

Chapter I: Clearing Model Related Provisions

# FCM Regulations of Eurex Clearing AG

As of 02.04.2024

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Chapter I Preamble	

## **Preamble**

This Chapter I forms an integral part of the FCM Clearing Conditions, including the FCM Regulations, of Eurex Clearing AG.

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## Chapter I Clearing Model Related Provisions

### 1 General Provisions

#### 1.1 Scope of Application

1.1.1 Eurex Clearing AG, having its registered office in Frankfurt am Main, acts as central counterparty for novations of certain swap transactions (each such novated transaction, a **“Swap Transaction”**).

1.1.2 These FCM Regulations of Eurex Clearing AG (**“FCM Regulations”**), in conjunction with the FCM Default Rules of Eurex Clearing AG (**“FCM Default Rules”**), provide a framework for clearing of Swap Transactions through Eurex Clearing AG by FCM Clearing Members acting as agent on behalf of their clients (as described in Number 6.2.2) and, if applicable, for their own account. The **“FCM Clearing Conditions”** means the rules of Eurex Clearing AG for the clearing of Swap Transactions by FCM Clearing Members and comprise the:

- (1) FCM Regulations;
- (2) FCM Default Rules;
- (3) Default Management Committee Rules of Eurex Clearing AG (**“Default Management Committee Rules”**);
- (4) Default Management Auction Rules of Eurex Clearing AG (**“Default Management Auction Rules”**);
- (5) Price List for Eurex Clearing AG; and
- (6) General Terms and Conditions to the Agreement on Technical Connection to the Clearing EDP of Eurex Clearing AG;

in each case in the currently available version as amended from time to time. The FCM Clearing Conditions may be viewed at and downloaded from the Eurex Clearing Website.

1.1.3 The conclusion of Swap Transactions between Eurex Clearing AG and the FCM Clearing Member by way of novation, the processing by Eurex Clearing AG of Swap Transactions, and the related services rendered by Eurex Clearing AG, in each case as set out in the FCM Clearing Conditions, shall together be referred to herein as **“Clearing”**.

1.1.4 With respect to the Clearing of Swap Transactions for clients, the FCM Regulations establish a clearing model for FCM Clearing Members based on the concept of legal segregation and operational commingling of collateral of their clients, referred to as **“LSOC”**.



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1.1.5 The FCM Clearing Conditions apply to all transactions resulting from the novation of any interest rate derivatives transaction (including inflation swaps) falling under Chapter II Part 2 of the FCM Regulations (each, an “**Interest Rate Derivative Transaction**”).

Eurex Clearing AG may designate transaction types for other asset classes as Swap Transactions under this Number 1.1.5, provided that the transaction type qualifies as a swap as defined in Section 1a (48) of the CEA and Regulation 1.3 of the CFTC (each separate classification (including Interest Rate Derivative Transactions) a “**Swap Transaction Type**”).

1.1.6 The procedures maintained and operated by Eurex Clearing AG for the Clearing of Swap Transactions under the FCM Clearing Conditions shall be carried out on the basis of a clearing agreement to be entered into between Eurex Clearing AG and the FCM Clearing Member in the form appended hereto as Appendix 1 (the “**FCM Clearing Agreement**”).

1.1.7 The FCM Clearing Conditions are specific to FCM Clearing Members and are separate from the Clearing Conditions, which apply to the clearing services that Eurex Clearing AG provides for various transaction types, including those classified as Swap Transaction Types herein, to other categories of Clearing Members (as defined in Number 1.2.1).

1.1.8 Only entities that have been granted an FCM Clearing License pursuant to Number 2 and that have been admitted as an FCM Clearing Member are authorized to participate in the Clearing of Swap Transactions pursuant to the FCM Clearing Agreement.

1.1.9 Each client of an FCM Clearing Member for which the FCM Clearing Member is clearing FCM Client Transactions through Eurex Clearing AG is an “**FCM Client**”.

- (1) FCM Clients do not have a direct contractual relationship with Eurex Clearing AG and shall not be required to enter into an FCM Clearing Agreement or any other contractual agreement with Eurex Clearing AG.
- (2) An FCM Client must be a direct client of an FCM Clearing Member (except when the FCM Clearing Member is acting as a Pre-Allocation FCM Clearing Member, with respect to the portion of the relevant Unallocated FCM Client Transaction that is to be transferred to a Post-Allocation Clearing Member in accordance with Number 1.3.3 Paragraph (4)). For the avoidance of doubt, the FCM Clearing Member is not allowed to clear Swap Transactions through Eurex Clearing AG for indirect clients.
- (3) An FCM Client will only be setup as a client within the systems of Eurex Clearing AG when the FCM Clearing Member has provided the FCM Client Information to Eurex Clearing AG and Eurex Clearing AG has not rejected the relevant client on the basis of its compliance checks.
- (4) “**FCM Client Information**” means:
  - (a) the name of the FCM Client,
  - (b) the address of its primary business address or primary residence, as applicable,

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- (c) the e-mail address (for default management purposes) or alternative contact details of the FCM Client,
  - (d) the telephone number of the FCM Client, and
  - (e) the legal entity identifier (LEI) of the FCM Client.
- (5) The FCM Clearing Member shall provide Eurex Clearing AG at any time or upon request of Eurex Clearing AG with:
- (a) any update of FCM Client Information,
  - (b) a list of authorized signatories of an FCM Client of such FCM Clearing Member that are entitled to represent such FCM Client, and
  - (c) any information in relation to any of its FCM Clients that Eurex Clearing AG reasonably requires or requests in order to comply with any statutory or regulatory obligations.

Eurex Clearing AG may rely on the Client Information provided by the FCM Clearing Member without conducting its own investigation.

## 1.2 Definitions and Interpretation

1.2.1 Unless the context requires otherwise, the following terms and expressions in the FCM Regulations shall have the following meanings:

**“Actually Delivered”** means at any time and with respect to an Eligible Margin Asset:

- (1) the actual credit of an Eligible Margin Asset in the form of cash to the relevant FCM Clearing Member Proprietary Margin Account or the relevant FCM Client Margin Account, or
- (2) the actual credit of an Eligible Margin Asset in the form of securities to the FCM Clearing Member Own Pledged Securities Account or the relevant FCM Client Pledged Securities Account, as the case may be, provided that the relevant pledge has been granted in accordance with Number 3.2.3 and has not expired in whole or in part, or
- (3) otherwise in the event of payment netting pursuant to Number 1.3.4, the legal effectiveness of such set-off of payment obligations.

**“Affiliate”** means, with respect to an FCM Clearing Member, any person that controls, directly or indirectly, the FCM Clearing Member; any person that the FCM Clearing Member controls, directly or indirectly; and any entity in respect of which the FCM Clearing Member and the entity are both under common control, directly or indirectly, of another person.

**“Affiliated Settlement Bank”** has the meaning assigned to it in Number 2.2.10.

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“**Applicable Law**” means any applicable law, statute, ordinance, rule, regulation or other instrument in force from time to time of any government or supranational body; governmental authority, agency or department; or regulatory or self-regulatory authority.

“**Approved SDR**” means any swap data repository approved from time to time by Eurex Clearing AG for the submission of swap data relating to the novation of Original Swap Transactions.

“**Assumed Allocation**” has the meaning assigned to it in Number 6.5.2.

“**Block Swap Transaction**” means an Original Swap Transaction with a notional amount that is at or above the minimum block size established by the CFTC pursuant to CFTC Regulation 43.6 for the relevant asset class of swap (e.g., Interest Rate Derivative Transactions).

“**Business Day**” means, for the Clearing of Swap Transactions, the days according to the definition in Chapter II Part 1 Number 1.7.

“**Cash Trust Account**” has the meaning assigned to it in Number 3.2.2.

“**CEA**” means the U.S. Commodity Exchange Act.

“**CFTC**” means the U.S. Commodity Futures Trading Commission.

“**CFTC Regulation**” means the rules, regulations and orders promulgated by the CFTC.

“**Clearing Conditions**” means the clearing conditions of Eurex Clearing AG.

“**Clearing Currency**” means Euro (“**EUR**”) or US Dollars (“**USD**”) as agreed in writing between Eurex Clearing AG and the FCM Clearing Member in respect of each Netting Set, provided that all Netting Sets linked to a particular internal margin account need to have the same Clearing Currency.

“**Clearing License**” means a clearing license granted to a Clearing Member pursuant to Chapter 1 Part 1 Number 2.1.1 of the Clearing Conditions; as used in the FCM Clearing Conditions, the term does not include a clearing license granted to an FCM Clearing Member pursuant to Number 2 of the FCM Regulations.

“**Clearing Member**” means (i) each Non-FCM Clearing Member and (ii) each FCM Clearing Member.

“**Correspondent Bank**” has the meaning assigned to it in Number 2.2.10.

“**CVR**” or “**Collateral Value Report**” has the meaning assigned to it in Number 6.5.1.

“**Default Fund**” means the default fund of Eurex Clearing AG as set out in Chapter I Part 1 Number 6 of the Clearing Conditions. The Default Fund does not have legal personality and the legal relationships arising in respect thereof shall not constitute any form of internal partnership (*Innengesellschaft*).

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“**Eligible Margin Assets**” has the meaning assigned to it in Number 3.1.2.

“**Encumbered FCM Client Buffer**” has the meaning assigned to it in Number 6.4.2 in relation to an FCM Client Margin Account under the LSOC Without Excess Model and in Number 6.5.3 in relation to an FCM Client Margin Account under the LSOC With Excess Model.

“**Eurex Clearing AG FCM Client RTGS Account**” has the meaning assigned to it in Number 2.2.10.

“**Eurex Clearing AG General RTGS Account**” has the meaning assigned to it in Number 2.2.10.

“**Euro**” means the lawful currency of the member states of the European Union that continue to have adopted the single currency in accordance with the Treaty establishing the European Community (signed in Rome on March 25, 1957), as amended by the Treaty on the European Union (signed in Maastricht on February 7, 1992), the Treaty of Amsterdam (signed in Amsterdam on October 2, 1997), the Treaty of Nice (signed in Nice on February 26, 2001) and the Treaty of Lisbon (signed in Lisbon on December 13, 2007).

“**Excess Margin**” means, in relation to an FCM Client Margin Sub-Account the amount (if any) by which the FCM Client Margin Sub-Account Balance of the relevant FCM Client Margin Sub-Account exceeds the Margin Requirement determined by Eurex Clearing AG with respect to the relevant FCM Client Margin Sub-Account of such FCM Client.

“**FCM**” means an entity that is a futures commission merchant as defined in the CEA and CFTC Regulations and is registered in that capacity with the CFTC.

“**FCM Clearing Agreement**” has the meaning assigned to it in Number 1.1.6.

“**FCM Clearing License**” means a clearing license granted to an FCM Clearing Member by Eurex Clearing AG pursuant to Number 2.

“**FCM Clearing Member**” means an entity that has been granted an FCM Clearing License by Eurex Clearing AG pursuant to Number 2.

“**FCM Clearing Member Client Cash Account**” has the meaning assigned to it in Number 2.2.10.

“**FCM Clearing Member Own Cash Account**” has the meaning assigned to it in Number 2.2.10.

“**FCM Clearing Member Own Pledged Securities Account**” has the meaning assigned to it in Number 2.2.9.

“**FCM Clearing Member Own Transaction Account**” has the meaning assigned to it in Number 4.2.1.

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“**FCM Clearing Member Proprietary Margin Account**” has the meaning assigned to it Number 4.3.1.

“**FCM Clearing Member Proprietary Margin Account Balance**” means, at any particular time, the value of the Eligible Margin Assets booked to the FCM Clearing Proprietary Margin Account as determined by Eurex Clearing AG in accordance with the FCM Regulations.

“**FCM Clearing Member Proprietary Margin Requirement**” has the meaning assigned to it Number 3.1.1.

“**FCM Clearing Member Termination Time**” has the meaning assigned to it in Number 9.2.3.

“**FCM Client**” has the meaning assigned to it in Number 1.1.9.

“**FCM Client Assumed Allocation Sub-Account**” has the meaning assigned to it in Number 6.5.2.

“**FCM Client Buffer**” has the meaning assigned to it in Number 6.3.2.

“**FCM Client Buffer Sub-Account**” has the meaning assigned to it in Number 6.3.2.

“**FCM Client Margin Account**” has the meaning assigned to it in Number 4.3.1.

“**FCM Client Margin Requirement**” has the meaning assigned to it in Number 3.1.1.

“**FCM Client Margin Short Fall**” has the meaning assigned to it in Number 6.4.2 Paragraph (1) (under the LSOC Without Excess Model) or Number 6.5.2 Paragraph (1) (under the LSOC With Excess Model).

“**FCM Client Margin Sub-Account**” has the meaning assigned to it in Number 4.3.1.

“**FCM Client Margin Sub-Account Balance**” means, at any particular time, the legally segregated value of the Eligible Margin Assets allocated to an FCM Client Margin Sub-Account (and to the FCM Client Assumed Allocation Sub-Account treated as part of the FCM Client Margin Sub-Account, under the LSOC With Excess Model) as determined by Eurex Clearing AG in accordance with the FCM Regulations. The FCM Client Margin Sub-Account Balance does not reflect the value of any FCM Client Buffer or FCM Client Unallocated Excess.

“**FCM Client Margin Suspension Sub-Account**” has the meaning assigned to it in Number 4.3.1. An FCM Client Margin Suspension Sub-Account is treated as a type of FCM Client Margin Sub-Account, and references in the FCM Clearing Conditions to an FCM Client Margin Sub-Account include, as applicable under the circumstances, an FCM Client Margin Suspension Sub-Account.

“**FCM Client Pledged Securities Account**” has the meaning assigned to it in Number 2.2.9.

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“**FCM Client RTGS Account**” has the meaning assigned to it in Number 2.2.10.

“**FCM Client Termination Time**” has the meaning assigned to it in Number 9.3.

“**FCM Client Transaction**” has the meaning assigned to it in Number 1.3.2.

“**FCM Client Transaction Account**” has the meaning assigned to it Number 4.2.1.

“**FCM Client Transaction Suspension Account**” has the meaning assigned to it in Number 4.2.1. An FCM Client Transaction Suspension Account is treated as a type of FCM Client Transaction Account, and references in the FCM Clearing Conditions to an FCM Client Transaction Account include, as applicable under the circumstances, an FCM Client Transaction Suspension Account.

“**FCM Client Unallocated Excess**” has the meaning assigned to it in Number 6.3.3.

“**FCM Client Unallocated Excess Sub-Account**” has the meaning assigned to it in Number 6.3.3.

“**Initial Margin**” means, with respect to the amount of Eligible Margin Assets attributable to a particular FCM Clearing Member Proprietary Margin Account or FCM Client Margin Sub-Account, the portion of such Eligible Margin Assets held in respect of Eurex Clearing AG’s initial margin requirements in respect of the Swap Transactions recorded in the corresponding FCM Clearing Member Own Transaction Account or FCM Client Transaction Account(s) for such account or sub-account.

“**Insolvency Termination Event**” has the meaning assigned to it Number 9.2.2.

“**LSOC With Excess Model**” has the meaning assigned to it in Number 6.5

“**LSOC Without Excess Model**” has the meaning assigned to it in Number 6.4.

“**Margin Call**” has the meaning assigned to it in Number 3.2.1.

“**Margin Requirement**” means, as applicable, the FCM Client Margin Requirement or the FCM Clearing Member Proprietary Margin Requirement.

“**Netting Set**” has the meaning assigned to it in Number 9.1.

“**NFA**” means the National Futures Association.

“**Non-FCM Clearing Member**” means each Clearing Member that has been granted a Clearing License by Eurex Clearing AG pursuant to Chapter 1 Part 1 Number 2.1.1 of the Clearing Conditions.

“**Original Swap Transaction**” has the meaning assigned to it in Number 1.3.3.

“**Other Eligible Margin Assets**” has the meaning assigned to it in Number 3.1.2 Paragraph (4).

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“**Own Transaction**” has the meaning assigned to it in Number 1.3.2.

“**Post-Allocation Clearing Member**” means a Post-Allocation FCM Clearing Member or a Post-Allocation Non-FCM Clearing Member.

“**Post-Allocation FCM Clearing Member**” has the meaning assigned to it in Number 1.3.3.

“**Post-Allocation Non-FCM Clearing Member**” has the meaning assigned to it in Number 1.3.3.

“**Pre-Allocation Executing Party**” has the meaning assigned to it in Number 1.3.3.

“**Pre-Allocation FCM Clearing Member**” has the meaning assigned to it in Number 1.3.3.

“**RTGS Account**” has the meaning assigned to it in Number 2.2.10.

“**Securities Trust Account**” has the meaning assigned to it in Number 3.1.3.

“**Settlement Bank**” has the meaning assigned to it in Number 2.2.10.

“**Supplementary Margin**” has the meaning assigned to it in Number 3.1.4.

“**Termination Event**” has the meaning assigned to it in Number 9.2.1.

“**Termination Time**” means an FCM Clearing Member Termination Time or an FCM Client Termination Time.

“**Third Party Information Provider**” means a system or facility, such as a trade affirmation or routing system, a swap execution facility, a multilateral trading facility, an exchange or another similar venue or system that is approved by Eurex Clearing AG to submit Original Swap Transactions to Eurex Clearing AG for Clearing.

“**Unallocated FCM Client Transaction**” has the meaning assigned to it in Number 4.3.1.

“**U.S.**” and “**United States**” means the United States of America, any state thereof and its territories and possessions.

“**Variation Settlement**” means a payment owed to an FCM Clearing Member by Eurex Clearing AG or by an FCM Clearing Member to Eurex Clearing AG in respect of a change in the net present value of Swap Transactions in the corresponding FCM Clearing Member Own Transaction Account or FCM Client Transaction Account (and the corresponding amounts owed between the FCM and its FCM Client as applicable), as determined by Eurex Clearing AG in accordance with the relevant Special Provisions in Chapter II.

1.2.2 References to laws, rules, regulations and agreements shall mean such laws, rules, regulations and agreements as they are amended and updated from time to time.

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1.2.3 In addition to the defined terms listed in this Number 1.2, terms used in these FCM Regulations are defined at the place of their first usage.

### 1.3 FCM Clearing Procedures

#### 1.3.1 General

- (1) The clearing procedures applicable to a Swap Transaction shall be determined on the basis of the general clearing provisions set out in Chapter I (General Provisions) and the provisions applicable to the relevant Swap Transaction Type set out in Chapter II ("**Special Provisions**"). The Special Provisions *inter alia* comprise provisions relating to the settlement of the relevant Swap Transaction Type by payment of a cash amount determined by reference to an asset (such as an interest rate) ("**Cash Settlement**").
- (2) In case of any conflicts between (i) the General Provisions and (ii) the Special Provisions, the Special Provisions prevail.
- (3) The FCM Clearing Conditions provide for terms and conditions with regard to the legal relationship between Eurex Clearing AG and the FCM Clearing Member.

#### 1.3.2 Categories of Swap Transactions between Eurex Clearing AG and the FCM Clearing Member

A Swap Transaction between Eurex Clearing AG and the FCM Clearing Member will, for purposes of the FCM Clearing Conditions, be categorized as:

- (1) an "**Own Transaction**", if it is concluded for the FCM Clearing Member's own account; or
- (2) an "**FCM Client Transaction**", if it is concluded for an FCM Client of the FCM Clearing Member.

#### 1.3.3 Conclusion and Transfer of Swap Transactions

##### (1) Novation

- (a) Swap Transactions will be concluded by way of novation.

Whenever a swap transaction (the "**Original Swap Transaction**")

(aa) is submitted to Eurex Clearing AG by or on behalf of an FCM Clearing Member (either directly or via a Third-Party Information Provider), as provided for in the Special Provisions, and

(bb) Eurex Clearing AG accepts such Original Swap Transaction for Clearing in accordance with the Special Provisions,



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Eurex Clearing AG will, subject to the following provisions, interpose itself by means of a novation as central counterparty between the parties to the Original Swap Transaction.

- (b) Any novation of Original Swap Transactions shall be subject to the novation procedures, criteria and effectiveness requirements specified in the relevant Special Provisions. The Swap Transactions resulting from the novation are binding regardless whether the Original Swap Transaction was validly formed.
- (c) The Original Swap Transaction shall, subject to the Special Provisions, upon the novation becoming effective, be extinguished and replaced by two transactions, each on terms that are identical to the terms of the other transaction, one that is a Swap Transaction between Eurex Clearing AG and the FCM Clearing Member (acting as agent on behalf of an FCM Client Transaction) and the other between Eurex Clearing AG and the other relevant Clearing Member (which may be a transaction subject to the Clearing Conditions or a Swap Transaction subject to the FCM Clearing Conditions, depending on the status of such Clearing Member).

**(2) Transactions Pursuant to the Default Management Process**

- (a) Eurex Clearing AG may conclude Swap Transactions with an FCM Clearing Member as part of its default management process pursuant to Number 4 of the FCM Default Rules and include such Swap Transactions in the Clearing. In particular, if an FCM Mandatory Participant has submitted the winning Bid in a DM Auction in accordance with the FCM Default Rules, the relevant DM Auction Transactions that are Swap Transactions shall be established between Eurex Clearing AG and such FCM Clearing Member pursuant to these FCM Regulations. The terms “**FCM Mandatory Participant**”, “**Bid**” and “**DM Auction**” have the meanings assigned to them in the FCM Default Rules.
- (b) Eurex Clearing AG may conclude Swap Transactions with an FCM Clearing Member pursuant to the FCM Regulations as part of Eurex Clearing AG’s procedures to hedge or manage liquidity risks or any other risks that Eurex Clearing AG may be exposed to with respect to a failed settlement of a transaction on the scheduled settlement day.

**(3) Transfer of Swap Transactions**

Subject to the terms and conditions set out in the Special Clearing Provisions, an FCM Clearing Member may with the consent of Eurex Clearing AG transfer a Swap Transaction (including Own Transactions established between such FCM Clearing Member and Eurex Clearing AG and FCM Client Transactions established through such FCM Clearing Member with Eurex Clearing AG)

- (i) from or to any of its transaction accounts of such FCM Clearing Member, or

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- (ii) upon a prior agreement with another Clearing Member holding the applicable Clearing License for such Swap Transaction, to a transaction account at another Clearing Member.

Subject to provisions in Chapter II FCM Regulations, any such transfer of a Swap Transaction shall occur by way of novation and, subject to the provisions of the Special Clearing Provisions, (i) the parties to the relevant Swap Transaction prior to the transfer (“Original Transaction”) shall be released from their obligations to each other under such Original Transaction (provided that any outstanding obligations relating to payments and deliveries that have become due, but have not been paid or delivered on or before the date of novation shall continue to exist under the contractual provisions of the Original Transaction, but shall be deemed to have been discharged under the newly established Transactions) and (ii), a new Transaction shall be established on terms identical to such Original Transaction, but under the terms applicable to the relevant account where the new transaction is booked to after the transfer.

The Swap Transaction resulting from the novation shall not be subject to the valid existence of the Original Transaction (abstract novation).

**(4) Post-Trade Allocation and Transfer of FCM Client Transactions**

Subject to the terms and conditions set out in the Special Conditions, a Pre-Allocation Executing Party may submit an FCM Client Transaction to be booked in an FCM Client Transaction Suspension Account (an “**Unallocated FCM Client Transaction**”) to an FCM Clearing Member (the “**Pre-Allocation FCM Clearing Member**”), for subsequent allocation and transfer to one or more (i) FCM Client Transaction Accounts of the FCM Clearing Member, (ii) FCM Client Transaction Accounts of another FCM Clearing Member (a “**Post-Allocation FCM Clearing Member**”) or (iii) relevant transaction accounts of a Non-FCM Clearing Member (a “**Post-Allocation Non-FCM Clearing Member**”). The Pre-Allocation FCM Clearing Member must be acting on behalf of a person that is authorized to execute Original Swap Transactions to be cleared initially as Unallocated FCM Client Transactions, where such person is acting [on its own behalf or] on behalf of one or more other persons (the “**Pre-Allocation Executing Party**”).

**(5) Swap Transactions Binding**

Once a Swap Transaction is concluded in accordance with the FCM Clearing Conditions (whether for an FCM Clearing Member Own Transaction Account or an FCM Client Transaction Account), unless explicitly stated in the FCM Clearing Conditions, the Swap Transaction is legally binding and the FCM Clearing Member waives, to the fullest extent permitted under Applicable Law, any right (contractual or otherwise) to rescind, terminate, void or adjust the terms of such Swap Transaction for reason of error, incorrect transmission, price correction or similar causes.

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#### 1.3.4 Payment Netting

- (1) If any amounts are payable on the same date between Eurex Clearing AG and an FCM Clearing Member in both directions in respect of (i) FCM Client Transaction Accounts linked to the same FCM Client Margin Account, (ii) the same currency, and (iii) to or from the same FCM Clearing Member Client Cash Account, and provided that the FCM Clearing Member is not in default of any obligation to Eurex Clearing AG under the FCM Clearing Conditions:
- (a) Eurex Clearing AG will aggregate the payments owed by Eurex Clearing AG into a single aggregated payment amount and will aggregate the payments owed by the FCM Clearing Member into a single aggregated payment amount, separately in respect of the FCM Client Margin Requirement and any Variation Settlement amounts owed (each a separate “**Accumulation Amount**”).
  - (b) The Accumulation Amounts owed by Eurex Clearing AG to the FCM Clearing Member and by the FCM Clearing Member to Eurex Clearing AG in respect to the FCM Client Margin Requirement will not be netted against one another.
  - (c) The Accumulation Amounts owed by Eurex Clearing AG to the FCM Clearing Member and by the FCM Clearing Member to Eurex Clearing AG for Variation Settlement will be netted against one another, and
    - (aa) if the net amount is zero, the payment obligations are deemed automatically satisfied and discharged (and Actual Delivery of the currency is deemed to occur);
    - (bb) if the netting results in a net amount payable by the FCM Clearing Member to Eurex Clearing AG, Eurex Clearing AG will issue a payment instruction to the FCM Clearing Member for such net amount and, upon receipt of payment of such net amount by Eurex Clearing AG, the Accumulation Amounts are deemed automatically satisfied and discharged to the extent of the netting (and Actual Delivery of the currency is deemed to occur); or
    - (cc) if the netting results in a net amount payable by Eurex Clearing AG to the FCM Clearing Member, Eurex Clearing AG will instruct a payment to the FCM Clearing Member for such net amount and, upon receipt of payment of such net amount by the FCM Clearing Member, the Accumulation Amounts are deemed automatically satisfied and discharged to the extent of the netting (and Actual Delivery of the currency is deemed to occur).
- (2) If any amounts are payable on the same date between Eurex Clearing AG and an FCM Clearing Member in both directions in respect of (i) the FCM Clearing Member’s Own Transactions, (ii) the same currency, and (iii) to or from the same FCM Clearing Member Own Cash Account, and provided that the FCM Clearing Member is not in default of any obligation to Eurex Clearing AG under the FCM Clearing Conditions:

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- (a) Eurex Clearing AG will aggregate the payments owed by Eurex Clearing AG into a single aggregated payment amount and will aggregate the payments owed by the FCM Clearing Member into a single aggregated payment amount;
- (b) The obligations owed by Eurex Clearing AG to the FCM Clearing Member and by the FCM Clearing Member to Eurex Clearing AG will be netted against one another, and to the extent of such netting the payment obligations are deemed automatically satisfied and discharged (and Actual Delivery of the currency is deemed to occur); and
- (c) If the aggregate amount that would otherwise have been payable by one party (Eurex Clearing AG or the FCM Clearing Member) to the other exceeds the aggregate amount that would have otherwise been payable by the other party, the amount owed by the party with the larger aggregate amount is automatically replaced by an obligation to pay the other person an amount equal to the difference between the larger aggregate amount and the smaller aggregate amount.

### **1.3.5 Mandatory Business Hours**

FCM Clearing Members are obliged to procure that they are prepared to handle Clearing-related business, including the assessment of reports and notifications in accordance with Number 15.1, on each Business Day from 7:00 a.m. until 23:30 p.m. CET.

### **1.3.6 Prohibition of Assignment**

Unless otherwise provided for in the FCM Clearing Conditions, an FCM Clearing Member may not assign any claims or rights arising from any Swap Transactions or its use of the Clearing.

## **1.4 Settlement of Swap Transactions**

The following general provisions shall apply in relation to the settlement of Swap Transactions.

### **1.4.1 Cash Payments**

- (1) The FCM Clearing Member shall procure that debit instructions received from Eurex Clearing AG with respect to any FCM Clearing Member Own Cash Accounts and any FCM Clearing Member Client Cash Accounts are honoured by the relevant bank.
- (2) All debit instructions provided by the FCM Clearing Member with respect to any FCM Clearing Member Own Cash Accounts and any FCM Clearing Member Client Cash Accounts may only be revoked by the FCM Clearing Member if the FCM Clearing Member also terminates its Clearing License. If the FCM Clearing Member has declared such revocation and termination, such revocation of debit instructions and the termination of the related Clearing License shall only become effective after all

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Swap Transactions of the FCM Clearing Member that are Own Transactions and FCM Client Transactions have been cancelled, closed or fulfilled. If the Clearing License ends for any other reasons, all related debit instructions shall terminate and such termination shall become effective in accordance with the foregoing sentence.

#### 1.4.2 **Currency Conversion**

Eurex Clearing AG is entitled in its discretion to convert cash standing to the debit or credit of an FCM Clearing Member's FCM Client Margin Account into any other currency or currencies as it determines. Eurex Clearing AG will make the conversion at such reasonable rate or rates of exchange as it determines appropriate.

#### 1.5 **EMIR Risk Committee**

Eurex Clearing AG has established the EMIR Risk Committee to advise the supervisory board of Eurex Clearing AG (the "**Supervisory Board**") and the Executive Board of Eurex Clearing AG (the "**Executive Board**") with respect to certain matters as provided in the statutes for the EMIR Risk Committee. The matters on which the EMIR Risk Committee may provide advice from time to time could result in changes to Eurex Clearing AG's provision of Clearing to the FCM Clearing Members.

#### 1.6 **Additionally Monitored Risks and Risk Mitigating Measures**

##### 1.6.1 **General Rules**

- (1) Eurex Clearing AG monitors and, when necessary, mitigates the following risks that Eurex Clearing AG is exposed to in relation to the FCM Clearing Member:
  - (a) the potential loss which Eurex Clearing AG may suffer if an FCM Clearing Member fails to fulfil its contractual obligations under its Swap Transactions ("**Credit Risk**"),
  - (b) the potential loss which Eurex Clearing AG may suffer during the default management process, due to insufficient diversification in respect of the Eligible Margin Assets provided by the FCM Clearing Member in respect of the FCM Clearing Member's Swap Transactions ("**Concentration Risk**"), and
  - (c) the potential loss which Eurex Clearing AG may suffer during the default management process, due to an unfavourable interrelatedness between the FCM Clearing Member's creditworthiness, the value of the Eligible Margin Assets provided by the FCM Clearing Member and the notional exposure arising from the FCM Clearing Member's Swap Transactions ("**Wrong Way Risk**", together with the Credit Risk and the Concentration Risk, the "**Additionally Monitored Risks**").

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- (2) Eurex Clearing AG determines dedicated thresholds or limits for each of the Additionally Monitored Risks. The FCM Clearing Member is required to comply with these thresholds and limits at all times.
- (3) Eurex Clearing AG will publish further details and guidelines regarding the determination of thresholds and limits and the applicable mitigation measures (together the “**Framework**”) on the Eurex Clearing Website. The Framework may be amended from time to time and published accordingly.
- (4) Eurex Clearing AG conducts an internal assessment of the creditworthiness of the FCM Clearing Member. Based on this assessment, Eurex Clearing AG classifies the FCM Clearing Member into one of multiple pre-defined classification levels (the “**Clearing Member Classification**”). Eurex Clearing AG performs such Clearing Member Classification (i) prior to the granting of an FCM Clearing Licence, (ii) at least once annually, and (iii) on an ad-hoc basis when it is deemed necessary. Eurex Clearing AG notifies the FCM Clearing Member about the Clearing Member Classification and any changes thereof.
- (5) Eurex Clearing AG conducts an internal assessment of the creditworthiness of each country, which is (i) the home country of any FCM Clearing Member, or (ii) the home country of an issuer of securities that qualify as Eligible Margin Assets. Based on this assessment, Eurex Clearing AG classifies such countries into one of multiple pre-defined classification levels (the “**Country Classification**”). Eurex Clearing AG reviews each Country Classification on a regular basis and on an ad-hoc basis when it is deemed necessary.
- (6) Eurex Clearing AG conducts an internal assessment of the creditworthiness of each supranational organization which has issued securities that qualify as Eligible Margin Assets. Based on this assessment, Eurex Clearing AG classifies such supranational organizations into one of multiple pre-defined classification levels (the “**Supranational Organization Classification**”). Eurex Clearing AG reviews each Supranational Organization Classification on a regular basis and on an ad-hoc basis when it is deemed necessary.
- (7) Eurex Clearing AG will publish the Country Classification and the Supranational Organization Classification in the member section on the Eurex Clearing Website.

### 1.6.2 Assessment and Mitigation of Credit Risk

- (1) Based on the Clearing Member Classification, Eurex Clearing AG is entitled to define one or more Credit Risk thresholds for the FCM Clearing Member (“**Credit Risk Thresholds**”). Eurex Clearing AG reviews each Credit Risk Threshold on a regular basis and on an ad-hoc basis when it is deemed necessary. Eurex Clearing AG notifies the FCM Clearing Member about all Credit Risk Thresholds, and any changes thereof.

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- (2) Credit Risk Thresholds can be defined as maximum margin requirement or as maximum notional exposure arising from the FCM Clearing Member's FCM Client Transactions or Own Transactions (which may be applied separately or on a combined basis to the FCM Clearing Member's FCM Client Transactions or Own Transactions).
- (3) In case the FCM Clearing Member breaches any Credit Risk Threshold, applicable at that point in time, the following applies:
  - (a) Eurex Clearing AG will notify the FCM Clearing Member about the breach of the relevant Credit Risk Threshold and will request the reduction of the relevant margin requirement or notional exposure, as the case may be, within a reasonable period of time and in an amount, which is necessary to remedy the relevant breach.
  - (b) In case the FCM Clearing Member does not remedy the breach of the relevant Credit Risk Threshold within the reasonable period of time pursuant to (a), Eurex Clearing AG is entitled to demand the provision of Supplementary Margin in accordance with Number 3.1.4.

### 1.6.3 Assessment and Mitigation of Concentration Risk

- (1) Eurex Clearing AG defines Concentration Risk limits for any Eligible Margin Assets in the form of securities ("**Concentration Risk Limits**").
  - (a) Eurex Clearing AG reviews each Concentration Risk Limit on a regular basis and on an ad-hoc basis when it is deemed necessary.
  - (b) Eurex Clearing AG will publish the Concentration Risk Limits, and any changes thereof, on the Eurex Clearing Website.
  - (c) In case the FCM Clearing Member breaches any Concentration Risk Limit applicable at that point in time, the following applies:
    - (aa) Eurex Clearing AG will notify the FCM Clearing Member about the breach of the relevant Concentration Risk Limit and will request the replacement of Eligible Margin Assets in the form of securities by other Eligible Margin Assets ("**New Eligible Margin Assets**") within a reasonable period of time and in an amount, which is necessary to remedy the relevant breach. The FCM Clearing Member must provide the New Eligible Margin Assets in accordance with the terms of Number 3.1.2 Paragraph (4), the same as if they constitute Other Eligible Margin Assets.
    - (bb) In case the FCM Clearing Member does not remedy the breach of the relevant Concentration Risk Limit, within the reasonable period of time pursuant to (i), Eurex Clearing AG is entitled to demand the provision of Supplementary Margin in accordance with Number 3.1.4.

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- (2) Notwithstanding Paragraph (1), Eurex Clearing AG defines Concentration Risk thresholds in relation to Eligible Margin Assets in the form of securities (“**Concentration Risk Thresholds**”).
- (a) Concentration Risk Thresholds are defined with respect to each Country Classification and Supranational Organization Classification.
  - (b) Eurex Clearing AG reviews the Concentration Risk Thresholds on a regular basis and on an ad-hoc basis when it is deemed necessary.
  - (c) Eurex Clearing AG will publish the Concentration Risk Thresholds, and any changes thereof, on the Eurex Clearing Website.
  - (d) In case the FCM Clearing Member breaches a Concentration Risk Threshold, applicable at that point in time, the following applies:
    - (aa) Eurex Clearing AG will notify the FCM Clearing Member about the breach of the relevant Concentration Risk Threshold and will request (i) the reduction of the relevant notional exposure or (ii) the replacement of Eligible Margin Assets in the form of securities by New Eligible Margin Assets within a reasonable period of time and to the extent necessary to remedy the relevant breach.
    - (bb) In case the FCM Clearing Member does not remedy the breach of the relevant Concentration Risk Threshold within the reasonable period of time pursuant to (i), Eurex Clearing AG is entitled to demand the provision of Supplementary Margin in accordance with Number 3.1.4.

#### 1.6.4 Assessment and Mitigation of Wrong Way Risk

- (1) Eurex Clearing AG defines Wrong Way Risk thresholds in relation to Eligible Margin Assets in the form of securities (“**Wrong Way Risk Thresholds**”).
- (2) Wrong Way Risk Thresholds are defined with respect to each FCM Clearing Member Classification and Country Classification.
- (3) Eurex Clearing AG reviews the Wrong Way Risk Thresholds on a regular basis and on an ad-hoc basis when it is deemed necessary.
- (4) Eurex Clearing AG will publish the Wrong Way Risk Thresholds, and any changes thereof, on the Eurex Clearing Website.
- (5) In case the FCM Clearing Member breaches any Wrong Way Risk Threshold applicable at that point in time, Eurex Clearing AG is entitled to take the following mitigating measures:
  - (a) Eurex Clearing AG will notify the FCM Clearing Member about the breach of the relevant Wrong Way Risk Threshold and will request (i) the reduction of the



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relevant notional exposure, or (ii) the replacement of Eligible Margin Assets in the form of securities by New Eligible Margin Assets within a reasonable period of time and to the extent necessary to remedy the relevant breach.

- (b) In case the FCM Clearing Member does not remedy the breach of the relevant Wrong Way Risk Threshold within the reasonable period of time pursuant to (a), Eurex Clearing AG is entitled to demand the provision of Supplementary Margin in accordance with Number 3.1.4.

## **1.7 Representations and Undertakings with Respect to the FCM Clearing Agreement**

### **1.7.1 Representations by the FCM Clearing Member**

At the time it enters an FCM Clearing Agreement, each FCM Clearing Member represents and warrants to Eurex Clearing AG that:

- (1) it has the power to enter into and perform the FCM Clearing Agreement and any other documentation relating to the FCM Clearing Agreement to which it is a party and has taken all necessary action to authorize such execution and performance;
- (2) its entry into and performance of the FCM Clearing Agreement and any other documentation relating to the FCM Clearing Agreement to which it is a party do not conflict with any law or regulation applicable to it, any provision of its constitutional documents, any order or judgment of any court or agency of government applicable to it or any of its assets or any agreement or instrument by which it is bound or which affects any of its assets;
- (3) it is registered with the CFTC as a futures commission merchant and is a member of the NFA;
- (4) it has all other governmental consents or other consents that it is required to obtain with respect to its entry into and performance of the FCM Clearing Agreement and such consents are in full force and effect and all conditions of any such consents have been complied with;
- (5) no order has been made or applied for or resolution passed for the suspension of payments or dissolution, termination of existence, liquidation, winding-up, reorganization, bankruptcy, insolvency, judicial management or curatorship, in each case, with respect to it;
- (6) no moratorium in respect of all or any debts or a composition or an arrangement with creditors or any similar proceeding or arrangement by which its assets are submitted to the control of its creditors is ordered, declared or applied for, in each case, with respect to it;
- (7) no liquidator, trustee, administrator, receiver or similar officer has been appointed in respect of it or in respect of all or a substantial part of its assets;

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- (8) it is able to pay its debts as and when they fall due, will not become unable to pay its debts as a consequence of entering into the FCM Clearing Agreement;
- (9) in case of Clearing of Own Transactions, it is acting as principal with respect to all of its Own Transactions;
- (10) it is duly authorized under its agreement (or agreements) with each of its FCM Clients to Clear FCM Client Transactions on their behalf subject to and in accordance with the terms of the FCM Clearing Conditions; and
- (11) no event has occurred or circumstance arisen with respect to it which would (whether or not with the giving of notice and/or the passage of time and/or the fulfilment of any other requirement) constitute a Termination Event or Insolvency Termination Event under the FCM Clearing Conditions.

#### **1.7.2 Additional representations and undertakings by FCM Clearing Members**

- (1) At the time it enters into the FCM Clearing Agreement, each FCM Clearing Member further represents and warrants to Eurex Clearing AG that:
  - (a) it is entitled to pledge, or, as relevant, transfer full legal and beneficial ownership of, all assets (including, without limitation, all Eligible Margin Assets (including securities)) to be so pledged or so transferred by it pursuant to the FCM Clearing Agreement, free from any liens, encumbrances, charges or other rights or claims, and, without limiting the foregoing, it is either the legal and beneficial owner of such Eligible Margin Assets or, with respect to Eligible Margin Assets provided to Eurex Clearing AG in respect of FCM Client Transactions, it has the unconditional consent of the legal and beneficial owner to pledge or transfer the Eligible Margin Assets;
  - (b) it is not subject to a disqualification pursuant to Section 8a of the CEA;
  - (c) it has implemented risk management processes that sufficiently address operational capacity, including the ability to process expected volumes and/or values of transactions within required time frames, including at peak times, the ability to fulfil collateral, payment, and delivery obligations, and the ability to participate in default management;
  - (d) it maintains written risk management policies and procedures which address the risks that such FCM Clearing Member may pose to Eurex Clearing AG.
- (2) The FCM Clearing Member further undertakes:
  - (a) to make the risk management policies and procedures described in Number 1.7.2 (1) (c) and (d) available to Eurex Clearing AG for inspection;

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- (b) to disclose to Eurex Clearing AG whether it has been audited by another derivatives clearing organization as well as the pertinent results of any such risk management audit; and
  - (c) to make information and documents regarding its risk management policies, procedures and practices available to the CFTC upon the CFTC's request.
- (3) The FCM Clearing Member further represents and warrants to Eurex Clearing AG that it will not clear FCM Client Transactions that are denominated in JPY for FCM Clients that qualify as Financial Instruments Business Operators or Registered Financial Institutions under the Japanese Financial Instruments and Exchange Act.
- (4) Any FCM Clearing Member that (i) is a bank or financial institution domiciled and/or incorporated in Singapore pursuant to the Companies Act (Chapter 50 of Singapore) or (ii) is or acts through a Singapore-registered branch of a foreign bank or financial institution holding the requisite capital markets services licence issued by the Monetary Authority of Singapore under the Securities and Futures Act (Chapter 289 of Singapore) ("**SFA**") (or which is duly exempted from holding such licence) represents and warrants to Eurex Clearing AG that any FCM Clients of the FCM Clearing Member that are domiciled and/or incorporated in Singapore are accredited investors, institutional investors and/or expert investors for the purposes of the SFA.
- (5) The term "**Chinese Clients**" shall cover Direct Clients and Indirect Clients (i) that are domiciled in the People's Republic of China (for this purpose, excluding Hong Kong, Macau and Taiwan – "**PRC**"), (ii) that are incorporated in accordance with PRC's laws (but, in respect of (i) and (ii), excluding any clients insofar as they act through a branch outside the PRC) and/or (iii) insofar as they act through a branch in the PRC.

Regarding Chinese Clients that are Direct Clients, the Clearing Member represents and warrants by way of an independent guarantee and irrespective of fault (*selbständiges, verschuldensunabhängiges Garantieverprechen*) to Eurex Clearing AG that, with regard to Original OTC Transactions and/or Eurex Off-Book Trades relating to a Chinese Client, it will use reasonable endeavors to obtain a representation from its Chinese Client that (i) the Chinese Client will not submit for Clearing any such transaction that was originally concluded between the respective Chinese Client and another party that fulfils the requirements in Paragraph (1) (i) – (iii), and (ii) any such transaction is entered into by the Chinese Client in compliance with the laws of the PRC (including but not limited to PRC's restrictions on cross border transactions).

Regarding Chinese Clients that are Indirect Clients, Paragraph (2) shall apply *mutatis mutandis*, provided that the Clearing Member may obtain the representation either from its Direct Client through which the Chinese Client clears or from the Chinese Client itself. If the representation is obtained from the Direct Client, the Clearing Member shall use reasonable endeavors to oblige the Direct Client to obtain a comparable representation from its Indirect Client.

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### 1.7.3 FCM Clearing Member Representations Deemed Repeated

Each FCM Clearing Member is deemed to repeat each representation set out in Numbers 1.7.1 and 1.7.2(1), to Eurex Clearing AG with regard to the facts and circumstances then existing whenever (i) its FCM Clearing Agreement is amended; (ii) it enters into a Swap Transaction that is an Own Transaction; or (iii) it submits (or allows the submission of) an Original Swap Transaction that results in a Swap Transaction that is an FCM Client Transaction.

### 1.7.4 Representations by Eurex Clearing AG

Eurex Clearing AG represents and warrants to the FCM Clearing Member at the time it enters into the FCM Clearing Agreement that:

- (1) it has the power to enter into and perform the FCM Clearing Agreement and any other documentation relating to the FCM Clearing Agreement to which it is a party and has taken all necessary action to authorize such execution and performance;
- (2) no order has been made or applied for or resolution passed for the suspension of payments or dissolution, termination of existence, liquidation, winding-up, reorganization, bankruptcy, insolvency, judicial management or curatorship, in each case, with respect to it;
- (3) no moratorium in respect of all or any debts or a composition or an arrangement with creditors or any similar proceeding or arrangement by which its assets are submitted to the control of its creditors is ordered, declared or applied for, in each case, with respect to it;
- (4) no liquidator, trustee, administrator, receiver or similar officer has been appointed in respect of it or in respect of all or a substantial part of its assets;
- (5) it is able to pay its debts as and when they fall due, will not become unable to pay its debts as a consequence of entering into the FCM Clearing Agreement and is not (i) imminent illiquid (*drohend zahlungsunfähig*) within the meaning of Section 18 of the German Insolvency Code ("**InsO**"), (ii) illiquid (*zahlungsunfähig*) within the meaning of Section 17 of the InsO or (iii) over-indebted (*überschuldet*) within the meaning of Section 19 of the InsO;
- (6) it has all governmental and other consents that it is required to obtain with respect to its entry into and performance of the FCM Clearing Agreement under the Applicable Laws in Germany and such consents are in full force and effect and all conditions of any such consents have been complied with; and
- (7) no event has occurred or circumstances arisen with respect to it which would (whether or not with the giving of notice and/or the passage of time and/or the fulfilment of any other requirement) constitute a Failure to Pay Event or Insolvency Event under the FCM Clearing Agreement.

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### **1.7.5 Notice Required When Representations Cease to be True**

- (1) Eurex Clearing AG shall promptly inform the FCM Clearing Member if it becomes aware that any representation or warranty in Number 1.7.4 ceases to be true.
- (2) The FCM Clearing Member shall promptly inform Eurex Clearing AG if it becomes aware that any of its representations or warranties in Number 1.7.1 or 1.7.2 Paragraph (1) ceases to be true.

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## **2 FCM Clearing Members**

### **2.1 Granting of FCM Clearing License**

- 2.1.1 An FCM Clearing Member may only participate in the Clearing of the relevant Swap Transaction Type, if the FCM Clearing Member was granted a clearing license for such Swap Transaction Type by Eurex Clearing AG (each, an “**FCM Clearing License**”).
- 2.1.2 Upon written application, Eurex Clearing AG may grant an FCM Clearing License for a Swap Transaction Type if the relevant applicant meets the general prerequisites pursuant to Number 2.2 and the special prerequisites for the relevant Swap Transaction Type set forth in the Special Provisions.
- 2.1.3 An FCM Clearing License will be granted upon the conclusion of, or an amendment to this effect to, an FCM Clearing Agreement for the relevant Swap Transaction Type.
- 2.1.4 As specified in the FCM Clearing Agreement, the FCM Clearing Member will be authorized to clear Own Transactions and FCM Client Transactions in the relevant Swap Transaction Type pursuant to its FCM Clearing License.
- 2.1.5 An FCM Clearing Member may not assign or transfer its FCM Clearing License, or its rights and obligations thereunder, to any other person.

### **2.2 General Prerequisites for the FCM Clearing License**

To receive approval for an FCM Clearing License, an applicant must meet the following prerequisites, and must continue to meet them on an ongoing basis to maintain its FCM Clearing License:

- 2.2.1 It must be legally organized and have its principal place of business in the United States.
- 2.2.2 It must be registered with the CFTC as a futures commission merchant and must be a member in good standing of the NFA.
- 2.2.3 At the time of the application, it must have adjusted net capital, calculated in accordance with CFTC Regulation 1.17, in the minimum amount published by Eurex Clearing AG on the Eurex Clearing Website, provided that such initial minimum amount will not be greater than USD 50,000,000 (fifty million USD). It must provide evidence of its adjusted net capital to Eurex Clearing AG as part of the application, and if the FCM Clearing License is granted, periodically thereafter as provided in Number 2.3 Paragraph (3).
- 2.2.4 It must provide Eurex Clearing AG with its written anti-money laundering procedures and written risk management policies and procedures and practices, addressing the risks that such FCM Clearing Member may pose to Eurex Clearing AG, including, but not limited to, information and documents relating to the liquidity of such FCM Clearing Member’s financial resources and settlement procedures.

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2.2.5 Without prejudice to the obligations imposed on an FCM Clearing Member under the FCM Clearing Conditions, it must have the ability to (i) process expected volumes and values of Own Transactions and FCM Client Transactions that it will clear within required time frames, including at peak times and on peak days; (ii) fulfil any collateral, payment and delivery obligations imposed by Eurex Clearing AG; and (iii) participate in the default management process pursuant to Number 4 of the FCM Default Rules.

2.2.6 It must comply with the following requirements:

- (1) Technical connection to the systems of Eurex Clearing AG and execution of the Agreement on Technical Connection to the Clearing EDP of Eurex Clearing AG (Connection Agreement) under inclusion of the General Terms and Conditions on Technical Connection to the Clearing EDP of Eurex Clearing AG.
- (2) The use of appropriate technical equipment (back-office facilities) to ensure the orderly recording, booking and supervision of all Swap Transactions, as well as the provision of margin and the calculation of Margin Requirements for its FCM Clients pursuant to the minimum requirements of Eurex Clearing AG.
- (3) The use of at least one sufficiently qualified (as defined by Eurex Clearing AG published pursuant to Number 15.1) clearing staff member in the back office for the orderly fulfilment of Number 1.3.5, provided however that an FCM Clearing Member is not obliged to use a qualified clearing staff member in the case of outsourcing to an Insourcer as defined in, and according to, Number 14.2 that has a qualified clearing staff member.

2.2.7 It must make its payment/delivery of the Contribution to the Default Fund in accordance with Number 3 of the FCM Default Rules.

2.2.8 It must appoint at least one employee as emergency contact for Eurex Clearing AG to initiate necessary measures in emergency cases who shall be available during regular business hours of Eurex Clearing AG; the FCM Clearing Member must register this employee contact with Eurex Clearing AG.

2.2.9 Securities Accounts

- (1) It must have available the following securities accounts, as applicable:
  - (a) With respect to the Clearing of Own Transactions: a securities account with Clearstream Banking AG pledged in favour of Eurex Clearing AG (the “**FCM Clearing Member Own Pledged Securities Account**”);
  - (b) With respect to the Clearing of FCM Client Transactions: one or more securities accounts with Clearstream Banking AG pledged in favour of Eurex Clearing AG for each FCM Client Margin Account (each an “**FCM Client Pledged Securities Account**”).

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- (2) The applicant is not required to maintain securities accounts, if it provides Eligible Margin Assets only in the form of cash.
- (3) For each FCM Client Pledged Securities Account, the applicant must:
  - (a) Open the account under a name that clearly identifies the account as a Cleared Swaps Customer Account that holds Cleared Swaps Customer Collateral (as those terms are defined in the CFTC Part 22 Regulations), subject to segregation in accordance with the CEA and CFTC Part 22 Regulations; and
  - (b) For avoidance of doubt, obtain an acknowledgement letter from Clearstream Banking AG in the form required by CFTC Regulation 22.5 addressed to the applicant, and provide a copy of such acknowledgement letter to Eurex Clearing AG (in addition to providing the acknowledgement letter to the CFTC).

#### 2.2.10 Cash Accounts

- (1) With respect to cash payments under any FCM Clearing Agreement or Swap Transaction, the applicant is required to maintain separate cash accounts with respect to the Clearing of Own Transactions and FCM Client Transactions, as provided in this Number 2.2.10.
- (2) With respect to the Clearing of Own Transactions:
  - (a) for cash payments in EUR:
    - (aa) an account within the payment module at a central bank of the Euro system which participates in TARGET2 with its TARGET2 component system or an account at another central bank which is not a central bank of the Euro system but is, due to a special agreement, connected to TARGET2 ("**RTGS Account**"), or
    - (bb) an RTGS Account maintained in the name of a correspondent bank ("**Correspondent Bank**"), or
    - (cc) an account with a commercial bank recognized by Eurex Clearing AG ("**Settlement Bank**") under the conditions set out under (ee), or
    - (dd) an account with a bank which maintains an account with a Settlement Bank under the conditions set out under (ee);
    - (ee) in case the applicant chooses to use an account with a Settlement Bank pursuant to (cc) or (dd) above, the following shall apply:
      - (A) any payment obligation of the applicant towards Eurex Clearing AG which may arise with respect to the Clearing of Own Transactions shall only be deemed discharged with the actual credit of the relevant cash amount to the general TARGET2 account of Eurex Clearing AG



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(the “**Eurex Clearing AG General RTGS Account**”). Eurex Clearing AG ensures that it will instruct its Settlement Bank immediately after any cash amount has been credited to its account with the Settlement Bank to transfer such amounts to the Eurex Clearing AG General RTGS Account;

- (B) any payment obligation of Eurex Clearing AG towards the applicant which may arise with respect to the Clearing of Own Transactions shall already be deemed discharged with the actual credit of the relevant cash amount to Eurex Clearing AG’s account maintained with the Settlement Bank. Eurex Clearing AG ensures that it will instruct its Settlement Bank immediately after any cash amount has been credited to its account with the Settlement Bank to transfer such amounts to the applicant’s account with the Settlement Bank;
  - (C) at the time the applicant enters into an FCM Clearing Agreement with Eurex Clearing AG, the applicant further represents and warrants to Eurex Clearing AG that it will indemnify Eurex Clearing AG against any and all damages and losses which may arise from (a) a non-transfer of the relevant cash amounts from the account of Eurex Clearing AG with the Settlement Bank to the Eurex Clearing AG General RTGS Account or (b) a non-transfer of the relevant cash amounts from the account of Eurex Clearing AG with the Settlement Bank to the applicant’s account with the Settlement Bank, unless such non-transfer has been caused by a wilful action or omission by Eurex Clearing AG. Eurex Clearing AG will assign any transferrable claim it may have against the Settlement Bank with respect to such non-transferred cash amount to the applicant;
- (b) for cash payments in other currencies:
- (aa) an account in the relevant currency with a Settlement Bank under the conditions set out under (cc), or
  - (bb) an account in the relevant currency with a bank which maintains an account with a Settlement Bank under the conditions set out under (cc);
  - (cc) in case the applicant chooses to use an account with a Settlement Bank pursuant to (aa) or (bb) above and if the Settlement Bank is an Affiliate of the applicant (“**Affiliated Settlement Bank**”), the applicant is not allowed to pay any cash amounts to the account of Eurex Clearing AG maintained with such Affiliated Settlement Bank. Any payment obligation of the applicant towards Eurex Clearing AG with respect to the Clearing of Own Transactions shall not be deemed discharged if the applicant pays the cash amount to the account of Eurex Clearing AG maintained with the Affiliated Settlement Bank. Any payment obligation of the applicant towards Eurex Clearing AG with respect to the Clearing of Own Transactions shall

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only be deemed discharged if the applicant pays the cash amount to an account of Eurex Clearing AG maintained with another Settlement Bank which is not an Affiliated Settlement Bank;

(together, the “**FCM Clearing Member Own Cash Accounts**”).

(3) With respect to the Clearing of FCM Client Transactions:

(a) for cash payments in EUR:

(aa) an account which is reserved for payments with respect to FCM Client Transactions within the payment module at a central bank of the Euro system which participates in TARGET2 with its TARGET2 component system or an account at another central bank which is not a central bank of the Euro system and, due to a special agreement, connected to TARGET2 (“**FCM Client RTGS Account**”), or

(bb) an RTGS Account of a Correspondent Bank and which is reserved for payments with respect to FCM Clients, or

(cc) an account with a Settlement Bank and which is reserved for payments with respect to FCM Clients, under the conditions set out under (V), or

(dd) an account with a bank which maintains an account with a Settlement Bank and which is reserved for payments with respect to FCM Clients under the conditions set out under (ee);

(ee) In case the applicant chooses to use an account with a Settlement Bank pursuant to (cc) or (dd) above, the following shall apply:

(A) Any payment obligation of the applicant towards Eurex Clearing AG with respect to the Clearing of FCM Client Transactions shall only be deemed discharged with the actual credit of the relevant cash amount to the designated TARGET2 account of Eurex Clearing AG reserved for payments in EUR for FCM Clients (the “**Eurex Clearing AG FCM Client RTGS Account**”). Eurex Clearing AG ensures that it will instruct its Settlement Bank immediately after any cash amount has been credited to its account with the Settlement Bank to transfer such amounts to the Eurex Clearing AG FCM Client RTGS Account;

(B) Any payment obligation of Eurex Clearing AG towards the applicant with respect to the Clearing of FCM Client Transactions shall already be deemed discharged with the actual credit of the relevant cash amount to Eurex Clearing AG’s account maintained with the Settlement Bank reserved for payments for FCM Clients. Eurex Clearing AG ensures that it will instruct its Settlement Bank immediately after any cash amount has been credited to its account

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with the Settlement Bank to transfer such amounts to the applicant's account with the Settlement Bank;

- (C) At the time the applicant enters into an FCM Clearing Agreement with Eurex Clearing AG, the applicant further represents and warrants to Eurex Clearing AG that it will indemnify Eurex Clearing AG against any and all damages and losses which may arise from (a) a non-transfer of the relevant cash amounts from the account of Eurex Clearing AG with the Settlement Bank to the Eurex Clearing AG FCM Client RTGS Account or (b) a non-transfer of the relevant cash amounts from the account of Eurex Clearing AG with the Settlement Bank to the applicant's account with the Settlement Bank reserved for payments with respect to FCM Clients, unless such non-transfer has been caused by a wilful action or omission by Eurex Clearing AG. Eurex Clearing AG will assign any transferable claim it may have against the Settlement Bank with respect to such non-transferred cash amount to the applicant;
- (b) for cash payments in other currencies:
- (aa) an account in the relevant currency with a Settlement Bank and which is reserved for payments with respect to FCM Clients, under the conditions set out under (cc), or
- (bb) an account in the relevant currency with a bank which maintains an account with a Settlement Bank and which is reserved for payments with respect to FCM Clients under the conditions set out under (cc);
- (cc) In case the applicant chooses to use an account with a Settlement Bank pursuant to (aa) or (bb) above and if the Settlement Bank is an Affiliate of the applicant ("**Affiliated Settlement Bank**"), the applicant is not allowed to pay any cash amounts to the account of Eurex Clearing AG, which is reserved for payments with respect to the Clearing of FCM Client Transactions, and which is maintained with such Affiliated Settlement Bank. Any payment obligation of the applicant towards Eurex Clearing AG with respect to the Clearing of FCM Client Transactions shall not be deemed discharged if the applicant pays the cash amount to the account of Eurex Clearing AG, which is reserved for payments with respect to the Clearing of FCM Client Transactions, and which is maintained with the Affiliated Settlement Bank. Any payment obligation of the applicant towards Eurex Clearing AG with respect to the Clearing of FCM Client Transactions shall only be deemed discharged if the applicant pays the cash amount to an account of Eurex Clearing AG, which is reserved for payments with respect to FCM Client Transactions, and which is maintained with another Settlement Bank which is not an Affiliated Settlement Bank;
- (together, the "**FCM Clearing Member Client Cash Accounts**").

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### 2.2.11 General obligations for accounts

Each FCM Clearing Member shall comply with the requirements set forth in the CFTC Regulations. Without limitation, this means that an FCM Clearing Member must:

- (1) Establish Cleared Swaps Customer Accounts at Permitted Depositories in which it holds Cleared Swaps Customer Collateral (including without limitation any cash or securities it receives from an FCM Client for the FCM Client's Swap Transactions) in accordance with the requirements of the CFTC Part 22 Regulations; and
- (2) not use, or permit the use of, one client's funds to purchase, margin or settle transactions (including without limitation Swap Transactions) of any other person or to secure credit for or extend credit to any other person; and to compute, record and report completely and accurately, and in a timely manner, the balances in its **"Statement of Segregation Requirements and Cleared Swaps Customer Collateral Held in Cleared Swaps Customer Accounts"** (as that term is used by the CFTC).

For purposes of this Number 2.2.11, the terms **"Cleared Swaps Customer Account"** and **"Cleared Swaps Customer Collateral"** have the meanings as defined in CFTC Regulation 22.1, and the term **"Permitted Depository"** has the meaning assigned to it in CFTC Regulation 22.4, subject to the further terms of CFTC Regulation 22.9.

2.2.12 An applicant must provide evidence of compliance with the prerequisites set forth in Paragraph 2.2 upon submission of the application, and is subject to the terms of such prerequisites on an ongoing basis if it is granted an FCM Clearing Member License.

2.2.13 Eurex Clearing AG may require the applicant to provide, at its own expense, a legal opinion from qualified counsel acceptable to Eurex Clearing AG that verifies the legal validity and enforceability of the FCM Clearing Conditions against the FCM Clearing Member in the United States, including in the state or territory of its organization or location of its principal place of business.

## 2.3 Additional Continuing Obligations for FCM Clearing Members

- (1) The FCM Clearing Member shall inform Eurex Clearing AG, without undue delay, if it is, or if it becomes aware that it will be, in non-compliance with any of the prerequisites or conditions included in Number 2.2.
- (2) The FCM Clearing Member must maintain adjusted net capital, calculated in accordance with CFTC Regulation 1.17, which is at least the higher of (i) the minimum amount required as published by Eurex Clearing AG in the member section on the Eurex Clearing Website or (ii) such higher amount as determined by Eurex Clearing AG based on the risks posed by the applicant or FCM Clearing Member.
- (3) The FCM Clearing Member shall file a copy of its monthly Form 1-FR (as defined by the CFTC) or, if applicable, FOCUS Report (as defined by the U.S. Securities and

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Exchange Commission) and its annual audited financial report with Eurex Clearing AG, promptly, but in any event no later than 30 Business Days after such report is available.

- (4) The FCM Clearing Member is further obliged to respond on a timely basis to requests for information about its financial condition from Eurex Clearing AG or from authorized agents acting on behalf of Eurex Clearing AG.
- (5) The FCM Clearing Member shall inform Eurex Clearing AG without undue delay of any decline in equivalent regulatory capital of 20% or more from that shown on its most recent monthly Form 1-FR or, if applicable, FOCUS Report. The FCM Clearing Member shall promptly inform Eurex Clearing AG if it becomes subject to a bankruptcy petition, receivership or equivalent proceeding, or it has or is required to file any notice with the CFTC or its designated self-regulatory organization pursuant to CFTC Regulation 1.12.
- (6) The FCM Clearing Member shall notify Eurex Clearing AG immediately and without request if it is unable to fulfil any obligations under the FCM Clearing Agreement or any Swap Transaction.
- (7) An FCM Clearing Member is obliged, at the request of Eurex Clearing AG, to provide Eurex Clearing AG with evidence of compliance with the prerequisites for an FCM Clearing License, including, in particular, evidence of implementation of risk management processes.
- (8) Eurex Clearing AG may, at the cost of the relevant FCM Clearing Member, conduct audits of the FCM Clearing Member which may include financial, operational, risk management and business practice aspects. An FCM Clearing Member is obliged to cooperate with such audits and promptly provide access to any books or records that Eurex Clearing AG's managers or staff or any authorized agents acting on behalf of Eurex Clearing AG may request as part of the audit, and to make their facilities available for review and inspection by Eurex Clearing AG's managers or staff or authorized agents acting on behalf of Eurex Clearing AG as such persons may request. Eurex Clearing AG's audit may include all such information that would allow Eurex Clearing AG to ascertain that the FCM Clearing Member continues to fulfil the prerequisites for participation in the Clearing and compliance with the FCM Clearing Conditions. Eurex Clearing AG may, in its discretion, have any such audit conducted by a third party.
- (9) An FCM Clearing Member shall respond promptly and completely to requests for information from Eurex Clearing AG's chief compliance officer or the chief compliance officer's authorized designee and to provide access to books and records and operating facilities upon request from Eurex Clearing AG's chief compliance officer or the chief compliance officer's authorized designee.
- (10) An FCM Clearing Member shall, without undue delay, provide Eurex Clearing AG with any changes to its written anti-money laundering procedures and written risk

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management policies and procedures and practices, addressing the risks that such FCM Clearing Member may pose to Eurex Clearing AG, including, but not limited to, information and documents relating to the liquidity of such FCM Clearing Member's financial resources and settlement procedures.

- (11) An FCM Clearing Member shall be obliged (to the extent permitted by Applicable Law) to provide Eurex Clearing AG with any information that Eurex Clearing AG may reasonably require in relation to the clearing services provided by the FCM Clearing Member to its FCM Clients, including any document reflecting the recording of the FCM Client Transactions in the different accounts held by the FCM Clearing Member per Business Day, the details of such FCM Client Transactions, and the margin assets, including excess margin, if any, held in respect of such FCM Client Transactions (reflected on an FCM Client by FCM Client basis).
- (12) The FCM Clearing Member shall without undue delay provide all information to Eurex Clearing AG, which Eurex Clearing AG may reasonably request at any time to comply with applicable laws, rules, regulations or orders by its competent supervisory authorities (in particular those relating to funding of terrorist activities and money laundering - "**KYC Information**"). The FCM Clearing Member shall appoint one of its employees as contact for Eurex Clearing AG for all matters relating to KYC Information ("**KYC Contact**"). The FCM Clearing Member shall immediately notify Eurex Clearing AG about any changes relating to (i) the KYC Information it has previously provided to Eurex Clearing AG or (ii) the KYC Contact. The FCM Clearing Member shall also provide without undue delay all KYC Information relating to any of its FCM Clients, which Eurex Clearing AG may reasonably request at any time to comply with applicable laws, rules, regulations or orders by its competent supervisory authorities.

## 2.4 Rejection and Termination of Clearing Licenses

2.4.1 Eurex Clearing AG may reject to grant an FCM Clearing License if Eurex Clearing AG, based on its evaluation, determines that this is necessary to avoid or mitigate risks for Eurex Clearing AG. In respect of the evaluation pursuant to Sentence 1 Eurex Clearing AG will take the following criteria into account:

- (1) credit ratings by generally accepted rating agencies relating to the applicant,
- (2) Eurex Clearing AG's credit ratings relating to the applicant, and
- (3) market indications relating to the applicant (e.g. share price and CDS spreads).

2.4.2 Eurex Clearing AG may terminate the FCM Clearing License of an FCM Clearing Member in accordance with Number 12.

2.4.3 Upon the occurrence of an FCM Clearing Member Termination Time with respect to the FCM Clearing Member, all FCM Clearing Licenses of the Affected FCM Clearing Member are terminated automatically in accordance with Number 9.2.3 Paragraph (4).

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### 3 General Provisions regarding Margin and Variation Settlement

#### 3.1 General Provisions

##### 3.1.1 Calculation of the Margin Requirement, Margin Methodology and Settlement Cycles

###### (1) Standard settings

Subject to Paragraph (2), Eurex Clearing AG will calculate each margin requirement in accordance with this Number 3, the Special Provisions and (as applicable) the provisions under Number 6 as follows:

- (a) on a net basis separately with respect to each FCM Clearing Member Own Transaction Account (“**FCM Clearing Member Proprietary Margin Requirement**”); and
- (b) on a net basis separately with respect to each FCM Client Transaction Account (each an “**FCM Client Margin Requirement**”);

(the FCM Clearing Member Proprietary Margin Requirement and the FCM Client Margin Requirement, each a “**Margin Requirement**”).

###### (2) Optional advanced risk netting units in accordance with the instructions of the FCM Clearing Member

- (a) Eurex Clearing AG shall, if so instructed by the FCM Clearing Member (which instruction shall be provided in the form requested by Eurex Clearing AG, and such instruction, a “**Net Margin Instruction**”), calculate each margin requirement on a net basis across several FCM Client Transaction Accounts selected by the FCM Clearing Member for such purpose subject to the restrictions set out in lit. (b) and any technical restrictions in the systems of Eurex Clearing AG (as disclosed by Eurex Clearing AG).
- (b) Eurex Clearing AG will not calculate any relevant Margin Requirement on a net basis
  - (iii) across FCM Client Transaction Accounts that are not allocated to the same FCM Client Netting Set; and
  - (iv) across FCM Client Transaction Accounts that are not allocated to the same FCM Client Margin Sub-Account.
- (c) A Net Margin Instruction will become effective (provided that it complies with the restrictions set out in lit. (b)) at the point in time it is reflected in the systems of Eurex Clearing AG, but no earlier than on the day determined by the FCM Clearing Member in the Net Margin Instruction. Eurex Clearing AG will inform the FCM Clearing Member of the effective date of a Net Margin Instruction given by such FCM Clearing Member.

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- (d) A Net Margin Instruction that has become effective in accordance with lit. (c) may be revoked or amended by the FCM Clearing Member by submitting a revised Net Margin Instruction in respect of the relevant FCM Client Transaction Accounts; lit. (c) applies *mutatis mutandis* to any such revised Net Margin Instruction. Eurex Clearing AG may reject a revocation or amendment of a Net Margin Instruction, in particular, if such revocation or amendment would increase the applicable Margin Requirement and the aggregate value of Eligible Margin Assets actually delivered as margin is less than such applicable Margin Requirement.

A Net Margin Instruction of an FCM Clearing Member shall cease to have effect with respect to FCM Client Transactions that are (following the occurrence of a Termination Event or Insolvency Termination Event with respect to such FCM Clearing Member) subject to a Transfer to a Replacement FCM Clearing Member. In respect of any relevant FCM Client Transaction Account to which, following a Transfer, such FCM Client Transactions are booked, the Replacement FCM Clearing Member may give a Net Margin Instruction in accordance with this Paragraph (2).

- (3) Eurex Clearing AG shall determine each Margin Requirement in accordance with the Eurex Clearing Prisma methodology. Eurex Clearing AG will publish further information on the Eurex Clearing Prisma methodology on the Eurex Clearing Website; such methodology shall form part of these FCM Clearing Conditions.
- (4) Each Margin Requirement calculated by Eurex Clearing AG shall equal, in respect of the relevant FCM Clearing Member Own Transaction Account or FCM Client Transaction Account(s), the sum of:
- (a) the Initial Margin,
  - (b) any Supplementary Margin that Eurex Clearing AG may impose in respect of such FCM Clearing Member Own Transaction Account or FCM Client Transaction Account(s), and
  - (c) in the case of an intra-day Margin Call, amounts as determined by Eurex to cover potential Variation Settlement payments that the FCM Clearing Member may owe in respect of any FCM Clearing Member Own Transaction Account or FCM Client Transaction Account(s) during the end-of-day settlement cycle.

The “**Initial Margin**” equals the amount of any potential losses Eurex Clearing AG would suffer as of the time of the determination of the Margin Requirement from a closing of the Swap Transaction(s) in the relevant FCM Clearing Member Own Transaction Account or FCM Client Transaction Account(s) by entering into (an) inverse transaction(s) within the respectively applicable holding period for the respective set of Swap Transactions, as published by Eurex Clearing AG on the Eurex Clearing Website, taking into account assumed price changes due to extreme price movements in the market.



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- (5) Eurex Clearing AG will conduct an end-of-day settlement cycle each Business Day to determine the end-of-day Margin Requirement, any Variation Settlement amounts (or other amounts such as Price Alignment Interest in accordance with Chapter II Part 2 Number 2.2.1 Paragraph (5) (b) of the FCM Regulations) owed or owing, and any amounts owed or owing in respect of Swap Transactions that have been terminated or which have expired, separately in respect of the relevant FCM Clearing Member Own Transaction Account or FCM Client Transaction Account(s), in accordance with the Special Provisions.

### 3.1.2 Eligible Margin Assets and Valuation; Large Exposure

- (1) Eligible assets to be provided as cover:
- (a) in respect of Initial Margin or Supplementary Margin are such currency amounts and such securities, as are acceptable to Eurex Clearing AG from time to time in its reasonable discretion; and
  - (b) in respect of Variation Settlement such currency amounts specified in the Special Provisions,

(together, the eligible assets described in clauses (a) and (b), the “**Eligible Margin Assets**”).

Eurex Clearing AG will publish the relevant applicable list of Eligible Margin Assets on the Eurex Clearing Website. Unless otherwise provided for in such list, debt securities that have a remaining term of 15 calendar days or less will not be accepted as Eligible Margin Assets.

- (2) The following general provisions apply:
- (a) The value of any Eligible Margin Asset that are Actually Delivered will be based on the latest valuation method and haircuts determined by Eurex Clearing AG from time to time in its reasonable discretion and published in accordance with Number 15.1.
  - (b) If Eligible Margin Assets in the form of cash are provided in a currency other than the Clearing Currency, the relevant cash amount shall, for the purpose of assessing compliance with the relevant Margin Requirement, be deemed to have been Actually Delivered on the Business Day following confirmation by Eurex Clearing AG’s receiving bank of the receipt of such cash amount vis-à-vis Eurex Clearing AG.
  - (c) If Eligible Margin Assets in the form of securities are credited to the FCM Clearing Member Own Pledged Securities Account or the relevant FCM Client Pledged Securities Account, such securities shall – for the purpose of assessing compliance with the Margin Requirement – be deemed to be Actually Delivered immediately after notification by Clearstream Banking AG of such credit. If such notification occurs after the cut-off time specified by Eurex Clearing AG from

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time to time with respect to Clearstream Banking AG, such securities shall – for the purpose of assessing compliance with the Margin Requirement – be treated by Eurex Clearing AG as Actually Delivered on the Business Day following such confirmation.

- (d) For avoidance of doubt, actual delivery of Eligible Margin Assets in the form of securities to an FCM Clearing Member Own Pledged Securities Account or an FCM Client Pledged Securities Account in accordance with the FCM Clearing Conditions constitutes delivery of such Eligible Margin Assets to Eurex Clearing AG.
  - (e) Currency amounts or securities, in each case that are Actually Delivered, which are no longer accepted by Eurex Clearing AG as Eligible Margin Assets will be disregarded for the purpose of assessing compliance with the Margin Requirement. Eurex Clearing AG will, without undue delay, inform the FCM Clearing Members of any currency amounts or securities that are no longer accepted in satisfaction of their respective Margin Requirements.
- (3) Deliveries of currency amounts or securities not accepted by Eurex Clearing AG as Eligible Margin Assets to Eurex Clearing AG shall be returned without undue delay.
- (4) If Eurex Clearing AG becomes aware of
- (i) circumstances which justify a higher risk assessment of Eurex Clearing AG with respect to the FCM Clearing Member, or
  - (ii) unanticipated market developments, in each case which have an adverse impact on specific Eligible Margin Assets that were Actually Delivered to Eurex Clearing AG or that have been announced to be delivered to Eurex Clearing AG,

Eurex Clearing AG is entitled to

- (I) reject the delivery of specific Eligible Margin Assets, or
- (II) request at any time and in its discretion from the FCM Clearing Member the delivery of other Eligible Margin Assets as specified by Eurex Clearing AG (“**Other Eligible Margin Assets**”) as replacement for Eligible Margin Assets which have been Actually Delivered to Eurex Clearing AG.

In addition, the following provisions shall apply:

- (a) The rejection pursuant to Sentence 1 (I) shall be made in writing and shall provide for the specification of the rejected Eligible Margin Asset and the reason for the rejection. The request pursuant to Sentence 1 (II) shall be made in writing (including electronically) and shall include the specification of the relevant Other Eligible Margin Assets to be delivered, their value, and a

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reasonable period of time within which such Other Eligible Margin Assets shall actually be delivered to Eurex Clearing AG.

- (b) If the relevant Other Eligible Margin Assets requested pursuant to Sentence 1 (II) have been Actually Delivered to Eurex Clearing AG, the FCM Clearing Member may request the release or redelivery of the Eligible Margin Assets that the Other Eligible Margin Assets are intended to replace.
  - (c) To the extent Other Eligible Margin Assets requested pursuant to Sentence 1 (II) have not been delivered within the specified period of time, Eurex Clearing AG shall be entitled to directly debit the relevant FCM Clearing Member Own Cash Account in accordance with the daily cash clearing procedure pursuant to Number 1.4.1 in an amount equal to the amount of Other Eligible Margin Assets requested pursuant to Sentence 1 (II).
  - (d) If an FCM Clearing Member requests the redelivery or release of Eligible Margin Assets that the Other Eligible Margin Assets are intended to replace, as applicable, Eurex Clearing AG is entitled to refuse the redelivery or release of specific Eligible Margin Assets in its own discretion, provided that Eurex Clearing AG becomes aware of unanticipated market developments, which have an adverse impact on the Other Eligible Margin Assets that were Actually Delivered, and provided further that Eurex Clearing AG is not required to redeliver or release such Eligible Margin Assets if doing so would trigger a Margin Call for any FCM Clearing Member Own Transaction Account or any FCM Client Transaction Account. Eurex Clearing AG shall inform the FCM Clearing Member about its decision to refuse the redelivery or release of Eligible Margin Assets immediately.
- (5) If, in the opinion of Eurex Clearing AG, the sum of Eligible Margin Assets in the form of cash actually delivered to Eurex Clearing AG with respect to a Margin Requirement in a particular currency other than a Clearing Currency (the “**Relevant Currency**”) that is held by Eurex Clearing AG exceeds or will exceed any large exposure limit with respect to the Relevant Currency to which Eurex Clearing AG is subject pursuant to Art. 395 of the European Capital Requirements Regulation (EU) No. 575/2013 (“**CRR**”) or any other comparable regulatory requirement (the amount of such excess or prospective excess, as determined by Eurex Clearing AG, the “**Relevant Currency Surplus**”), then Eurex Clearing AG shall be entitled to take the following measures with a view to complying with such large exposure limit:
- (a) Eurex Clearing AG may, with respect to FCM Clearing Members in respect of which an amount of Eligible Margin Assets in the Relevant Currency has been actually delivered to Eurex Clearing AG in excess of the applicable margin requirement and has not been returned, repaid or applied (“**Currency Margin Excess**”), pay to each such FCM Clearing Member (without prior notice) an amount in the Relevant Currency up to the relevant Currency Margin Excess.

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The aggregate of any such payments to all relevant FCM Clearing Members and all payments to all relevant Non-FCM Clearing Members in accordance with the Clearing Conditions shall not exceed the Relevant Currency Surplus.

If one or more Currency Margin Excesses exist with respect to more than one FCM Clearing Member or Non-FCM Clearing Member, Eurex Clearing AG may distribute such payments (up to an aggregate of the Relevant Currency Surplus) across such FCM Clearing Members and Non-FCM Clearing Members in its reasonable discretion.

When exercising such discretion, Eurex Clearing AG may take into account, *inter alia*, the amount of the relevant Currency Margin Excess of the relevant FCM Clearing Members and Non-FCM Clearing Members and the absolute amount of Eligible Margin Assets in the form of cash in the Relevant Currency provided by each such FCM Clearing Member and Non-FCM Clearing Member.

Any such payment shall discharge the corresponding Redelivery Claim of the receiving Clearing Member or ISA Direct Clearing Member.

- (b) If Eurex Clearing AG concludes that the aggregate payments by Eurex Clearing AG pursuant to (a) above fall or will fall short of the Relevant Currency Surplus (the amount of such shortfall, the “**Residual Currency Surplus**”), Eurex Clearing AG may issue Margin Calls in accordance with Number 3.2 and Number 6.4.3 or Number 6.5.4 (in an aggregate equivalent value up to the Residual Currency Surplus), *provided that*
- (i) for the purposes of the determination whether the aggregate value of the Eligible Margin Assets actually delivered to Eurex Clearing AG is insufficient to provide the cover required to comply with the applicable Margin Requirement, the Requested Substitution Amount shall be deemed to have a value of zero, and
  - (ii) only Eligible Margin Assets either in the form of cash in a Clearing Currency or in the form of Securities may be delivered in respect of such Margin Call.

Following the actual delivery of the Eligible Margin Assets delivered in respect of such Margin Call(s), Eurex Clearing AG shall redeliver Eligible Margin Assets in the Relevant Currency in an amount not exceeding the Requested Substitution Amount to the FCM Clearing Member. For the avoidance of doubt, for the purposes of the determinations which amount shall be redelivered to the FCM Clearing Member, the Requested Substitution Amount shall no longer be deemed to have a value of zero.

“**Requested Substitution Amount**” means the relevant amount(s) of Eligible Margin Assets in the Relevant Currency provided by the relevant FCM Clearing

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Member with respect to the relevant Margin Requirement, requested to be substituted by Eurex Clearing AG pursuant to this lit. (b).

Eurex Clearing AG may distribute the requests for such substitutions in its reasonable discretion across all FCM Clearing Members and Non-FCM Clearing Members which have actually delivered Eligible Margin Assets in the Relevant Currency to Eurex Clearing AG. When exercising such discretion, Eurex Clearing AG may take into account, *inter alia*, the absolute amount of Eligible Margin Assets in the form of cash in the Relevant Currency provided by each FCM Clearing Member and Non-FCM Clearing Member.

Eurex Clearing AG's rights to conduct any further Margin Calls shall remain unaffected.

### **3.1.3 Currency Conversion, Use of Eligible Margin Assets in the form of cash and Income on Margin Assets**

- (1) If at any time a conversion of a currency amount which is not denominated in a Clearing Currency is necessary in order to calculate the relevant Margin Requirement or to assess compliance therewith, Eurex Clearing AG shall use a commercially reasonable exchange rate prevailing as at such time (or if such rate is not available or not commercially appropriate as deemed by Eurex Clearing AG, such other rate as Eurex Clearing AG determines).
- (2) Eurex Clearing AG reserves the right to make use of Eligible Margin Assets in the form of cash that is Actually Delivered by an FCM Clearing Member to Eurex Clearing AG as cover in respect of Initial Margin or Supplementary Margin for all Own Transactions in its sole discretion in order to ensure its capacity to operate as a derivatives clearing organization as well as for investment purposes. Eurex Clearing AG shall also be entitled to use securities purchased in such investment transactions for purposes of liquidity management and liquidity generation in relation to its clearing activities in form of repo transactions.

Eurex Clearing AG reserves the right, in its sole discretion, to make use of Eligible Margin Assets in the form of cash that is Actually Delivered by an FCM Clearing Member to Eurex Clearing AG as cover in respect of Initial Margin or Supplementary Margin for FCM Client Transactions for investment purposes.

- (a) Eurex Clearing AG shall be entitled to enter into repo transactions with commercial counterparties.
- (b) In order to ensure insolvency protection of the Eligible Margin Assets in form of cash used for investment purposes, Eurex Clearing AG and the FCM Clearing Member are subject to specific German law governed provisions on the establishment of Cash Trust Accounts as set out in Clause 6 of the FCM Clearing Agreement in the form attached to these FCM Regulations as Appendix 1 (each such account qualifies as Cash Trust Account). The FCM

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Clearing Member agrees to hold its rights in respect of any such Cash Trust Account on trust for its FCM Clients from time to time.

- (c) In order to ensure insolvency protection of the securities Eurex Clearing AG received as deal securities under repo transactions (“**Deal Securities**”), Eurex Clearing AG and the FCM Clearing Member are subject to specific German law governed provisions on the establishment of securities trust accounts as set out in Clause 7 of the FCM Clearing Agreement in the form attached to these FCM Regulations as Appendix 1 (each such account, a “**Securities Trust Account**”). The FCM Clearing Member agrees to hold its rights in respect of any such Securities Trust Account on trust for its FCM Clients from time to time.
  - (d) Any proceeds Eurex Clearing AG generates from the investment in repo transactions shall economically belong to the FCM Clearing Members and shall be transferred to the relevant Cash Trust Account immediately upon receipt of such proceeds by Eurex Clearing AG.
- (3) Eurex Clearing AG may determine from time to time to either pay interest or charge negative interest on Eligible Margin Assets in the form of cash that is Actually Delivered by an FCM Clearing Member to Eurex Clearing AG in respect of Margin. Eurex Clearing AG publishes information on the calculation of interest rates or negative interest rates as well as any changes to the applicable calculation method due to extraordinary market conditions or market disruptions on the Eurex Clearing Website. Such information will be amended from time to time and published accordingly. When determining to charge negative interest, Eurex Clearing AG shall consider the currently applicable benchmark interest rates and interest rates charged by the central banks or commercial banks.
- (4) Eurex Clearing AG may demand from an FCM Clearing Member the reimbursement of expenses arising from the holding of cash that is Actually Delivered as Margin. The FCM Clearing Member shall reimburse Eurex Clearing AG for expenses such as charges on any account balances (including in connection with any applicable bank levies, taxes or similar regulatory instruments), negative interest rates, penalty fees, commissions and other payments with a similar effect which are determined by the relevant central bank or relevant commercial bank or governmental agencies in respect of the respective cash funds.

#### 3.1.4 Supplementary Margin

- (1) Eurex Clearing AG shall be entitled to demand at any time during a Business Day from an FCM Clearing Member a higher or supplementary margin in the form of Eligible Margin Assets (“**Supplementary Margin**”) in an amount adequate to secure all of Eurex Clearing AG’s claims (including conditional claims) under any set of Swap Transactions in one or more FCM Clearing Member Own Transaction Accounts or FCM Client Transaction Accounts of the FCM Clearing Member, if the prerequisites of Paragraph (2) below have been fulfilled. This applies even if Eurex Clearing AG has initially refrained, wholly or partly, from demanding any

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Supplementary Margin. Any Supplementary Margin requested by Eurex Clearing AG will increase the Margin Requirement with respect to the relevant set of Swap Transactions.

- (2) Eurex Clearing AG's claim for the provision of Supplementary Margin shall always be based on the precondition that Eurex Clearing AG becomes aware of any of the following circumstances, which justify a higher risk assessment of Eurex Clearing AG's claims against the FCM Clearing Member. This may, in particular, be the case, if:
  - (a) the economic conditions of the FCM Clearing Member have adversely changed or threaten to adversely change, e.g., upon the occurrence of extraordinary losses of the FCM Clearing Member or the deterioration of the credit standing of the FCM Clearing Member,
  - (b) portfolio risks in the form of cluster risks occur,
  - (c) the legal or regulatory framework for the exercise of rights or the fulfilment of obligations of Eurex Clearing AG or the FCM Clearing Member under or in relation to the FCM Clearing Agreement adversely changes (e.g., if trade restrictions are imposed, the determination of currency exchange rates is regulated or Eurex Clearing AG is required to demand additional margin),
  - (d) the liquidity of certain products or markets in or in relation to which the FCM Clearing Member conducts business, materially decreases,
  - (e) the recognized risk models change (e.g., by inclusion of new risk factors, exclusion of existing risk factors or changes in the assessment of time-related dependencies or the correlation of risk factors), or
  - (f) unanticipated market developments or political events occur which have not been considered previously in the risk assessment of Eurex Clearing AG with respect to the FCM Clearing Member.
- (3) Eurex Clearing AG shall have the right to demand the provision of Supplementary Margin, irrespective of whether Eurex Clearing AG has already exercised Margin Calls vis-à-vis the FCM Clearing Member.
- (4) Eurex Clearing AG shall, in view of the prevailing circumstances, allow a reasonable period of time for the provision of Supplementary Margin by the FCM Clearing Member. If Eurex Clearing AG intends to make use of a termination right against such FCM Clearing Member in accordance with Number 9 in the event that the FCM Clearing Member fails to fulfil its obligation to provide Supplementary Margin in due time, it shall inform the FCM Clearing Member thereof when demanding the provision of Supplementary Margin.

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- (5) Supplementary Margin shall be provided by the FCM Clearing Member in accordance with the provisions of Number 3.2, but shall not limit the right of Eurex Clearing AG to exercise Margin Calls.
- (6) After and to the extent that the risks leading to the provision of Supplementary Margin have ceased or Eurex Clearing AG has otherwise covered such risks vis-à-vis the FCM Clearing Member, Eurex Clearing AG shall be obliged to return or, as applicable, release to the FCM Clearing Member any Supplementary Margin, subject to the terms of Number 9 if a Termination Time has occurred in respect of the FCM Clearing Member.

### 3.1.5 Provisions regarding holding of Eligible Margin Assets by Eurex Clearing AG

- (1) Any cash held at any time in any Cash Trust Account or Eurex Clearing AG FCM Client RTGS Account and any securities held at any time in any FCM Client Pledged Securities Account established by an FCM Clearing Member for the benefit of Eurex Clearing AG are part of the cleared swaps account class as defined in, and for purposes of, the CFTC Part 190 Regulations.
- (2) Eurex Clearing AG shall comply with the requirements set forth in the CFTC Part 22 Regulations with respect to the FCM Client Margin Accounts. Without limitation, this means that Eurex Clearing AG will treat FCM Clients as “**Cleared Swaps Customers**” and FCM Client Margin Accounts as “**Cleared Swaps Customer Accounts**” as those terms are defined in, and for purposes of, the CFTC Part 22 Regulations, and will only invest collateral held directly by Eurex Clearing AG in a Cleared Swaps Customer Account with a Permitted Depository in accordance with CFTC Regulation 1.25.

### 3.1.6 Participation of FCM Clearing Members in non-default losses

- (1) If an FCM Clearing Member pays Eligible Margin Assets in the form of cash, denominated in a Commercial Bank Currency, to Eurex Clearing AG:
  - (a) to meet an FCM Clearing Member Proprietary Margin Requirement or an FCM Client Margin Requirement,
  - (b) Eurex Clearing AG either (X) holds such cash amounts in an account maintained with a commercial bank (“**Deposit**”) or (Y) invests such cash amounts, partly or in whole, for purposes of liquidity management and liquidity generation (“**Investment**”); and
  - (c) Eurex Clearing AG suffers a Loss with respect thereto,

Eurex Clearing AG is entitled to claim compensation for the Loss in accordance with the provisions of this Number 3.1.6.

- (2) Definitions



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“**Loss**” means any loss incurred by Eurex Clearing AG with respect to:

- (a) an Investment because the amount invested was not, or not fully, repaid to Eurex Clearing AG or a third party by the contractual counterparty of the relevant Investment (“**Investment Counterparty**”) on the date on which it shall be repaid in accordance with the relevant contractual terms of the Investment or an instruction by Eurex Clearing AG;
- (b) a Deposit due to the failure or default of the commercial bank holding the account.

“**Commercial Bank Currency**” means any currency accepted by Eurex Clearing AG as Eligible Margin Assets for which Eurex Clearing AG does not maintain an account with a central bank. Eurex Clearing AG shall publish a list of the Commercial Bank Currencies on the Eurex Clearing Website.

(3) Allocation of Losses

- (a) Eurex Clearing AG shall participate in the Loss on a pro rata basis (“**Own Contribution**”). The maximum Own Contribution shall be EUR 50,000,000 (“**Maximum Own Contribution**”). The Maximum Own Contribution refers to all past and future Losses and, in case of the occurrence of a Loss, the Maximum Own Contribution shall be reduced by the relevant Own Contribution (“**Available Own Contribution**”). Eurex Clearing AG shall publish the current Available Own Contribution on the Eurex Clearing Website.

In case of the occurrence of Losses with respect to more than one Commercial Bank Currency on a Business Day, Eurex Clearing AG allocates the Available Own Contribution to the Commercial Bank Currencies as follows: the product of (A) the Available Own Contribution and (B) the ratio of (i) the sum of the Eligible Margin Assets in form of cash, Prefunding Amounts, Late Payment Amounts and Corresponding Pay-In Amounts (all as defined under the Clearing Conditions), denominated in the relevant Commercial Bank Currency, which were paid by all Clearing Members to Eurex Clearing AG (or, in the case of Corresponding Pay-In Amounts, relate to all Late CMs (as defined under the Clearing Conditions) as receivers of a Deferred Payment Amount (as defined under the Clearing Conditions)) with respect to all their Swap Transactions or Transactions (as defined under the Clearing Conditions) and (ii) the sum of the Eligible Margin Assets in form of cash, Prefunding Amounts, Late Payment Amounts and Corresponding Pay-In Amounts (all as defined under the Clearing Conditions), denominated in all Commercial Bank Currencies, which were paid by all Clearing Members to Eurex Clearing AG (or, in the case of Corresponding Pay-In Amounts, relate to all Late CMs as receivers of a Deferred Payment Amount (all as defined under the Clearing Conditions)) with respect to all their Swap Transactions or Transactions (as defined under the Clearing Conditions) (“**Available Currency-Related Own Contribution**”).

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- (b) Eurex Clearing AG shall determine the relevant Own Contribution with respect to each Commercial Bank Currency separately on the basis of the following formula; the product of (A) the Loss and (B) the ratio of (i) the Available Own Contribution or the Available Currency-Related Own Contribution and (ii) the sum of the Eligible Margin Assets in form of cash, Prefunding Amounts, Late Payment Amounts and Corresponding Pay-In Amounts (all as defined under the Clearing Conditions), denominated in the relevant Commercial Bank Currency, which were paid by all Clearing Members to Eurex Clearing AG (or, in the case of Corresponding Pay-In Amounts, relate to all Late CMs as receivers of a Deferred Payment Amount (all as defined under the Clearing Conditions)) with respect to all their Swap Transactions or Transactions (as defined under the Clearing Conditions) plus the Available Own Contribution or the Available Currency-Related Own Contribution.
- (c) Eurex Clearing AG shall determine the FCM Clearing Member's share in the Loss with respect to each Commercial Bank Currency separately and on the basis of the following formula: the product of (A) the Loss and (B) the ratio of (i) the sum of the Eligible Margin Assets in form of cash, denominated in the Commercial Bank Currency, which were paid by the relevant FCM Clearing Member to Eurex Clearing AG with respect to all its Swap Transactions and (ii) the sum of the Eligible Margin Assets in form of cash, Prefunding Amounts, Late Payment Amounts and Corresponding Pay-In Amounts (all as defined under the Clearing Conditions), denominated in the Commercial Bank Currency, which were paid by all Clearing Members to Eurex Clearing AG (or, in the case of Corresponding Pay-In Amounts, relate to all Late CMs as receivers of a Deferred Payment Amount (all as defined under the Clearing Conditions)) with respect to all of their Swap Transactions or Transactions (as defined in the Clearing Conditions) plus the Available Own Contribution or the Available Currency-Related Own Contribution ("**FCM Clearing Member-Related Loss**").

Eurex Clearing AG shall notify the FCM Clearing Member about the FCM Clearing Member-Related Loss without undue delay ("**Loss Notice**").

- (d) The FCM Clearing Member shall pay to Eurex Clearing AG the relevant FCM Clearing Member-Related Loss by the time specified in the Loss Notice at the latest. If the FCM Clearing Member fails to do so by the time specified in the Loss Notice, Eurex Clearing AG is entitled to directly debit the FCM Clearing Member Own Cash Account in an amount equal to the requested amount in accordance with the daily cash clearing procedure pursuant to Number 1.4.1.
- (e) If the Loss is reduced through a payment by the Investment Counterparty (if applicable) or a third party ("**Reduction Amount**") after the FCM Clearing Member paid its FCM Clearing Member-Related Loss to Eurex Clearing AG or Eurex Clearing AG has paid any excess pursuant to Chapter VIII Part 3 Number 3.4.1 Paragraph (6) or Number 3.4.2 Paragraph (3) of the Clearing Conditions, Eurex Clearing AG shall distribute the Reduction Amount among all

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Clearing Members, which paid their Clearing Member-Related Loss to Eurex Clearing AG or received such excess, by applying, *mutatis mutandis*, the share in the Loss determined under Paragraph (ii) or (iii).

- (f) In case of the occurrence of a Loss, the FCM Clearing Member is not entitled to require Eurex Clearing AG to enforce any rights or security interests which Eurex Clearing AG may have against the Investment Counterparty (in the case of Loss due to Investment) and/or a third party, before claiming the payment of the FCM Clearing Member-Related Loss from the FCM Clearing Member. In the case Eurex Clearing AG has claimed the payment of the FCM Clearing Member-Related Loss from the FCM Clearing Member on the occurrence of a Loss, Eurex Clearing AG will take any action as is required to enforce any rights or security interests which Eurex Clearing AG may have against the Counterparty and/or a third party with respect to the Loss.

## 3.2 Margin Calls and Delivery of Eligible Margin Assets

### 3.2.1 Margin Call and direct debit prior to or at the end of a Business Day

- (1) Eurex Clearing AG is entitled to require the FCM Clearing Member to provide additional Eligible Margin Assets in an amount up to

- (a) the Proprietary Margin Requirement, determined in accordance with Numbers 3.1.1 and 5.2 and the Special Provisions, or
- (b) the relevant FCM Client Margin Requirement, determined in accordance with Number 3.1.1 and Number 6.4.3 or Number 6.5.4, as applicable, and the Special Provisions;

in each case by the time specified by Eurex Clearing AG at the end or at any time prior to the end of a Business Day ("**Margin Call**").

- (2) With respect to a Margin Call, Eurex Clearing AG shall be entitled to directly debit the relevant FCM Clearing Member Own Cash Account or FCM Clearing Member Client Cash Account in an amount equal to the requested amount of Eligible Margin Assets in accordance with the daily cash clearing procedure pursuant to Number 1.4.1.

### 3.2.2 Delivery of Eligible Margin Assets in the form of cash

- (1) The FCM Clearing Member shall be obliged to deliver Eligible Margin Assets in the form of cash by transferring the relevant cash to Eurex Clearing AG free and clear from any and all rights and claims of the FCM Clearing Member and of any third person, including, without limitation, pursuant to applicable regulation or under any statutory or other trust, but subject to the obligations of Eurex Clearing AG with respect to Cleared Swaps Customer Collateral (as defined in CFTC Regulation 22.1).

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- (2) Eligible Margin Assets in the form of cash shall be provided in accordance with the cash clearing procedure pursuant to Number 1.4.1.
- (3) In order to ensure insolvency protection in relation to Eligible Margin Assets in the form of cash delivered to Eurex Clearing AG by the FCM Clearing Member in respect of the FCM Client Margin Account, Eurex Clearing AG and the FCM Clearing Member are subject to specific German law governed provisions on the establishment of cash trust accounts as set out in Clause 6 of the FCM Clearing Agreement in the form attached to these FCM Regulations as Appendix 1 (each such account, a "**Cash Trust Account**"). The FCM Clearing Member agrees to hold its rights in respect of any such Cash Trust Account on trust for its FCM Clients from time to time.

In case the Account Bank with which the Cash Trust Account is maintained charges any expenses (such as charges on any account balances (including in connection with any applicable bank levies, taxes or similar regulatory instruments), negative interest rates, penalty fees, commissions and other payments with a similar effect) directly to the Cash Trust Account, Eurex Clearing AG or the Account Bank acting on behalf of Eurex Clearing AG shall in advance transfer own funds of Eurex Clearing AG ("**Eurex Clearing AG Funds**") to the relevant Cash Trust Account in an amount which is needed to cover such expenses. By such transfer, the Eurex Clearing AG Funds shall form part of the relevant FCM Client Margin Account and Eurex Clearing AG shall not have any redelivery claim with respect to such Eurex Clearing AG Funds. With respect to the FCM Clearing Member, Number 3.1.3 (4) shall apply.

### 3.2.3 Delivery of Eligible Margin Assets in the form of securities

- (1) The FCM Clearing Member will grant a German law pledge in favour of Eurex Clearing AG over all securities which are or will be credited to the relevant FCM Clearing Member Own Pledged Securities Account or the relevant FCM Client Pledged Securities Account by execution of the Pledge Agreement in the form attached to the FCM Regulations as Appendix 2 (the "**Pledge Agreement**").

In order to provide Eligible Margin Assets in the form of securities:

- (a) as cover in respect of Initial Margin or Supplementary Margin for all Own Transactions, the Clearing Member shall transfer Eligible Margin Assets in the form of securities to its FCM Clearing Member Own Pledged Securities Account; and
- (b) as cover in respect of Initial Margin or Supplementary Margin for all FCM Client Transactions of the relevant FCM Client, the FCM Clearing Member shall transfer Eligible Margin Assets in the form of securities to the relevant FCM Client Pledged Securities Account maintained for the relevant FCM Client Margin Account within which the relevant FCM Client Margin Sub-Account of such FCM Client is located.

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- (2) The FCM Clearing Member shall instruct Clearstream Banking AG in a timely manner to transfer the relevant securities to the FCM Clearing Member Own Pledged Securities Account or the FCM Client Pledged Securities Account and authorizes Clearstream Banking AG to inform Eurex Clearing AG of such transfer.
- (3) In relation to securities credited to the FCM Clearing Member Own Pledged Securities Account or the FCM Client Pledged Securities Account that confer voting rights or other optional rights on the FCM Clearing Member (including, but not limited to, warrants, options, conversion and subscription rights, rights in connection with takeovers, other forms of offers or capital reorganizations, redemption rights, tenders, options to tender or non-mandatory puts or calls) or that provide for discretionary action or alternative courses of action by the FCM Clearing Member, Eurex Clearing AG shall not be entitled to exercise such voting or optional rights or to take up such discretionary actions or alternative courses of action. The FCM Clearing Member shall remain responsible in this respect.
- (4) The FCM Clearing Member agrees to take any action requested by Eurex Clearing AG to perfect, maintain or enforce the security interest granted to Eurex Clearing AG pursuant to this Number 3.2.3, including the execution and due filing or registration of any documents with any relevant competent authority.
- (5) Pursuant to the Pledge Agreement in the form attached to the FCM Regulations as Appendix 2 and subject to the provisions set out therein, each pledge granted by the FCM Clearing Member to Eurex Clearing AG over securities which are or will be credited to the FCM Clearing Member Own Pledged Securities Account with Clearstream Banking AG (the "**Relevant Pledged Securities**") permits Eurex Clearing AG to make use of the Relevant Pledged Securities, subject to the following conditions:
  - (a) The right for Eurex Clearing to make use of the Relevant Pledged Securities pursuant to this provision is conditional upon the issuance of a Declaration of Termination with respect to the FCM Clearing Member by Eurex Clearing AG.
  - (b) Eurex Clearing AG shall only be entitled to exercise such appropriation right and right of use to contain losses and liquidity pressures from the default of the relevant FCM Clearing Member.
  - (c) If Eurex Clearing AG exercises such appropriation right in respect of any Relevant Pledged Securities, the FCM Clearing Member shall have a claim against Eurex Clearing AG for redelivery of securities that are equivalent to such Relevant Pledged Securities; such redelivery claim shall become due at the same time the Difference Claim with respect to all FCM Clearing Member Own Transaction Accounts becomes due in accordance with Number 9.5.4, provided that, Eurex Clearing AG may, in its discretion, either (A) discharge such redelivery claim by transferring to the FCM Clearing Member securities equivalent to such Relevant Pledged Securities before the Difference Claim with respect to all FCM Clearing Member Own Transaction Accounts becomes due,

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(B) set off the value of such Relevant Pledged Securities against the amount of such Difference Claim or (C) include the value of the Relevant Pledged Securities in the determination of such Difference Claim (as a position in favour of the FCM Clearing Member).

- (d) If Eurex Clearing AG receives, in relation to the Relevant Pledged Securities with respect to which Eurex Clearing AG exercised its appropriation right, a payment of interest, dividends, or other distributions in the form of securities (“**Securities Income**”), or any payment of interest, dividends or other distribution in cash (“**Cash Income**”), Eurex Clearing AG shall transfer to the FCM Clearing Member securities equivalent to and in the same value as the relevant Securities Income and pay to the FCM Clearing Member a cash amount equivalent to and in the same currency as the relevant Cash Income, respectively. With respect to any voting rights or elections in relation to corporate actions, which may arise from the Relevant Pledged Securities and with respect to which Eurex Clearing AG exercised its appropriation right, Eurex Clearing AG shall have no obligation in respect of the exercise of such voting rights or the exercise of such elections in relation to corporate actions. Eurex Clearing AG shall neither be under any obligations to exercise any subscription right resulting from the Relevant Pledged Securities nor under any obligation to sell such subscription rights and any subscription right resulting from the Relevant Pledged Securities which has not been exercised by the end of the subscription period shall lapse without the FCM Clearing Member being entitled to any compensation.
- (e) The information statement set out in Appendix 3 of the FCM Regulations in accordance with Article 15 of the Regulation on transparency of securities financing transactions and of reuse (Regulation (EU) 2015/2365) applies.
- (6) Each time the FCM Clearing Member furnishes Eligible Margin Assets to Eurex Clearing AG, in the form of securities, it represents and warrants to Eurex Clearing AG, as applicable, that the FCM Clearing Member is the sole legal and beneficial owner of the Eligible Margin Assets or is furnishing and pledging the Eligible Margin Assets with the unconditional consent of, and authority granted by, the legal and beneficial owner of the Eligible Margin Assets.

### 3.3 Secured Claims

The purpose of the Eligible Margin Assets that are Actually Delivered in the form of cash or pledged as securities is to secure, the following claims of Eurex Clearing AG against the FCM Clearing Member:

- (1) the claims secured by the Eligible Margin Assets booked to the FCM Clearing Member Proprietary Margin Account, which comprise
- (a) all present and future claims under any Own Transactions, any Difference Claim and any single difference claim (as described in Number 11.1.2) Eurex

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Clearing AG may have against the FCM Clearing Member with respect to the Own Transactions, and

- (b) all present and future claims under any FCM Client Transactions, any Difference Claim and any single difference claim (as described in Number 11.1.2) Eurex Clearing AG may have against the FCM Clearing Member with respect to any FCM Client Transactions of any FCM Client of such FCM Clearing Member, and
- (c) all other present and future claims of Eurex Clearing AG against the FCM Clearing Member under the FCM Clearing Agreement between Eurex Clearing AG and such FCM Clearing Member,

(together, the "**FCM Proprietary Secured Claims**"); and

- (2) the claims secured by the Eligible Margin Assets booked to the relevant FCM Client Margin Account, which comprise

- (a) all present and future claims under any FCM Client Transactions on all FCM Client Transaction Accounts linked to the relevant FCM Client Margin Account, and
- (b) any Difference Claim and any single difference claim (as described in Number 11.1.2) Eurex Clearing AG may have against the FCM Clearing Member with respect to any FCM Client Transactions on all FCM Client Transaction Accounts linked to the relevant FCM Client Margin Account,

(together, the "**FCM Client Secured Claims**"),

provided, however, that Eurex Clearing AG will not apply the value of any Eligible Margin Assets booked to the FCM Client Margin Sub-Account for one FCM Client to satisfy the FCM Client Secured Claim of any other FCM Client or any other person other than the FCM Client for the FCM Client Margin Sub-Account.

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## 4 Internal Accounts

### 4.1 Types of Accounts

Eurex Clearing AG establishes and maintains internal accounts for each FCM Clearing Member, on which the Swap Transactions, cash amounts and margin of such FCM Clearing Member for its Own Transactions and its FCM Client Transactions are booked as further set out in this Number 4 and subject further to the provisions of Number 6 in the case of FCM Client Transactions.

### 4.2 Internal Transaction Accounts

4.2.1 Eurex Clearing AG opens and maintains with respect to each FCM Clearing Member the following transaction accounts in which the Swap Transactions of the FCM Clearing Member to be cleared will be booked:

- (1) one transaction account for Own Transactions of the FCM Clearing Member (an **“FCM Clearing Member Own Transaction Account”**);
- (2) with respect to FCM Client Transactions, one or more transaction accounts for each FCM Client (each, an **“FCM Client Transaction Account”**) in which the Swap Transactions to be cleared by the FCM Clearing Member acting as agent on behalf of the respective FCM Client will be booked.
- (3) when an FCM Clearing Member is acting as a Pre-Allocation FCM Clearing Member for one or more Pre-Allocation Executing Parties, a separate account for each Pre-Allocation Executing Party (each, an **“FCM Client Transaction Suspension Account”**) in which Swap Transactions that are cleared initially as Unallocated FCM Client Transactions in accordance with Number 1.3.3 Paragraph (4) and the Special Provisions will be booked.

4.2.2 With respect to the FCM Clearing Member Own Transaction Account, the FCM Clearing Member shall ensure that each instruction to book Own Transactions to its FCM Clearing Member Own Transaction Account only relates to Own Transactions of such FCM Clearing Member. Eurex Clearing AG may rely on, and is not obligated to verify, the contents of any such instruction from the FCM Clearing Member.

4.2.3 With respect to each FCM Client Transaction Account the following applies:

- (1) The FCM Clearing Member shall ensure that each instruction to book Swap Transactions to a certain FCM Client Transaction Account only relates to FCM Client Transactions of the FCM Client for such FCM Client Transaction Account. Eurex Clearing AG may rely on, and is not obliged to verify the contents of, any such instruction from the FCM Clearing Member.
- (2) When establishing an FCM Client Transaction Account within the systems of Eurex Clearing AG, the FCM Clearing Member must link each FCM Client Transaction Account to the relevant FCM Client Margin Sub-Account and each relevant FCM



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Client Margin Sub-Account to the relevant FCM Client Margin Account, provided that if more than one FCM Client Transaction Account are established for the same FCM Client, these FCM Client Transaction Accounts which are established for the same FCM Client shall be linked to the same FCM Client Margin Sub-Account.

### 4.3 Internal Margin Accounts

4.3.1 Eurex Clearing AG will, in its internal systems, establish and maintain for each FCM Clearing Member the following internal margin accounts to which the value of all Eligible Margin Assets that have been Actually Delivered to Eurex Clearing AG as Eligible Margin Assets shall be allocated:

- (1) with respect to Own Transactions of the FCM Clearing Member one internal proprietary margin account (the "**FCM Clearing Member Proprietary Margin Account**");
- (2) with respect to FCM Client Transactions of all or a set of FCM Clients of the FCM Clearing Member one or more internal FCM Client margin accounts (each an "**FCM Client Margin Account**") in accordance with the instructions of the FCM Clearing Member (which shall be provided in the form requested by Eurex Clearing AG);
- (3) within each FCM Client Margin Account, Eurex Clearing AG establishes the following separate sub-accounts:
  - (a) separate margin sub-account linked to the relevant FCM Client Transaction Account(s) for the same FCM Client (each an "**FCM Client Margin Sub-Account**");
  - (b) one FCM Client Buffer Sub-Account;
  - (c) one FCM Client Unallocated Excess Sub-Account; and
  - (d) provided that the FCM Client Margin Account is established and maintained in accordance with the LSOC With Excess Model, an FCM Client Assumed Allocation Sub-Account that is treated as part of the FCM Client Margin Sub-Account.

4.3.2 Each FCM Client Margin Account shall be established and maintained in accordance with either the LSOC Without Excess Model or the LSOC With Excess Model.

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## **5 Clearing of Own Transactions**

### **5.1 Scope**

This Number 5 will apply to the Clearing of Own Transactions.

### **5.2 Proprietary Margin Requirement**

The Clearing Member is required to provide Eligible Margin Assets as margin in respect of all its Own Transactions booked into the FCM Clearing Member Own Transaction Account, in such amounts, in such forms and at such times as are required pursuant to this Number 5, Number 3 and the Special Provisions.

Eurex Clearing AG calculates the FCM Clearing Member Proprietary Margin Requirement for the FCM Clearing Member Own Transaction Account of an FCM Clearing Member in accordance with Number 3.1.1. The FCM Clearing Member Proprietary Margin Requirement will be notified by Eurex Clearing AG to the relevant FCM Clearing Member.

The FCM Clearing Member Proprietary Margin Requirement may, in the case of an intra-day Margin Call, include amounts as determined by Eurex to cover potential Variation Settlement payments that the FCM Clearing Member may owe in respect of any Own Transactions in the FCM Clearing Member Own Transaction Account during the end-of-day settlement cycle.

### **5.3 Margin Call with respect to Own Transactions**

Eurex Clearing AG will issue a Margin Call if the FCM Clearing Member Proprietary Margin Requirement exceeds the FCM Clearing Member Proprietary Margin Account Balance.

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## 6 Clearing of FCM Client Transactions

### 6.1 Scope

This Number 6 will apply to the Clearing of FCM Client Transactions.

### 6.2 General

- 6.2.1 An FCM Clearing Member may clear Swap Transactions for FCM Clients. An FCM Clearing Member is not permitted to clear Interest Rate Derivative Transactions through Eurex Clearing AG for or on behalf of any Affiliate or any third person whose account in which the FCM Clearing Member would record the transactions in its internal books is classified as a proprietary account of the FCM Clearing Member under CFTC Regulation 1.3.
- 6.2.2 The FCM Clearing Member acts as agent on behalf of each of its FCM Clients (for purposes of CFTC Regulation 39.12 (b) (6)), and as guarantor, for each FCM Client Transaction. In contrast, Eurex Clearing AG treats the FCM Clearing Member as principal for purposes of the rights and obligations defined under the FCM Clearing Agreement and FCM Clearing Conditions in relation to an FCM Client Transaction. Accordingly, an FCM Client does not have any rights against Eurex Clearing AG with respect to the Clearing of its Swap Transactions. The terms “**acts as agent**”, “**acts as agent on behalf of**” or derivations thereof when used in the FCM Regulations to describe the FCM Clearing Member’s relationship to its FCM Clients shall be interpreted consistent with this Number 6.2.2.
- 6.2.3 An FCM Clearing Member may provide clearing services to FCM Clients subject to the provisions of the FCM Clearing Conditions, on terms and conditions mutually agreed between the FCM Clearing Member and the FCM Client.
- 6.2.4 Before an FCM Clearing Member clears Swap Transactions for an FCM Client under the provisions of the FCM Clearing Conditions, it must ensure that it has a written agreement in place with such person (which may be in the form of an addendum to an existing agreement), pursuant to which such person agrees that it is bound by the applicable provisions of the FCM Clearing Conditions (as may be revised from time to time) by direct reference thereto or otherwise.
- 6.2.5 Each FCM Client, by virtue of clearing any Swap Transaction subject to the provisions of the FCM Clearing Conditions, is deemed to acknowledge and agree that:
- (1) the FCM Client does not have any rights against Eurex Clearing AG;
  - (2) the Swap Transactions cleared on its behalf by the FCM Clearing Member are governed by applicable provisions of the FCM Clearing Conditions, the FCM Client is bound by such provisions, and such provisions are enforceable by Eurex Clearing AG in accordance with their terms;

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- (3) the FCM Client is bound by the terms of each Swap Transaction cleared by its FCM Clearing Member on its behalf in its FCM Client Transaction Account(s); and
- (4) the FCM Client has granted its consent to the FCM Clearing Member to deposit collateral with Eurex Clearing AG in satisfaction of the Margin Requirement attributable to its Swap Transactions cleared by its FCM Clearing Member on its behalf.

6.2.6 The FCM Clearing Member must require an FCM Client to provide it with collateral in respect of the FCM Client's open Swap Transactions in its FCM Client Transaction Account(s) that has a value not less than the sum of (a) (i) Eurex Clearing AG's Margin Requirements for such Transactions if they are hedge transactions for the FCM Client or (ii) 110% of Eurex Clearing AG's Margin Requirements for such Transactions if they are non-hedge transactions for the FCM Client, and (b) any Variation Settlement requirement for such Transactions as determined by Eurex Clearing AG in accordance with the relevant Special Provisions in Chapter II.

6.2.7 The situs of each FCM Client Transaction Account and FCM Client Margin Account (including each FCM Client Margin Sub-Account and each other sub-account within the FCM Client Margin Account) is deemed to be in the United States.

6.2.8 Each FCM Clearing Member shall maintain internal accounts for its FCM Clients. The FCM Clearing Member shall keep accurate and up-to-date records of the Swap Transactions and collateral relating to each FCM Client in respect of which Swap Transactions are cleared by Eurex Clearing AG and the collateral and accruals standing to the credit of the FCM Client in respect of such Swap Transactions.

### 6.3 Provisions Common to Both LSOC Models

An FCM Clearing Member may clear FCM Client Transactions for an FCM Client in accordance with either the LSOC Without Excess Model or the LSOC With Excess Model (together, the "**LSOC Models**").

The following provisions in this Number 6.3 apply regardless of the LSOC Model that the FCM Clearing Member has elected with respect to the relevant FCM Client.

#### 6.3.1 Election of applicable LSOC Model

Prior to the establishment of each FCM Client Margin Account within the systems of Eurex Clearing AG, the FCM Clearing Member must specify whether such FCM Client Margin Account shall be established under the LSOC Without Excess Model or the LSOC With Excess Model ("**LSOC Model Election**") by submitting a notice in form and substance satisfactory to Eurex Clearing ("**LSOC Model Election Notice**").

If the FCM Clearing Member wants to alter its LSOC Model Election with respect to an FCM Client Margin Account after its establishment, the FCM Clearing Member shall submit a new LSOC Model Election Notice to Eurex Clearing AG.

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### 6.3.2 FCM Client Buffer

- (1) An FCM Clearing Member may deposit Eligible Margin Assets that it owns with Eurex Clearing AG to be attributed to an FCM Client Margin Account for the benefit of its FCM Clients covered by such FCM Client Margin Account as “**FCM Client Buffer**”.
  - (a) Under the LSOC Without Excess Model, Eurex Clearing AG is permitted to, and the FCM Clearing Member agrees that it may, treat as FCM Client Buffer the value of all Eligible Margin Assets delivered with respect to an FCM Client Margin Account that are not delivered upon a Margin Call or a Collateral Call (as defined in Number 6.3.5) by Eurex Clearing AG.
  - (b) Under the LSOC With Excess Model, Eurex Clearing AG will treat as FCM Client Buffer the legally segregated value of Eligible Margin Assets specified in the latest CVR provided by the FCM Clearing Member as FCM Client Buffer.
- (2) Eurex Clearing AG shall book the value of all Eligible Margin Assets qualifying as FCM Client Buffer in a sub-account of the relevant FCM Client Margin Account (“**FCM Client Buffer Sub-Account**”).
- (3) Upon the occurrence of a Termination Event or an Insolvency Termination Event with respect to the FCM Clearing Member, Eurex Clearing AG may apply FCM Client Buffer (other than Encumbered FCM Client Buffer, which is instead applied in accordance with the relevant provisions of Number 6.4 or Number 6.5) to satisfy an FCM Client Margin Sub-Account Balance shortfall in any FCM Client Margin Sub-Account in the same FCM Client Margin Account as the FCM Client Buffer Sub-Account in which the FCM Client Buffer is booked. If the available FCM Client Buffer is insufficient to satisfy in full each FCM Client Margin Sub-Account Balance shortfall in the relevant FCM Client Margin Account, Eurex Clearing AG will apply the available FCM Client Buffer on a pro rata basis (based on the amount of the shortfall) to each FCM Client Margin Sub-Account with an FCM Client Margin Sub-Account shortfall.
- (4) Provided it is not subject to a Termination Event or an Insolvency Termination Event, an FCM Clearing Member may withdraw any of its FCM Client Buffer that is not, at the time, being used by Eurex Clearing AG as Encumbered FCM Client Buffer by (i) instructing Eurex Clearing AG to transfer such FCM Client Buffer to the FCM Client Unallocated Excess Sub-Account in the relevant FCM Client Margin Account (in the case of LSOC Without Excess) or (ii) by reclassifying FCM Client Buffer as Unallocated Excess in a new CVR (in the case of LSOC With Excess). Following transfer of the FCM Client Buffer to the relevant Unallocated Excess Sub-Account, the amount will be returned as provided in Number 6.3.3 Paragraph (4).

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### 6.3.3 FCM Client Unallocated Excess

- (1) “**FCM Client Unallocated Excess**” means:
- (a) with respect to the LSOC Without Excess Model, the value of all Eligible Margin Assets booked to an FCM Client Margin Account that are not allocated to
    - (aa) any FCM Client Margin Sub-Account, or
    - (bb) the FCM Client Buffer Sub-Account; and
  - (b) with respect to the LSOC With Excess Model, the value of all Eligible Margin Assets booked to an FCM Client Margin Account, which are not delivered upon a Margin Call or Collateral Call by Eurex Clearing AG, that are not allocated to
    - (aa) any FCM Client Margin Sub-Account or the linked FCM Client Assumed Allocation Sub-Account, or
    - (bb) the FCM Client Buffer Sub-Account.

All such Eligible Margin assets qualifying as FCM Client Unallocated Excess, shall be booked in a sub-account of the applicable FCM Client Margin Account (the “**FCM Client Unallocated Excess Sub-Account**”).

- (2) Eurex Clearing AG holds FCM Client Unallocated Excess for the benefit of the FCM Clients corresponding to such FCM Client Margin Account as a class, segregated in accordance with the CEA and CFTC Regulations, including the CFTC Part 22 Regulations. Eurex Clearing AG shall treat and record the FCM Client Unallocated Excess in respect of an FCM Client Margin Account on an unallocated basis, and shall not attribute any portion thereof to a particular FCM Client, FCM Client Margin Sub-Account (of any linked FCM Client Assumed Allocation Account, if applicable) or FCM Client Buffer Sub-Account.
- (3) An FCM Clearing Member that maintains FCM Client Unallocated Excess in an FCM Client Unallocated Excess Sub-Account must assure that its internal records accurately reflect at all times the FCM Client or FCM Clients to which such FCM Client Unallocated Excess is attributable and the amount attributable to each such FCM Client.
- (4) Eurex Clearing AG will return FCM Client Unallocated Excess to the FCM Clearing Member as part of the end-of-day settlement cycle.
- (5) Upon the occurrence of a Termination Event or an Insolvency Termination Event with respect to the FCM Clearing Member, Eurex Clearing AG shall hold any FCM Client Unallocated Excess in the FCM Clearing Member’s FCM Client Unallocated Excess Sub-Account in the relevant FCM Client Margin Account for the benefit of the FCM Clients of the FCM Clearing Member linked to such FCM Client Margin Account, in accordance with the CFTC Part 190 Regulations and Applicable Law.

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Eurex Clearing AG acknowledges that it is not permitted to, and it shall not, apply any such FCM Client Unallocated Excess to any obligations owed by the FCM Clearing Member to Eurex Clearing AG (whether acting as agent on behalf of its FCM Clients or otherwise), except to the extent required by Applicable Law and/or as directed by the applicable bankruptcy trustee or government authority in accordance with Applicable Law.

#### 6.3.4 Substitution of Eligible Margin Assets

An FCM Clearing Member may request to substitute Eligible Margin Assets booked to an FCM Client Margin Account with alternative forms of Eligible Margin Assets that have an equal or greater value to the Eligible Margin Assets being substituted. Eurex Clearing AG will only release or re-deliver the Eligible Margin Assets that have been substituted to the FCM Clearing Member after confirming that the substitute Eligible Margin Assets have been Actually Delivered.

#### 6.3.5 Collateral Value Decrease

- (1) If Eurex Clearing AG determines that the value of Eligible Margin Assets recorded in an FCM Client Margin Account for any FCM Clearing Member has decreased due to changes in the market value of the Eligible Margin Assets or to changes in foreign exchange rates used to calculate the value ("**Collateral Value Decrease**"), Eurex Clearing AG shall be entitled to demand that an FCM Clearing Member furnish additional Eligible Margin Assets to Eurex Clearing AG up to the amount of the Collateral Value Decrease ("**Collateral Call**").
- (2) In case of the occurrence of a Termination Event or Insolvency Termination Event with respect to the FCM Clearing Member, and if the FCM Clearing Member did not furnish additional Eligible Margin Assets to Eurex Clearing AG to meet the Collateral Call or the Collateral Value Decrease occurs after such Termination Event or Insolvency Termination Event, Eurex Clearing AG shall reduce pro rata the legally segregated value of Eligible Margin Assets recorded in each FCM Client Margin Sub-Account (including any linked Assumed Allocation Sub-Account, if applicable), the FCM Client Unallocated Excess Sub-Account, and the FCM Client Buffer Sub-Account.

#### 6.4 LSOC Without Excess Model

The provisions of this Number 6.4 shall apply with respect to an FCM Client Margin Account with respect to which the FCM Clearing Member made the election that the FCM Clearing Member is not allowed to maintain Excess Margin in an FCM Client Margin Sub-Account on a day-to-day basis ("**LSOC Without Excess Model**").

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#### 6.4.1 Restriction on Excess Margin in FCM Client Margin Sub-Accounts

- (1) An FCM Clearing Member is not permitted to maintain Excess Margin in any FCM Client Margin Sub-Account on a day-to-day basis, but an FCM Client Margin Sub-Account may maintain Excess Margin on an intraday basis.
- (2) If any Excess Margin is attributable to an FCM Client Margin Sub-Account following a close of the end-of-day clearing cycle, Eurex Clearing AG shall transfer such Excess Margin to the FCM Client Unallocated Excess Sub-Account of the relevant FCM Client Margin Account on the morning of the following Business Day, whereupon such Excess Margin becomes FCM Client Unallocated Excess.
- (3) If Eurex Clearing AG determines intra-day that any Excess Margin is attributable to an FCM Client Margin Sub-Account, the FCM Clearing Member may request Eurex Clearing AG to transfer such Excess Margin to the corresponding FCM Client Unallocated Excess Sub-Account of the relevant FCM Client Margin Account, whereupon such Excess Margin becomes FCM Client Unallocated Excess. By virtue of making such request, the FCM Clearing Member is deemed to represent to Eurex Clearing AG that the request complies with the CFTC Regulations.
- (4) If at any time an FCM Clearing Member furnishes Eligible Margin Assets to Eurex Clearing AG on behalf of an FCM Client in an amount that would cause the FCM Client's FCM Client Margin Sub-Account to contain Excess Margin, Eurex Clearing AG may reject the deposit of such Excess Margin or immediately transfer such Excess Margin back to the FCM Clearing Member. If Eurex Clearing AG does not take either of those actions, and accepts the deposit, it will reclassify and record the Excess Margin as FCM Client Unallocated Excess in the FCM Client Unallocated Excess Sub-Account.

#### 6.4.2 FCM Client Buffer

- (1) If the applicable Margin Requirement with respect to the relevant FCM Client Transaction Account(s) exceeds the relevant FCM Client Margin Sub-Account Balance for such FCM Client Transaction Account(s) ("**FCM Client Margin Shortfall**"), Eurex Clearing AG is permitted to apply any portion of the FCM Client Buffer carried in the FCM Client Buffer Sub-Account in the same FCM Client Margin Account as the FCM Client Margin Sub-Account to satisfy the FCM Client Margin Shortfall (the "**Encumbered FCM Client Buffer**").
- (2) Eurex Clearing AG may not at any time apply any portion of the FCM Client Buffer with respect to an FCM Client Margin Sub-Account in an amount that would cause the sum of the applicable FCM Client Margin Sub-Account Balance and the Encumbered FCM Client Buffer applicable to such FCM Client Margin Sub-Account at such time (if any) to exceed the amount of the applicable FCM Client Margin Requirement. In the event that any such excess exists (e.g., due to a decrease in the margin required, crediting additional Eligible Margin Assets attributable to such FCM Client, or otherwise) with respect to an FCM Client Margin Sub-Account, Eurex



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Clearing AG shall reduce the amount of Encumbered FCM Client Buffer applicable to such FCM Client in an amount sufficient to remove any such excess; thereupon the reduced portion of Encumbered FCM Client Buffer again constitutes unencumbered FCM Client Buffer.

### 6.4.3 Margin Calls; Application of FCM Client Buffer

- (1) Eurex Clearing AG calculates the FCM Client Margin Requirement(s) for the relevant FCM Client Transaction Account(s) (including any FCM Client Transaction Suspension Account) in accordance with Number 3.1.1. Eurex Clearing AG will notify an FCM Clearing Member of the relevant FCM Client Margin Requirement for (i) each FCM Client Transaction Account or (ii) based on a Net Margin Instruction, a set of FCM Client Transaction Accounts. Notification of an FCM Client Margin Requirement is not a Margin Call.
- (2) Eurex Clearing AG will issue a Margin Call with respect to the relevant FCM Client Transaction Account(s) at any time prior to the end of a Business Day provided that the following requirements are met:
  - (a) Eurex Clearing AG has determined there is an FCM Client Margin Shortfall with respect to the relevant FCM Client Transaction Account(s), and
  - (b) the FCM Client Margin Shortfall with respect to the relevant FCM Client Transaction Account(s) cannot be fully met by unencumbered FCM Client Buffer provided with respect to the relevant FCM Client Margin Account to which the FCM Client Transaction Account(s) is/are linked.

If such requirements are met, Eurex Clearing AG will exercise the Margin Call without regard to any FCM Client Buffer. Eurex Clearing AG will book the value of the Eligible Margin Assets Actually Delivered by the FCM Clearing Member due to a Margin Call into the relevant FCM Client Margin Sub-Account(s) covered by the Margin Call.

- (3) In the end-of-day settlement cycle, Eurex Clearing AG shall use the FCM Client Buffer to meet (in whole or in part) any Margin Call Eurex Clearing AG determines with respect to the relevant FCM Client Transaction Account(s).
  - (a) In case Eurex Clearing AG determines an FCM Client Margin Shortfall with respect to one or more FCM Client Transaction Account(s) linked to the same FCM Client Margin Account, Eurex Clearing AG will not issue a Margin Call with respect to such FCM Client Transaction Account(s), provided that the sum of all FCM Client Margin Shortfalls determined with respect to the same FCM Client Margin Account does not exceed the balance of the FCM Client Buffer Sub-Account of such FCM Client Margin Account.

Eurex Clearing AG will book the value of the Eligible Margin Assets needed to cover the FCM Client Margin Shortfall(s) with respect to the relevant FCM Client

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Transaction Account(s) into the relevant FCM Client Margin Sub-Account(s) and will reduce the FCM Client Buffer Sub-Account accordingly.

- (b) In case Eurex Clearing AG determines an FCM Client Margin Shortfall with respect to one or more FCM Client Transaction Account(s) linked to the same FCM Client Margin Account and Eurex Clearing AG determines that the sum of all FCM Client Margin Shortfalls determined with respect to the same FCM Client Margin Account exceeds the balance of the FCM Client Buffer Sub-Account of such FCM Client Margin Account, Eurex Clearing AG will issue a Margin Call with respect to such FCM Client Transaction Account(s) in an amount equal to the difference of (i) the sum of all FCM Client Margin Shortfalls and (ii) the balance of the FCM Client Buffer Sub-Account.

Eurex Clearing AG will book the value of the Eligible Margin Assets Actually Delivered by the FCM Clearing Member due to a Margin Call (including any FCM Client Buffer needed to cover the relevant FCM Client Margin Shortfall) into the relevant FCM Client Margin Sub-Account(s) and will reduce the FCM Client Buffer Sub-Account to zero.

- (4) Eurex Clearing AG may combine the Margin Call amounts for more than one of the FCM Client Margin Sub-Accounts within the same FCM Client Margin Account into a single gross aggregate Margin Call amount.
- (5) The FCM Clearing Member is required to provide Eligible Margin Assets to Eurex Clearing AG in the amount of the Margin Call, in accordance with the applicable provisions of Number 3 and this Number 6.

#### 6.4.4 FCM Client Unallocated Excess

- (1) Eurex Clearing AG shall not, at any time, apply any FCM Client Unallocated Excess to an FCM Client Margin Sub-Account or FCM Client Buffer Sub-Account.
- (2) An FCM Clearing Member may provide an instruction to Eurex Clearing AG requesting Eurex Clearing AG to book all or a portion of its FCM Client Unallocated Excess to the FCM Client Buffer Sub-Account within the corresponding FCM Client Margin Account. Eurex Clearing AG will accordingly reduce FCM Client Unallocated Excess Sub-Account Balance and increase the FCM Client Buffer Sub-Account Balance. By virtue of making such request, the FCM Clearing Member is deemed to represent to Eurex Clearing AG that the request complies with the CFTC Regulations.

#### 6.5 LSOC With Excess Model

The provisions of this Number 6.5 shall apply with respect to an FCM Client Margin Account with respect to which the FCM Clearing Member made the election that the FCM Clearing Member is permitted to maintain Excess Margin in FCM Client Margin Sub-Accounts on a day-to-day basis ("**LSOC With Excess Model**").

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### 6.5.1 Collateral Value Reports

- (1) The FCM Clearing Member must provide to Eurex Clearing AG, at least once each Business Day, a collateral value report (a “**Collateral Value Report**” or “**CVR**”) for each FCM Client Margin Account that is established and maintained in accordance with the LSOC With Excess Model, that instructs Eurex Clearing AG as to the appropriate allocation of the FCM Client Margin Account Collateral Balance attributable to each FCM Client Margin Sub-Account (including any FCM Client Margin Suspension Sub-Account) and the FCM Client Buffer Sub-Account within such FCM Client Margin Account.
- (2) The FCM Clearing Member must produce and submit CVRs in accordance with the CFTC Part 22 Regulations and any other Applicable Law, and such CVRs must also comply with the requirements prescribed by Eurex Clearing AG from time to time set forth in the technical description for CVRs which are published on the Eurex Clearing Website.
- (3) The FCM Clearing Member is fully responsible for all information contained in its CVRs. Eurex Clearing AG is entitled to rely fully on such information, without no obligation to conduct its own investigation as to the accuracy thereof.
- (4) Eurex Clearing AG is entitled to reject a CVR submitted with respect to an FCM Client Margin Account in the following cases:
  - (a) the CVR allocates the value of Eligible Margin Assets in a manner that would trigger a Margin Call by creating a shortfall in the FCM Client Margin Account Collateral Balance for any FCM Client Margin Sub-Account;
  - (b) the CVR reallocates the value of Eligible Margin Assets to satisfy a Margin Call in whole or in part;
  - (c) if Eurex Clearing AG determines in its discretion that allocating the value of Eligible Margin Assets in the manner provided in the CVR could cause Eurex Clearing AG to violate any Applicable Law, or
  - (d) if Eurex Clearing AG determines that any information provided in the CVR does not correspond with the setup of the FCM Clearing Member within the systems of Eurex Clearing AG.

The FCM Clearing Member and Eurex Clearing may (i) agree on additional checks by Eurex Clearing pursuant to which Eurex Clearing AG will reject a CVR or (ii) agree in a specific situation to deviate from the requirements under (a) to (d) or from any additional checks imposed under clause (i).

- (5) Eurex Clearing AG will update its applicable records in accordance with the most recent compliant version of the CVR submitted with respect to the relevant FCM Client Margin Account, which will supersede any prior CVR for such FCM Client Margin Account.

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### 6.5.2 Assumed Allocation due to a Margin Call before the submission of a CVR

- (1) When an FCM Clearing Member furnishes Eligible Margin Assets to Eurex Clearing AG with respect to an FCM Client Margin Account to satisfy a Margin Call, Eurex Clearing AG shall automatically allocate such Eligible Margin Assets among each of the FCM Client Margin Sub-Accounts within the FCM Client Margin Account with respect to which Eurex Clearing AG determined an FCM Client Margin Shortfall pro rata based on the amount of shortfall in each such FCM Client Margin Sub-Account (the “**Assumed Allocation**”).

Eurex Clearing AG shall record the value of all Eligible Margin Assets forming part of an Assumed Allocation in a sub-account of the applicable FCM Client Margin Account (the “**FCM Client Assumed Allocation Sub-Account**”).

“**FCM Client Assumed Allocation Sub-Account Balance**” means, at any particular time, the legally segregated value of the Eligible Margin Assets allocated to an FCM Client Assumed Allocation Sub-Account as determined by Eurex Clearing AG.

- (2) Eurex Clearing AG will consider any FCM Client Assumed Allocation Sub-Account Balance when determining whether a Margin Call shall be issued with respect to the relevant FCM Client Margin Account.
- (3) An FCM Clearing Member is not permitted to deliver a CVR simultaneously with its delivery or payment of Eligible Margin Assets to Eurex Clearing AG in satisfaction of a Margin Call so as to avoid the Assumed Allocation.
- (4) However, an FCM Clearing Member may subsequently deliver a CVR allocating the entire FCM Client Margin Account Collateral Value in the applicable FCM Client Margin Account and any prior Assumed Allocation shall not limit the FCM Clearing Member’s ability to allocate the FCM Client Margin Account Collateral Value in the normal course by subsequent delivery of CVRs. Whenever a new CVR is submitted by the FCM Clearing Member, the FCM Client Assumed Allocation Sub-Account Balance is reduced to zero.
- (5) Upon the occurrence of a Termination Event or an Insolvency Termination Event with respect to the FCM Clearing Member, Eurex Clearing AG shall treat the Assumed Allocation as part of the FCM Client Margin Sub-Account Balance of the relevant FCM Client. The Assumed Allocation can be used in case a porting occurs with respect to the relevant FCM Client Transactions and can also be used by Eurex Clearing AG in case no porting occurs with respect to the relevant FCM Client Transactions.

### 6.5.3 FCM Client Buffer

- (1) If Eurex Clearing determines at any time prior to the end of a Business Day that the applicable Margin Requirement with respect to the relevant FCM Client Transaction Account(s) exceeds the relevant FCM Client Margin Sub-Account Balance (which with respect to this Number 6.5 includes the related FCM Client Assumed Allocation

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Sub-Account Balance as a component) for such FCM Client Transaction Account(s) (“**FCM Client Margin Shortfall**”), Eurex Clearing AG is permitted to apply any portion of the FCM Client Buffer carried in the FCM Client Buffer Sub-Account in the same FCM Client Margin Account as the FCM Client Margin Sub-Account to satisfy the FCM Client Margin Shortfall (the “**Encumbered FCM Client Buffer**”).

- (2) Eurex Clearing AG will calculate the Margin Requirement for the relevant FCM Client Transaction Account(s) for the end-of-day settlement cycle and issue a Margin Call for the corresponding FCM Client Margin Sub-Account without regard to any Encumbered FCM Client Buffer applied to such FCM Client Margin Sub-Account on the Business Day to which the end-of-day Margin Call applies.

#### 6.5.4 Margin Calls; Application of FCM Client Buffer

- (1) Eurex Clearing AG calculates a separate FCM Client Margin Requirement for the relevant FCM Client Transaction Account(s) (including any FCM Client Transaction Suspension Account) in accordance with Number 3.1.1. Eurex Clearing AG will notify an FCM Clearing Member of the relevant FCM Client Margin Requirement for (i) each FCM Client Transaction Account or (ii) based on a Net Margin Instruction, a set of FCM Client Transaction Accounts. Notification of an FCM Client Margin Requirement is not a Margin Call.
- (2) Eurex Clearing AG will issue a Margin Call with respect to the relevant FCM Client Transaction Account(s) at any time prior to the end of a Business Day provided that the following requirements are met:
  - (i) Eurex Clearing AG has determined there is an FCM Client Margin Shortfall with respect to the relevant FCM Client Transaction Account(s), and
  - (ii) the FCM Client Margin Shortfall with respect to the relevant FCM Client Transaction Account(s) cannot be fully met by unencumbered FCM Client Buffer provided with respect to the relevant FCM Client Margin Account to which the FCM Client Account(s) is/are linked.

If such requirements are met, Eurex Clearing AG will exercise the Margin Call without regard to any FCM Client Buffer. Eurex Clearing AG will initially book the value of the Eligible Margin Assets Actually Delivered by the FCM Clearing Member due to a Margin Call into the relevant FCM Client Assumed Allocation Sub-Account.

- (3) In the end-of-day settlement cycle, Eurex Clearing AG will issue a Margin Call with respect to the relevant FCM Client Transaction Account(s), if Eurex Clearing determines there is an FCM Client Margin Shortfall with respect to such FCM Client Transaction Account(s) without regard to any FCM Client Buffer.

Eurex Clearing AG will initially book the value of the Eligible Margin Assets Actually Delivered by the FCM Clearing Member due to a Margin Call into the relevant FCM Client Assumed Allocation Sub-Account(s).

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- (4) Eurex Clearing AG may combine the Margin Call amounts for more than one FCM Client Margin Sub-Accounts within the same FCM Client Margin Account into a single gross aggregate Margin Call amount.
- (5) The FCM Clearing Member is required to provide Eligible Margin Assets to Eurex Clearing AG in the amount of the Margin Call, in accordance with the applicable provisions of Number 3 and this Number 6.

#### **6.5.5 FCM Client Unallocated Excess**

- (1) An FCM Clearing Member may not deliver additional Eligible Margin Assets to Eurex Clearing AG for the purpose of allocating such Eligible Margin Assets to the FCM Client Unallocated Excess Sub-Account.
- (2) An FCM Clearing Member may deliver a CVR to Eurex Clearing AG that has the effect of allocating all or a portion of the FCM Client Unallocated Excess to the FCM Client Buffer Sub-Account within the same FCM Client Margin Account.

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## 7 Fees

On the basis of its price list in effect (the “**Price List of Eurex Clearing AG**” (*Preisverzeichnis der Eurex Clearing AG*)), which will be published in accordance with Number 15.1, Eurex Clearing AG will charge to its FCM Clearing Members (i) a one-time fee upon conclusion of the first FCM Clearing Agreement, (ii) an annual fee for the granting of an FCM Clearing License, payable by the FCM Clearing Member, as applicable, on January 31 of each year, and (iii) further fees for certain actions and Swap Transactions, as specified in the Price List of Eurex Clearing AG. The Price List of Eurex Clearing AG shall form part of the FCM Clearing Conditions.

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## **8 Default Fund**

Eurex Clearing AG maintains the Default Fund. Special provisions governing an FCM Clearing Member's obligations to contribute to the Default Fund are set forth in the FCM Default Rules. Certain matters pertaining to the rights and obligations of Eurex Clearing AG and FCM Clearing Members are also set forth in the FCM Default Rules.



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## 9 Termination Rules with respect to the FCM Clearing Member

Upon the occurrence of certain termination or insolvency events with respect to an FCM Clearing Member, Eurex Clearing AG may issue a Declaration of Termination (as defined in Number 9.2.3), terminate and liquidate Swap Transactions and realize and apply Eligible Margin Assets to payment of Difference Claims (as defined Number 9.5.2), or transfer FCM Client Transactions, as further provided for in this Number 9.

### 9.1 Application and Netting Sets

The provisions set forth in this Number 9 apply upon the occurrence of a Termination Event or Insolvency Termination Event with respect to an FCM Clearing Member.

The term “**Netting Set**” refers to

- (1) all Own Transactions in the FCM Clearing Member Own Transaction Account of the FCM Clearing Member, which constitute a single Netting Set (“**FCM Clearing Member Netting Set**”), and
- (2) all FCM Client Transactions in the relevant FCM Client Transaction Account(s) for each FCM Client (including, as applicable, any FCM Client Transaction Suspension Account); the FCM Client Transactions booked to a FCM Client Transaction Account or, based on a Net Margin Instruction, set of relevant FCM Client Transaction Accounts (as applicable) constitute a separate netting set (each an “**FCM Client Netting Set**”).

### 9.2 Termination Events, Insolvency Termination Event, Suspension of Clearing, and Declaration of Termination

#### 9.2.1 Termination in case of the occurrence of Termination Events

##### (1) Termination Events:

Each of the following events constitutes a termination event with respect to an FCM Clearing Member (each a “**Termination Event**”):

##### (a) Failure to Pay; Failure to Deliver Eligible Margin Assets or Failure to pay Variation Settlement Amounts

The FCM Clearing Member fails to pay any amount due under the FCM Clearing Conditions to Eurex Clearing AG or fails to deliver any Eligible Margin Assets to Eurex Clearing AG in respect of a due request for delivery of Eligible Margin Assets in respect of Initial Margin or, if applicable, Supplementary Margin or to meet a Collateral Call, or fails to pay a due request for Variation Settlement.

##### (b) Failure to comply with FCM Clearing Conditions

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The FCM Clearing Member fails to comply with any of its obligations under the FCM Clearing Agreement (incorporating the FCM Clearing Conditions) or is in breach of any of its representations given in an FCM Clearing Agreement.

(c) **Failure to comply with Clearing License prerequisites**

The FCM Clearing Member is no longer in compliance with the relevant prerequisites for its FCM Clearing License set forth in Number 2.2.

(d) **Repudiation or objection to amendments to the FCM Clearing Conditions**

The FCM Clearing Member (i) repudiates any of the terms and conditions of the FCM Clearing Agreement or the FCM Clearing Conditions or (ii) objects to an amendment to the FCM Clearing Agreement or the FCM Clearing Conditions and Eurex Clearing AG cannot reasonably be expected to continue its relationship with such FCM Clearing Member, in particular, if such objections would lead to different versions of the FCM Clearing Conditions being applicable to several FCM Clearing Members, and the application of different versions of the FCM Clearing Conditions would not be technically feasible.

(e) **Insolvency related Events**

Any action, legal proceedings or other procedure or step is taken in relation to any of the following events or any of the following events occurs in relation to the FCM Clearing Member:

- (aa) any event which constitutes a cause for the initiation of insolvency proceedings;
- (bb) any preliminary insolvency proceedings initiated by the insolvency court by ordering protection measures prior to the commencement of insolvency proceedings;
- (cc) the filing of an involuntary petition to commence a bankruptcy case against the FCM Clearing Member under Subchapter IV of Chapter 7 of the U.S. Bankruptcy Code, 11 U.S.C. § 101 et seq; or
- (dd) any other filing of a petition to commence insolvency proceedings against the FCM Clearing Member.

(f) **Violation of Regulatory Provisions**

Non-compliance with regulatory requirements by the FCM Clearing Member, provided that Eurex Clearing AG has determined in its reasonable opinion that such non-compliance may materially impair the FCM Clearing Member's proper fulfilment of the obligations under the FCM Clearing Agreement.

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(g) **Moratorium**

Any administrative order, court ruling, legal act or any other action issued by the competent regulatory authorities, any court, the government or any other administrative body with respect to the FCM Clearing Member that constitute the imposition of a moratorium (or a similar measure) resulting in a (temporary) ban on payments or other disposals by such FCM Clearing Member for a specific period of time (moratorium).

(h) **Restructuring Proceedings and Measures**

The commencement of any other restructuring or reorganization proceedings or the application of any supporting measures, actions or tools in accordance with the laws applicable to the Clearing Member, provided that such applicable laws allow the exercise of termination rights.

(i) **Change in Law and other similar Causes**

(aa) Any change takes place in the laws of the United States or other laws applicable to the FCM Clearing Member, or the official interpretation or application of such laws which, in the reasonable opinion of Eurex Clearing AG, have a material adverse impact on the interests or services of Eurex Clearing AG under the FCM Clearing Conditions or the interests of the other FCM Clearing Members (or Non-FCM Clearing Members), or

(bb) any similar event occurs having a similar adverse impact on the interests or services of Eurex Clearing AG under the FCM Clearing Conditions or the interests of other FCM Clearing Members (or Non-FCM Clearing Members).

(2) **Right to suspend Clearing upon occurrence of a Termination Event**

Upon the occurrence of a Termination Event or if any of the following events occurs with respect to an FCM Clearing Member:

- (a) the existence of an unremedied breach by the FCM Clearing Member of its FCM Clearing Agreement with Eurex Clearing AG, except where such breach is minor, technical or administrative in nature in the reasonable opinion of Eurex Clearing AG;
- (b) a determination is made by Eurex Clearing AG that a limitation or suspension of Clearing is necessary for it to contain its exposure to the FCM Clearing Member (including in respect of the FCM Client Transaction Accounts and FCM Clearing Margin Sub-Accounts for its FCM Clients);
- (c) the suspension or termination (other than a voluntary termination) of the FCM Clearing Member's membership in another clearing house, provided that the circumstances relating to that suspension or termination are, in Eurex

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Clearing AG's reasonable opinion, material to the management of the risk of Eurex Clearing AG, and that Eurex Clearing AG first consults or attempts to consult with the FCM Clearing Member and the competent regulatory authorities;

- (d) the commencement of Disciplinary Procedures pursuant to the Disciplinary Procedures Rules, in each case as defined in Chapter 1 Part 1 Number 14 of the Clearing Conditions, against the FCM Clearing Member; or
- (e) any other event in respect of the FCM Clearing Member that could materially impact the ability of that FCM Clearing Member to perform its obligations under the FCM Clearing Conditions and the relevant FCM Clearing Agreement,

Eurex Clearing AG may (taking into account the interests of the FCM Clearing Member and its FCM Clients and provided that such action constitutes a proportionate and reasonable action), one or more times, suspend or limit the Clearing of Own Transactions and FCM Client Transactions.

Eurex Clearing AG shall notify the FCM Clearing Member and attempt to notify all FCM Clients of such FCM Clearing Member of the decision to suspend or limit the Clearing. Eurex Clearing AG shall specify in the notification a reasonable period of time during which such suspension or limitation shall apply. The provisions under Number 9.2.4 shall apply accordingly.

Furthermore, if Eurex Clearing AG so demands, the relevant FCM Clearing Member shall, at the FCM Clearing Member's own expense, provide such information and evidence as Eurex Clearing AG, in its reasonable opinion, may deem necessary to conduct an appropriate investigation of the facts and circumstances relating to a Termination Event or any of the events listed above in this Number 9.2.1 Paragraph (2).

### (3) **Delivery of Grace Period Notice**

If a Termination Event has occurred and is continuing with respect to an FCM Clearing Member, Eurex Clearing AG may give written notice thereof to the FCM Clearing Member and designate a reasonable grace period to remedy the relevant Termination Event (the "**Grace Period**"), which may be extended by Eurex Clearing AG from time to time, (the "**Grace Period Notice**").

- (a) If the Termination Event has been remedied to Eurex Clearing AG's satisfaction by the end of the Grace Period, Eurex Clearing AG shall inform the FCM Clearing Member thereof.
- (b) If Eurex Clearing AG determines in its discretion that the Termination Event has not been satisfactorily remedied by the end of the Grace Period, Eurex Clearing AG shall be entitled to deliver a Declaration of Termination (as defined in Number 9.2.3) to the FCM Clearing Member.

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(4) **Grace Period unreasonable**

If a Termination Event has occurred and is continuing with respect to an FCM Clearing Member and if, taking into account all relevant circumstances of the specific case, Eurex Clearing AG determines in its discretion that it would be unreasonable to set a Grace Period or if the relevant Termination Event cannot be remedied, Eurex Clearing AG shall also be entitled to deliver a Declaration of Termination immediately.

(5) **Disciplinary Procedures**

Where Eurex Clearing AG has commenced Disciplinary Procedures against an FCM Clearing Member with respect to an Alleged Breach (as defined in the Disciplinary Procedures Rules), Eurex Clearing AG shall for as long as such Disciplinary Procedures are continuing, refrain from delivering a Declaration of Termination to such FCM Clearing Member on the basis of those facts that have led to the determination of the Alleged Breach by Eurex Clearing AG.

## 9.2.2 **Insolvency Termination Event**

An “**Insolvency Termination Event**” occurs with respect to an FCM Clearing Member, when:

- (1) an order for relief has been entered in a bankruptcy case commenced by or against the FCM Clearing Member under Subchapter IV of Chapter 7 of the U.S. Bankruptcy Code, 11 U.S.C. § 101 et seq.,
- (2) if the FCM Clearing Member is a member of the Securities Investor Protection Corporation, a liquidation proceeding has been commenced under the U.S. Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq., against the FCM Clearing Member, or
- (3) a proceeding has been commenced against the FCM Clearing Member under Title II of the U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 12 U.S.C. § 5301 et seq.

## 9.2.3 **Declaration of Termination**

- (1) Submission of Declaration of Termination

If

- (a) a Termination Event has occurred and is continuing with respect to the FCM Clearing Member and a Grace Period Notice was delivered to the FCM Clearing Member and the Termination Event has not been remedied to Eurex Clearing AG's satisfaction by the end of the Grace Period, or

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- (b) a Termination Event has occurred and is continuing with respect to the FCM Clearing Member and Eurex Clearing AG determines in its discretion that it would be unreasonable to set a Grace Period or if the relevant Termination Event cannot be remedied,

Eurex Clearing AG shall be entitled to issue a declaration of termination (the “**Declaration of Termination**”) with respect to the FCM Clearing Member (the “**Affected FCM Clearing Member**”) specifying the termination date and time (“**FCM Clearing Member Termination Time**”) with respect to the FCM Clearing Member.

In case of the occurrence of an Insolvency Termination Event with respect to the FCM Clearing Member, Eurex Clearing AG shall issue a Declaration of Termination immediately after acquiring knowledge of the occurrence of the Insolvency Termination Event with respect to the FCM Clearing Member and specifying the FCM Clearing Member Termination Time with respect to the FCM Clearing Member.

As soon as reasonably practicable, Eurex Clearing AG will publish that it has submitted a Declaration of Termination with respect to the FCM Clearing Member on the Eurex Clearing Website.

(2) Consequences for Own Transactions of the FCM Clearing Member

As of the FCM Clearing Member Termination Time, the following consequences apply to the Affected FCM Clearing Member with respect to its Own Transactions:

- (a) the Clearing of new Own Transactions by the Affected FCM Clearing Member is immediately suspended;
- (b) the payment of Variation Settlement amounts to the Affected FCM Clearing Member with respect to its Own Transactions is immediately suspended; and
- (c) all Own Transactions are treated as if they are terminated as of the applicable FCM Clearing Member Termination Time, and Eurex Clearing AG shall calculate the Difference Claim with respect thereto in accordance with Number 9.5.2.

(3) Consequences for FCM Client Transactions

- (a) As of the FCM Clearing Member Termination Time, the following consequences apply to the Affected FCM Clearing Member with respect to the FCM Client Transactions:
  - (aa) the Clearing of new FCM Client Transactions of all FCM Clients of the Affected FCM Clearing Member is immediately suspended; and
  - (bb) the payment of Variation Settlement amounts to the Affected FCM Clearing Member with respect to all FCM Client Transactions of all FCM Clients is immediately suspended.

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- (b) As of the FCM Client Termination Time, Eurex Clearing AG may separately for each FCM Client Netting Set exercise one of the following rights:
- (aa) its right to treat FCM Client Transactions under the relevant Netting Set as if they are terminated by issuing an FCM Client Declaration of Termination pursuant to Number 9.3, and to calculate the Difference Claim with respect to such Netting Set in accordance with Number 9.5.2; or
  - (bb) transfer all FCM Client Transactions under the relevant FCM Client Netting Set (including the relevant Eligible Margin Assets) to one or more other FCM Clearing Members pursuant to Number 9.4,

Any action taken by Eurex AG pursuant to Paragraph (b) (aa) or (bb) of this Paragraph (3) regarding the liquidation or porting of FCM Client Transactions and Eligible Margin Assets booked in any FCM Client Margin Account shall be taken in its reasonable discretion, in accordance with this Number 9 and the FCM Default Rules, and in compliance with the CEA, CFTC Regulations and (as applicable) the U.S. Bankruptcy Code and related CFTC Part 190 Regulations.

- (4) Effective upon the FCM Clearing Member Termination Time, all FCM Clearing Licenses of the Affected FCM Clearing Member are terminated automatically.

#### 9.2.4 Notifications

Eurex Clearing AG will notify the CFTC and BaFin without undue delay after the occurrence of a Termination Event or Insolvency Termination Event with respect to an FCM Clearing Member.

Eurex Clearing AG will also inform the Management Board of Clearstream Banking AG of the occurrence of a Termination Event or Insolvency Termination Event.

### 9.3 Termination of FCM Client Transactions

Upon the occurrence of a Termination Event or Insolvency Termination Event with respect to the FCM Clearing Member, if Eurex Clearing AG, in its sole discretion, exercises its termination right under Number 9.2.3 Paragraph (3) (b) (aa) with respect to FCM Client Transactions under any FCM Client Netting Set, it shall issue a declaration of termination to the FCM Clearing Member (the “**FCM Client Declaration of Termination**”) specifying the termination date and time (“**FCM Client Termination Time**”) on which all FCM Client Transactions under the FCM relevant Client Netting Set are treated as if they are terminated.

### 9.4 Porting of FCM Client Transactions

#### 9.4.1 Reasonable Efforts to Port

- (1) Following the Declaration of Termination with respect to the FCM Clearing Member, Eurex Clearing AG will use reasonable efforts to transfer FCM Client Transactions in

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the relevant FCM Client Transaction Account(s), along with Eligible Margin Assets as provided in Number 9.4.4, to one or more other FCM Clearing Members, subject to compliance with the FCM Clearing Member Replacement Requirements.

- (2) Eurex Clearing AG may provide for such procedures for the transfer of assets and positions that it deems necessary taking into account Applicable Law with respect to any such transfer.
- (3) Eurex Clearing AG reserves its termination right with respect to FCM Client Transactions under the relevant FCM Client Netting Set if it believes that the Transfer of such transactions would introduce an unacceptable level of risk or volatility to the Clearing or to Eurex Clearing AG.
- (4) If the Affected FCM Clearing Member is subject to an Insolvency Termination Event, Eurex Clearing AG will seek to coordinate with the CFTC and the bankruptcy trustee (or comparable person responsible for administering the proceeding) with respect to the transfer of any FCM Client Transactions and Eligible Margin Assets allocated to the relevant FCM Client Margin Account or FCM Client Margin Sub-Account. In case of the occurrence of an Insolvency Termination Event with respect to the FCM Clearing Member, Eurex Clearing AG may deviate from the provisions and processes described in this Number 9.4 below if so required by the CFTC and the bankruptcy trustee.

#### 9.4.2 Replacement Notice

- (1) Unless Eurex Clearing AG has exercised its termination right with respect to FCM Client Transactions under the relevant FCM Client Netting Set pursuant to Number 9.2.3 Paragraph (3) (b) (aa) and Number 9.3, Eurex Clearing AG may upon the issuance of the Declaration of Termination with respect to the FCM Clearing Member give notice to all other FCM Clearing Members of Eurex Clearing AG and all FCM Clients of the Affected FCM Clearing Member, and to all Non-FCM Clearing Members, in accordance with Number 15.1 Clause (ii) of the occurrence of the Termination Event or Insolvency Termination Event with respect to the FCM Clearing Member and that Eurex Clearing AG is initiating the porting process with respect to the FCM Client Transactions of the FCM Clearing Member (the “**Replacement Notice**”).
- (2) If no Replacement FCM Clearing Member can be identified or if a potential Replacement FCM Clearing Member does not fulfil the FCM Clearing Member Replacement Requirements with respect to an FCM Client Netting Set until 13:00 p.m. CET on the Business Day following the date on which the FCM Clearing Member Termination Time occurs (the “**Replacement Cut-Off Time**”), Eurex Clearing AG shall exercise its termination right with respect to such FCM Client Netting Set pursuant to Number 9.2.3 Paragraph (3) (b) (aa) and Number 9.3, in accordance with Number 9.5.



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Eurex Clearing AG may extend the Replacement Cut-Off Time to facilitate porting of FCM Client Transactions by giving notice to the Affected FCM Clearing Member and all FCM Clients of the Affected FCM Clearing Member, and all other FCM Clearing Members, and to all Non-FCM Clearing Members, in accordance with Number 15.1 Clause (ii).

### 9.4.3 Transfer of FCM Client Transactions

- (1) If a potential FCM Clearing Member is willing to accept the transfer of FCM Client Transactions in one or more FCM Client Transaction Accounts, and Eurex Clearing AG determines that all FCM Clearing Member Replacement Requirements in respect of the relevant FCM Client Transactions are fulfilled by the end of the Replacement Cut-Off Time, the FCM Client Transactions, and all rights and obligations of the Affected FCM Clearing Member arising from such FCM Client Transactions, shall be transferred (a “**Transfer**”) to the new FCM Clearing Member (the “**Replacement FCM Clearing Member**”).

If one or more FCM Clearing Member Replacement Requirements in respect of the relevant FCM Client Transactions are not fulfilled by the end of the Replacement Cut-Off Time, Eurex Clearing AG shall exercise its termination right with respect to such FCM Client Netting Set pursuant to Number 9.2.3 Paragraph (3) (b) (aa) and Number 9.3, in accordance with Number 9.5. Eurex Clearing AG shall inform the FCM Clearing Member and the relevant FCM Client(s) on the non-fulfilment of the FCM Clearing Member Replacement Requirements immediately.

- (2) “**FCM Clearing Member Replacement Requirements**” means all of the following requirements:
- (a) the Replacement FCM Clearing Member is an FCM Clearing Member;
  - (b) the Replacement FCM Clearing Member has agreed with Eurex Clearing AG in writing on the Transfer pursuant to this Number 9.4 in form and substance satisfactory to Eurex Clearing AG;
  - (c) the Replacement FCM Clearing Member has represented to Eurex Clearing AG that it meets the minimum funding requirements of CFTC Regulation 1.17 (a) (4);
  - (d) the Replacement FCM Clearing Member has (a) provided Eurex Clearing AG with sufficient Eligible Margin Assets to cover any shortfall in Eligible Margin Assets or in any Variation Settlement Amount in respect of all FCM Client Transactions to which the Transfer relates or (b) committed itself to Eurex Clearing AG to provide the relevant amount of Eligible Margin Assets or Variation Settlement Amounts without undue delay following the Transfer; and

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- (e) if the Affected FCM Clearing Member is the subject of an Insolvency Termination Event, the CFTC or bankruptcy trustee (or comparable party administering the proceeding) has consented (or not disapproved) the Transfer.

Eurex Clearing AG may, in its free discretion, waive any of the FCM Clearing Member Replacement Requirements in whole or in part to the extent alternative arrangements have been agreed on with the relevant Replacement FCM Clearing Member with respect to the relevant FCM Client Transactions to be transferred.

- (3) As a result of a Transfer, the Affected FCM Clearing Member will be released from all its obligations in relation to the transferred FCM Client Transactions and the Replacement FCM Clearing Member shall have assumed such obligations in relation to such FCM Client Transactions.

#### 9.4.4 Transfer of Eligible Margin Assets

- (1) Eurex Clearing AG will determine the portion of the value of Eligible Margin Assets booked on the FCM Client Margin Account to which the relevant FCM Client is allocated which may be transferred to the Replacement FCM Clearing Member ("**Transferred Portion**") in connection with a Transfer of FCM Client Transactions.
- (2) With respect to Eligible Margin Assets transferred to a Replacement FCM in the form of securities, the following applies:
- (a) The Affected FCM Clearing Member hereby irrevocably authorizes Eurex Clearing AG to transfer to the Replacement FCM Clearing Member any or all Eligible Margin Assets in the form of securities that are credited to the relevant FCM Client Pledged Securities Account at the time when the FCM Clearing Member Requirements are fulfilled and to issue all other statements and to take all other acts on behalf of the Affected FCM Clearing Member that Eurex Clearing AG considers necessary or expedient to effect the transfer of the relevant securities to the Replacement FCM Clearing Member. Such transfer shall be without prejudice to the security interest granted to Eurex Clearing AG in the relevant securities.
- (b) Eurex Clearing AG and the Affected FCM Clearing Member agree that, following the transfer of any Eligible Margin Assets in the form of securities to the Replacement FCM Clearing Member, the security purpose of the security interests held by Eurex Clearing AG in such securities shall also extend to all present and future claims of Eurex Clearing AG against the Replacement FCM Clearing Member with respect to the transferred FCM Client Transactions.
- (c) If a transfer of Eligible Margin Assets in the form of securities to the securities account of the Replacement FCM Clearing Member is impossible or impractical due to restrictions of the securities depository bank, custodian or central securities depository used by the Replacement FCM Clearing Member or for other reasons, the Affected FCM Clearing Member hereby irrevocably

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authorizes (*bevollmächtigt*) Eurex Clearing AG to liquidate on behalf of the Replacement FCM Clearing Member such Eligible Margin Assets in the form of securities and to appropriate the proceeds of the realization of such securities and such proceeds shall then constitute, and be treated as, Eligible Margin Assets in the form of cash with respect to the relevant FCM Client Margin Account.

- (3) After the Transfer, Eurex Clearing AG will make appropriate changes to its records with respect to the transferred Eligible Margin Assets. Following such changes to the records, the transferred Eligible Margin Assets shall be deemed to constitute Eligible Margin Assets that have been provided by the Replacement FCM Clearing Member with respect to the transferred FCM Client Transactions.

## 9.5 Consequences of a Termination

If

- (1) an FCM Clearing Member Termination Time has occurred with respect to all Own Transactions under the FCM Clearing Member Netting Set of the Affected FCM Clearing Member, or
- (2) an FCM Client Termination Time has occurred with respect to FCM Client Transactions under the relevant FCM Client Netting Set for any FCM Client of the Affected FCM,

the following provisions in this Number 9.5 shall apply.

### 9.5.1 As if Termination

All Swap Transactions forming an FCM Clearing Member Netting Set or an FCM Client Netting Set shall be treated as if they are terminated as of the Termination Time or the FCM Client Termination Time, as applicable. Eurex Clearing AG shall be entitled to liquidate the Swap Transactions in the relevant Netting Set in accordance with the FCM Default Rules, and to calculate the Difference Claim with respect thereto.

### 9.5.2 Difference Claim

Upon the occurrence of an FCM Clearing Member Termination Time or FCM Client Termination Time, Eurex Clearing AG shall determine a separate difference claim for the FCM Clearing Member Netting Set and each FCM Client Netting Set on the Last Valuation Date (each a "**Difference Claim**") by way of combining the Single Transaction Amounts of all Swap Transactions forming part of the relevant FCM Clearing Member Netting Set or FCM Client Netting Set.

- (1) The final amount of the Difference Claim resulting from such combination shall (i) if it is a positive figure, be owed by Eurex Clearing AG to the FCM Clearing Member (in case of an FCM Client Netting Set, on behalf of the relevant FCM Client), or (ii) if it is

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a negative figure, shall be owed by the FCM Clearing Member (in case of an FCM Client Netting Set, on behalf of the relevant FCM Client) to Eurex Clearing AG.

- (2) The Difference Claim shall be denominated in the Clearing Currency or any other currency last agreed in writing between Eurex Clearing AG and the FCM Clearing Member (the "**Termination Currency**").
- (3) For the purpose of the determination of the Difference Claim:
  - (i) The "**DMP Valuation Date**" shall, with respect to a Swap Transaction, be any day on which a Liquidation Price is determined for such Swap Transaction. The latest DMP Valuation Date with respect to Swap Transactions under the relevant FCM Clearing Member Netting Set or FCM Client Netting Set shall be the "**Last Valuation Date**". Such Last Valuation Date shall occur upon completion of the default management process pursuant to this Number 9 and the FCM Default Rules.
  - (ii) The "**Single Transaction Amount**" shall be determined with respect to each Swap Transaction under the relevant FCM Clearing Member Netting Set or FCM Client Netting Set that is deemed terminated as of the FCM Clearing Member Termination Time or FCM Client Termination Time and shall equal its Liquidation Price as of the relevant DMP Valuation Date.

In case a group of Swap Transactions is liquidated in a way that Eurex Clearing AG cannot determine a Single Transaction Amount for each individual Swap Transaction in that group of Swap Transactions, Eurex Clearing AG may include the price received for the respective group of Swap Transactions in the respective Difference Claim.

When making such calculation, (a) any amount due to be paid as a primary obligation under the relevant Swap Transaction, but unpaid at the relevant DMP Valuation Date, and (b) the value of any assets due to be delivered as a primary obligation under the relevant Swap Transaction, but not delivered at the relevant DMP Valuation Date (each an "**Unpaid Amount**"), shall be taken into account.

- (iii) "**Liquidation Price**" means, with respect to a Swap Transaction,
  - (a) the price of a relevant replacement transaction entered into by Eurex Clearing AG with respect to the relevant Swap Transaction during and as part of the default management process pursuant to the FCM Default Rules at the latest on the fifth Business Day after the FCM Clearing Member Termination Date, or, to the extent this is required for a value-preserving liquidation, use the price of such replacement transactions entered into by Eurex Clearing AG with respect to the relevant Swap Transaction on any Business Day after the fifth Business Day after the FCM Clearing Member Termination Date has occurred;

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- (b) subject to Sub-Paragraph (c) below, if Eurex Clearing AG does not enter into a replacement transaction during and as part of the default management process pursuant to Number 4 of the FCM Default Rules, the last available Market Price for such Swap Transaction on the date on which the FCM Clearing Member Termination Time or FCM Client Termination Time has occurred;
  - (c) if Eurex Clearing AG does not enter into a replacement transaction during and as part of the default management process pursuant to Number 4 of the FCM Default Rules and a Liquidation Group Deficiency (as defined in Number 9.6) occurs in relation to such Swap Transaction, the amount corresponding to the relevant Single Valuation Price for such Swap Transaction; or
  - (d) when determining the Liquidation Price pursuant to Paragraph (a) to (c), Eurex Clearing AG will consider (A) all relevant costs and expenses incurred by Eurex Clearing AG during the respective default management process, in particular relevant DM Hedging Transaction Costs (including potential profits and losses arising from such DM Hedging Transactions), and (B) all payment obligations arising from the Swap Transaction between Eurex Clearing AG and another FCM Clearing Member or Clearing Member corresponding to the relevant terminated Swap Transaction in the time as of the Clearing Member Termination Time until the entering into the relevant replacement transaction during and as part of the default management process pursuant to Number 4 of the FCM Default Rules
- (4) **“Market Price”** means:
- (a) the market price for the relevant Swap Transaction; and
  - (b) if market events do not allow the determination of a market or exchange price in accordance with Sub-Paragraph (a) above, the price determined on the basis of a model for the valuation of the market or exchange value of the relevant Swap Transactions (which considers market risks and market prospects, inter alia, taking into account asset classes, volatility and liquidity).

### 9.5.3 Notification

Eurex Clearing AG shall notify the value of each Difference Claim determined by it to the FCM Clearing Member and, in case of an FCM Client Netting Set, to the relevant FCM Client as soon as reasonably practicable after its determination, together with reasonable detail regarding the data and information forming the basis of the determination.

### 9.5.4 Payment of Difference Claim

- (1) The Difference Claim of either Eurex Clearing AG or the FCM Clearing Member relating to the relevant FCM Clearing Member Netting Set or FCM Client Netting Set

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shall become unconditional and immediately due in the Termination Currency against the respective other party as of the end of the Last Valuation Date.

- (2) The debtor of the relevant Difference Claim shall pay the determined amount of the Difference Claim as soon as reasonably practicable following the notification by Eurex Clearing AG of the payable amount pursuant to Number 9.5.3.
- (3) The debtor of the Difference Claim shall not be obliged to pay any interest on the amount of the Difference Claim unless it is in default following the receipt of a payment reminder by the other party. Default interest shall be paid on the basis of the effective overnight interest rate applicable to the currency of the Difference Claim.

#### **9.5.5 Realization of Margin**

- (1) In case Eurex Clearing AG is, with respect to an FCM Clearing Member Netting Set or an FCM Client Netting Set, the creditor of the Difference Claim against the Affected FCM Clearing Member, Eurex Clearing AG shall, in the case of Eligible Margin Assets in the form of cash, use such cash (where applicable, in accordance with the provisions relating to Cash Trust Accounts set out in the FCM Clearing Agreement) and, in the case of Eligible Margin Assets in the form of securities, be entitled to realize its security interest granted by the Affected FCM Clearing Member in accordance with the Pledge Agreement.
- (2) Eurex Clearing AG:
  - (a) shall apply Eligible Margin Assets in the form of cash, and shall enforce and realize its security interests over all Eligible Margin Assets in the form of securities booked into the FCM Clearing Member Proprietary Margin Account and apply the proceeds thereof, in the following order of priority:
    - (aa) first, to the Difference Claim relating to the FCM Clearing Member Netting Set of the Affected FCM Clearing Member; and
    - (bb) second, (only to the extent that the FCM Client Margin is, for whatever reason, not sufficient for such purpose), in Eurex Clearing AG's discretion, to the Difference Claim relating to an FCM Client Netting Set of any FCM Client of the Affected FCM Clearing Member; and
  - (b) shall enforce and realize its security interests over all Eligible Margin Assets booked into the relevant FCM Client Margin Account and shall apply the proceeds to the Difference Claim relating to an FCM Client Netting Set of any FCM Client of the Affected FCM Clearing Member whose FCM Client Transaction Account(s) has/have been allocated to such FCM Client Margin Account within the systems of Eurex Clearing AG.

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### 9.5.6 Return of any balance owed by Eurex Clearing AG and return or release of Eligible Margin Assets after completion of the default management process

If an FCM Clearing Member Termination Time has occurred with respect to the FCM Clearing Member Own Transaction Account and an FCM Client Termination Time has occurred with respect to any FCM Client Transaction Accounts, Eurex Clearing AG shall return any balance owed by it in respect of any FCM Clearing Member Netting Set or relevant FCM Client Netting Set following the completion of the default management process with respect to the FCM Clearing Member as follows:

- (1) The Difference Claim in relation to the FCM Clearing Member Netting Set owed by Eurex Clearing AG shall be discharged by payment of the relevant amount to the Affected FCM Clearing Member.
- (2) The Difference Claim in relation to the relevant FCM Client Netting Set owed by Eurex Clearing AG shall be discharged by payment of the relevant amount to the Affected FCM Clearing Member and such payment shall constitute a return to the Affected FCM Clearing Member for the account of such FCM Client.
- (3) Any remaining pledges in respect of Eligible Margin Assets in the form of securities booked into the FCM Clearing Member Margin Account or the relevant FCM Client Margin Account shall expire or shall be released by Eurex Clearing AG.
- (4) Any remaining Eligible Margin Assets in the form of cash booked into the FCM Clearing Member Margin Account or the relevant FCM Client Margin Account shall be returned to the Affected FCM Clearing Member, in the latter case collectively for the benefit of its FCM Clients.

## 9.6 Cash Settlement with respect to DMP Cash Settlement Transactions; Establishment of DM Swap Hedging Transactions and Additional Swap Transaction; Cash Settlement of Liquidation Group Transactions

### 9.6.1 Cash settlement with respect to DMP Cash Settlement Transactions

- (1) In case of any Remaining Swap Transactions, Eurex Clearing AG shall be entitled to terminate and settle in cash DMP Cash Settlement Transactions (in whole or in part) established between Eurex Clearing AG and a FCM Clearing Member pursuant to the requirements set out below and up to a number and size which is sufficient to cover all Remaining Swap Transactions.

**“Remaining Swap Transactions”** means any Terminated Transaction, Terminated FCM Clearing Member Transaction and DM Hedging Transaction, which qualifies as Swap Transaction and which could not be covered by an Independent Trade Transaction or DM Auction Transaction pursuant to the procedures under Number 4.3 of the FCM Default Rules.

**“DMP Cash Settlement Transactions”** means the following Transactions:

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- (i) a Swap Transaction with terms identical to a Terminated Transaction or a Terminated FCM Clearing Member Transaction except that the relevant FCM Clearing Member has the opposite position than the Affected Clearing Member, the Affected ISA Direct Clearing Member or Affected FCM Clearing Member had under the Terminated Transaction or Terminated FCM Clearing Member Transaction, or
- (ii) a Swap Transaction with terms identical to a DM Hedging Transaction.

Eurex Clearing AG shall inform the FCM Clearing Member about the cash settlement without undue delay by submitting a written notice ("**Cash Settlement Notice**") specifying (i) each DMP Cash Settlement Transaction which shall be terminated and cash settled, (ii) the date and time as of which the termination and cash settlement shall become effective (such date being the "**Cash Settlement Date**" and such time being the "**Cash Settlement Time**") and (iii) the Cash Settlement Price for each DMP Cash Settlement Transaction.

- (2) The required number and size of DMP Cash Settlement Transactions to be terminated shall be shared on a pro-rata basis between all FCM Clearing Members, Clearing Members and ISA Direct Clearing Members and.

The pro-rata share shall be based on the open interest of the Clearing Member, ISA Direct Clearing Member or FCM Clearing Member in the Transaction corresponding to the relevant DMP Cash Settlement Transaction (irrespective of whether the relevant Transaction is entered into as Own Transaction or FCM Client Transaction).

The pro-rata share of DMP Cash Settlement Transactions determined for the FCM Clearing Member shall be allocated to the relevant FCM Clearing Member Own Transaction Account or FCM Client Transaction Account on which the relevant DMP Cash Settlement Transaction is booked. For the avoidance of doubt, such allocation to the relevant FCM Clearing Member Own Transaction Account or FCM Client Transaction Account shall also occur on a pro-rata basis based on the open interest of the FCM Clearing Member in the Swap Transaction corresponding the relevant DMP Cash Settlement Transactions booked on such transaction account.

Eurex Clearing AG shall use best efforts to find a fair and proportionate distribution of the pro-rata share between the relevant Clearing Members, ISA Direct Clearing Members and FCM Clearing Members.

- (3) As of the Cash Settlement Time, Eurex Clearing AG and the FCM Clearing Member shall be released from their obligations to each other under the relevant DMP Cash Settlement Transaction (provided that any outstanding obligations relating to payments and deliveries that have become due, but have not been paid or delivered on or before the Cash Settlement Time shall continue to exist).
- (4) Eurex Clearing AG shall determine a cash settlement price in the relevant product currency with respect to each DMP Cash Settlement Transaction terminated



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pursuant to Paragraph (1) (“**Cash Settlement Price**”) which shall become due and payable by Eurex Clearing AG or the FCM Clearing Member as of the end of the Cash Settlement Date.

The Cash Settlement Price shall be determined on the basis of one of the following prices in the following order:

- (i) in case a DM Auction was partially successfully with respect to a Terminated Transaction, Terminated FCM Clearing Member Transaction or DM Hedging Transaction relating to the relevant DMP Cash Settlement Transaction, the best price Eurex Clearing AG accepted in the relevant DM Auction for such Transaction,
- (ii) the last available settlement price for the relevant DMP Cash Settlement Transaction as determined by Eurex Clearing AG in accordance with the applicable provisions under the Special Conditions,
- (iii) the last available market or exchange price for the relevant DMP Cash Settlement Transaction, or
- (iv) the price determined by Eurex Clearing AG based on a model for the valuation of the market or exchange value of the relevant DMP Cash Settlement Transaction (which considers market risks and market prospects, inter alia, considering asset classes, volatility and liquidity).

## **9.6.2 DM Swap Hedging Transactions, DM Swap Auctions and Additional Swap Transactions**

In case of Remaining Swap Transactions, Eurex Clearing AG shall be entitled to either apply the measures under Number 9.6.1 or (i) establish DM Swap Hedging Transactions pursuant to Paragraph (1), (ii) conduct additional Swap DM Auctions with respect to the Remaining Swap Transactions and the DM Swap Hedging Transactions pursuant to Paragraph (2), or (iii) establish Additional Swap Transactions pursuant to Paragraph (3).

Eurex Clearing AG shall in its own discretion determine to apply either one or more of the measures described under Paragraphs (1), (2) and (3) and shall use best efforts to apply such measure(s) with the least impact for all Clearing Members, ISA Direct Clearing Members and FCM Clearing Members.

### **(1) Establishment of DM Swap Hedging Transactions**

Eurex Clearing AG shall be entitled (i) to establish DM Swap Hedging Transactions between Eurex Clearing AG and a FCM Clearing Member having open Transactions in the last three months prior to the Termination of the Affected Clearing Member, Affected ISA Direct Clearing Member or Affected FCM Clearing Member, which correspond to the relevant Remaining Swap Transactions which shall be hedged by the DM Swap Hedging Transaction, (ii) to determine the commercial terms of the DM Swap Hedging Transaction in its own discretion and the FCM Clearing Member

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hereby accepts such DM Swap Hedging Transaction as legally binding, and (iii) to book the DM Swap Hedging Transactions into the relevant FCM Clearing Member Own Transaction Account or the FCM Client Transaction Account of the FCM Clearing Member at the Hedging Price.

(a) Definitions

**“DM Swap Hedging Transactions”** means any Swap Transaction, which Eurex Clearing AG deems in its own discretion necessary to hedge the effects of the Remaining Swap Transactions.

**“Hedging Price”** means one of the following prices in the following order:

- (i) the last available settlement price for the relevant DM Swap Hedging Transaction as determined by Eurex Clearing AG in accordance with the applicable provisions under Chapter II,
- (ii) the last available market or exchange price for the relevant DM Swap Hedging Transaction, or
- (iii) the price determined by Eurex Clearing AG based on a model for the valuation of the market or exchange value of the relevant DM Swap Hedging Transaction (which considers market risks and market prospects, inter alia, considering asset classes, volatility and liquidity).

(b) Pro-Rata Share

The DM Swap Hedging Transactions shall be shared on a pro-rata basis between all FCM Clearing Members, Clearing Members and ISA Direct Clearing Members (in accordance with the Clearing Conditions).

The pro-rata share shall generally be determined on basis of the average Margin Requirement (excluding any Supplementary Margin) of the FCM Clearing Members in the last three months prior to the Termination of the Affected Clearing Member, Affected ISA Direct Clearing Member or Affected FCM Clearing Member with respect to the relevant Product Type (irrespective of whether the relevant Transaction is entered into as Own Transaction or FM Client Transaction). Eurex Clearing AG may in its own discretion consider further criteria to determine the pro-rata share (i.e. the terms of the relevant Transactions), if Eurex Clearing AG deems such criteria necessary.

Eurex Clearing AG shall use best efforts to find a fair and proportionate distribution of the DM Swap Hedging Transactions between the relevant FCM Clearing Members, Clearing Members and ISA Direct Clearing Members.

(c) Booking of DM Swap Hedging Transactions

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The pro-rata share of DM Swap Hedging Transactions determined for the FCM Mandatory Participant shall be allocated to and booked into the relevant FCM Clearing Member Own Transaction Account or FCM Client Transaction from which the Margin Requirement arises.

(d) Hedging Price

Eurex Clearing AG shall determine a Hedging Price for each DM Swap Hedging Transaction which shall become due and payable by Eurex Clearing AG or the FCM Clearing Member as of the end of the day of the receipt of the DM Swap Hedging Transaction Notice.

(e) DM Swap Hedging Transaction Notice

Eurex Clearing AG shall inform the FCM Clearing Member without undue delay about the establishment of DM Swap Hedging Transactions by submitting a written notice ("**DM Swap Hedging Transaction Notice**") specifying (i) each DM Swap Hedging Transaction, (ii) the relevant FCM Clearing Member Own Transaction Account or FCM Client Transaction Account into which each DM Swap Hedging Transaction shall be booked, and (iii) the Hedging Price for each DM Swap Hedging Transaction.

(2) **DM Swap Auctions**

Eurex Clearing AG may conduct one or more additional DM Auctions ("**DM Swap Auctions**") to establish new Swap Transaction which are - taken as a whole - (i) equivalent to the Terminated Transaction or a Terminated FCM Clearing Member Transaction or (ii) opposite to the DM Hedging Transactions or DM Swap Hedging Transactions (if any).

Such additional DM Swap Auctions shall be conducted in accordance with the provisions under Numbers 4.3.2 and 4.3.3 of the FCM Default Rules and the DM Auction Rules.

(3) **Establishment of Additional Swap Transactions**

If not all Remaining Swap Transactions and DM Swap Hedging Transactions could be fully covered by the DM Swap Auctions, Eurex Clearing AG shall be entitled (i) to establish Additional Swap Transactions between Eurex Clearing AG and a FCM Mandatory Participant, which was invited to the DM Swap Auction, (ii) to determine the commercial terms of the Additional Swap Transaction in its own discretion and the FCM Mandatory Participant hereby accepts such Additional Swap Transaction as legally binding, and (iii) to book the Additional Swap Transactions into the relevant FCM Clearing Member Own Transaction Account or FCM Client Transaction Account of the FCM Mandatory Participant at the Swap Settlement Price.

(a) Definitions

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**“Additional Swap Transactions”** means:

- (i) A Swap Transaction with terms identical to a Terminated Transaction or Terminated FCM Clearing Member Transaction which could not be covered by an DM Swap Auction, and
- (ii) A Swap Transaction with terms identical to a DM Hedging Transaction or DM Swap Hedging Transaction except that the relevant FCM Clearing Member has the opposite position than the relevant Clearing Member, ISA Direct Clearing Member or FCM Clearing Member has under the DM Hedging Transaction or DM Swap Hedging Transaction and which could also not be covered by an DM Swap Auction.

**“Swap Settlement Price”** means one of the following prices in the following order:

- (i) the last available settlement price for the relevant Additional Swap Transaction as determined by Eurex Clearing AG in accordance with the applicable provisions under Chapter II,
  - (ii) the last available market or exchange price for the relevant Additional Swap Transaction, or
  - (iii) the price determined by Eurex Clearing AG on the basis of a model for the valuation of the market or exchange value of the relevant Additional Swap Transaction (which considers market risks and market prospects, inter alia, considering asset classes, volatility and liquidity).
- (b) Pro-Rata Share

The Additional Swap Transactions shall be shared on a pro-rata basis between all FCM Mandatory Participants and Mandatory Participants (in accordance with the Clearing Conditions), which was invited were invited to the DM Swap Auction.

The pro-rata share shall generally be determined on basis of the average Margin Requirement (excluding any Supplementary Margin) of the FCM Mandatory Participant or Mandatory Participant in the last three month prior to the Termination of the Affected Clearing Member, Affected ISA Direct Clearing Member or Affected FCM Clearing Member with respect to the relevant Product Type of the Remaining Swap Transaction (irrespective of whether the relevant Swap Transaction is entered into as Own Transaction or FCM Client Transaction). Eurex Clearing AG may in its own discretion consider further criteria to determine the pro-rata share (i.e. the terms of the relevant Swap Transactions), if Eurex Clearing AG deems such criteria necessary.

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Eurex Clearing AG shall use best efforts to find a fair and proportionate distribution of the Additional Swap Transactions between the relevant Mandatory Participants and FCM Mandatory Participants.

(c) Booking of Additional Swap Transactions

The pro-rata share of the relevant Additional Swap Transaction determined for the FCM Mandatory Participant shall be allocated to and booked into the relevant FCM Clearing Member Own Transaction Account or FCM Client Transaction Account from which the Margin Requirement arises.

(d) Determination of Swap Settlement Price

Eurex Clearing AG shall determine a Swap Settlement Price for each Additional Swap Transaction which shall become due and payable by Eurex Clearing AG or the FCM Mandatory Participant as of the end of the day of the receipt of the Additional Swap Transaction Notice.

(e) Additional Swap Transaction Notice

Eurex Clearing AG shall inform the relevant FCM Mandatory Participant without undue delay about the establishment of Additional Swap Transactions by submitting a written notice (“**Additional Swap Transaction Notice**”) specifying (i) each Additional Swap Transaction, (ii) the relevant FCM Clearing Member Own Transaction Account into which the Additional Swap Transactions shall be booked, and (iii) the Swap Settlement Price for each Additional Swap Transaction.

### 9.6.3 Cash Settlement with respect to a Liquidation Group

If, at any time following the occurrence of a Realization Event, Eurex Clearing AG determines a Liquidation Group Deficiency with respect to the Relevant Liquidation Group, Eurex Clearing AG may terminate and settle in cash all (but not only some) Swap Transactions of such Relevant Liquidation Group (each a “**Liquidation Group Transaction**”) with all Non-Affected FCM Clearing Members by giving a notice to such FCM Clearing Members specifying the date (“**Liquidation Group Cash Settlement Date**”) and the time (“**Liquidation Group Cash Settlement Time**”) on which the termination shall become effective. At the same time, Eurex Clearing AG will suspend the clearing with respect to all transaction types which are comprised in such Relevant Liquidation Group and will inform the respective markets accordingly.

A “**Liquidation Group Deficiency**” shall occur with respect to a Relevant Liquidation Group, if Eurex Clearing AG determines on the basis of its valuation models for the Terminated Clearing Member Transactions and/or Terminated FCM Clearing Member Transactions falling within the Relevant Liquidation Group that all Contributions and Further Contributions and all FCM Contributions and FCM Further Contributions to the

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Default Fund would not be sufficient to settle all Default Fund Secured Claims relating to such Relevant Liquidation Group as of the time of determination by Eurex Clearing AG.

**(1) Consequences of Cash Settlement of a Liquidation Group**

If a Liquidation Group Cash Settlement Time has occurred with respect to the Relevant Liquidation Group, the following provisions shall apply:

All current and future primary obligations (including payment and delivery obligations) of each party under the relevant Netting Set between Eurex Clearing AG and the FCM Clearing Member arising from any FCM Clearing Member Transaction relating to the Relevant Liquidation Group shall expire as of the Liquidation Group Cash Settlement Time and shall no longer be required to be performed by the relevant obligor. The expiration affects all claims arising from all FCM Clearing Member Transactions relating to the Relevant Liquidation Group independently of the time they came into existence

or would have come into existence otherwise. These expired primary obligations and delivery obligations, respectively, are reflected by the FCM Liquidation Group Difference Claim.

**(2) Liquidation Group Difference Claim**

With regard to the relevant Netting Set between Eurex Clearing AG and the FCM Clearing Member, the difference claim relating to the Relevant Liquidation Group that was created by the signing of the relevant FCM Clearing Agreement shall become unconditional and immediately due in the Termination Currency from one party to the relevant Netting Set to the respective other party as of the end of the Liquidation Group Cash Settlement Date (each such claim shall be a “**Liquidation Group Difference Claim**”).

The Liquidation Group Difference Claim shall be determined by Eurex Clearing AG on the Liquidation Group Cash Settlement Date for each Netting Set by way of combining the Single Valuation Prices of all terminated FCM Clearing Member Transactions relating to the Relevant Liquidation Group under such Netting Set. “**Single Valuation Price**” shall mean, with respect to the FCM Clearing Member Transactions relating to the Relevant Liquidation Group, the last available settlement price as determined by Eurex Clearing AG.

The final amount of the Liquidation Group Difference Claim resulting from such combination shall (i) if it is a positive figure for Eurex Clearing AG, be owed to it by the relevant FCM Clearing Member, or (ii) if it is a negative figure for Eurex Clearing AG, be owed by it to the relevant FCM Clearing Member.

Eurex Clearing AG shall notify the value of the Liquidation Group Difference Claim determined by it to the FCM Clearing Member as soon as reasonably practicable, together with reasonable detail regarding the data and information forming the basis of the determination.

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**(3) Payment of Liquidation Group Difference Claim**

Such party to the relevant Netting Set which is the obligor of the FCM Liquidation Group Difference Claim shall be obliged to pay the determined amount to the other party as soon as reasonably practicable following the notification by Eurex Clearing AG of the amount payable.

**(4) Certain Defined Terms**

For purposes of this Number 9.6 the terms "**Realization Event**", "**Relevant Liquidation Group**", "**FCM Clearing Member Transaction**", "**Non-Affected FCM Clearing Member**", "**Terminated Clearing Member Transactions**", "**Terminated FCM Clearing Member Transactions**", "**Contributions**", "**Further Contributions**", "**FCM Contributions**", "**FCM Further Contributions**", "**Default Fund**" and "**Default Fund Secured Claims**" shall have the meanings ascribed to them in the FCM Default Rules.

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## 10 Termination of FCM Client Transactions when the FCM Client is in default

### 10.1 Scope

This Number 10 describes actions that an FCM Clearing Member may take in the event that one of its FCM Clients is in default or is the subject of a termination event (“**Client Default or Termination Event**”) under the FCM Clearing Member’s agreement (or agreements) with the FCM Client (the “**Affected FCM Client**”).

### 10.2 Transfers

- (1) Following the occurrence of a Client Default or Termination Event, an FCM Clearing Member may take one or more of (but not limited to) the following actions to liquidate FCM Client Transactions of the Affected FCM Client, by choosing the appropriate option within the systems of Eurex Clearing AG (each, an “**FCM Client Risk Reducing Measure**”):
  - (a) Enter into one or more Original Swap Transactions that economically reverse one or more of the FCM Client Transactions in the FCM Clearing Member’s FCM Client Transaction Account for the Affected FCM Client, and submit such Original Swap Transaction(s) to be booked (if concluded by way of novation as set out in Number 1.3.3) as FCM Client Transactions in such FCM Client Transaction Account.
  - (b) Transfer one or more of the Affected FCM Client’s FCM Client Transactions from the FCM Clearing Member’s FCM Client Transaction Account for the Affected FCM Client to:
    - (aa) the FCM Clearing Member’s Own Transaction Account;
    - (bb) the Own Transaction Account of another Clearing Member;
    - (cc) another FCM Client Transaction Account of the FCM Clearing Member; or
    - (dd) an FCM Client Transaction Account of another FCM Clearing Member or a Client Transaction Account of a Non-FCM Clearing Member.
  - (c) Transfer one or more Own Transactions from the FCM Clearing Member’s Own Transaction Account to the FCM Clearing Member’s FCM Client Transaction Account for the Affected FCM Client; or
  - (d) Transfer one or more Own Transactions from the Own Transaction Account of another Clearing Member (which may be a Non- FCM Clearing Member) to the FCM Clearing Member’s FCM Client Transaction Account for the Affected FCM Client.
- (2) Alternatively, the FCM Clearing Member may submit a written request to Eurex Clearing AG by email or facsimile requesting Eurex Clearing AG to initiate one or



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more of the FCM Client Risk Reducing Measures described in (a) through (d) in Paragraph (1) of this Number 10.2.

- (3) The FCM Clearing Member must ensure that after it takes one or more FCM Client Risk Reducing Measures, the FCM Client Margin Requirement for the relevant FCM Client Transaction Account for the Affected FCM Client is zero.
- (4) For purposes of this Number 10, when used in relation to a Non-FCM Clearing Member, the terms "Own Transaction" and "Client Transaction Account" have the meanings assigned to them in the Clearing Conditions, and the term "**Own Transaction Account**" shall have the meaning assigned to the term "**Clearing Member Own Account**" and/or "**ISA Direct Own Account**" (as applicable) in the Clearing Conditions.
- (5) The FCM Clearing Member is responsible for verifying that each of the following conditions (as applicable) is met with respect to each FCM Client Risk Reducing Measure it takes, and represents to Eurex Clearing AG that each such condition (as applicable) is met when it takes the FCM Client Risk Reducing Measure:
  - (a) The FCM Clearing Member is not in default of any of its obligations to Eurex Clearing AG under the FCM Clearing Conditions and will not become in default upon completion of the transfer;
  - (b) Any other Clearing Member involved in the transfer is not in default of any of its obligations to Eurex Clearing AG under the FCM Clearing Conditions or Clearing Conditions (as applicable) and will not become in default upon completion of the transfer; and
  - (c) The FCM Clearing Member has the authority under its agreement(s) with the Affected FCM Client or otherwise to take such action.
- (6) When an FCM Clearing Member takes any Client Risk Reducing Measure, Eurex Clearing AG will not perform any transfer of Eligible Margin Assets. If the FCM Client Margin Sub-Account for the Affected Clearing Member is in an FCM Client Margin Account under LSOC Without Excess, and if the FCM Client Risk Reducing Measure (or measures) taken by the FCM Clearing Member for the Affected FCM Client's corresponding FCM Client Transaction Account results in Excess Margin in the corresponding FCM Client Margin Sub-Account, the amount of such Excess Margin will become Unallocated Excess and will be booked to the relevant FCM Unallocated Excess Margin Sub-Account.

### 10.3 Terms that apply to Transfers

- (1) Eurex Clearing AG shall have no liability to the FCM Clearing Member, the Affected FCM Client, or any Clearing Member involved in the transfer for any losses or costs it may incur in connection with any action that Eurex Clearing AG takes pursuant to this Number 10.

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- (2) The actions described in this Number 10 are subject to Applicable Law, including the provisions of the CEA and CFTC Regulations.
- (3) An FCM Clearing Member that takes any FCM Client Risk Reducing Measure in respect of an Affected FCM Client shall indemnify Eurex Clearing AG and its officers, employees and agents against any and all losses, liabilities, damages, claims, costs or expenses suffered or incurred by such person arising out of or in connection with any dispute between the FCM Clearing Member and Affected FCM Client regarding (i) any FCM Client Risk Reducing Measure taken (or any measure not taken) by the FCM Clearing or (ii) the underlying circumstances that led the FCM Clearing Member to take the FCM Client Risk Reducing Measure. This indemnity is in addition to the general indemnification by an FCM Clearing Member under Number 13.1.3.

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## 11 Termination Rules with respect to Eurex Clearing AG

### 11.1 Claim for Non-Performance and Single Difference Claim

11.1.1 If at any time a Failure to Pay Event or an Insolvency Event has occurred with respect to Eurex Clearing AG, all primary obligations (including payment and delivery obligations but excluding Termination Unpaid Amounts) arising from all Swap Transactions in all FCM Clearing Member Own Transaction Accounts and all FCM Client Transaction Accounts (including FCM Client Transaction Suspension Accounts) shall expire and may no longer be performed by the relevant obligor. These expired primary obligations representing the market or exchange value of the Swap Transactions are reflected by the claim for non-performance (“**Claim for Non-Performance**”) which is determined pursuant to Number 11.2.

Further, all due but unsatisfied obligations to deliver Eligible Margin Assets to meet an obligation to pay a Margin Requirement or Variation Settlement in respect of the relevant account expire.

11.1.2 A separate Claim for Non-Performance shall be determined by Eurex Clearing AG for the relevant Netting Set by way of combining (*saldieren*) the CCP Single Transaction Amounts of all terminated Swap Transactions in such Netting Set.

- (1) The Claim for Non-Performance for a Netting Set resulting from such combination shall, following its determination in accordance with Number 11.2.1 or Number 11.2.2 below, be automatically (i) set off with relevant Termination Unpaid Amounts and/or (ii) added to relevant Termination Unpaid Amounts in case they are payable by the debtor of the Claim for Non-Performance, as the case may be, in order to result in one single difference claim.

“**Termination Unpaid Amounts**” means (i) any amount due to be paid as a primary obligation under the relevant Swap Transaction, but unpaid on the date of expiry of primary obligations under Number 11.1.1 above, and (ii) the value of any assets due to be delivered as a primary obligation under the relevant Transaction, but not delivered, on the date of expiry of primary obligations under Number 11.1 above. All such amounts or values shall be denominated in the Termination Currency.

- (2) The Claim for Non-Performance and the difference claim shall be denominated in the Termination Currency.
- (3) If the Claim for Non-Performance is a positive figure with respect to a Netting Set, that amount shall be owed by Eurex Clearing AG to the FCM Clearing Member in respect of such Netting Set (with the FCM Clearing Member acting as agent on behalf of its FCM Client in the case of an FCM Client Netting Set).

If it is a negative figure for a particular Netting Set, the provisions under 9.5.5 and 9.5.6 regarding the realization of Margin and the return of any balances owed by

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Eurex Clearing AG shall apply accordingly. In case a negative figure remains with respect to the relevant Netting Set, such amount shall be owed by the FCM Clearing Member to Eurex Clearing AG in respect of such account.

- (4) Eurex Clearing AG shall notify the determined value of the difference claim with respect to all Netting Sets to the relevant FCM Clearing Member as soon as reasonably practicable after its determination, together with reasonable detail regarding the data and information forming the basis of the determination. The party with the payment obligation in respect of the relevant Netting Set shall pay the determined value of the difference claim to the other party as soon as reasonable practicable following the notification of the payable amount by Eurex Clearing AG. Such party shall not be obliged to pay any interest on the amount of the difference claim unless it is in default following the receipt of a payment reminder by the other party. Default interest shall be paid on the basis of the effective overnight interest rate applicable to the currency of the difference claim.

## 11.2 Calculation of the Claim for Non-Performance

### 11.2.1 Calculation in case of a Failure to Pay Event

In the case of a Failure to Pay Event, the value of the Claim for Non-Performance for all relevant Netting Sets shall be determined by Eurex Clearing AG in accordance with this Number 11.2.1.

If Eurex Clearing AG enters into replacement transactions in connection with the determination of the CCP Market Price, such replacement transactions will be entered into without undue delay on or after the occurrence of the Failure to Pay Event.

For the purpose of the determination of the Claim for Non-Performance, the following definitions shall apply:

- (1) The “**CCP Valuation Date**” shall, with respect to a Swap Transaction, be any day until and including the Last CCP Valuation Date on which a CCP Market Price is determined for such Swap Transaction in accordance with the applicable determination mechanism set out in the definition of “**CCP Market Price**” in Number 11.2.2 Paragraph (2) below.

The “**Last CCP Valuation Date**” is (i) the fifth Business Day after the occurrence of the Failure to Pay Event, or (ii), to the extent this is required for a value-preserving liquidation, the 20<sup>th</sup> Business Day after the occurrence of a Failure to Pay Event.

The “**CCP Margin Valuation Date**” shall, with respect to any Eligible Margin Assets, be any day until and including the Last CCP Valuation Date on which such Eligible Margin Assets are actually realized by Eurex Clearing AG.

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- (2) The “**CCP Single Transaction Amount**” shall be determined with respect to each terminated Swap Transaction under the relevant Netting Set and shall equal its CCP Market Price on the relevant CCP Valuation Date.
- (3) “**CCP Market Price**” means, with respect to a Swap Transaction:
  - (a) the price of the replacement transaction entered into by Eurex Clearing AG with respect to the relevant terminated Swap Transaction on the relevant CCP Valuation Date; or
  - (b) if Eurex Clearing AG does not enter into a replacement transaction by or on the Last CCP Valuation Date, the last available Market Price for the terminated Swap Transaction on the fifth Business Day after the occurrence of the Failure to Pay Event.
- (4) “**Market Price**” shall have the same meaning as stipulated under Number 9.5.2 Paragraph (4).

#### 11.2.2 Calculation in case of an Insolvency Event

In the case of an Insolvency Event, the value of the Claim for Non-Performance for all relevant Netting Sets shall be determined by Eurex Clearing AG in accordance with this Number 11.2.2. For the purpose of the determination of the Claim for Non-Performance the following definitions shall apply:

- (1) The “**CCP Single Transaction Amount**” shall be determined with respect to each terminated Swap Transaction under the relevant Netting Set and shall equal its CCP Market Price on the second Business Day following the Insolvency Event.
- (2) “**CCP Market Price**” means, with respect to a terminated Swap Transaction, the last available Market Price for such Swap Transaction on the second Business Day following the Insolvency Event;
- (3) “**Market Price**” shall have the same meaning as stipulated under Number 9.5.2 Paragraph (4).

#### 11.3 Failure to Pay Event and Insolvency Event

The following events shall constitute a Failure to Pay Event or an Insolvency Event with respect to Eurex Clearing AG:

- (1) A “**Failure to Pay Event**” occurs if (a) a Payment Default, or (b) a Non-Payment of the Cash Settlement Amount following a Delivery Default.
- (2) An “**Insolvency Event**” occurs if the *Bundesanstalt für Finanzdienstleistungsaufsicht* files a petition for the opening of insolvency proceedings over the assets of Eurex Clearing AG.

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### 11.3.1 A “Payment Default” occurs if:

- (1) Eurex Clearing AG fails to make, when due, any payment (other than a payment of the Cash Settlement Amount following a Delivery Default) in respect of a payment claim of an FCM against Eurex Clearing AG arising from a Transaction;
- (2) Eurex Clearing AG has received written notice (*Textform*) of such failure from the relevant FCM Clearing Member (“**First Notification**”);
- (3) Eurex Clearing AG has received a further written notice (*Textform*) of such failure after the expiry of a period of not less than three (3) calendar days after receipt of the First Notification (“**Second Notification**”); and
- (4) Eurex Clearing AG's failure to make such payment to such FCM Clearing Member, subject to the following paragraph, for a period of at least two (2) calendar days after the Second Notification, provided that the last day of such period shall be a Business Day.

For the purposes of this Number 11.3.1, a payment will be considered not to have been made by Eurex Clearing AG if no corresponding amount has been credited to the relevant account of the relevant FCM Clearing Member or to an appropriate account of a correspondent bank designated by the FCM Clearing Member. Delays in effecting such credit for technical reasons (i) which are outside the control of Eurex Clearing AG, as explained in writing (*Textform*) to such FCM Clearing Member shall only lead to a Payment Default if Eurex Clearing AG's failure to make such payment continues for a period of one (1) calendar month after receipt of the Second Notification and (ii) which are within the control of Eurex Clearing AG shall, only lead to a Payment Default if Eurex Clearing AG's failure to make such payment continues for a period of ten (10) Business Days after receipt of the Second Notification. In the event of (i) Eurex Clearing AG shall use reasonable endeavours to effect such credit as soon as practicable. Eurex Clearing AG will notify the relevant FCM Clearing Member without undue delay whether there is a case of (i) or (ii).

### 11.3.2 A “Non-Payment of the Cash Settlement Amount following a Delivery Default” occurs if with respect to a Transaction:

- (1) a Delivery Default; and
- (2) a Cash Settlement Payment Default occurs.

### 11.3.3 A “Delivery Default” occurs if:

- (1) Eurex Clearing AG fails to satisfy, when due, any delivery obligation vis-à-vis an FCM Clearing Member arising from a Transaction;
- (2) Eurex Clearing AG has received, after the expiry of a period of not less than five (5) calendar days following the due date, written (*Textform*) notice from such FCM

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Clearing Member making reference to this Number 11.3.3 and requesting Eurex Clearing AG to fulfil such delivery obligation ("**First Delivery Request**");

- (3) Eurex Clearing AG has received from such FCM Clearing Member a further written (*Textform*) notice requesting Eurex Clearing AG to fulfil such delivery obligation after the expiry of a further period of not less than ten (10) calendar days after receipt of the First Delivery Request ("**Second Delivery Request**"); and
- (4) Eurex Clearing AG has, after the expiry of a further period of not less than ten (10) calendar days after receipt of the Second Delivery Request, received a written (*Textform*) request from such FCM Clearing Member for cash settlement of the relevant delivery obligation from Eurex Clearing AG ("**Cash Settlement Request**").

Delays in effecting a delivery for technical reasons shall not lead to a Delivery Default. Upon receipt of a Cash Settlement Request from an FCM Clearing Member (the date of such request, the "**Cash Settlement Request Date**") Eurex Clearing AG shall no longer be obliged to make any delivery under the relevant Swap Transaction. This obligation shall be replaced by an obligation of Eurex Clearing AG to pay to the FCM Clearing Member, the Cash Settlement Amount under the relevant Swap Transaction (each a "**Cash-settled Transaction**").

For the purpose of this Number 11.3.3, a delivery obligation will not be considered to be satisfied by Eurex Clearing AG if no corresponding securities have been credited to an appropriate securities account of a depository, a settlement institution or a custodian designated by the FCM Clearing Member at a deposit bank or a central securities depository.

#### 11.3.4 A "**Cash Settlement Payment Default**" occurs if:

- (1) Eurex Clearing AG has, after the expiry of a period of not less than three (3) calendar days following the Cash Settlement Request Date, received the written (*Textform*) request from the FCM Clearing Member to pay to it the Cash Settlement Amount ("**Cash Settlement Payment Request**"); and
- (2) Eurex Clearing AG fails, subject to the following paragraph, after the expiry of a further period of not less than two (2) calendar days after the receipt of Cash Settlement Payment Request (with the proviso that the last day of such period shall be a Business Day) to pay to such FCM Clearing Member the Cash Settlement Amount.

For the purposes of this Number 11.3.4, a payment will be considered not to have been made by Eurex Clearing AG if no corresponding amount has been credited to the relevant account of the relevant FCM Clearing Member or to an appropriate account of a correspondent bank designated by the FCM Clearing Member. Delays in effecting such credit for technical reasons for which Eurex Clearing AG (i) is not responsible, as explained in writing (*Textform*) to the FCM Clearing Member without undue delay, shall not lead to a Cash Settlement Payment Default, (ii) is responsible

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shall only lead to a Cash Settlement Payment Default if Eurex Clearing AG's failure to make such payment to such FCM Clearing Member continues for a period of ten (10) Business Days after receipt of the Cash Settlement Request.

11.3.5 For the purposes of this Number 11.3.5, "**Cash Settlement Amount**" means an amount determined by the Calculating Party (as defined in Paragraph (4) below) as follows:

- (1) The Default Value of the assets which are the subject of the Delivery Default (the "**Non-Delivered Assets**") and the amount of the corresponding payment obligation of the FCM Clearing Member shall be established by the Calculating Party.
- (2) On the basis of the sums so established, account shall be taken of what is due from each party to the other under the relevant Swap Transaction and the sums due from one party shall be set off against the sums due from the other under such Swap Transaction and only the balance of the account shall be payable (by the party having the claim valued at the lower amount pursuant to the foregoing) and such balance shall be due and payable on the next following day which is a Business Day. For the purposes of this calculation, all sums not denominated in Euro shall be converted into Euro at the then current rate of exchange, as determined by the Calculating Party.
- (3) "**Default Value**" means, with respect to any Non-Delivered Assets, the value of such assets determined by the Calculating Party by applying the following method:

The basis for this calculation shall be the settlement price determined by Eurex Clearing AG for Transactions to which the Non-Delivered Assets relate on the Business Day immediately prior to the Cash Settlement Request Date. In the event that (i) Eurex Clearing AG has not determined a settlement price for Transactions to which the Non-Delivered Assets relate on the Business Day immediately prior to the Cash Settlement Request Date or (ii) Eurex Clearing AG has determined such settlement price, but such settlement price does not reasonably accurately reflect the value of such transactions that would have been obtained from the relevant market if it were operating normally, the Calculating Party shall choose from among the Clearing Members that have been granted a clearing license to clear the relevant Swap Transaction Type pursuant to the Clearing Conditions or FCM Clearing Conditions three Clearing Members who shall determine a market price of the Non-Delivered Assets. The average of the quoted prices (mid-market offer) shall be the Default Value of the Non-Delivered Assets. If less than three quotations are provided as requested, the Calculating Party shall determine a settlement price for Transactions to which the Non-Delivered Assets relate acting in good faith and by using commercially reasonable procedures expected to produce a commercially reasonable result.

- (4) "**Calculating Party**" means, for the purposes of this Number 11.3.5, Eurex Clearing AG unless Eurex Clearing AG is, for operational reasons, unable to make one or more calculations or determinations required to be made under this Number 11.3. In such event, Eurex Clearing AG shall promptly notify the relevant



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FCM Clearing Member and “**Calculating Party**” then means such FCM Clearing Member.

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## **12 Termination of Clearing Agreements, Clearing Licenses and FCM Client Netting Sets; Market Disorders Event, Impossibility Event, Force Majeure Event**

### **12.1 Termination**

12.1.1 Eurex Clearing AG or the FCM Clearing Member may terminate the FCM Clearing Agreement and the corresponding FCM Clearing Licence at any time. Such termination requires written notice to the FCM Clearing Member or Eurex Clearing AG. The termination shall take effect on the later of the following dates: (i) 30 days after receipt of the termination notice and (ii) after all Swap Transactions which are subject to the FCM Clearing Agreement and corresponding FCM Clearing License have been cancelled, closed or fulfilled.

12.1.2 Notwithstanding the termination right of Eurex Clearing AG under Number 9, Eurex Clearing AG or the FCM Clearing Member may terminate an FCM Client Netting Set at any time provided that all Transactions cleared under the relevant FCM Client Netting Set have been fully cancelled, closed or fulfilled prior to the termination. A termination of an FCM Client Netting Set requires written notice to the FCM Clearing Member or Eurex Clearing AG. The termination shall take effect 30 days after receipt of the termination notice by the FCM Clearing Member or Eurex Clearing AG. The FCM Clearing Member shall inform the relevant FCM Client without undue delay after the FCM Clearing Member has either submitted or received the termination notice pursuant to this Number 12.1.2.

### **12.2 New Swap Transactions Following Termination**

If an FCM Clearing Agreement or the relevant FCM Clearing License of an FCM Clearing Member has been terminated, no new Swap Transaction (other than a Swap Transaction that liquidates an existing Swap Transaction) of such FCM Clearing Member, may be included in the Clearing after receipt of the termination notice in accordance with Number 15.

### **12.3 Release of Pledge and Cash**

If all FCM Clearing Licenses of the FCM Clearing Member have been terminated, and provided that the FCM Clearing Member is not the subject of a Termination Event or an Insolvency Termination Event, Eurex Clearing AG shall release its pledge over securities in any FCM Clearing Member Own Pledged Securities Account or FCM Client Pledged Securities Account of the FCM Clearing Member and release any cash provided by the FCM Clearing Member to Eurex Clearing AG in connection with the FCM Clearing Member's use of the Clearing (apart from the release of the FCM Clearing Member's Contribution to the Default Fund, as those terms are defined in the FCM Default Rules), as follows:

- (1) if no Capped Period (as defined in the FCM Default Rules) has commenced at the time of the termination, at the later of (I) the last effective date of termination of the FCM Clearing Member's FCM Clearing Licenses, or (II) 30 days after the date on which all Own Transactions of the FCM Clearing Member and all FCM Client

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Transactions in all FCM Client Transaction Accounts of FCM Clients of the FCM Clearing Member have been settled; and

- (2) if a Capped Period has commenced at the time of the termination, at the later of (I) the last effective date of termination of the FCM Clearing Member's FCM Clearing Licenses, (II) the end of the Capped Period, or (III) 30 days after the date on which all Own Transactions of the FCM Clearing Member and all FCM Client Transactions in all FCM Client Transaction Accounts of FCM Clients of the FCM Clearing Member have been settled, and provided further that the release shall be applied *mutatis mutandis*.

## 12.4 Market Disorders Event, Impossibility Event, Force Majeure Event

12.4.1 If Eurex Clearing AG determines that a Market Disorder Event, an Impossibility Event or a Force Majeure Event (each a "Special Event") has occurred, the following shall occur:

- (1) Before taking any action pursuant to Paragraph (2) or Paragraph (3) below, Eurex Clearing AG shall
- (i) if reasonable in the circumstances considering the nature of the relevant Special Event, consult with the relevant FCM Clearing Member to find a mutual solution with respect to the relevant Special Event, and
  - (ii) use best efforts to exercise its rights under Paragraph (2) and Paragraph (3) in a way which is proportionate (*verhältnismäßig*) taking into account the interests of the relevant FCM Clearing Member.
- (2) Actions with respect to the FCM Clearing Member

Eurex Clearing may with respect to the existing Swap Transactions entered into between Eurex Clearing AG and the FCM Clearing Member (including Swap Transactions entered into as FCM Client Transactions) and which are affected by the Special Event:

- (i) establish corresponding Opposite Transactions and book such Opposite Transactions into the same FCM Clearing Member Own Transaction Account or FCM Client Transaction Account by giving written notice specifying the date and time at which the Opposite Transaction shall be established and booked ("**Special Event Off-Setting Time**") and settle the relevant existing Swap Transaction against the Opposite Transaction, or
- (ii) take, by giving written notice, any other action Eurex Clearing AG deems necessary to limit any adverse impacts arising from the Special Event for itself and the FCM Clearing Member and require the FCM Clearing Member to comply with such action, provided that such action does not provide for a settlement of any existing Swap Transaction entered into between Eurex Clearing AG and the FCM Clearing Member.

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Any decision to take actions pursuant to paragraph (i) and (ii) above shall be taken by the Executive Board of Eurex Clearing AG.

(3) Suspension of Clearing.

In case of the occurrence of a Special Event Off-Setting Time, Eurex Clearing AG may with respect to those Swap Transaction Types which are affected by the relevant Special Event suspend or limit the clearing of new Own Transactions and new FCM Client Transactions of the relevant FCM Clearing Member.

(4) Information of third parties

In case of the occurrence of a Special Event Off-Setting Time, Eurex Clearing AG

- (i) shall without undue delay notify the CFTC, and
- (ii) may inform the Management Board of Clearstream Banking AG, all affected FCM Clients of the relevant FCM Clearing Member; and other market participants and the public,

of any actions taken by Eurex Clearing AG pursuant to this Number 13.4.

(5) Priority of Special Events over Termination Events or Insolvency Termination Event

In case of the occurrence of any event which qualifies as a Special Event, such Special Event can never qualify as a Termination Event or Insolvency Termination Event with respect to the FCM Clearing Member at the same time. For the avoidance of doubt, if after the occurrence of a Special Event other additional events occur, which qualify as Termination Event or Insolvency Termination Event with respect to the relevant FCM Clearing Member, Eurex Clearing AG remains entitled to perform its termination rights pursuant to Number 9.

12.4.2 Definitions:

(1) **“Market Disorder Event”** means one of the following events:

- (a) the government of any nation, state or territory or any governmental entity, agency or authority thereof has taken or given notice of its intention to take actions or measures which may have, not only temporarily, a material adverse impact on the Clearing of Swap Transactions, including, but not limited to, the fulfilment of any obligations under any Swap Transaction or the FCM Clearing Agreement; or
- (b) the EU or any international organisations, or any institution or agency thereof, has introduced, varied, terminated or allowed to lapse any provision, rule or order which may have, not only temporarily, a material adverse impact on the Clearing of Swap Transactions, including, but not limited to,

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the fulfilment of any obligations under any Swap Transaction or the FCM Clearing Agreement.

- (2) If, Eurex Clearing AG determines that the fulfilment of any obligation under any Swap Transaction or the FCM Clearing Agreement becomes impossible for any reason whatsoever (excluding the occurrence of any Market Disorder Event) ("**Impossibility Event**").
- (3) "**Force Majeure Event**" means any failure or delay, which is not only temporary, in discharging in whole or in part any obligations under any Swap Transaction or the FCM Clearing Agreement by Eurex Clearing AG or the FCM Clearing Member provided that such failure or delay arises from events which are beyond Eurex Clearing AG's or the FCM Clearing Member's reasonable control. Such events may include, without limitation, action of the elements, riot, insurrection, embargos, fire, flood, explosion, war, terrorism, power, communication or mechanical failure, unavailability or restriction of computer or data processing facilities, energy supplies, settlement systems or of bank transfer systems or wires, or any similar event, provided it is beyond Eurex Clearing AG's or the FCM Clearing Member's reasonable control.

#### 12.4.3 **Consequences of the occurrence of a Special Event Off-Setting Time**

- (1) If a Special Event Off-Setting Time has occurred, Eurex Clearing AG shall establish Opposite Transactions and book such Opposite Transactions into the same FCM Clearing Member Own Transaction Account or FCM Client Transaction Account of the FCM Clearing Member on which the relevant Off-Setting Transactions are booked at the Off-Setting Price and settle the open Off-Setting Transactions against the Opposite Transactions.

- (2) Definitions

"**Opposite Transaction**" shall mean a Swap Transaction with terms identical to an Off-Setting Transaction entered into between Eurex Clearing AG and the relevant FCM Clearing Member except that the FCM Clearing Member has the opposite position than it has under such Off-Setting Transaction.

"**Off-Setting Transactions**" means any open Swap Transaction entered into between Eurex Clearing AG and the FCM Clearing Member which shall be settled against the Opposite Transaction.

"**Off-Setting Price**" means the last available price of the following prices: (i) the last available settlement price of the relevant Off-Setting Transaction as determined in accordance with the applicable provisions under the Special Conditions, (ii) the last available market or exchange price of the relevant Off-Setting Transaction, or (iii) the price determined by Eurex Clearing AG on the basis of a model for the valuation of the market or exchange value of the relevant Off-

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Setting Transaction (which considers market risks and market prospects, *inter alia*, taking into account asset classes, volatility and liquidity).

- (3) In addition to the establishment of Opposite Transactions pursuant to paragraph (1), Eurex Clearing AG shall also be entitled to establish Other Opposite Transactions between Eurex Clearing AG and other FCM Clearing Members (each an “**Other FCM Clearing Members**”) corresponding to the Opposite Transactions established pursuant to paragraph (1) above and book such Other Opposite Transactions into the relevant FCM Clearing Member Own Transaction Account or FCM Client Transaction Account of such Other FCM Clearing Member at the Off-Setting Price and settle the relevant open Swap Transactions against the Other Opposite Transactions.

“**Other Opposite Transaction**” shall mean a Swap Transaction with terms identical to the relevant Opposite Transaction except that the Other FCM Clearing Member has the opposite position from the position the FCM Clearing Member has under the Opposite Transaction.

Eurex Clearing AG shall use best efforts to find a fair and proportionate distribution of the Other Opposite Transactions between all Other FCM Clearing Members which have open Swap Transactions in the same Swap Transaction Type of the relevant Off-Setting Transactions considering all interests of the relevant Other FCM Clearing Member (including, *inter alia*, (i) the number of Swap Transactions held by such Other FCM Clearing Member with respect to the relevant Swap Transaction Type, (ii) the notional amount of Swap Transactions held by the relevant Other FCM Clearing Member with respect to the relevant Swap Transaction Type and (iii) the risks inherent in the Swap Transactions held by the relevant Other FCM Clearing Member with respect to the relevant Swap Transaction Type.

## **13 Liabilities, Indemnification, Emergency Actions, Contractual Penalties, Delegation**

### **13.1 Liability, Indemnification, Emergency Actions**

- 13.1.1 An FCM Clearing Members shall be liable for its wilful misconduct and negligence. If an FCM Clearing Member causes any damages for Eurex Clearing AG, such damages shall in particular include any loss and properly incurred legal fees (including any applicable VAT).
- 13.1.2 Eurex Clearing AG shall only be liable for wilful misconduct or gross negligence, unless Eurex Clearing AG violates any of its essential obligations under the FCM Clearing Agreement (incorporating the FCM Clearing Conditions). An essential obligation is an obligation, the performance of which is necessary for the execution of the contract and as well a performance of which the FCM Clearing Member trusts in and may trust in. In case of simple negligence, the liability of Eurex Clearing AG is restricted only to damages typically foreseeable at the time of granting the FCM Clearing License. The provision under Sentence 1 above shall not affect the statutory liability for damages incurred as a

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result of injury to life, body or health as well as the liability pursuant to the German Product Liability Act.

- 13.1.3 Each FCM Clearing Member shall indemnify Eurex Clearing AG and its officers, employees and agents against any and all losses, liabilities, damages, claims, costs or expenses suffered or incurred by such person arising out of or in connection with the FCM Clearing Member's breach of the FCM Clearing Conditions, except to the extent that the losses, liabilities, damages, claims, costs or expenses arise as a result of the bad faith, fraud, wilful default or gross negligence of the person indemnified.
- 13.1.4 In case an orderly Clearing procedure with an FCM Clearing Member is disrupted, in particular by technical disruptions, the relevant FCM Clearing Member shall immediately notify Eurex Clearing AG thereof. Any respective emergency actions by Eurex Clearing AG are legally binding on all contractual parties.
- 13.1.5 Neither Eurex Clearing AG nor the FCM Clearing Member shall be liable for damages arising out of a business disruption as a result of Force Majeure Event or Market Disorder Event.
- 13.1.6 Eurex Clearing AG shall, after sufficient testing, operate and maintain the equipment and systems in their sphere of responsibility, including application and communication software.

## 13.2 Disciplinary Procedures; Contractual Penalties

- 13.2.1 All FCM Clearing Members are subject to the disciplinary procedures (the "**Disciplinary Procedures**") as set out in the disciplinary procedures rules, which are published on the Eurex Clearing Website and shall form an integral part of these Clearing Conditions, (the "**Disciplinary Procedures Rules**"). Pursuant and subject to the Disciplinary Procedures Rules, certain Sanctions (as defined in the Disciplinary Procedures Rules) may be imposed on an FCM Clearing Member following the alleged breach of such FCM Clearing Member of any of its obligations under, or any of its representations made in, the FCM Clearing Agreement (including the FCM Clearing Conditions). Such Sanctions may include contractual penalties, provided that the Disciplinary Procedures Rules do not apply to contractual penalties which are explicitly regulated in the FCM Clearing Conditions (other than in the Disciplinary Procedures Rules).

Eurex Clearing AG shall establish a Committee for the purpose of providing recommendations to the Executive Board of Eurex Clearing AG in connection with the Disciplinary Procedures, as provided for in the statutes of the disciplinary committee (the "**Statutes of the Disciplinary Committee**"). The Statutes of the Disciplinary Committee are published on the Eurex Clearing Website and shall form an integral part of these FCM Clearing Conditions.

- 13.2.2 If a Termination Event pursuant to Number 9.2.1 Paragraph (1) (a) (Failure to Pay) occurs or in the event of a failure to deliver securities or other assets or a failure to provide any cash amount where a Physical Settlement shall occur in accordance with the

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Special Provisions – irrespective of whether Eurex Clearing AG has suffered any damage – unless such failure to deliver securities or other assets or such failure to provide a cash amount results from a Force Majeure Event and/or a Market Disorder Event, the FCM Clearing Member shall pay, in accordance with the instructions received from Eurex Clearing AG, a contractual penalty in the amount of 0.025 per cent of the relevant unpaid due amount, but no less than EUR 2,500 – or the corresponding equivalent in any other Clearing Currency as determined by Eurex Clearing AG – per calendar day, however, no more than EUR 25,000 or the corresponding equivalent in any other Clearing Currency as determined by Eurex Clearing AG. If the amount calculated from the above percentage exceeds EUR 25,000, the amount of the contractual penalty shall – notwithstanding the provisions in Sentence 1 – be calculated according to a percentage of the relevant unpaid due amount, such percentage having been fixed and notified in advance by Eurex Clearing AG. Such percentage shall be based on the effective overnight interest rate applicable to the relevant Clearing Currency. The right of Eurex Clearing AG to claim further damages and/or default interest shall remain unaffected.

13.2.3 Eurex Clearing AG shall, upon written notice by an FCM Clearing Member which has suffered damage as a consequence of the failure to comply with the obligations referred to in Number 9.2.1 Paragraph (1) (a) (Failure to Pay), be entitled to assign to such FCM Clearing Member with discharging effect any claims it may have against the defaulting FCM Clearing Member.

### 13.3 Delegation

Eurex Clearing AG shall be permitted to delegate in its own name the performance of the services assigned to it in whole or in part to third parties, provided that Eurex Clearing AG considers such delegation reasonable with regard to the interests of FCM Clearing Members. If Eurex Clearing AG delegates the performance of its services, it shall only remain responsible for the performance of the contractual obligations in respect of such services, but shall otherwise only be liable for diligently selecting and providing initial instructions to such delegate. However, upon request, Eurex Clearing AG shall assign any existing claims arising out of such delegation against such delegate to the respective FCM Clearing Member.



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## 14 Transmission of information by Eurex Clearing AG; Outsourcing of Clearing Functions

### 14.1 Transmission of information relating to FCM Clearing Members by Eurex Clearing AG

14.1.1 Eurex Clearing AG treats all data and information which relate to its FCM Clearing Members and the FCM Clients confidentially. Eurex Clearing AG shall be authorized, subject to Applicable Law, to transfer such data and information to the CFTC or another competent supervisory authority or other authorized third parties domestic or abroad which are subject to confidentiality regulations with respect to such data and information comparable to those of Eurex Clearing AG.

All data and information which relate to FCM Clearing Members and the FCM Clients may only be passed on by Eurex Clearing AG if it is already publicly available or if it is legally required to be passed on or if the relevant FCM Clearing Member and the FCM Client has agreed to it.

14.1.2 Notwithstanding the provisions in Number 14.1.1, Eurex Clearing AG shall also be entitled to transmit or to request from clearing and settlement institutions or independent auditors which are subject to confidentiality regulations comparable to those applicable to Eurex Clearing AG, all data and information which refer to FCM Clearing Members and FCM Clients and which are necessary for the orderly conduct of the Clearing and for the fulfilment of Swaps Transactions.

14.1.3 The FCM Clearing Member agrees to obtain written (*Textform*) consent of each of its FCM Clients to the transmission of information related to such FCM Client by Eurex Clearing AG pursuant to this Number 14, if required by Applicable Law.

### 14.2 Fulfilment and partial Outsourcing of Clearing-related functions

14.2.1 Subject to the following provisions of this Number 14.2, each FCM Clearing Member has to perform itself and on its own responsibility, all functions incumbent on it in the context of the Clearing.

14.2.2 An FCM Clearing Member ("**Outsourcer**") may outsource the Clearing, risk management or back-office functions ("**Outsourced Functions**") to be performed by it in whole or in part to another entity ("**Insourcer**") by way of an outsourcing arrangement between the Outsourcer and the Insourcer ("**Outsourcing**"). The Insourcer may outsource the Outsourced Functions that are outsourced to it ("**Sub-Outsourcing**") to another Insourcer ("**Sub-Outsourcer**") with the prior approval of the relevant Outsourcer. The following requirements for Outsourcing shall apply accordingly to any Sub-Outsourcing.

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- 14.2.3 The Outsourcer remains fully responsible towards Eurex Clearing AG for the orderly conduct of the Outsourced Functions.
- 14.2.4 Any Outsourcing shall fulfil the following requirements:
- (1) The Outsourcing is in compliance with the laws and regulations applicable to the Outsourcer as well as to the Insourcer and the relevant FCM Clearing Agreement;
  - (2) The Outsourcer ensures the performance of the Outsourced Functions by the Insourcer and that the fulfilment of its obligations arising from the Clearing procedures is not affected by the Outsourcing;
  - (3) As a result of the Outsourcing, Eurex Clearing AG will not be required to obtain any additional license or authorization unless Eurex Clearing AG in its discretion decides to apply for such license or authorization;
  - (4) The Outsourcer has to fulfil any further prerequisites as may be determined by Eurex Clearing AG in its reasonable discretion and published in accordance with Number 15.1.
  - (5) The Outsourcer submits to Eurex Clearing AG prior to the commencement of the Outsourcing the following information in a form provided by Eurex Clearing AG which can be downloaded from the website of Eurex Clearing AG ("**Outsourcing Notice**"):
    - (a) the name and registered office of the Insourcer,
    - (b) the date on which the Outsourcing shall begin ("**Outsourcing Begin**") and the envisaged term of the Outsourcing;
    - (c) A contract person at the Insourcer in relation to the Outsourced Functions to escalate any issues in respect of the Outsourced Functions who shall be available during regular German business hours.
  - (6) The Outsourcer has to provide to Eurex Clearing AG any other information as may reasonably be requested by Eurex Clearing AG for the purposes of assessing the envisaged Outsourcing.
  - (7) The Outsourcer shall not be required to maintain a qualified clearing staff member pursuant to Number 2.2.6 Paragraph (3), if the Insourcer is a Clearing Member which is already required to comply with such requirement vis-à-vis Eurex Clearing AG directly and/or the Outsourcer contractually obliges the Insourcer to appoint a qualified clearing staff member in the back office pursuant to Number 2.2.6 Paragraph (3), applied *mutatis mutandis*.
  - (8) The Outsourcer ensures that all requirements under this Number 14.2.4 are fulfilled during the complete term of the Outsourcing and shall inform Eurex Clearing AG in written form about any changes in this regard.

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14.2.5 An Outsourcing may only be commenced if (i) the Outsourcer has submitted the Outsourcing Notice to Eurex Clearing AG and (ii) Eurex Clearing AG has confirmed the receipt of the Outsourcing Notice in writing.

Eurex Clearing AG may rely on the respective information provided by the Outsourcer and will not conduct own investigations in this regard.

14.2.6 Eurex Clearing AG may at any time and at its own expense check, or authorize an independent auditor to check, documents and processes related to the FCM Clearing Conditions in the business premises of the Outsourcer and the Insourcer (“**Compliance Audit**”). The Outsourcer shall contractually ensure that Eurex Clearing AG is entitled to equally execute these rights vis-à-vis the Insourcer.

Any Compliance Audit is solely carried out in the interest of Eurex Clearing AG. Eurex Clearing AG is not obliged to reassess the results of any audit or any information provided by the Outsourcer.

14.2.7 Eurex Clearing AG may at any time exercise a veto right in respect of the Outsourcing if it becomes aware of one of the following events or if probable cause exists to believe that one of the following events has occurred:

- (1) non-compliance by the Outsourcer with the requirements for Outsourcing stipulated under Number 14.2.4;
- (2) risk of reputational damage to Eurex Clearing AG caused by the Outsourcing (e.g., by the relevant Insourcer improperly disclosing confidential information to third parties); or
- (3) concentration risk due to the appointment of the same Insourcer by several Outsourcers,

and if, in Eurex Clearing AG’s determination, this may have a material adverse effect on the FCM Clearing procedures. Upon exercise of the veto right by Eurex Clearing AG, the Outsourcer is obliged to terminate the Outsourcing with immediate effect or at a time specified by Eurex Clearing AG and to perform the Outsourced Functions by itself.

Before exercising its veto right, Eurex Clearing AG may grant the Outsourcer an adequate grace period to remedy the relevant issues. During such period, Eurex Clearing AG may partially restrict the Outsourcing and/or restrict the access of the Insourcer to its systems.

14.2.8 Eurex Clearing AG’s liability for any damages, losses and expenses caused by an inadequate or wrongful exercise of (i) the veto right pursuant to Number 14.2.7 or (ii) the right to conduct Compliance Audits pursuant to Number 14.2.6 shall be restricted to wilful misconduct or gross negligence, except for any damages incurred as a result of injury to life, body or health caused negligently or intentionally.

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14.2.9 Eurex Clearing AG shall be entitled to transfer to the Insourcer any information and customer-related data obtained by Eurex Clearing AG in connection with the Clearing procedures to the extent that such transfer of data is necessary for the orderly conduct of the Outsourced Functions. The Outsourcer shall indemnify Eurex Clearing AG for any damages claimed by third parties alleging the violation of applicable data protection law or any contractual provisions by such transfer. This obligation shall remain in force for a period of three (3) years after expiry or termination of the Clearing Agreement between the Outsourcer and Eurex Clearing AG.

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## **15 Publications and Notices**

### **15.1 Notices from Eurex Clearing AG**

If provided for in these FCM Clearing Conditions, all notices from Eurex Clearing AG regarding these FCM Clearing Conditions will be published (i) via electronic circular to FCM Clearing Members or (ii) on the Eurex Clearing AG website ([www.eurex.com/ec-en](http://www.eurex.com/ec-en)) ("**Eurex Clearing Website**") for at least three (3) Business Days. Such notices will become effective immediately upon publication, provided that changes and amendments to the FCM Clearing Conditions will become effective in accordance with Number 16.2.

### **15.2 Address and Form**

All notices to be given between Eurex Clearing AG and an FCM Clearing Member shall be given in such form and at such address as agreed and/or notified from time to time by the relevant party. Notices will be given in the English language. Unless otherwise specified in these FCM Clearing Conditions, notices by FCM Clearing Members may be made by telefax or e-mail. Forms published by Eurex Clearing AG must be used.

### **15.3 Access Area for Eurex Clearing AG Notices**

Each FCM Clearing Member acknowledges that Eurex Clearing AG will send to FCM Clearing Members notices and reports in the systems of Eurex Clearing AG in an area which is only individually accessible to it (the "**Access Area**"). Each FCM Clearing Member acknowledges that Eurex Clearing AG is entitled to provide each FCM Client with reports in the Access Area of such FCM Client with respect to the FCM Client Transactions relating to such FCM Client. Eurex Clearing AG is not entitled to access or change the Access Area of an FCM Clearing Member without its consent. Reports and notifications stored in an Access Area will regularly be exchanged against new notices or reports within ten (10) Business Days of their storage in the Access Area.

### **15.4 FCM Clearing Member Acknowledgment**

Each FCM Clearing Member acknowledges that the notices and reports which are made accessible in the individual Access Area may also contain declarations of intent, in particular acceptance declarations with respect to Swap Transactions and other declarations of particular importance.

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## 16 Miscellaneous

### 16.1 Governing law; Place of Jurisdiction

16.1.1 Unless provided otherwise, the rights and obligations arising out of, and in connection with, these FCM Regulations shall be governed by the substantive laws of the United States and of the State of New York.

16.1.2 Exclusive place of jurisdiction for all disputes arising out of, or in connection with, the FCM Clearing Conditions is Frankfurt am Main.

### 16.2 Changes and Amendments to the FCM Clearing Conditions

16.2.1 Subject to Number 16.2.5, Eurex Clearing AG reserves the right to change or amend the FCM Clearing Conditions at any time; any changes and amendments of these FCM Clearing Conditions shall be published in accordance with Number 15.1.

16.2.2 Such publication will be made to all affected FCM Clearing Members at least fifteen (15) Business Days prior to the effective date fixed in the relevant notice ("**Notification Period**").

16.2.3 FCM Clearing Members affected by a proposed change or amendment may submit in writing to Eurex Clearing AG comments to any changes or amendments of the FCM Regulations within the first 10 Business Days of the Notification Period. Eurex Clearing AG shall assess whether these comments prevent the published change or amendment from becoming effective taking into account the interests of Eurex Clearing AG and the FCM Clearing Members. There is no obligation of Eurex Clearing AG to implement a comment. To the extent Eurex Clearing AG decides to implement comments of affected FCM Clearing Members, the relevant changes and amendments will be published again in accordance with the Notification Period. During the additional Notification Period, there will be no further assessment of any comments of any affected FCM Clearing Member pursuant to this Number 16.2.3.

16.2.4 Each affected FCM Clearing Member accepts each change and amendment of the FCM Regulations, unless it objects by written notice to Eurex Clearing AG within the Notification Period. Eurex Clearing AG will inform the affected FCM Clearing Members of the effects of such approval in the relevant publication of the changes and amendments of these FCM Regulations. Eurex Clearing AG has the right to terminate the FCM Clearing Agreement upon the occurrence of the Termination Event set out in Number 9.2.1 Paragraph (1) (d), which right shall remain unaffected by this Number 16.2.

16.2.5 Changes and amendments to the FCM Default Rules, the Default Management Committee Rules and the Default Management Auction Rules are subject to the requirements set out in Number 6.2 of the FCM Default Rules. Changes and amendments to the Price List of Eurex Clearing AG are subject to the requirements set out in Number 15 of the Price List of Eurex Clearing AG. With respect to changes to the FCM Clearing Conditions, other than changes and amendments to the FCM Regulations,

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the FCM Default Rules, the Default Management Committee Rules, the Default Management Auction Rules or the Price List of Eurex Clearing AG, this Number 16.2 shall apply accordingly and any reference to the amendment provisions in the Clearing Conditions shall be deemed as reference to this Number 16.2.

### **16.3 Current Version of the FCM Clearing Conditions**

The current valid version of the FCM Clearing Conditions is available via the internet on the Eurex Clearing Website.

### **16.4 Tax Forms**

Eurex Clearing AG and the FCM Clearing Member shall provide to the other party, upon a reasonable request in writing, any form, document, statement or certification (including any forms of the U.S. Internal Revenue Service), in each case to permit Eurex Clearing AG or the FCM Clearing Member to make any payment under any Swap Transaction, the FCM Clearing Agreement, or the FCM Regulations without withholding for any tax, levy or charge, if possible. The foregoing requirement shall not apply in the event Eurex Clearing AG or the FCM Clearing Member is not permitted to deliver such form, document, statement or certification under any applicable law. Eurex Clearing AG and the FCM Clearing Member shall immediately notify the other party in writing about any changes which may have occurred or will occur with respect to the obligation stipulated in this Number 16.4. Such written notice must be delivered to Eurex Clearing AG together with a correspondingly amended form, document, statement or certification, if applicable.

### **16.5 Swap Transaction Reporting**

- 16.5.1 Each FCM Clearing Member acknowledges that Eurex Clearing AG shall, as required under the CFTC Part 43 and Part 45 Regulations, report to an Approved SDR the details of the FCM Clearing Member's Own Transactions and the details of FCM Client Transactions for the FCM Client Transaction Accounts of its FCM Clients, along with any settlement, modification or termination of such Swap Transactions, and, to the extent further required under Applicable Law, to one or more other trade repositories.
- 16.5.2 The FCM Clearing Member must advise its FCM Clients of Eurex Clearing AG's list of Approved SDRs, and that Eurex Clearing AG will only report details of FCM Client Transactions to an Approved SDR.
- 16.5.3 The FCM Clearing Member must provide Eurex Clearing AG with the unique swap identifier (as that term is used in the CFTC Part 45 Regulations) for each Original Swap Transaction submitted to Eurex Clearing AG by or on behalf of the FCM Clearing Member, along with the legal entity identifier (as that term is used in the CFTC Part 45 Regulations) for the swap data repository to which the Original Swap Transaction was reported, when the Original Swap Transaction is submitted or immediately thereafter. The FCM Clearing Member acknowledges that it must provide such information to Eurex Clearing AG to that Eurex Clearing AG may report termination of the Original Swap

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Transaction to the relevant swap data repository on a timely basis, in accordance with its obligations under the CFTC Part 45 Regulations.

## 16.6 **General Clearing Provisions in accordance with the CCP Recovery and Resolution Regulation**

### 16.6.1 **Deviating Decisions (Article 9 (6) of the CCP Recovery and Resolution Regulation**

Pursuant to Article 9 of the Regulation (EU) 2021/23 dated 16 December 2020 on a framework for the recovery and resolution of central counterparties ("**CCP Recovery and Resolution Regulation**"), Eurex Clearing AG is obliged to establish and maintain a recovery plan.

- (1) Such recovery plan shall include (i) the recovery measures Eurex Clearing AG intends to take in case of the occurrence of a default event or non-default event and (ii) a framework of indicators identifying the circumstances under which any recovery measure is to be taken.
- (2) According to Article 9 (6) of the CCP Recovery and Resolution Regulation, Eurex Clearing AG is entitled to
  - (i) take recovery measures although the relevant indicators have not been met or
  - (ii) refrain from taking recovery measures although the relevant indicators have been met.

Any decision pursuant to Paragraph (2) (i) and (ii) shall be taken by the management board of Eurex Clearing AG.

- (3) In case Eurex Clearing AG takes a decision pursuant to Paragraph (2) (i) or (ii) above, Eurex Clearing AG will
  - (i) when taking such decision use best efforts to establish a reasonable argumentation equally considering the interests of Eurex Clearing AG and all of its FCM Clearing Members and which outlines in detail why
    - (I) in case of Paragraph (2) (i), the relevant recovery measure is required to restore or to ensure Eurex Clearing AG's financial soundness, or
    - (II) in case of Paragraph (2) (ii), Eurex Clearing AG's financial soundness can be restored or ensured without the relevant recovery option;
  - (ii) notify BaFin about any such decision without undue delay; and
  - (iii) closely monitor the relevant situation and notify BaFin about any new developments in this regard.



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## 16.6.2 Resolution Measures to be taken by the Resolution Authority

### (1) General Requirements for Resolution Measures

If BaFin, acting in its capacity as Eurex Clearing AG's resolution authority within the meaning of the CCP Recovery and Resolution Regulation ("**Resolution Authority**"), determines that all conditions for resolution pursuant to Article 22 (1) of the CCP Recovery and Resolution Regulation are met, the Resolution Authority is entitled to take one of the following resolution measures pursuant to Paragraph (2) to (5) with respect to the FCM Clearing Member.

### (2) Termination and Cash Settlement

- (a) The Resolution Authority shall be entitled to exercise the termination right under Number 9 above provided that the applicable requirements are met.
- (b) The Resolution Authority shall further be entitled to exercise the following rights with respect to a Clearing Member or Basic Clearing Member:
  - (i) to terminate and settle in cash DMP Cash Settlement Transactions pursuant to Number 9.6.1 above;
  - (ii) to establish DM Swap Hedging Transactions, to conduct one or more additional DM Swap Auctions and to establish Additional Swap Transactions pursuant to Number 9.6.2 above; or
  - (iii) to terminate and settle in cash all Liquidation Group Transactions under a specific Liquidation Group pursuant to Number 9.6.3 above.
- (c) Prior to exercising any rights under Paragraphs (a) and (b) above, the Resolution Authority shall inform the relevant FCM Clearing Member about (i) the date on which such right will be exercised and (ii) any net amount being payable by or to the relevant FCM Clearing Member.
- (d) Any net amount being payable by the FCM Clearing Member pursuant to Paragraph (a) or (b) shall be provided in accordance with the daily cash processing pursuant to Number 1.4.1 above.
- (e) For the avoidance of doubt, if the FCM Clearing Member is not able to pay the relevant net amount determined pursuant to Paragraphs (a) or (b), such non-payment will constitute a Termination Event pursuant to Number 9.2.1 (1) (a) above.
- (f) If the Resolution Authority exercised its rights under Paragraph (a) or (b), the Resolution Authority is entitled to suspend or limit the clearing of Swap Transactions with respect of which it has exercised its rights.

### (3) Daily Profits Reduction

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The Resolution Authority shall be entitled to exercise Daily Profit Reductions in accordance with this Paragraph (3) to cover any outstanding Default Loss or Non-Default Loss.

- (a) This Paragraph (3) applies to Default Losses and Non-Default Losses.

“**Default Loss**” means any loss incurred by Eurex Clearing AG caused by the occurrence of a termination with respect to a FCM Clearing Member, a Clearing Member Termination or a Basic Clearing Member Termination pursuant to the Clearing Conditions.

“**Non-Default Loss**” means any loss incurred by Eurex Clearing AG, which does not qualify as a Default Loss.

- (b) If
- (i) after the occurrence of the FCM Clearing Member Termination Time, the Clearing Member Termination Time or the Basic Clearing Member Termination Time, or
  - (ii) in case of the occurrence of a Non-Default Loss

Eurex Clearing AG is obliged to pay a Variation Settlement Amount to a (non-defaulting) FCM Clearing Member with respect to any Swap Transaction pursuant to Chapter II Part 2 Number 2.2.1 (5) of the FCM Regulations, the Resolution Authority is entitled to partly or fully reduce any IRS STM Amount and any IRS PAA arising from any Swap Transaction, (“**Daily Profit Reduction**”).

- (c) The total Daily Profit Reduction, which is needed to cover any outstanding Default Loss incurred by Eurex Clearing AG, shall be shared on a pro-rata basis between all Clearing Members, Basic Clearing Members and FCM Clearing Members and shall be proportional to the open amounts Eurex Clearing AG owes to the relevant Clearing Member, Basic Clearing Member or FCM Clearing Member.
- (d) If the Daily Profit Reductions is used by the Resolution Authority to cover any outstanding Non-Default Loss, it shall only be applied up to a cumulative amount equal to the FCM Contribution Requirement to the Default Fund of the relevant FCM Clearing Member.

The total Daily Profit Reduction, which is needed to cover all outstanding Non-Default Loss incurred by Eurex Clearing AG, shall be shared on a pro-rata basis between all FCM Clearing Members, Clearing Members and BCM Clearing Members and shall be proportional to the FCM Contribution Requirement, CM Contribution Requirement or BCM Contribution Requirement of the relevant FCM Clearing Member, Clearing Member or Basic Clearing Member.

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- (e) The Resolution Authority shall inform each affected FCM Clearing Member about the exercise of any Daily Profit Reduction without undue delay. If the Daily Profit Reduction relates to a FCM Client Transaction, the relevant FCM Clearing Member shall inform any affected FCM Client about the exercise of the Daily Profit Reduction by the Resolution Authority and the effects of the exercise for such FCM Client.
  - (f) If, after the exercise of the Daily Profits Reduction, the Resolution Authority determines that the total amount gained through the Daily Profit Reductions exceeds the amounts needed to cover all Default Losses or Non-Default Losses, all FCM Clearing Members, Clearing Members and Basic Clearing Members, which were subject to the Daily Profits Reductions, will be reimbursed accordingly on a pro-rata basis.
  - (g) All claims for damages or any other restitution or compensation claim against Eurex Clearing AG which may arise in connection with a Daily Profit Reduction shall be excluded.
- (4) Resolution Cash Calls
- (a) The Resolution Authority shall be entitled to require from (non-defaulting) FCM Clearing Members and Clearing Members (pursuant to the Clearing Conditions) to provide further contributions to the Default Fund in the form of cash (“**Resolution Cash Calls**”) to cover any outstanding Default Loss or Non-Default Loss.
  - (b) The Resolution Cash Calls may amount up to twice the applicable FCM Contribution Requirement of the relevant FCM Clearing Member.
  - (c) The total amount of Resolution Cash Calls, which is needed to cover all outstanding Default Losses or Non-Default Losses, shall be shared on a pro-rata basis between all FCM Clearing Members and Clearing Members and shall be proportional to the FCM Contribution Requirement or the CM Contribution Requirement of the relevant FCM Clearing Member or Clearing Member.
  - (d) Notwithstanding Paragraph (1) above, the Resolution Authority is entitled to exercise Resolution Cash Calls regardless of whether Eurex Clearing AG has or has not fully exhausted any calls for FCM Further Contribution pursuant to Number 3.3 of the FCM Default Rules.
  - (e) Any amount being payable under a Resolution Cash Call by the FCM Clearing Member shall be provided in accordance with the daily cash processing pursuant to Number 1.4.1 above.
  - (f) For the avoidance of doubt, if the FCM Clearing Member is not able to pay amount due under a Resoultion Cash Call, such non-payment will constitute a Termination Event pursuant to Number Number 9.2.1 (1) (a) above.

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- (g) If, after the exercise of the Resolution Cash Call, the Resolution Authority determines that the total amount obtained through the Resolution Cash Calls exceeds the amounts needed to cover all Default Losses or Non-Default Losses, all FCM Clearing Members and Clearing Members, which were subject to the Resolution Cash Calls, will be reimbursed accordingly on a pro-rata basis.

(5) Enforcement of Outstanding Obligations

If the Resolution Authority makes use of resolution measures pursuant to Paragraph (2) to (5) with respect to a FCM Clearing Member and the Resolution Authority prior to such resolution measures refrained partially or fully from enforcing the following rights with respect to a FCM Clearing Member to

- (i) call for FCM Further Contribution pursuant to Number 3.3 of the FCM Default Rules,
- (ii) terminate and settle in cash DMP Cash Settlement Transactions pursuant to Number 9.6.1 above,
- (iii) establish DM Swap Hedging Transactions, conduct additional DM Swap Auctions, or establish Additional Swap Transactions pursuant to Number 9.6.2 above, or
- (iv) terminate and settle in cash all Transactions of a Relevant Liquidation Group pursuant to Number 9.6.3 (each a “**Refrained Right**”),

the Resolution Authority shall be entitled to enforce any Refrained Right within 18 months after the CCP is considered to be failing or likely to fail in accordance with Article 22 of the CCP Recovery and Resolution Regulation, provided that the reasons for refraining from enforcing the relevant Refrained Right no longer exist. The Resolution Authority shall notify the FCM Clearing Member three months before enforcing the relevant Refrained Right. The proceeds from the enforced Refrained Right shall be used to recover the use of public funds.

16.6.3 **Recognition of Resolution Measures**

- (1) The FCM Clearing Member agrees to be bound by any Resolution Measure taken by the Resolution Authority in respect of the FCM Clearing Member’s assets, rights, obligations and liabilities under the FCM Clearing Agreement and the FCM Regulations, including the application of Article 28 (position and loss allocation tools), Article 32 (write down and conversion tool), Article 55 (power to suspend certain obligations), Article 56 (power to restrict the enforcement of security interests) and Article 57 (power to temporarily suspend termination rights) of the CCP Recovery and Resolution Regulation.

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**"Resolution Measure"** means the application of any resolution tool taken by the Resolution Authority as set out in Article 27 (1) or the exercise of a resolution power as set out in Articles 48 to 58 of the CCP Recovery and Resolution Regulation.

- (2) The FCM Clearing Member further acknowledges that, pursuant to Article 54 of the CCP Recovery and Resolution Regulation, any Resolution Measure taken by the Resolution Authority with respect to Eurex Clearing AG does not constitute a Failure to Pay Event or an Insolvency Event with respect to Eurex Clearing AG pursuant to Number 11.3 above.

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## 17 **Eurex ESG Clearing Compass**

### 17.1 **ESG Visibility Hub**

FCM Clearing Members may provide Eurex Clearing AG with certain ESG-related information which will be linked to the respective FCM Clearing Member in the public list of all current clearing contacts on the Eurex Clearing Website. The exact scope of this service is described and rights and obligations of the FCM Clearing Member and Eurex Clearing AG are set out in the terms of use of the ESG Visibility Hub ("**ESG Visibility Hub Terms**"), which are published on the Eurex Clearing Website and shall form an integral part of the FCM Clearing Conditions, including the FCM Regulations of Eurex Clearing AG.

### 17.2 **ESG Portfolio Assessment**

FCM Clearing Members will be provided with a report including climate metrics and ratings on an aggregated portfolio level ("**ESG Report**"). The exact scope of this service is described and rights and obligations of Eurex Clearing AG and the FCM Clearing Member are set out in the terms for the ESG Report ("**ESG Report Terms**"), which are published on the Eurex Clearing Website and shall form an integral part of the FCM Clearing Conditions, including the FCM Regulations of Eurex Clearing AG.