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| **VIETNAM SECURITIES DEPOSITORY AND CLEARING CORPORATION** | **SOCIALIST REPUBLIC OF VIETNAM****Independence - Freedom - Happiness** |

**GUIDELINE ON VSDC’S DERIVATIVES CLEARING MEMBERS AT Vietnam Securities Depository AND CLEARING CORPORATION**

 *(Issued with Decision No. 13/QD-HĐTV dated August 13th, 2023 by the Chief Executive Officer of Vietnam Securities Depository and Clearing Corporation)*

# CHAPTER I

# GENERAL PROVISIONS

#  Governing scope

This Regulation provides guidance on registration, changes of registration information of derivatives clearing members (hereinafter referred to as CMs) voluntary cancellation of clearing membership, handling of violations. violations, inspection of CMs and the reporting regime of clearing members at Vietnam Securities Depository and Clearing Corporation (VSDC).

2. Governed subjects

a) VSDC

b) Securities companies, commercial banks, foreign bank branches registering to be CMs (hereinafter referred to as organizations registered to be CMs).

c) Other relevant organizations and individuals.

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# CHAPTER II

# Registration, changes of registration information of derivatives, voluntary cancellation of clearing membership

**Article 2. CMs registration**

1. Organizations registering to be CMs shall send CMs registration dossier to VSDC as specified in Clauses 2 and 3, Article 30 of Decree No. 158/2020/ND-CP dated December 31st, 2020 of the Government on derivatives and derivatives market (hereinafter referred to as Decree 158/2020/ND-CP), in which:

a) A note as regards meeting requirements of the business process according to Form 01/PS-TVBT issued together with this Guideline (hereinafter referred to as the Business Note).

b) A note as regards meeting requirements of information technology infrastructure according to Form 02/PS-TVBT issued together with this Guideline (hereinafter referred to as the IT Note).

2. Within 7 working days from the date of receipt of CMs registration dossier, VSDC shall:

a) If the application is complete and valid, VSDC shall issue a written in-principle approval for the organization registering to be a CM according to Form 03/PS-TVBT issued together with this Guideline. This requires the organization registering to be a CM to contribute to the Clearing Fund for derivatives market (hereinafter referred to as the Clearing Fund), to connect the system, to perform testing with VSDC’s clearing and settlement system.

 b) In case the dossier is incomplete or invalid, VSDC shall send a written request to the organization registering to be a CM to amend, supplement the dossier as regulated.

3. Upon completion of work in Clause 2 of this Article, the organization registering to be a CM shall send to VSDC 2 copies of the account registration slip for cash collateral withdrawal, payment and receipt of refunded contributions to/from the Clearing Fund according to Form 04/PS-TVBT issued together with this Guideline.

4. Within 1 working day from the date the organization registers to be a CM completing the work as specified at Point a, Clause 2 of this Article and VSDC receives the complete dossier as specified in Clause 3 of this Article, VSDC issues the Certificate of derivatives CM according to Form 05/PS-TVBT and signs a contract for providing clearing and settlement service for derivatives transactions with the CM according to Form 06/PS-TVBT issued together with this Guideline.

5. After being granted the Certificate of derivatives CM by VSDC, the CM uses the same number and abbreviated name of the depository member as the number and abbreviated name for the CM.

# Article 3. Change of registered information by CMs

1. CMs have to send written notice to VSDC to update information in the CM registration file in case of information change:

 a) List of members of the Board of Directors being in charge of clearing and settlement of derivatives transactions at Point 5, Section I of the Business Note.

b) Points 2, 3, 4, 5, 6, Section II of the IT Note.

2. CMs have to send written request to VSDC to approve the changed information in the CM registration file in case of information change:

a) Section II of the Business Note.

b) Point 1, Section II of the IT Note.

3. CMs have to send written notice and request to VSDC to issue a revised certificate of derivatives CM in case of information change:

a) Name of organization, head office, legal representative, charter capital.

b) The certificate of eligibility to provide clearing and settlement services for derivatives transactions issued by the State Securities Commission (hereinafter referred to as SSC).

c) CM type.

4. Procedures for changing information in the CM registration file

a) For the case specified in Clause 1 of this Article: The CM shall send to VSDC a written notice of the changed information within 7 working days from the effective date of the change.

b) For the case specified at Point a, Clause 2 of this Article: Within 7 working days from the date of receipt of complete and valid dossier, and after the change, the business process meets processing requirement for clearing and settlement of derivatives transactions between CMs and VSDC, VSDC shall have written approval for the change. In case of refusal, VSDC shall send written reply clearly stating the reason.

c) For the case specified at Point b, Clause 2 of this Article: The process and timeframe for handling the change shall comply with the Regulation on participating in ISO-based gateway message of VSDC for clearing and settlement for derivatives transactions.

d) For the case specified at Point a, Clause 3 of this Article: Within 5 working days from the effective date of the change, the CM has to send a written notice to VSDC enclosed with a dossier having the competent authority’s certification for the changed information (if any), VSDC shall issue the revised CM Certificate for the CM according to Form 07/PS-TVBT issued together with this Guideline within 2 working days from the date of issuing the revised Depository Membership Certificate for the CM.

dd) For the case specified at Point b, Clause 3 of this Article: VSDC shall issue the revised CM Certificate for the CM according to Form 07/PS-TVBT issued together with this Guideline within 2 working days from the date of receipt of the written notice of the CM together with a certified copy of the certificate of eligibility to provide derivatives clearing and settlement services issued by SSC.

e) For the case specified at Point c, Clause 3 of this Article, VSDC shall issue a revised certificate of derivatives CM according to Form 07/PS-TVBT issued together with this Guideline within 3 working days from the date the CM completes the followings:

- Sending VSDC a written request to change member type together with a certified copy of the document issued by SSC related to the change of member type;

- Making additional deposit to the Clearing Fund (in case of shortage as regulated) when changing from a DCM to a GCM;

- Liquidating all positions, collaterals and fulfil payment obligations for accounts of non CMs and their clients (if any) in case of changes from a GCM to a DCM. The liquidation is done through a position closing transaction or a request for position/collateral closing out transfer according to VSDC's Guideline on Derivatives Clearing and Settlement.

# Article 4. Voluntary cancellation of clearing membership

1. Those CMs who voluntarily request for cancellation of clearing membership as specified at Point a, Clause 1, Article 28 of Circular No. 58/2021/TT-BTC dated July 12th, 2021 of the Ministry of Finance guiding some Articles of Decree No. 158/2020/ND-CP dated December 31st, 2020 of the Government on derivatives and derivatives market (hereinafter referred to as Circular 58/2021/TT-BTC) shall send VSDC the dossier, including:

a) A written request for cancellation of clearing membership according to Form 08/PS-TVBT attached to this Guideline.

b) Plan to handle position balance, collaterals in the CM’s proprietary accounts and its clients’ accounts.

2. Dossier for voluntary cancellation of clearing membership shall be prepared in 1 original set and sent to VSDC in person or by post.

3. Within 7 working days from the date of receiving the dossier for voluntary cancellation of clearing membership:

- In case the dossier is complete and valid, VSDC shall send a written notice to the CM about terminating provision of clearing and settlement services for derivatives transactions and allowing implementation of procedures for cancelling clearing membership.

- In case the dossier is not complete and valid, VSDC shall send a written request to the CM to amend and supplement the dossier. In case of refusal, VSDC shall send a written reply, clearly stating the reason.

4. From the time of terminating provision of clearing and settlement services for derivatives transactions according to the written notice specified in Clause 3 of this Article, VSDC only performs the followings for the CM:

a) Offsetting reciprocal transactions to close out positions, making payment of daily position profit and loss or contract execution for existing positions on the account.

b) Making position closing-out/collateral transfer as requested by clients from the CM whose membership status has been cancelled to a replacing CM.

c) Sending notification, reconciling with the CM about the balance of positions and collaterals in each client's account.

5. Within 2 working days from the date of receiving VSDC's notice of position balance, collaterals in each client's account as prescribed at Point c, Clause 4 of this Article, the CM is responsible for coordinating with VSDC to reconcile and confirm information about position balance, collaterals in each client's account. In case there is any discrepancy, the CM shall send a written notice to VSDC for checking and reconciliation.

6. Within 1 working day from the date of VSDC’s issuing written document on terminating provision of clearing and settlement services for derivatives transactions, the CM has to disclose information about carrying out procedures for cancelling clearing membership in order to close out/make final settling transfer of clients' positions/collaterals to another CM and closing out all proprietary positions. The time for VSDC’s making position/collateral closing-out transfer as requested by clients is 30 days at maximum from the date of service termination. Dossier for account closing out at clients’ request is specified in VSDC's Guideline on Derivatives Clearing and Settlement.

7. After the deadline specified in Clause 6 of this Article, for clients’ positions and collaterals that have not been closed out, CMs are responsible for selecting a replacing CM and informing VSDC accordingly.

8. VSDC prepares a list of clients whose positions and collaterals are not closed out to send the replacing CM for opening accounts for these clients. This list does not include accounts that are violating collateral usage rate, position limits; or subject to insolvency, collateral dispute and civil obligation unfulfilling between clients and the CM, which have been confirmed with VSDC by the CM.

9. The CM is responsible for mandatorily closing positions and returning collaterals (if any) to customers whose accounts are violating collateral usage rate, position limits; or subject to insolvency, collateral dispute and civil obligation unfulfilling between clients and the CM, which have been confirmed with VSDC by the CM.

10. Within 3 working days from the date of receiving the list of accounts provided by VSDC as prescribed in Clause 8 of this Article, the replacing CM shall open a margin account for each customer and register account information with VSDC for transfer making.

11. The steps and procedures for position closing out/collateral transfers are specified in VSDC's Guideline on Derivatives Clearing and Settlement.

12. VSDC issues a decision on cancelling clearing membership status and return the assets contributed to the Clearing Fund by the CM in accordance with the Guideline on Management and Usage of the Clearing Fund for the Derivatives Market at VSDC and disclose information to the market after the CM complete the followings:

a) Closing out the proprietary trading account (if any) and all accounts of clients opened at the CM or complete transfer of all clients’ positions and collaterals to the replacing CM.

b) Fulfilling all obligations to VSDC as regulated.

# CHAPTER III

# DISCIPLINARY ACTIONS AGAINST CMS’ BREACHES

# Article 5. Disciplinary actions against CMs’ breaches

1. VSDC shall apply the following disciplinary actions:

a) Warning;

b) Censure;

c) Suspension of CMs’ clearing and settlement of derivatives operations;

d) Mandatory cancellation of clearing membership.

2. Disciplinary actions mentioned in Sub clauses b, c, and d, Clause 1 of this Article shall be disclosed on VSDC’s website and reported to SSC. The violating CM is responsible for disclosing information on its own website.

3. Disciplinary actions in Sub clauses a, b, c Clause 1 of this Article are not applicable to a CM who is in the process of cancelling clearing membership.

# Article 6. Warning

1. VSDC issues a written document to warn CMs in the following cases:

a) Failing to make full or on time contribution to the Clearing Fund as notified by VSDC;

b) Failing to remedy the violation of collateral usage rate regulation before the intra-day deadline for collateral deposit as prescribed in VSDC's Guideline on Derivatives Clearing and Settlement with the number of 2 accounts or less;

c) Within 1 month, there are 2 violating cases of position limit on investors' account;

d) Failing to reduce the number of futures contracts exceeding position limit within 2 working days from the date of receiving VSDC’s violation notice, except for the case of exceeding the position limit due to re-defining professional securities investors;

dd) Being insolvent with the deficit amount not exceeding the usable cash collateral of the CM itself at the time of determining the insolvency (including cash collateral in the investor’s account and that in the proprietary account);

e) Failing to make full or on time payment of service charges related to clearing and settlement of derivatives transactions as notified by VSDC.

g) Failing to notify or notify VSDC later than the prescribed deadline of changes in the CM’s registration information (in case VSDC's approval is not required) specified in Article 3 of this Guideline.

2. Timeline for issuing warning document

a) For violations specified at Points a, b, d, dd, e and g, Clause 1 of this Article, VSDC shall issue a warning document decision for the violating CM within 1 working days from the violating date.

b) For the violation specified at Point c, Clause 1 of this Article, VSDC shall total on a monthly basis and issue warning document for the violating CM no later than the 2nd working day of the following month.

# Article 7. Censure

1. VSDC issues a decision on censure for a CM in the following cases:

a) Failing to make full or on time contribution to the Clearing Fund as requested within 5 working days from the deadline for contribution as notified by VSDC;

b) Failing to remedy the violation of collateral usage rate regulation before the intra-day deadline for collateral deposit as prescribed in VSDC's Guideline on Derivatives Clearing and Settlement with the number of 3 accounts or more;

c) Within 1 month, there are 3 (and over) violating cases of position limit in investors' account;

d) Failing to reduce the number of futures contracts exceeding position limit within 3 working days from the date of receiving VSDC’s violation notice, except for the case of exceeding the position limit due to re-defining professional securities investors;

dd) Failing to replenish collaterals or close positions to reduce collateral usage rate within 1 working day from the date of receiving VSDC’s violation notice;

e) There are 2 times and more within 1 month being subject to written warning as specified in Clause 1, Article 6 of this Guideline;

g) Being insolvent with the deficit amount not exceeding the usable cash collateral of the CM itself at the time of determining the insolvency but the payment support from the Clearing Fund does not exceed the CM’s contributed amount to the Clearing Fund;

h) Failing to make full or on time payment as notified by VSDC with reference to the compensation as prescribed at Point c, Clause 4, Article 11 of Circular 58/2021/TT-BTC;

i) Failing to fully refund the payment support to the Clearing Fund, the Business Operation Risk Reserve Fund and VSDC's capital within 2 working days from the using date;

k) Failing to have sufficient money for payment or Government bonds for delivery within the timeframe specified by VSDC, leading to the cash settlement of Government bond futures;

l) Failing to make full or on time payment of service charges related to clearing and settlement of derivatives transactions within 20 days from the deadline as notified by VSDC;

m) Failing to provide complete, accurate and timely information requested by VSDC as prescribed in Article 10 of this Guideline;

n) Changing registration information of CMs without VSDC's approval (in case VSDC's approval is required) and/or failing to notify VSDC of the change (in case VSDC's approval is not required) within10 days after the deadline for sending a written notice as prescribed in Article 3 of this Guideline;

o) Failing to complete allocation of position profits to investors (if investors have profits) and/or proceeds from bond selling to investors who deliver bonds upon execution of bond futures on the settlement date.

2. Timeline for issuing censure decision

a) For violations specified at Points a, b, d, dd, g, h, i, k, l, m, n and o, Clause 1 of this Article, VSDC shall issue a censure decision for the violating CM within 1 working days from the violating date.

b) For monthly totaled violations specified at Points c and e, Clause 1 of this Article, VSDC shall issue a censure decision for the violating CM no later than the 2nd working day of the following month.

**Article 8. Suspension of CMs’ clearing and settlement of derivatives operations**

1. VSDC shall issue suspension decision for CMs’ clearing and settlement of derivatives operations in the cases specified at Points a, b, c, d, dd, e, g and h clauses. 1 Article 27, Circular 58/2021/TT-BTC.

 2. VSDC shall issue suspension decision for CMs’ clearing and settlement of derivatives operations upon obtainment of SSC’ approval in the following cases:

a) CMs’ failure to make full or on time payment of service charges related to clearing and settlement of derivatives transactions within 30 days from the deadline as notified by VSDC.

b) The CM has been subject to VSDC’s censure decision for violating provisions of Point m, Clause 1, Article 7 of this Guideline but failing to comply with VSDC's request within the timeframe specified in the censure decision.

3. The period for suspension of CMs’ clearing and settlement of derivatives transactions is specified in VSDC's suspension decision for 90 days at maximum from the date of VSDC’s issuing the decision. For the case that CMs’ clearing and settlement of derivatives transactions are subject to suspension by SSC, the suspension period shall comply with SSC’s decision.

4. Steps and procedures for suspension

a) Within 1 working day from the date of arising violations as prescribed in Clause 1 of this Article, VSDC shall issue suspension decision for the violating CM.

b) The suspension of CMs’ clearing and settlement of derivatives transactions includes suspension of trading for opening new positions under the CM’s name in the entire trading account at the CM except for execution of offset transactions to close existing positions, daily position profit and loss settlement and contract executing settlement for existing positions. VSDC’s CEO shall decide the CM’s partial or full closing out positions of the CM or its clients depending on certain circumstances.

c) Within 10 days from the date of suspension, the CM is responsible for disclosing information, notifying the client and carrying out transfer procedures for position closing out/collateral as required.

d) The transfer step and procedures for transfer of position closing-out and collaterals as required at Point c of this Clause shall comply with VSDC’ Regulation on clearing and settlement of derivatives transactions at VSDC.

5. VSDC considers and decides to resume clearing and settlement activities of derivatives transactions for the CM only upon the CM’s completing remedy actions for the deeds leading to the suspension.

 **Article 9. Mandatory cancellation of clearing membership.**

1. VSDC mandatorily cancels clearing membership in cases specified in Clause 2, Article 28 of Circular 58/2021/TT-BTC.

2. Steps and procedures for mandatory cancellation of clearing membership:

2.1. VSDC shall send written notice to the CM as regards termination of clearing and settlement services for derivatives transactions and request for carrying out procedures for mandatory cancellation of clearing membership within 1 working day from:

a) By end of the time limit for suspension of clearing and settlement of derivatives transactions according to VSDC’s suspension decision, the CM has not yet been able to complete remedy actions for those deeds leading to the suspension.

b) VSDC receives SSC’s written document allowing to carry out procedures for terminating provision of clearing and settlement services for derivatives transactions according to Clause 4, Article 12 of Decree 158/2020/ND - CP or SSC’s written document requesting the CM to carry out procedures for terminating provision of clearing and settlement services for derivative securities transactions as specified in Clause 2, Article 13 of Decree 158/2020/ ND-CP.

c) VSDC receives the decision of the Stock Exchange on canceling derivatives trading membership of the CM.

2.2. From the time of service suspension according to the written notice specified in Clause 2.1 of this Article, VSDC only performs the followings for the CM:

a) Executing offset transactions to close positions, making daily profit and loss payments or contract executing payments for existing positions in the account;

b) Making closing-out position/collateral transfer as requested by clients from the CM whose clearing membership status to the replacing CM;

c) Notifying and reconciling with the CM about the balance of positions and collaterals in each client’s account.

2.3. Within 2 working days from the date of receiving VSDC's notice on position balance and collaterals in each customer's account as specified at Point c, clause 2.2 of this Article, CMs are responsible for coordinating with VSDC to reconcile and confirm information on position balance and collaterals in each client's account. In case there is any discrepancy, the CM shall send a written notice to VSDC for checking and reconciliation.

2.4. Within 1 working day from the date of VSDC’s issuing written document on terminating provision of clearing and settlement services for derivatives transactions, the CM has to disclose information about conducting procedures for clearing membership cancellation to close or make transfer for closing-out positions and collaterals of its clients to another CM and of its proprietary positions. VSDC's time to make transfer for closing-out positions and collaterals as requested by 30 days from the date of service termination. The transfer dossier for account closing-out as requested by clients are specified in VSDC’s Guideline on Clearing and Settlement of derivatives transactions.

2.5. After the deadline specified in Clause 2.4 of this Article, for positions and collaterals of clients that have not been closed out, CMs are responsible for negotiating, determining the replacing CM and informing VSDC. In case the CM is not able to determine a replacing CM, VSDC shall send a written appointment of a replacing CM to take over positions and collaterals of clients. The CM is responsible for informing its clients of the replacing CM.

2.6. VSDC and CMs shall perform further related work as specified in Clauses 8, 9, 10, 11, 12, Article 4 of this Guideline.

# CHAPTER IV

# REPORTING, INSPECTION

# Article 10. CMS’ reporting obligation

1. CMs have to report to VSDC within 1 working day upon occurrence of the followings:

a. CMs’ system used for derivatives clearing and settlement is problematic;

b. Occurrence of breakdowns related to derivatives clearing and settlement that are not intraday remedied.

b) Being suspended from derivatives business;

c) Being subject to derivatives trading membership;

d) Being default as specified in Clause 1, Article 15 of Circular 58/2021/TT-BTC;

dd) Being in warning status in accordance with the securities regulations on financial safety, the banking regulations on capital safety.

2. Reporting upon request

In necessary cases, VSDC shall request a CM to provide information on open positions, collaterals of the CMs and its clients and other documents related to clearing and settlement of derivatives transactions at the CM.

**Article 11. Inspection of CMs**

1. Inspection scope

VSDC shall conduct inspection on CMs’ compliance with VSDC's rules and guidelines related to clearing and settlement activities for derivatives transactions.

2. Steps and procedures for inspection

VSDC shall coordinate for implementation according to the plan, steps for periodic or ad-hoc basis inspection of SSC as specified in Clause 5, Article 16 of Circular 95/2020/TT-BTC on supervision of securities transactions on the securities market.

# CHAPTER V

# IMPLEMENTATION

#  Article 12. Implementation clause

1. During implementation if any problems occur, related parties are requested to contact VSDC for guidance and solution.

2. The Revision of this Guideline shall be decided by VSDC’s Board of Directors upon and SSC’s approval.