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Reference	NASDAQ OMX Default Fund Policy Paper

## ASSESSMENT POWER AND REPLENISHMENT

### INTRODUCTION

In the rules and regulations regarding NASDAQ OMX's default fund, it will be stipulated that a clearing member has an obligation to contribute to the default fund (see NASDAQ OMX Default Fund Policy Paper). Moreover, the rules will also stipulate that a clearing member has obligations in terms of Replenishment and Assessment Power.

Replenishment refers to the clearing member's obligation to provide new (pre-funded) default fund contributions to restore the size of the fund in the event the clearing house has had to use any contributions to the default fund.

Assessment Power refers to the clearing member's obligation (a non-pre-funded guarantee commitment) to contribute an additional amount where the total loss in counterparty default(s) exceeds the pre-funded contributions to the default fund and NASDAQ OMX Junior and Senior Capital. This guarantee undertaking is, however, limited to an amount equal to the member's default fund contribution requirement for the Financial Default Fund and the Commodities Default Fund.

The existence of strict and clear rules for Replenishment and Assessment Power are fundamental pre-requisites for a clearing house's default fund. This ensures a high degree of financial strength and also a sound loss-sharing arrangement among its clearing members. Replenishment and Assessment Power obligations are common among other international clearing houses.

As a consequence of NASDAQ OMX's rules for Replenishment and Assessment Powers, a clearing member always has a limited exposure equivalent to its contributions to the default fund and the Assessment Power obligation.<sup>1</sup> The mechanism for this limitation is firstly that a member may terminate its membership, and secondly that the Assessment Power obligation is reduced by an amount equal to any replenished amount within an interim period of 90 days following a default.

This appendix describes the rules regarding Replenishment and Assessment Power, and also the process and conditions for when a clearing member's default fund contribution and Assessment Power obligation will be released in connection with the termination of its membership.

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<sup>1</sup> The limited exposure consists of 1) the Default Fund contributions (including to Mutualized Default Fund) , and 2) the Assessment Power equal to 100% of the pre-funded Default Fund contributions to the Financial Default Fund and Commodities Default Fund (i.e. excluding contributions to the Mutualized Default Fund). In total, the exposure equals 187 per cent of the pre-funded Default Fund contributions.

## TERMINATION AND RELEASE OF DEFAULT FUND CONTRIBUTIONS IF NO DEFAULT

If a clearing member chooses to terminate membership, the termination becomes effective from the date when the member's own transactions and customer transactions have been wound up or transferred to another member.

If there is no default affecting the default fund per the effective date of membership termination, a member's default fund contribution and obligations under the Assessment Power will remain as obligations until the next quarterly allocation of default fund contributions. At that time, the default fund contribution will be repaid, and the member will also be released from the Assessment Power obligation.

During the period from the effective date of membership termination until the day for actual repayment of the default fund contribution, the member will not have any Replenishment obligation.

To avoid the risk of too short a notice period for the clearing house, and ultimately for remaining members, a member's termination must be effective no later than ten bank days before the quarterly default fund contribution notice is distributed by NASDAQ OMX. The quarterly default fund contribution notice will be distributed to members ten bank days before the contribution adjustments are settled.

If termination is not effective ten bank days before the quarterly default fund contribution notice is distributed, the default fund contribution will be repaid 30 calendar days after the adjustment of the contributions is settled. The member's default fund contribution and Assessment Power will be part of the loss-sharing arrangement in the clearing house's default fund, with respect to any defaults occurring before the date of repayment.

## REPLENISHMENT AND NO TERMINATION OF MEMBERSHIP

Members have an obligation to replenish any default fund contribution that is consumed in a default. Replenishment shall be effected within ten bank days after a default fund utilization notice is distributed by NASDAQ OMX. The default fund utilization notice will include information about utilized amount and date for replenishment.

Replenished funds will be placed above the Assessment Power in the Waterfall (see NASDAQ OMX Default Fund Policy Paper, "Default Fund Capital Structure"). The replenished funds will remain in that position until 90 calendar days have elapsed from the date for Replenishment specified in the default utilization notice the "interim period"). During the interim period, the Assessment Power obligation is reduced by an amount equivalent to the replenished amount. After the interim period, the replenished amount is placed in the original Waterfall position. The purpose of the interim period is to preserve the original Waterfall structure in the event of multiple defaults.

## REPLENISHMENT AND TERMINATION OF MEMBERSHIP

Members have an obligation to replenish any default fund contribution that is consumed in the default.

If a member effectively terminates membership within 90 calendar days following a default, the original default fund contribution, Assessment Power obligation and replenished capital, if any, that remain after utilization in the default, will be repaid/released at the first quarterly allocation of default fund contributions that occurs following the interim period. This is provided that the effective date for termination of membership occurs at least ten bank days before the default fund contribution notice is distributed. If the membership is effectively terminated later than ten bank days before notice distribution, the default fund contribution will be repaid 30 calendar days after the contributions have been adjusted.

During the period starting with the effective date of membership termination until the day of actual repayment of the default fund contribution, the member will not have any Replenishment obligation.

#### **DEFAULT CAUSING UTILIZATION OF ASSESSMENT POWER**

If losses from one or more defaults lead to utilization of the Assessment Power, NASDAQ OMX has no right to require new Replenishment. In such a situation, NASDAQ OMX and its members will have to negotiate a plan to continue operations or else initiate an orderly wind-down of the clearing house.