruthful information;
 - (b) [The organization providing services of clearance and payment for derivatives transactions] operated for wrong purposes or carried out activities other than those stated in the issued SC

Certificate for derivatives clearing;

- (c) [Such organization] does not satisfy the provisions in sub-clauses (a) and (dd) of article 4.2 of Decree 42;
 - (d) [Such organization] does not satisfy the provision in article 4.2(c) of Decree 42 for six consecutive months;
 - (dd) [Such organization] does not satisfy the capital adequacy or financial prudence criteria prescribed in article 12.1(b) of this Circular for six consecutive months.
2. An organization providing services of clearance and payment for derivatives transactions is only permitted to resume the activities of providing services of clearance and payment for derivatives transactions after it has remedied all acts resulting in the suspension. If it fails to remedy [such acts] upon expiry of the period of suspension, it shall be subject to compulsory termination of the activities of providing services of clearance and payment for derivatives transactions.
3. An organization providing services of clearance and payment for derivatives transactions shall terminate such provision when its SC Certificate for derivatives clearing is revoked. The revocation shall be implemented in the following cases:
- (a) Voluntary termination of operation;
 - (b) Compulsory termination of operation.
4. In the case of voluntary termination of operation, such organization must submit an application file for termination of activities to provide services of clearance and payment for derivatives transactions. Such application file comprises the following documents:
- (a) Request for termination in accordance with guidelines of the SSC;
 - (b) Minutes of meeting, resolution of the general meeting of shareholders or of the members' council, or decision of the owner on termination of activities to provide services of clearance and payment for derivatives transactions and approval of the plan for dealing with related matters;
 - (c) Plan for dealing with effective contracts for provision of services of clearance and payment for derivatives transactions, including the plan for dealing with accounts and escrow deposited assets of clients.
5. The application file prescribed in clause 4 of this article shall be made in one original set enclosing an electronic file. The original set shall be sent to the SSC directly or by post.
6. Within fifteen (15) days from the date of receipt of a complete and valid file, the SSC shall provide a letter permitting termination of the activities of providing services of clearance and payment for derivatives transactions. In the case of refusal, the SSC shall provide a written reply specifying its reason.
7. An organization providing services of clearance and payment for derivatives transactions shall be subject to compulsory termination of such provision in the following cases:
- (a) Upon expiry of the period of suspension, it has still failed to remedy the situation giving rise to suspension;
 - (b) It is dissolved, becomes bankrupt, temporarily suspends its operation, or has its establishment and operation licence revoked; or the document approving the clearance and payment for

derivatives is withdrawn by the State Bank (applicable to a commercial bank or foreign bank branch); or its SC Certificate for derivatives brokerage or SC Certificate for derivatives clearing is withdrawn by the SSC; or it is divided or de-merged and the organization formed upon division or de-merger does not satisfy any of the business conditions prescribed in article 4.2 of Decree 42.

8. Within thirty (30) days from the date on which the organization providing services of clearance and payment for derivatives transactions is subject to compulsory termination of such provision as prescribed in clause 7 of this article, the SSC shall provide a letter requesting such organization to carry out the procedures for termination.
9. Any organization providing services of clearance and payment for derivatives transactions whose [operation] is suspended or terminated must implement and apply the relevant provisions in clauses 9, 10 and 13 of article 11 of this Circular.
10. Within five days from expiry of the period for carrying out the procedures for termination of activities of providing services of clearance and payment for derivatives transactions, the organization providing such services shall submit a file reporting the results of dealing with them, comprising the following documents:
 - (a) List of clients with complete identifying information of clients, trading accounts and escrow deposit accounts, and list of escrow deposited assets and positions on each account; reasons for not being able to close or deal with outstanding accounts (if they have not been dealt with);
 - (b) Minutes of liquidation certified by the replacement clearing member and documents verifying that all accounts or escrow deposited assets (if any) of clients have been handed over to the replacement member;
 - (c) Decision of the VSD on withdrawal of the membership of the clearing member.
11. Within ten (10) days from the date of receipt of the file reporting the results as prescribed in clause 10 of this article, the SSC shall provide a letter terminating the activities of providing services of clearance and payment for derivatives transactions or issue a decision revoking the SC Certificate for derivatives clearing. In the case of refusal, the SSC shall provide a written reply specifying its reason.

Section 3

Operations of Trading Members and Stock Exchanges

Article 14 *Rights and obligations of trading members*

1. A non-clearing trading member must sign a clearance and payment trust contract with a general clearing member. The contents of such contract must be in accordance with guidelines of the SSC. In the case of change of the general clearing member, the closure and bank transfer [remittance] of an escrow deposit and transfer of a position shall be implemented in accordance with regulations of the VSD.
2. A trading member must sign a contract opening a trading account with a client. The contents of such contract must comply with guidelines of the SSC.
3. A trading member is responsible to regularly verify, review, update and promptly provide complete information about trading and other information to a general clearing member. All information about investors and their trading accounts must be provided completely and promptly to the SSC, the VSD and the SE when requested in writing.
4. A trading member is not permitted to open a trading account for the following clients:

- (a) Individuals under 18 years old;
 - (b) Individuals who lack capacity for civil acts, currently serve a prison sentence or are prohibited by a court from conducting business;
 - (c) The director (general director), deputy director (deputy general director), heads of departments and staff of any other trading member.
5. When it is discovered that a client who opened a trading account falls into one of the cases prescribed in clause 4 of this article, the trading member must immediately stop receiving trading orders from such client, except for reciprocal transactions, and must close the account of the client immediately after completing the liquidation of the position of such client.
6. Where a clearing member or a client becomes insolvent, then at the request of the SE, the VSD or the SSC, the trading member is responsible:
- (a) To stop receiving or implementing trading orders of the clearing member or client who is insolvent, except for reciprocal transactions;
 - (b) To carry out other activities as requested by the SSC, the SE or the VSD.
7. To perform other rights and obligations as stipulated in articles 15.1 and 15.2 of Decree 42 and regulations of the SE.

Article 15 *Receipt and performance of orders and certification of trading results*

1. A trading member is permitted to receive trading orders of a client directly at a transaction counter or receive remote orders via telephone, facsimile or other transmission lines or via the online trading system of the trading member. A trading order must be recorded with complete information received at the time of receiving the order, [details of] the staff receiving the order (placing or correcting the order, if any correction) and evidence of placing the order by the client.

In the case of receipt of a trading order via telephone or facsimile, [the trading member] must obtain confirmation of the client prior to placing the order into the system. In the case of receipt of an online trading order, [the trading member] must comply with the law on electronic transactions.

2. A trading member is only permitted to perform an order of a client when such trading order contains complete information on the client, trading account, trading day, derivatives code, method, type of order, trading type, quantity and trading price in accordance with regulations of the SE.
3. A trading member must refuse to receive an order of a client in the following cases:
- (a) The client has not fully provided an escrow deposit, except for reciprocal transactions; or
 - (b) The order exceeds the order limit; the order together with other orders awaiting implementation on the system of the same trading account exceeds the accumulated order limit or the order causes the position of the client on such account to exceed the position limit in accordance with regulations of the SE or the VSD (if applicable).
4. Within twenty four (24) hours after an order has been performed, the trading member is responsible to certify the trading results with the client in accordance with guidelines of the SSC.
5. Within twenty four (24) hours after a client makes a request and within three days after the end of a month, the trading member must send to the client a statement of the trading account [and/or] a report on the status of trading on the account of the client. The contents of such report shall be in

accordance with guidelines of the SSC.

Article 16 *Market-making members*

1. Market-making members must be honest and must show goodwill when making a market.
2. Types of derivatives for which liquidity must be created and the provisions on trading applicable to market makers shall be implemented in accordance with contracts for market making and regulations of the SE.
3. Market-making members are permitted to conduct market making transactions and self-trading at the same time but must ensure the principles in accordance with regulations of the SE.
4. [Market-making members must] exercise the rights and perform the obligations prescribed in article 15.2 of Decree 42.

Article 17 *Management of market-making activities*

1. An SE has the right to terminate, refuse to sign or refuse to extend a contract with a market-making member on the basis of the following factors:
 - (a) Level of liquidity of each type of derivatives;
 - (b) Financial capability of the member;
 - (c) Operational efficiency, market making quality, and level of objectiveness, honesty and goodwill in the market making activities.
2. An SE has the right to suspend or terminate a contract for market making in the following cases:
 - (a) The member commits a breach of the provisions on responsibilities for providing quotations, the scale of market making and the time of providing quotations, and the provisions giving rise to suspension or termination of the contract in accordance with regulations of the SE;
 - (b) Other cases in accordance with regulations of the SE and in accordance with the contract for market making.
3. A market-making member has the right to terminate market making activities in accordance with the contract for market making signed with the SE.
4. On a quarterly basis, the SE shall evaluate the operational efficiency and quality of market-making members in respect of each type of derivatives for which such members provide market making services. The efficiency and quality of market making activities shall be evaluated on the basis of price displaying activities (difference of displayed prices, time of displaying prices and volume displayed), volume of transactions and other criteria in accordance with regulations of the SE.

Section 4

Operations of Clearing Members and of the VSD [Vietnam Securities Depository Centre]

Article 18 *Clearing members*

1. A clearing member has the following rights and obligations:
 - (a) To sign clearance and payment contracts with the VSD and sign clearance and payment trust contracts with non-clearing members. Such contracts must contain provisions which specify

that the clearing member is the authorized representative of a brokerage client or a clearance and payment client, [that the clearing member] stands in the name of the position of such client, and is responsible to fully perform obligations of such client with respect to the VSD;

- (b) To manage separately accounts and escrow deposited assets of each client; to set up a system of registers monitoring and compiling complete information about positions, daily position profit and loss, initial escrow deposit value, escrow deposit value required to be maintained, and value and list of escrow deposited assets according to each account of investors;
 - (c) To stipulate the initial escrow deposit value, the escrow deposit value to be maintained and the escrow deposit ratio in cash which must not be lower than the corresponding value stipulated in regulations of VSD. Information about assets permitted to be used as escrow deposited assets and the method and time of payment of escrow deposits must be published in detail by the clearing member on its website;
 - (d) Other rights and obligations as prescribed in article 22 of Decree 42 and regulations of the VSD.
2. Depending on the seriousness of a breach in clearance and payment activities, the VSD may apply forms of penalty for the breach committed by a clearing member, comprising:
 - (a) Official letter on reminder;
 - (b) Reprimand;
 - (c) Suspension;
 - (d) Termination of membership of the clearing member.
 3. Breaches shall be dealt with, and the sequence and procedures for dealing with breaches of clearing members shall accord with regulations of the VSD.
 4. The membership of a clearing member shall only be terminated after the clearing member has completed the bank transfer of positions [and/or] escrow deposits in order to close accounts of clients, liquidate positions and fulfill payment obligations on self-trading accounts (if any), and has fully performed the obligations owed to the VSD.

Article 19 *Activities of clearance and payment for derivatives transactions*

1. The VSD shall implement clearance of derivatives according to each account of an investor or a clearing member on the principle that corresponding positions of the same derivative having the same maturity date on the same account shall be offset to determine the quantity of net positions of derivatives on such account.
2. With respect to payment of daily position profit and loss, on the basis of the profit and loss results at the end of the day on each account of an investor, the VSD shall offset money according to each account of the investor and according to each clearing member in order to determine the amount payable and receivable on each account of the investor or the clearing member. The payment of daily profit and loss shall be made in the form of bank transfer via the escrow monetary deposit account of the VSD at a payment bank.
3. With respect to the payment made when implementing a contract, the VSD shall make payment on the last payment day on the following principles:
 - (a) In the case of payment in cash, the VSD shall calculate payment obligations separately

according to each investor and each clearing member. The clearing member of the paying party is required to transfer in full money to its escrow monetary deposit account opened at a payment bank for payment to the clearing member of the receiving party via the VSD. The clearing member being the receiving party is obliged to make payment to the investor immediately after receiving payment from the VSD;

- (b) In the case of payment in the form of transfer of underlying assets, the clearing member of the seller must transfer transferable underlying assets of sufficient quantity and correct type in accordance with the derivatives contract to the member's escrow securities deposit account at the request of the VSD.

The clearing member of the purchaser is only permitted to receive transferred assets after it has made full payment at the request of the VSD, and then shall immediately conduct distribution to the purchaser investor.

4. The VSD shall promulgate regulations providing guidelines on sequence and procedures for clearance and payment and transfer of assets when implementing contracts, methods of payment, and time of payment upon approval of the SSC.

Article 20 *Escrow deposit accounts of clearing members*

1. The VSD is responsible to open escrow monetary deposit accounts in the name of the VSD at a payment bank (hereinafter referred to as member escrow monetary deposit accounts) and escrow securities deposit accounts at the VSD (hereinafter referred to as member escrow securities deposit accounts) for the purpose of managing escrow deposited assets and performing payment obligations for positions in the name of clearing members.
2. A member escrow monetary deposit account opened for each clearing member at a payment bank comprises:
 - (a) Self-trading escrow monetary deposit account to be used to manage escrow deposits for self-trading or market-making transactions of such clearing member;
 - (b) Client escrow monetary deposit account to be used to manage escrow deposits of all clients of such clearing member;
 - (c) Payment account to be used to make payment of daily profit and loss and to make payment implementing a contract in the name of the clearing member and other payment activities of the clearing member.
3. A member escrow monetary deposit account and a member escrow securities deposit account are only used for the following activities:
 - (a) Receipt and return of escrow deposited assets for the clearing member. Escrow deposited assets on such an account shall include assets of a client which are used by the clearing member to provide escrow deposit for the position of such client;
 - (b) Receipt of profit or payment of loss on a daily basis for the positions in the name of the clearing member; payment and receipt of payment when implementing contracts; receipt of payment of interest on deposit at a bank;
 - (c) Receipt [and/or] transfer of underlying securities when implementing contracts (in the case of payment in the form of transfer of underlying assets) with respect to positions in the name of the clearing member.

4. Member escrow deposit accounts must be established, ensuring that assets of clearing members and assets of the VSD, assets of each clearing member, and assets of a clearing member and assets of clients of such clearing member are managed separately.
5. At all times, the VSD has the right to request clearing members to provide detailed information about trading accounts, escrow deposit accounts, and value and list of escrow deposited assets of each investor.
6. Money or securities arising from the exercise of rights with respect to escrow deposited securities on member escrow deposit accounts shall be allocated in accordance with regulations of the VSD. The VSD is not permitted to make a term deposit in respect of [using] escrow monetary deposits of clearing members. Interest on monetary deposits shall be returned to the clearing members at the on-call rate published by the payment bank.
7. The VSD is responsible to set up a system for management of complete information about the fluctuation of positions, daily position profit and loss, initial escrow deposit value, escrow deposit value required to be maintained, and value and list of escrow deposited assets according to each trading account of investors and clearing members.
8. The SSC is permitted to select a commercial bank as the payment bank to provide monetary payment services for derivatives transactions on the SEs in accordance with the criteria, sequence and procedures stipulated in the law on securities regarding registration, depository, clearing and settlement of securities transactions. Such payment bank has the following rights and obligations:
 - (a) To set up a system of accounts for management of escrow deposited deposits in accordance with this Circular;
 - (b) To promptly and completely provide information about operations and detailed balance of the escrow monetary deposit accounts at the request of the VSD or SSC;
 - (c) Other rights and obligations stipulated in the law on securities regarding registration, depository, clearing and settlement of securities transactions.

Article 21 *Escrow deposit paid by clearing members*

1. An escrow deposit must be paid by a clearing member to the VSD as follows:
 - (a) The clearing member must pay an initial escrow deposit to the VSD for all positions in its name which are proposed to be opened before conducting trading, except for reciprocal transactions of the same trading account;
 - (b) The clearing member must supplement the escrow deposit when the total value of escrow deposited assets does not satisfy the escrow deposit value required to be maintained as calculated by the VSD in respect of all positions in its name, and is permitted to withdraw escrow deposited assets if their value is higher than the escrow deposit value required to be maintained in accordance with regulations of the VSD;
 - (c) The escrow deposit ratio in cash shall be in accordance with regulations of the VSD, ensuring that such ratio is not less than eighty per cent (80%), except in the case of escrow deposit in securities for the purpose of transfer when implementing a contract or [except where] the investor who holds the sell position of a bond futures contract with payment in the form of transfer of underlying assets pays an escrow deposit by way of transferable assets. The escrow deposit value required to be maintained in respect of the investment portfolio on each trading account of the investor, and the total value of the escrow deposit required to be maintained in respect of all positions in the name of the clearing member shall be calculated by the VSD in a trading session on the basis of the initial escrow deposit value and/or the value of

position profit and loss in combination with evaluation of possible fluctuation of prices at the maximum level, the level of correlation between positions, requirements on an escrow deposit when implementing the contract in the form of transfer of underlying assets, and other factors which the VSD considers necessary;

(d) The VSD shall determine and supervise the ratio of the escrow deposit value required to be maintained and the total value of escrow deposited assets in real-time according to each account of the investor or the clearing member. If such ratio falls onto the threshold stipulated in regulations of the VSD, the VSD has the right to give a warning to the clearing member and apply any of the following measures to deal with it:

- Request the SE to suspend trading in respect of relevant trading accounts, except for reciprocal transactions;
- Request the clearing member (in the case of a self-trading account) or via the clearing member, request the investor (in the case of an account of the investor) to conduct a reciprocal transaction to reduce its position or supplement escrow deposited assets.

2. The determination of types of escrow deposit, methods of calculating escrow deposit and parameters of such methods, types of assets permitted to be used as escrow deposited assets, method and time of and procedures for paying or withdrawing escrow deposits, initial escrow deposit ratio, and escrow deposit ratios in cash, and the exercise of rights relating to escrow deposited securities, and other related contents shall comply with regulations of the VSD issued upon approval of the SSC.

Article 22 *Escrow deposited assets*

1. Investors or clearing members are permitted to use money and securities which satisfy the conditions prescribed in clause 2 of this article to pay an escrow deposit.

2. Securities which are permitted by the VSD or a clearing member to be used as escrow deposited assets for positions of derivatives must satisfy all of the following conditions:

- (a) Such securities must be included in the list of assets permitted to be used as escrow deposited assets of the VSD;
- (b) Such securities must not be subject to a warning, control or suspension of trading on an SE; or [such securities are not] those of an issuing organization which is currently subject to liquidation, dissolution, bankruptcy, consolidation or merger;
- (c) Such securities must not be pledged, blockaded or temporarily withheld at the VSD;
- (d) Such securities are freely transferable and have been deposited on a securities trading account at the VSD; or are property belonging to the party delivering an escrow deposit which is an investor or clearing member;

(dd) Such securities satisfy other conditions in accordance with regulations of the VSD.

3. The VSD or a clearing member is responsible to publish the list of securities permitted to be used as escrow deposited assets and the discount ratio in respect of each [type of] securities on its website. In the case of change of securities permitted to be used as escrow deposited assets, the clearing member is responsible to replace such securities with money or other securities permitted to be used for escrow deposited assets at the request of the VSD or the clearing member.

4. Management of escrow deposited assets:

- (a) The VSD or a clearing member shall manage escrow deposited assets of a clearing member

or an investor in accordance with articles 25 and 26 of Decree 42;

- (b) A clearing member is only permitted to use escrow deposited assets on the escrow deposit account of an investor for the purpose of paying an escrow deposit, guaranteeing payment obligations or making payment for the positions on the corresponding trading account of such investor; is not permitted to use such escrow deposited assets to guarantee or support payment or make payment for other trading accounts, including accounts owned by the same investor; is not permitted to use such escrow deposited assets as security property or to make payment for other purposes or to any third party, except for the cases stipulated in sub-clauses (d) and (dd) of this clause; and is not permitted to use such escrow deposited assets as security property for its loans or for investment. Interest on deposits shall be returned to the investor at the on-call rate published by the payment bank;
 - (c) Escrow deposited assets of an investor must be managed separately, and are not and must not be deemed property of a clearing member even when such assets have been deposited on a member escrow deposit account. If the clearing member becomes bankrupt, the escrow deposited assets of the investor must be fully returned to the investor after the payment obligations of such investor have been fulfilled;
 - (d) If the investor becomes insolvent, the clearing member is permitted to use, sell or transfer the escrow deposited assets without approval of the investor. Within one day before and after dealing with the escrow deposited assets, the clearing member must send a written notice to the investor on dealing with the escrow deposited assets. Such notice must specify the reason [for dealing with the escrow deposited assets], the type of assets already dealt with, the method and proposed time of dealing with [the escrow deposited assets] (or [method and time of having already dealt with [the escrow deposited assets]]), and proposed realizable value (or actual realized value).
 - (dd) The VSD has the right to use escrow deposited assets of the investor and of the clearing member which have been provided to the VSD in order to support payment for the positions of the investor and of the clearing member in accordance with article 19.4 of Decree 42;
 - (e) During the escrow deposit period, the investor or the clearing member is still entitled to enjoy rights and benefits arising in connection with escrow deposited securities in accordance with the law on enterprises and the law on securities. The benefits of the investor in respect of the escrow deposited securities shall be guaranteed in accordance with regulations of the VSD.
5. During the escrow deposit period on an escrow deposit account, an investor or a clearing member is not permitted to assign, give, donate, mortgage, pledge, use as security deposit or other form of collateral, or register security property or use escrow deposited assets for other purposes.

Article 23 *Clearance Fund*

1. The Clearance Fund shall be formed from contributions of money or securities from clearing members as approved by the VSD for the purpose of paying compensation for loss and damage and for finalizing derivatives transactions in the name of clearing members if they or an investor of a clearing member becomes insolvent. The ratio of contribution of money to the Clearance Fund shall accord with regulations of the VSD upon approval of the SSC.
2. After the VSD has approved in principle a registration to become a clearing member, such clearing member is obliged to make contribution to the Clearance Fund at the initial minimum level.
3. On a monthly basis, the VSD shall re-assess the scale of the Clearance Fund and determine the obligation of each clearing member to contribute to the Clearance Fund on the basis of the trading scale, the level of price fluctuation on the market, financial obligations, risk level and other criteria:

- (a) If the remaining amount to be contributed to the Clearance Fund is higher than the contribution obligation, the clearing member is entitled to receive the difference;
 - (b) If the remaining amount to be contributed to the Clearance Fund is smaller than the contribution obligation, the clearing member is required to contribute the difference.
4. A clearing member is responsible to make extraordinary additional contribution to the Clearance Fund in accordance with regulations of the VSD in the following cases:
 - (a) The clearing member is in a situation which caused it to be given a warning in accordance with the law on securities regarding financial prudence and the law on capital adequacy in banking;
 - (b) Contributed assets of the clearing member are blockaded or confiscated by a competent State agency or pursuant to a court's decision;
 - (c) Other cases as reported by the VSD and approved by the SSC.
5. Management of the Clearance Fund:
 - (a) Assets contributed by each clearing member to the Clearance Fund shall belong to such clearing member and shall be managed by the VSD separately from assets of the VSD. Clearing members are required to sign a commitment which permits the VSD to have the full right to use, including sale of, the assets contributed to the Clearance Fund in order to perform obligations of the positions in the name of such clearing members;
 - (b) In the case of monetary contribution, the VSD shall open a deposit account at a payment bank to manage money contributed by the clearing members to the Clearance Fund;

In the case of contribution of securities, the VSD shall open a depository account in the name of the VSD to manage contributions of securities from clearing members. Dividends, bond dividends, interest and other benefits arising in respect of contributed securities must be returned to the clearing members after deduction of all related costs and taxes;
 - (c) Interest arising from money contributed to the Clearance Fund shall be allocated to clearing members in proportion to the amount of money contributed by and the period of contribution from the clearing members, after deduction of related costs.
6. Return [refund] from the Clearance Fund

Assets of a clearing member contributed to the Clearance Fund shall only be returned when such clearing member has its membership terminated or is no longer the clearing member.

Return from the Clearance Fund shall be implemented after the VSD has deducted all amounts payable (debt obligations) and all payments to implement the positions in the name of such member in accordance with regulations.
7. The Clearance Fund shall be formed, managed and used in accordance with regulations promulgated by the VSD upon approval of the SSC.

Article 24 *Dealing with cases of insolvency*

1. A clearing member or a client of a clearing member [is deemed] insolvent in one of the following cases:
 - (a) [Such clearing member or such client] did not promptly perform or did not completely perform payment obligations in respect of position losses, or payment [obligations] when implementing

a contract in accordance with regulations of the VSD;

(b) [Such clearing member or such client] becomes bankrupt or is declared bankrupt in accordance with the law on bankruptcy of enterprises;

(c) Other cases in accordance with regulations of the VSD.

2. The VSD shall use the sources stipulated in article 27.1 of Decree 42 to guarantee payment when a clearing member or a client of a clearing member becomes insolvent. The sources shall be used in the following order:

(a) Use of the deposit of the insolvent clearing member or of the deposit of the client of the insolvent clearing member;

(b) If the deposit is insufficient to cover the payment obligations, the VSD is permitted to:

- Use monetary contributions to the Clearance Fund from the clearing member which is insolvent;

- Sell escrow deposited assets or contributions of securities to the Clearance Fund from the clearing member which is insolvent on the SE via a designated trading member at the price determined by the VSD;

(d) Use of contributions from other clearing members at a rate determined by the VSD. In such case, the VSD shall send a detailed notice to the related clearing members of use of the Clearance Fund immediately on the day of using it. The insolvent clearing member is obliged to return all assets used to the Fund and pay interest to other members at the rate determined by the VSD but not exceeding 150% of the basic interest rate stipulated by the State Bank;

(dd) Use of the payment risk reserve fund and other legal capital sources of the VSD in accordance with regulations of the VSD.

3. In addition to the sources prescribed in clause 2 of this article, the VSD is permitted to implement the following measures:

(a) To request the member to explain the reason for and provide all information relating to the insolvency, and to provide a list of clients, identifying information about clients and information on escrow deposit accounts of clients;

(b) To co-ordinate with the SE to restrict or prohibit the opening of new positions in the name of such member, except for reciprocal transactions;

(c) To request the member to liquidate its position in accordance with article 19.4 of Decree 42;

(d) To open a trading account at the SE to implement transactions of closing positions of the insolvent clearing member in accordance with article 19.4(a) of Decree 42 and to carry out other activities and take other risk prevention measures in accordance with articles 19.4 and 28 of Decree 42.

4. If an investor becomes insolvent, the clearing member is responsible to notify immediately the VSD of the position and the list of escrow deposited assets of such investor and is permitted to implement appropriate solutions for dealing with [such insolvency], comprising:

(a) Request the investor or the clearing member to implement compulsory closure or liquidation of positions in respect of open positions of the investor;

- (b) Suspend the receipt of trading orders to open new positions from the related investor; and cancel trading orders of such investor which have not been implemented;
- (c) Use, sell or transfer escrow deposited assets of the investor for the purpose of purchasing or using [such escrow deposited assets] as security property for loans to perform payment obligations in respect of open positions of the investor. If such assets are insufficient, the clearing member must use its own assets to implement derivatives contracts of the investor;
- (d) The investor is responsible to return all advanced assets to the clearing member and bear all relevant costs arising.

CHAPTER V

Obligations to Make Reports and Disclose Information

Article 25 *Obligations of derivatives service business organizations to make reports and disclose information*

1. A derivatives service business organization [DSBO] shall send to the SSC the following reports:
 - (a) Report on situation of brokerage or self-trading of derivatives (if any); and on clearance and payment for derivatives transactions (if any) in accordance with guidelines of the SSC;
 - (b) Other reports as stipulated in the law on securities regarding organization of operation of securities companies and fund management companies.
2. A DSBO must make a disclosure of information about and at the same time report the following events to the SSC:
 - (a) Change (if any) of the clearing member;
 - (b) Other cases as stipulated in the law on securities regarding organization of operation of securities companies and fund management companies, and disclosure of information on the securities market, and at the request of the SSC.

Article 26 *Obligations of SEs to disclose information*

1. An SE is responsible to disclose the following information:
 - (a) Reference price, ceiling price, floor price, opening price and closing price of each trading session and each trading day, and agreed price (if any);
 - (b) Best offer prices for purchase or sale and volume of purchase or selling orders which were placed in respect of each type of derivatives;
 - (c) Other information to be disclosed in accordance with guidelines of the SSC.
2. An SE is responsible to regularly publish quotations on its website with the following information:
 - (a) Codes of currently listed derivatives;
 - (b) Reference price, ceiling price, floor price, exercise price and implementing volume of the latest transaction, highest trading price in a session, lowest trading price in a session, and closing

price; three (3) best offer prices for purchase or sale;

- (c) Total implementing volume;
 - (d) Other information in accordance with guidelines of the SSC.
3. The SEs are responsible to disclose information about de-listing of derivatives or listing of new derivatives upon approval of the SSC.
4. An SE is responsible to disclose information about trading members and market-making members:
- (a) Information about approval of new trading members or new market-making members; suspension or termination of membership of trading members or of market-making members;
 - (b) Information about breaches and penalties (if any) imposed on trading members or market-making members;
 - (c) Other information in accordance with regulations of the SE.
5. An SE is responsible to disclose information about operations of the derivatives market comprising:
- (a) Information about temporary suspension of trading on the derivatives market when a force majeure event occurs or when there is an abnormal signal during trading; information about permission to resume trading of derivatives contracts;
 - (b) Information about change of price fluctuation ranges, order limits, and accumulated order limits (if any);
 - (c) Information about amendment of or addition to the contents of derivatives securities upon approval of the SSC;
 - (d) Other information as requested by the SSC.
6. The VSD shall provide necessary information in order for the SE to make a daily disclosure of information, comprising the following information:
- (a) Daily settlement price, final settlement price (if any);
 - (b) Open interest of each type of derivatives on the preceding trading day;
 - (c) Other contents in accordance with guidelines of the SSC.

Article 27 *Obligations of the VSD to make reports and disclose information*

1. The VSD shall periodically send to the SSC the following reports:
- (a) Report on clearance and payment for derivatives transactions, report on use of the mechanism for payment guarantee, and report on supervision and penalties for breaches by clearing members in accordance with guidelines of the SSC;
 - (b) Other reports in accordance with guidelines of the SSC.
2. The VSD must make a report to the SSC within no more than twenty four (24) hours on occurrence of any of the following abnormal events:
- (a) A clearing member becomes insolvent in that it is unable to settle derivatives transactions;

- (b) The membership of a clearing member is suspended or terminated.
 - (c) Other cases as provided by law and at the request of the SSC.
3. The VSD is responsible to disclose the following information:
- (a) Issuance of certificates of registration, withdrawal or suspension of membership of clearing members; list of clearing members; information about breaches (if any) of clearing members;
 - (b) Information about escrow deposit and position limits, and other information in accordance with guidelines of the SSC.

Article 28 *Time-limits for submission of reports*

1. In the case of periodical reports
- (a) In the case of a monthly report, the time-limit is five days from the end of a month;
 - (b) In the case of a quarterly report, the time-limit is twenty (20) days from the end of a quarter;
 - (c) In the case of a semi-annual report, the time-limit is forty five (45) days from the end of the first six months of a year;
 - (d) In the case of an annual report, the time-limit is ninety (90) days from the end of a year.
2. In the case of reports on events arising
- (a) In the case of reports prescribed in articles 25.2, 26.3, 26.4 and 26.5 of this Circular, the time-limit is twenty four (24) hours;
 - (b) The time-limit is twenty four (24) hours from the date of receipt of a request for other reports from the SSC.
3. Other reports as stipulated in this Circular must be accompanied by electronic files.

CHAPTER VI

Implementing Provisions

Article 29 *Effectiveness*

This Circular is of full force and effect as from 1 July 2016.

Article 30 *Organization of implementation*

1. The SSC, the SEs, the VSD, derivatives service business organizations, trading members, clearing members and organizations and individuals involved in activities of investment in and trading derivatives and involved in the derivatives market in Vietnam are responsible to organize implementation.
2. Any amendment of or addition to this Circular shall be decided by the Minister of Finance.

For the Minister
Deputy Minister

