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Eurex Clearing

Amendments to Eurex Clearing's Clearing Conditions and FCM Regulations with respect to the new ISDA IBOR Fallbacks Supplement

Eurex Clearing Circular 112/20 Amendments to Eurex Clearing's Clearing Conditions and FCM Regulations with respect to the new ISDA IBOR Fallbacks Supplement

1. Introduction

This circular contains information with respect to the service offering of Eurex Clearing AG (Eurex Clearing) and introduces amendments to the Clearing Conditions of Eurex Clearing AG (Clearing Conditions) and the Price List of Eurex Clearing AG (Price List) regarding the following topic:

- ◆ Amendments to the index cessation regime for OTC transactions to align with the ISDA IBOR Fallbacks Supplement and further minor amendments

The amendments will become effective as of **25 January 2021**.

2. Required action

There is no required action for the Participants.

3. Details

Amendments to the index cessation regime for OTC transactions to align with the ISDA IBOR Fallbacks Supplement and further minor amendments

With this circular, Eurex Clearing introduces amendments to its index cessation regime for OTC transactions to keep them in line with bilateral market practice. In particular, Eurex Clearing aims at reflecting the core provisions of the newly published ISDA IBOR Fallbacks Supplement in its rulebooks. The key amendments are as follows:

A. Introduction of a pre-cessation event as an index cessation trigger event for LIBORs

For LIBORs, a new pre-cessation event as a trigger for the application of a fallback index is introduced. A pre-cessation event occurs if the regulatory supervisor for the relevant index administrator publicly states that

- ◆ it has determined that the relevant index is no longer, or as of a specified future date will no longer be, representative of the underlying market and economic reality that such index is intended to measure and representativeness will not be restored, and
- ◆ the public statement or publication of information is being made in the awareness that the statement or publication will engage certain contractual triggers for fallbacks activated by pre-cessation announcements by such supervisor (howsoever described) in contracts.

This provision mirrors the respective pre-cessation event clause of the ISDA IBOR Fallbacks Supplement.

B. Clarification of the applicable fallbacks for IBORs

Already today, Eurex Clearing's Rulebooks foresee that in case an index cessation event occurs, in principle, the fallback specified in the 2006 ISDA Definitions will be applied. It is now clarified that also with regard to the discontinuation of certain tenors of IBORs, the fallback regime of the 2006 ISDA Definitions (as amended by the ISDA IBOR Fallbacks Supplement) will normally be applied.

C. Amendments with respect to the temporary index non-publication regime and further minor amendments

Within the fallback logic applicable to a temporary index non-publication, it is now clarified that (unless specified otherwise) Eurex Clearing will retrieve the relevant missing index level either from another authorised distributor or directly from the index administrator or (new) it will use an index level formally recommended for use by the relevant supervisor of the index administrator. This fallback logic resembles the provisions introduced by the ISDA IBOR Fallbacks Supplement.

Further minor amendments are introduced, in particular, to keep Eurex Clearing's Rulebooks in line with the 2006 ISDA Definitions to the extent relevant.

To reflect the changes, in particular the following provisions will be amended as outlined in Attachments 1-3:

- ◆ Chapter I Part 6 Number 3.7 of the Clearing Conditions
- ◆ Chapter VIII Part 1 Number 1.8 of the Clearing Conditions
- ◆ Chapter II Part 1 Number 1.8 of the FCM Regulations

As of the effective date, the full versions of the Clearing Conditions and FCM Regulations will be available for download on the Eurex Clearing website www.eurex.com/ec-en/ under the following link:

Clear > Rules & Regs > Rules and Regulations

The changes and amendments to the legal framework of Eurex Clearing AG published by this circular are deemed accepted by each affected contractual party of Eurex Clearing AG, unless the respective contractual party objects by written notice to Eurex Clearing AG within the first ten (10) Business Days after publication. Any ordinary right of Eurex Clearing AG to terminate the respective contract (including a Clearing Agreement, if applicable) shall remain unaffected.

Unless the context requires otherwise, terms used and not otherwise defined in this circular shall have the meaning ascribed to them in the Clearing Conditions or FCM Clearing Conditions of Eurex Clearing AG, as applicable.

Attachments:

Amended sections of the following Rules and Regulations, in particular:

1. Chapter I Part 6 Number 3.7 of the Clearing Conditions
2. Chapter VIII Part 1 Number 1.8 of the Clearing Conditions
3. Chapter II Part 1 Number 1.8 of the FCM Regulations

Further information

Recipients: All Clearing Members, Basic Clearing Members, Disclosed Direct Clients and FCM Clearing Members of Eurex Clearing AG, vendors and other affected contractual parties

Target groups: Front Office/Trading, Middle + Backoffice, IT/System Administration, Auditing/Security Coordination

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Web: www.eurex.com/ec-en/

Authorised Jens Janka
by:

Further information

- [Attachment 1 to Eurex Clearing circular 112/20](#)
- [Attachment 2 to Eurex Clearing circular 112/20](#)
- [Attachment 3 to Eurex Clearing circular 112/20](#)

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Chapter I of the Clearing Conditions of Eurex Clearing AG

General Provisions

As of 25.01.2021

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED

DELETIONS ARE CROSSED OUT

Clearing Conditions of Eurex Clearing AG

Preamble

As provided for in these clearing conditions of Eurex Clearing AG ("**Eurex Clearing**") (hereinafter referred to as "**Clearing Conditions**")₂ Eurex Clearing AG, having its registered office in Frankfurt am Main, acts as central counterparty for (a) (i) transactions in securities and *Wertrechte*, including German book-entry securities (*Gutschriften in Wertpapierrechnung*) and Swiss intermediated securities (*Schweizer Bucheffekten*) (hereinafter together the "**Securities**") and (ii) futures, options and other derivative transactions, which, in each case, result from either matching orders and quotes of trading participants (the "**Matching**") on the markets Eurex Deutschland, Eurex Repo or another multilateral trading facility for Repo Transactions and Frankfurter Wertpapierbörse (hereinafter collectively referred to as "**Markets**" and each a "**Market**", each transaction resulting from Matching a "**Market Transaction**"), (b) novations of transactions executed over-the-counter (each transaction resulting from an over-the-counter transaction an "**OTC Transaction**") or (c) novations of executed over-the-counter securities or cash lending transactions or securities lending transactions executed on Eurex Repo (each transaction resulting from a novation of any such securities (or cash) lending transaction a "**Securities Lending Transaction**", and each Market Transaction, OTC Transaction and Securities Lending Transaction, a "**Transaction**").

[...]

Part 6 Basic Clearing Member Provisions

[...]

3 Role of Clearing Agent

[...]

3.7 The Basic Clearing Member may, subject to the Clearing Agent's prior written consent, upon at least five (5) Business Days' prior written notice to Eurex Clearing AG and the Clearing Agent, limit the role, tasks, functions and authorities of the Clearing Agent to only some of the tasks, functions and authorities of the Clearing Agent set out or referred to in this Part 6 (the "**Clearing Agent Limitation Notice**"), except that a Clearing Agent Limitation Notice may not limit any of the Clearing Agent's tasks, functions and authorities set out or referred to in Number 3.2, 3.6 or Number 9. The Clearing Agent Limitation Notice must set out the tasks, functions and authorities of the Clearing Agent that shall be subject to such limitation (and, as relevant, the scope of such limitation in respect to a particular task, function and authority) and the point in time at which such limitation shall take effect. Upon a limitation having become effective in accordance with the preceding sentences, the tasks, functions and authorities of the Clearing Agent specified in the Clearing Agent Limitation Notice shall be transferred to the Basic Clearing Member, and the relevant provisions of the Clearing Conditions shall be read accordingly. Upon the Clearing Agent Limitation Notice becoming effective, the relevant Basic Clearing Member Clearing Agreement shall automatically be amended accordingly. The provision of this Number 3.7 shall apply accordingly, with respect to a subsequent termination of a limitation of the Clearing Agent's tasks, functions and authorities.

[...]

Chapter VIII of the Clearing Conditions of Eurex Clearing AG

Clearing of OTC Interest Rate Derivative Transactions, OTC FX Transactions and OTC XCCY Transactions

As of 25.01.2021

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED

DELETIONS ARE CROSSED OUT

[...]

Part 1 General Provisions

- (1) Eurex Clearing AG offers the Clearing and settlement of interest and currency related products traded over-the-counter which are **OTC Interest Rate Derivative Transactions**, (as defined in Part 2 Number 2.1.1), OTC FX Transactions (as defined in Part 3 Number 3.1.1) or OTC XCCY Transactions (as defined in Part 4 Number 4.1.1 and together with the OTC FX Transactions, the "**OTC Currency Transactions**")₁ provided that such OTC Interest Rate Derivative Transactions and OTC Currency Transactions meet the applicable novation criteria set out in Number 1.2.3.

[...]

[...]

1.2 Conclusion of Transactions

[...]

1.2.1 Novation of Original OTC Transactions

[...]

- (2) Whenever the trade record of an Original OTC Transaction, including, as the case may be, a Credit Limit Token (as defined in Sub-Paragraph (b) (ii) below), is transmitted to Eurex Clearing AG via an ATS (such record, including, as the case may be, a Credit Limit Token, hereinafter referred to as a "**Trade Record**"); and

[...]

- (c) Eurex Clearing AG accepts such Original OTC Transaction for inclusion in the Clearing Procedures by making an OTC Trade Novation Report available to the Clearing Member or, if applicable, the Basic Clearing Member ~~(or the Clearing Agent acting on behalf of the Basic Clearing Member)~~ electronically via its system,

[...]

[...]

(7) For the purposes of this Chapter VIII,

[...]

- (f) **“OTC Trade Daily Summary Report”** means a report that lists events occurring after the original novation which will be made available to the Clearing Members or Basic Clearing Members holding an Interest Rate Derivatives Clearing License ~~(or the Clearing Agent acting on behalf of the relevant Basic Clearing Member)~~ and/or to the Clearing Members holding an OTC Currency Products Clearing License electronically via Eurex Clearing AG's system on each Business Day. The last OTC Trade Daily Summary Report will be made available at or around 11 p.m. (Frankfurt am Main time).

[...]

1.2.2 Legal Effectiveness of the Novation

The novation becomes legally effective at the point in time when Eurex Clearing AG accepts the relevant Original OTC Transaction for Clearing by making the relevant OTC Trade Novation Report available to the relevant Clearing Member or, if applicable, to the relevant Basic Clearing Member ~~(or Clearing Agent acting on behalf of the Basic Clearing Member)~~ electronically via Eurex Clearing AG's system.

1.2.3 Novation Criteria

- (1) Eurex Clearing AG will accept an Original OTC Transaction for inclusion in the Clearing in accordance with the novation process if all of the following novation criteria are fulfilled:

[...]

3. (i) The Trade Record is transmitted to Eurex Clearing AG in a format which allows Eurex Clearing AG to import the relevant data in its system, as communicated by Eurex Clearing AG to Clearing Members or Basic Clearing Members ~~(or the Clearing Agent acting on behalf of the relevant Basic Clearing Member)~~ that hold an OTC Clearing License and (ii) no information required with respect to the terms of the relevant OTC Interest Rate Derivative Transaction, OTC FX Transaction or OTC XCCY Transaction as set out in Part 2, Part 3 or Part 4, respectively, is missing;

[...]

9. The Clearing Member or the Basic Clearing Member, as applicable, must have complied with the scheduled intraday margin calls as further set out below and if applicable:

[...]

- (b) Eurex Clearing AG shall notify the Clearing Member ~~of and, as applicable, the or~~ Basic Clearing Member, ~~as applicable, of (or the Clearing Agent acting on its behalf)~~ (A) the Transactions arising pursuant to Part 2 Numbers 2.5, 2.6 and 2.7, Part 3 Numbers 3.7 and 3.8 and Part 4 Numbers 4.8 and 4.9 to be covered by the Shortfall Margin Requirement as well as (B) the Shortfall Margin Amount in both the relevant Preliminary OTC Margin Call Report and OTC Margin Call Report.

[...]

[...]

- (2) If a novation criterion is not fulfilled but the relevant OTC Trade Novation Report has nevertheless been made available via the system of Eurex Clearing AG and, accordingly, novation is effective, Eurex Clearing AG is entitled to terminate the CCP Transactions by notifying (a) the relevant Clearing Member(s) and the relevant Basic Clearing Member(s) ~~(or the Clearing Agent(s) acting on behalf of the relevant Basic Clearing Member(s))~~ in writing (including by fax or e-mail) provided that the CCP Transaction(s) created upon novation of the Original OTC Transaction were not subject to (i) any netting or accumulation pursuant to Part 2 Number 2.6, Part 3 Number 3.7 or Part 4 Number 4.8 or (ii) a transfer pursuant to Part 2 Number 2.7, Part 3 Number 3.8 or Part 4 Number 4.9 or (iii) trade amendment pursuant to Part 2 Number 2.7, Part 3 Number 3.8 or Part 4 Number 4.9 and, (b) if a Swap Transaction was created upon novation of the Original OTC Transaction, the relevant FCM Clearing Member(s), provided that such Swap Transaction was not subject to any netting, accumulation, transfer or trade amendment pursuant to the FCM Regulations.

[...]

1.2.4 Special Provisions with respect to the Conclusion of CCP Transactions

- (1) If (A) in the case of OTC Interest Rate Derivative Transactions, the Clearing Member or, if applicable, the Basic Clearing Member holds an Interest Rate Derivatives Clearing License pursuant to Part 2 Number 2.1.3 or (B) in the case of OTC FX Transactions, the Clearing Member holds an OTC Currency Products Clearing License, the Clearing Member or the Basic Clearing Member ~~(or the Clearing Agent acting on behalf of the Basic Clearing Member)~~ (i) authorises Eurex Clearing AG to capture and maintain records vis-à-vis the respective ATS, and (ii) confirms that it has appointed the relevant ATS to receive trade communications and generate and send trade communications to Eurex Clearing AG for the Clearing Member or, if applicable, the Basic Clearing Member ~~(or the Clearing Agent acting on behalf of the Basic Clearing Member)~~. Eurex Clearing AG may rely on such trade communications.

[...]

1.2.5 Daily Novation Process

[...]

- (4) If an Original OTC Transaction has been accepted for Clearing, an OTC Trade Novation Report will be made available to the relevant Clearing Member or to the relevant Basic Clearing Member ~~(or Clearing Agent acting on behalf of the Basic Clearing Member)~~ electronically via Eurex Clearing AG's system. The last OTC Trade Novation Report will be made available at or around 11:00 p.m. (Frankfurt am Main time). Such last OTC Trade Novation Report summarizes all novations of the respective Business Day.

[...]

- (6) A Clearing Member, a DC With System Access or a Basic Clearing Member ~~(or Clearing Agent acting on behalf of the Basic Clearing Member)~~ may subsequently cancel the submission with respect to any CCP Transaction intended to be transferred pursuant to Part 2 Number 2.7, Part 3 Number 3.8 or Part 4 Number 4.9 or to be terminated pursuant to Part 2 Number 2.8, Part 3 Number 3.9 or Part 4 Number 4.10, provided that (i) the cancellation request is entered by the Clearing Member, the DC With System Access or the Basic Clearing Member ~~(or Clearing Agent acting on behalf of the Basic Clearing Member)~~ into the system of, and received by, Eurex Clearing AG, and (ii) each of the responsible Clearing Member, in case the request is entered by a DC With System Access and the other Clearing Member, Basic Clearing Member ~~(or Clearing Agent acting on behalf of the Basic Clearing Member)~~ or FCM Clearing Member that is involved in such transfer or termination has given its prior consent in the system of Eurex Clearing AG to such cancellation.

[...]

1.6 US Reporting for Original OTC Transactions (via non-SEF ATS)

- (1) The relevant Clearing Member or Basic Clearing Member having a reporting obligation under Part 45 of the CFTC Regulations acknowledges that Eurex Clearing AG shall, as required under Part 45 of the CFTC Regulations, report to an Approved SDR the details of the Clearing Member's or Basic Clearing Member's Own Transactions and the details of Client-Related Transactions for the Client Transaction Accounts, along with any settlement, modification or termination of such Original OTC Transactions, and, to the extent further required under applicable law, to one or more other trade repositories.

[...]

- (3) If the relevant Clearing Member or Basic Clearing Member having a reporting obligation under Part 45 of the CFTC Regulations transmits a Trade Record that contains an Original OTC Transaction via an ATS which is not a SEF, the relevant Clearing Member or Basic Clearing Member must provide Eurex Clearing AG with the unique swap identifier (as that term is used in Part 45 of the CFTC Regulations)

for each Original OTC Transaction submitted to Eurex Clearing AG by or on behalf of the Clearing Member, along with the legal entity identifier (as that term is used in Part 45 of the CFTC Regulations) for the swap data repository to which the Original OTC Transaction was reported, when the Original OTC Transaction is submitted or immediately thereafter. The Clearing Member or Basic Clearing Member acknowledges that it must provide such information to Eurex Clearing AG so that Eurex Clearing AG may report the termination of the Original OTC Transaction to the relevant swap data repository on a timely basis, in accordance with its obligations under Part 45 of the CFTC Regulations. The relevant Clearing Member or Basic Clearing Member has to ensure that the Original OTC Transaction is legally effectively terminated upon novation.

1.7 Certain Definitions

In this Chapter VIII:

[...]

- (2) **“Bloomberg Screen”** means, when used in connection with any designated page and any floating rate index (Floating Rate Option), the display page so designated on the Bloomberg service, or any successor display page that has been officially designated by the sponsor of the original page or, if the sponsor has not officially designated a successor display page, the successor display page designated by the relevant information vendor or provider (if different from the sponsor).

[...]

- (4) **“CFTC Regulations”** means the rules, regulations and orders promulgated by the US Commodity Futures Trading Commission (**“CFTC”**) published as Title 17 of the US Code of Federal Regulations(CFTC).

[...]

- (9) **“Reuters Screen”** or **“Thomson Reuters Screen”** each means, when used in connection with any designated page and any floating rate index (Floating Rate Option)~~any Floating Rate~~, the display page so designated on the Thomson Reuters service, or any successor display page that has been officially designated by the sponsor of the original page or, if the sponsor has not officially designated a successor display page, the successor display page designated by the relevant information vendor or provider (if different from the sponsor).

[...]

1.8 Index-related Provisions

If ~~in~~under this Chapter VIII (or under any transaction to which this Chapter VIII is applicable), a rate is to be determined by reference to an index, benchmark, a screen or page displaying an index or benchmark, or any other price source that is referred to under a CCP Transaction (in particular as part of the floating rate), the following

provisions shall apply, unless provided otherwise. For the avoidance of doubt, these provisions shall also apply to any Successor Index determined in accordance with these provisions.

1.8.1 Index Correction

- (1) For the purpose of determining the index level for a specific point in time (the “**Relevant Index Level**”), the Relevant Index Level will be subject to corrections (each an “**Index Correction**”), if any, to that information that are subsequently (i) published by the natural or legal person that has control over the provision of an index (the “**Index Administrator**”) or (ii) provided by the Index Administrator to, and published by, authorised distributors of the Relevant Index Level, as applicable, in each case,

[...]

- (b) if no time period has been specified in accordance with lit. (a), the time period specified for corrections for the respective index or rate in the 2006 ISDA Definitions, or

[...]

- (2) For the avoidance of doubt, if an Index Correction has taken place, Eurex Clearing AG shall automatically reperform any calculations which have been originally based on an index level before the Index Correction. If any payments took place on the basis of a Relevant Index Level before an Index Correction, the Clearing Member or Basic Clearing Member which has received an excess payment is obliged to repay any excess to Eurex Clearing AG, and Eurex Clearing AG will ~~then~~ make a payment to compensate for an underpayment to the respective Clearing Member or Basic Clearing Member.

1.8.2 Permanent Index Cessation

- (1) A “**Permanent Index Cessation Event**” means, with respect to the relevant index, the occurrence of one or more of the following events:

- (a) a public statement or publication of information by or on behalf of the Index Administrator that it has ceased or will cease to provide values for the index permanently or indefinitely, provided that at the time of the statement or publication, there is no announcement of a successor administrator that will continue to provide values for the index,

- (b) the following events:

(aa) a public statement or publication of information by the regulatory supervisor for the Index Administrator, the central bank for the currency of the relevant index, an insolvency official or a resolution authority with jurisdiction over the Index Administrator or a court or an entity with similar insolvency or resolution authority over the Index Administrator, ~~or the competent central~~

~~bank for the currency of the relevant index~~, which states that the Index Administrator has ceased or will cease to provide values for the index permanently or indefinitely, provided that at the time of the publication, there is no announcement of a successor administrator that will continue to provide values for the index,

(bb) in respect of a LIBOR index, a public statement or publication of information by the regulatory supervisor for the Index Administrator that

(i) it has determined that the relevant index is no longer, or as of a specified future date will no longer be, representative of the underlying market and economic reality that such index is intended to measure and representativeness will not be restored, and

(ii) the public statement or publication of information is being made in the awareness that the statement or publication will engage certain contractual triggers for fallbacks activated by pre-cessation announcements by such supervisor (howsoever described) in contracts

(a "Pre-cessation Event").

- (c) a statement by Eurex Clearing AG published in accordance with Chapter I Part 1 Number 16.1 ~~of the Clearing Conditions~~ that it considers that the Index Administrator which, at that time, actually has not provided values for at least one week has ceased to provide values for the index permanently or indefinitely, provided that, at that time, there is no successor administrator that will continue to provide values for the index,
- (d) a public statement or a decision by a regulator, a competent public entity or a court prohibiting Eurex Clearing AG the use of the index, provided that Eurex Clearing AG announces in accordance with Chapter I Part 1 Number 16.1 it considers this lit. (d) to be triggered, or
- (e) a statement by Eurex Clearing AG published in accordance with Chapter I Part 1 Number 16.1 ~~of the Clearing Conditions~~ that it determines that its further use of the index will be a violation of laws applicable to it (including, but not limited to, Regulation (EU) 2016/1011 on indices used as benchmarks), provided that such announcement is based on reasonable grounds.

The Permanent Index Cessation Event shall occur at the earliest point in time which has been specified in a public statement, publication of information, decision or public announcement referred to in lit. (a) – (e) or, if no point in time has been specified in this way, immediately after the earliest of the events listed in lit. (a) – (e) has occurred (the "**Index Cessation Date**"). In case of lit. (b) (bb), the date indicated in the relevant most recent statement or publication of the relevant regulatory supervisor as of which the Pre-cessation Event shall apply shall be decisive, even if the index continues to be provided on such date.

(2) For the avoidance of doubt, the change of the definition, methodology, ~~or formula or other means of calculating~~ an index per se does not constitute a Permanent Index Cessation Event, but only if Paragraph (1) lit. (a) – (e) is triggered by this change. In particular, the changes to the methodology for the calculation of EONIA taking effect on 2 October 2019 for the purpose of aligning it to €STR developed by the European Central Bank do not constitute a Permanent Index Cessation Event.

(3) If a Permanent Index Cessation Event occurs, Eurex Clearing AG will determine each index level for a date from (and including) the Index Cessation Date based on the following fallbacks (any such fallback index a “**Successor Index**”), whereby lit. (a) – (d) mark the order of application of the relevant fallback. For the avoidance of doubt, a Successor Index may also consist of a fallback index plus or minus a certain fixed spread.

[...]

(b) Only in case the Permanent Index Cessation Event according to Paragraph (1) (a) – (c) has occurred: If the definition of the relevant index in the 2006 ISDA Definitions includes a reference to a concept defined or otherwise described as an index cessation event (regardless of the contents of that definition or description) then, as of the Index Cessation Date, any fallback specified in that definition or description to apply following such an event shall apply, provided that Eurex Clearing states in accordance with Chapter I Part 1 Number 16.1 ~~of the Clearing Conditions~~ that it is operationally and legally capable to use this fallback. In this or a further statement, Eurex Clearing may also issue accompanying provisions to clarify the fallback regime and its relation to the provisions of the Clearing Conditions.

(c) If an index is formally designated, nominated or recommended as a fallback index by (i) the competent central bank for the currency of the relevant index, the regulatory supervisor for either the relevant index or the Index Administrator, or any working group or committee officially endorsed or convened by any of the foregoing authorities, a group of any of the foregoing authorities, or the Financial Stability Board, or any part thereof, or (ii), if (i) does not apply, the Index Administrator of the relevant index, then, as of the Index Cessation Date, this fallback index shall be applied as the Successor Index, provided that Eurex Clearing states in accordance with Chapter I Part 1 Number 16.1 ~~of the Clearing Conditions~~ that it is operationally and legally capable to use this fallback index. In this or a further statement, Eurex Clearing may also issue accompanying provisions to clarify the fallback regime and its relation to the provisions of the Clearing Conditions.

(d) If Eurex Clearing AG states ~~(in accordance with Chapter I Part 1 Number 16.1 of the Clearing Conditions)~~ the application of an index as a fallback, then, as of the Index Cessation Date, this index shall be applied as the Successor Index. Before announcing an index as a fallback index, Eurex Clearing AG shall take into account inter alia market practice, recommendations and documents by

ISDA, IOSCO and competent authorities. If reasonably possible, Eurex Clearing AG shall consult affected Clearing Members and Basic Clearing Members prior to announcing any Successor Index in accordance with lit. (d).

[...]

(8) Specific provisions relating to discontinued rates maturities

Section 8.5 (and Section 7.3 (r), (s) and 8.6, to the extent relevant for Section 8.5) of the 2006 ISDA Definitions shall apply *mutatis mutandis*, provided that Eurex Clearing states in accordance with Chapter I Part 1 Number 16.1 that it is operationally and legally capable to use this fallback. In this or a further statement, Eurex Clearing may also issue accompanying provisions to clarify the fallback regime and its relation to the provisions of the Clearing Conditions.

In case of any inconsistency between this Paragraph (8) and any other provision in this Chapter VIII (save for Paragraph (9)) defining the rates for calculating the floating rate or providing a fallback regime for such a rate (including Paragraph (1) – (7)), this Paragraph (8) shall prevail and in case of any inconsistency between this this Paragraph (8) and Paragraph (9), Paragraph (9) shall prevail.

(9) Specific provisions relating to calculation periods to which 'Linear Interpolation' is specified to be applicable

In respect of any calculation period (i) to which 'Linear Interpolation' is specified to be applicable to determine the relevant rate for the floating rate and (ii) with regard to which the relevant rate is determined by reference to a LIBOR index, the EURIBOR index, a BBSW index or a CDOR index, Section 7.9 (a) (i) and (ii) (and Section 7.3 (r), (s) and 8.6, to the extent relevant for Section 7.9) of the 2006 ISDA Definitions shall apply *mutatis mutandis*, provided that Eurex Clearing states in accordance with Chapter I Part 1 Number 16.1 that it is operationally and legally capable to use this fallback. In this or a further statement, Eurex Clearing may also issue accompanying provisions to clarify the fallback regime and its relation to the provisions of the Clearing Conditions.

In case of any inconsistency between this Paragraph (9) and any other provision in this Chapter VIII defining the rates for calculating the floating rate or providing a fallback regime for such a rate (including Number 1.8.2 (1) – (8)), this Paragraph (9) shall prevail.

1.8.3 Temporary Index Cessation~~Non-Publication~~

- (1) A "**Temporary Index Cessation~~Non-Publication~~ Event**" means that a Relevant Index Level has not been published by the Index Administrator at the specified or usual point in time, but an ~~Permanent~~ Index Cessation ~~Event~~ Date has not occurred. This includes, for the avoidance of doubt, a situation where a Relevant Index Level does not appear on the relevant screen, page or price source at the specified or

usual point in time, if under these Clearing Conditions a screen page is specified as the relevant authoritative source for a Relevant Index Level.

- (2) If a Temporary Index ~~Cessation~~ Non-Publication Event occurs, Eurex Clearing AG will determine each missing index level based on the following fallbacks:
- (a) ~~If a Relevant Index Level does not appear on the relevant screen page, and the Clearing Conditions contain a special regime on the further procedure with respect to a specific index or screen, then this special regime shall apply.~~
- (b) ~~If a Relevant Index Level does not appear on the relevant screen page and lit. (a) does not apply,~~

~~Eurex will~~ (aa) the Relevant Index Level as provided by the Index Administrator and published by an authorized distributor or the Index Administrator itself (in accordance with any time periods for corrections and/or delayed publications specified by the Index Administrator, or, if no such time has been specified, the time period specified for corrections and/or delayed publications for the respective index or rate in the 2006 ISDA Definitions) shall be decisive;

(bb) if no Relevant Index Level may be determined in accordance with lit. (aa),

(i) a rate or index level as formally recommended for use by the Index Administrator; or

(ii) a rate or index level as formally recommended for use by the supervisor for the relevant index or the supervisor for the relevant Index Administrator shall be decisive;

but, in each case, only if Eurex Clearing AG states in accordance with Chapter I Part 1 Number 16.1 that retrieve the Relevant Index Level by other means, including screens of other distributors or direct disclosure from the Index Administrator or any other competent entity. When determining the applicable fallback, Eurex Clearing shall take into account the fallback sequence laid out in the 2006 ISDA Definitions and whether it is operationally and legally capable to use a fallback the relevant data as a fallback.

- (c) ~~If lit. (a) – (b) do not apply or the fallback mechanism contemplated therein is not feasible,~~ Eurex Clearing will surrogate each missing Relevant Index Level by the latest available Relevant Index Level until the occurrence of an Index Cessation Date.
- (3) If a Relevant Index Level is ~~retrospectively~~ published by an authorized distributor or the Index Administrator after a fallback in accordance with Paragraph (2) has been applied, Eurex Clearing AG will replace the Relevant Index Level surrogated in accordance with Paragraph (2) by ~~the retrospectively~~ such published Relevant Index Level, provided that the retrospective publication did take place within (i) the time period specified for retrospect publications of index values by the Index

Administrator, (ii) the time period specified for corrections and/or delayed publications for the respective index or rate in the 2006 ISDA Definitions or (iii), if no time period has been specified in accordance with lit. (i) and/or (ii), one week after the specified or usual point in time at which the publication of the Relevant Index Level should have happened. Eurex Clearing AG shall reperform any calculations which have been originally based on an index level surrogated in accordance with Paragraph (2) based on the retrospectively published Relevant Index Level. If any payments took place on the basis of an index level surrogated in accordance with Paragraph (2), but a replacement in accordance with this Paragraph (3) took place, the Clearing Member or Basic Clearing Member which has received an excess payment is obliged to repay any excess to Eurex Clearing AG, and Eurex Clearing AG will make a payment to compensate for an underpayment to the respective Clearing Member or Basic Clearing Member.

1.9 Copyright Notices and Disclaimers of Third Parties

[...]

1.9.2 SARON-related Copyright Notice and Disclaimer

The Swiss Reference Rates and related data are the intellectual property (including registered trademarks) of SIX Swiss Exchange AG, Zurich, Switzerland (for the purposes of this provision the “**SIX Swiss Exchange**”) and/or its licensors (for the purposes of this provision the “**Licensors**”), which is used under license. SIX Swiss Exchange and/or its Licensors do not give any warranty and exclude any liability (whether in negligence or otherwise) with respect thereto generally or specifically in relation to any errors, omissions or interruptions in connection with the Swiss Reference Rates and/or related data.

[...]

Part 2 Clearing of OTC Interest Rate Derivative Transactions

2.1 General Provisions

[...]

2.1.5 Novation Criteria and Process Regarding OTC Interest Rate Derivative Transactions

[...]

2.1.5.1 Transaction Type Specific Novation Criteria

[...]

(7) Shortened or extended calculation period (stub period)

[...]

- (a) a short or long first calculation period ("**Interest Rate Front Stub Period**") and a short or long last calculation period ("**Interest Rate Back Stub Period**") may be specified for IRS and OIS, provided that:

[...]

- (cc) Interest Rate Stub Periods must not be specified for OTC Interest Rate Derivative Transactions with (i) payments of floating amounts which are calculated on a compounding basis (except OIS) as set out in Paragraph 17 below, or (ii) zero coupon payments.

[...]

[...]

2.1.5.3 Bulk Backloading of Original OTC Transactions

[...]

- (5) At 3:00 p.m. and 5:00 p.m. (each Frankfurt am Main time) on each Business Day Eurex Clearing AG will make available to the Clearing Member and the DC With System Access and the Basic DC (depending on the categorisation of such Basic DC in the systems of Eurex Clearing AG) or the Basic Clearing Member ~~(or Clearing Agent acting on behalf of the Basic Clearing Member)~~ a preliminary report indicating the Bulk Backloaded Original OTC Transactions which have been received for Clearing and which fulfil the novation criteria pursuant to Number 2.1.5.1 and the Margin Requirement as well as any shortage in actually delivered Eligible Margin Assets.

[...]

- (7) For Bulk Backloaded Original OTC Transactions which, on the day of submission, fulfil all novation criteria except for the requirement to provide sufficient Eligible Margin Assets necessary to cover the relevant Margin Requirement, Eurex Clearing AG will debit the shortfall amount set forth in the OTC Margin Call Report produced and made available at 10:30 p.m. (Frankfurt am Main time) in the agreed Clearing Currency from the relevant Clearing Member Cash Account, relevant OTC IRS U.S. Clearing Member Cash Account or Basic Clearing Member Cash Account, as relevant, in accordance with the daily cash clearing procedure pursuant to Chapter I Part 1 Number 1.4.1. Such payment made by direct debit shall constitute cover in respect of the Margin to which the Margin Requirement referred to in the foregoing sentence relates and accordingly will constitute (i) Proprietary Margin or Omnibus Margin delivered by the Clearing Member pursuant to the Elementary Clearing Model Provisions, (ii) Margin delivered by the Clearing Member pursuant to the ISA Provisions or (iii) Basic Clearing Member Margin delivered by the Basic Clearing Member pursuant to the Basic Clearing Member Provisions. Eurex Clearing AG will make available an OTC Trade Novation Report on the Business

Day following the day of submission at or around 9:30 a.m. (Frankfurt am Main time) to the Clearing Member and the DC With System Access and the Basic DC (depending on the categorisation of such Basic DC in the systems of Eurex Clearing AG) or the Basic Clearing Member ~~(or the Clearing Agent acting on behalf of the Basic Clearing Member)~~.

- (8) A Clearing Member, a DC With System Access (acting on behalf of the Clearing Member) or a Basic Clearing Member ~~(or a Clearing Agent acting on behalf of the Basic Clearing Member)~~ may subsequently cancel the submission with respect to any Bulk Backloaded Original OTC Transaction submitted to Eurex Clearing AG via an ATS and intended to be novated by the latest by 5:00 p.m. (Frankfurt am Main time) on a Business Day, provided that
- (i) the cancellation request is entered by the Clearing Member, the DC With System Access or Basic Clearing Member ~~(or Clearing Agent acting on behalf of the Basic Clearing Member)~~ into the system of, and received by, Eurex Clearing AG, and
 - (ii) each, the responsible Clearing Member, in case the request is entered by a DC With System Access, and the other Clearing Member, the other Basic Clearing Member ~~(or Clearing Agent acting on behalf of the Basic Clearing Member)~~ or the FCM Clearing Member that is a party to the relevant Transaction or Swap Transaction, respectively, has given its prior consent in the system of Eurex Clearing AG to such cancellation request.

[...]

2.1.7 Margin Requirements

[...]

- (4) In addition to Variation Margin and Basic Clearing Member Variation Margin, as applicable, and as part of the primary payment obligations of CTM Interest Rate Derivative Transactions, interest (the so-called price alignment interest ("**PAI**")) shall be payable on the cumulative Variation Margin or Basic Clearing Member Variation Margin, respectively, at the applicable overnight interest rate.

[...]

- (b) The relevant indices to determine the PAI are:

[...]

- (ix) In case the currency is PLN then POLONIA (Polish Overnight Index Average).

Eurex Clearing AG may switch the index to determine the IRS PAI by amending this Paragraph (4) (b) in accordance with Chapter I Part 1 Number 17.2 or by way of applying the provisions laid out in Part 1 Number 1.8.2 (each an "**IRS**

PAI Switch”). Eurex Clearing AG may postpone the effective date of an IRS PAI Switch by amending this Paragraph (4) (b) in accordance with Chapter I Part 1 Number 17.2 or, if a Termination Event with respect to a Clearing Member, a Termination Event (as defined in the FCM Regulations) with respect to an FCM Clearing Member, an Insolvency Termination Event with respect to a Clearing Member, an Insolvency Termination Event (as defined in the FCM Regulations) with respect to an FCM Clearing Member, a Basic Clearing Member Termination Event or a Basic Clearing Member Insolvency Termination Event occurs and Eurex Clearing AG deems that such event may have an adverse impact on the proper course of the implementation of an IRS PAI Switch, by publishing an announcement in accordance with Chapter I Part 1 Number 16.1 ~~of the Clearing Conditions~~.

[...]

[...]

2.2 General product-related terms for OTC Interest Rate Derivative Transactions

[...]

2.2.1 Payment Obligations

- (1) The relevant Clearing Member or Basic Clearing Member ~~(or its Clearing Agent acting for its account)~~ and Eurex Clearing AG shall pay either Fixed Amounts or Floating Amounts and, if applicable, any initial amount payable under the relevant CCP Transaction, as provided for in Number 2.3 and 2.4.

[...]

2.2.2 References to Market Standard OTC Interest Rate Derivatives Documentation

- (1) Notwithstanding any selection of the 2000 ISDA Definitions or 2006 ISDA Definitions in the data to be transmitted via the ATS and subject to Number 2.2.6 (*Day Count Conventions*) below and unless the context requires otherwise, (a) the 2006 ISDA Definitions, ~~as published by ISDA~~, shall apply to all CCP Transactions that are ISDA Interest Rate Derivative Transactions and (b) the 2000 ISDA Definitions or 2006 ISDA Definitions shall not apply to DRV Interest Rate Derivative Transactions except that (i) the definitions relating to compounding set forth in Section 6.3 of the 2006 ISDA Definitions, which are referenced in the last sub-paragraph of Number 2.2.4 ~~Paragraph~~ (1) below, and (ii) Section 8.3 of the 2006 ISDA Definitions relating to Linear Interpolation, which is referenced in Number 2.2.4 ~~Paragraph~~ (4) below shall also apply to DRV Interest Rate Derivative Transactions.

[...]

- (5) **“2006 ISDA Definitions”** shall mean the 2006 Definitions published by ISDA, as amended and supplemented from time to time (including, for the avoidance of doubt, supplement number 70 to the 2006 ISDA Definitions regarding amendments to the