



## eurex clearing circular 010/17

**Date:** 27 January 2017  
**Recipients:** All Clearing Members, Non-Clearing Members, Registered Customers, FCM Clients and Basic Clearing Members of Eurex Clearing AG  
**Authorized by:** Thomas Laux

### **Consultation on amendments of Special Provisions regarding the Default Management Process and Clearing Fund**

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**Content may be most important for:**

➡ All departments

**Attachments:**

- 1.-3. Amended sections of the Clearing Conditions of Eurex Clearing AG
4. Amended sections of the Default Management Committee Rules of Eurex Clearing AG
5. Form for appointment of individuals entitled to submit comments

**Summary:**

In line with the continuous development and improvement of the Default Management Process and the Clearing Fund, Eurex Clearing AG (Eurex Clearing) proposes to:

1. Clarify the utilisation of (potential) Excess Contributions to the Clearing Fund;
2. Rename the Clearing Fund to "Default Fund";
3. Amend the frequency in which Clearing Fund Contributions are calculated;
4. Further clarify the definition of "Confidential Information" in regards to Default Management Committees (DMCs);
5. Amend the timing provisions relating to assignments of new DMC Members;
6. Introduce a possibility for DMC Member Institutions' compliance departments to be informed by Eurex Clearing in case of a DMC Convention.

The amended sections of the Clearing Conditions of Eurex Clearing AG (Clearing Conditions) and the Default Management Committee Rules, as decided by the Executive Board of Eurex Clearing, are attached to this circular.

The planned amendments fall within the scope of Special Provisions of the Clearing Conditions and are subject to a consultation process to which Eurex Clearing hereby invites all Clearing Members, Non-Clearing Members, Registered Customers and Basic Clearing Members to submit comments.

**Consultation on amendments of Special Provisions regarding the Default Management Process and Clearing Fund**

In line with the continuous development and improvement of the Default Management Process and the Clearing Fund, Eurex Clearing AG (Eurex Clearing) proposes to:

1. Clarify the utilisation of (potential) Excess Contributions to the Clearing Fund;
2. Rename the Clearing Fund to “Default Fund”;
3. Amend the frequency in which Clearing Fund Contributions are calculated;
4. Further clarify the definition of “Confidential Information” in regards to Default Management Committees (DMCs);
5. Amend the timing provisions relating to assignments of new DMC Members;
6. Introduce a possibility for DMC Member Institutions’ compliance departments to be informed by Eurex Clearing in case of a DMC Convention.

The amended sections of the Clearing Conditions of Eurex Clearing AG (Clearing Conditions) and the Default Management Committee Rules, as decided by the Executive Board of Eurex Clearing, are attached to this circular.

Eurex Clearing has decided to amend Special Provisions which requires a Consultation on the proposed amendments, pursuant to Chapter I Part 1 Number 17.3 of the Clearing Conditions.

Such Consultation will commence on **30 January 2017** and shall end on **28 February 2017** at midnight (Consultation Period).

**Eurex Clearing herewith invites all Affected Customers to submit comments on the proposed amendments of Special Provisions (see amended sections in Attachments 1 to 4 of this circular) within the Consultation Period.**

Such Consultation Period will be immediately followed by a Regular Notification Period of 15 business days, after which the proposed changes will come into effect on **27 March 2017**, provided that in total no more than two Affected Customers request a Prolonged Notification Period (three months).

If Eurex Clearing receives such request for a Prolonged Notification Period from more than two Affected Customers during the Consultation, Eurex Clearing will notify all affected parties promptly upon the receipt of such requests in an additional electronic circular.

**1. Clarification of utilisation of (potential) Excess Contributions to the Clearing Fund**

When providing Contribution to the Clearing Fund, a Clearing Member may transfer cash or securities in excess of the actual Clearing Fund requirement (Excess Contribution) to Eurex Clearing. With respect to a defaulted Clearing Member, Eurex Clearing will utilise all available Clearing Fund Contribution (including any Excess Contribution) to cover losses resulting from such Clearing Member’s default.

However, Eurex Clearing will not utilise any Excess Contribution provided by non-defaulted Clearing Members. Potential Excess Contributions merely count towards the relevant Further Contributions (if any), to be provided by non-defaulted Clearing Members.

To further increase transparency, Eurex Clearing will include the handling of Excess Contributions in the Clearing Conditions.

To reflect the changes, the following provisions will be amended, as outlined in Attachment 1:

- Chapter I Part 1 Number 6 of the Clearing Conditions.

## **2. Renaming of Clearing Fund to “Default Fund”**

Eurex Clearing will rename the Clearing Fund to “Default Fund” to align its terminology with current market standards.

- To reflect the changes, the Clearing Conditions will be amended, as outlined in Attachment 2.

## **3. Amendment of the frequency in which Clearing Fund Contributions are calculated**

Currently, Contributions to the Clearing Fund are calculated and adjusted on a quarterly basis, at the end of each calendar quarter.

Eurex Clearing will amend the frequency in which it calculates Contributions to the Clearing Fund to a monthly basis. Monthly calculations capture Clearing Members’ risk profiles in a more adequate and timely manner, highlight swift changes in risk levels and enable a proportionate consideration of stress test results for the determination of Clearing Fund Contributions.

To reflect the changes, the following provisions in the Clearing Conditions will be amended, as outlined in Attachment 3:

- Chapter I Part 1 Number 6

## **4. Further clarification of the definition of “Confidential Information” with respect to Default Management Committees (DMCs)**

In summary, any information received in connection with a DMC qualifies as confidential information, unless it is public knowledge, or has already lawfully been known to the respective party.

To further increase transparency, Eurex Clearing will clarify that the exemption for information to qualify as confidential applies not only if the relevant information has already been known to the DMC Member or its DMC Deputy, but also in case such information has already been known to the Clearing Member or the relevant Affiliate (if the DMC Member is an employee of such Affiliate).

To reflect the changes, the following provisions in the Default Management Committee Rules will be amended, as outlined in Attachment 4:

- Section 7 and Appendix 1

## **5. Amendment of timing provisions relating to assignments of new DMC Members**

Currently, the DMC Rules prescribe fixed dates within each calendar year at which DMC Members are rotated. However, in practice these fixed dates might be sub-optimal.

Eurex Clearing will adjust the timings around the assignment of new DMC Members to become more flexible, without shortening the notice periods for Clearing Members in which they can prepare for a potential assignment.

To reflect the changes, the following provisions in Default Management Committee Rules will be amended, as outlined in Attachment 4:

- Numbers 1, 2 and 3

## **6. Introduction of possibility for DMC Member Institutions' compliance departments to be informed in case of a DMC Convention**

DMC Member Institutions (i.e. Clearing Members) are liable for any breach of confidentiality of their employees acting as DMC Member or DMC Deputy.

To enable DMC Member Institutions to perform a more focused monitoring of their employees acting as DMC Member and DMC Deputy, Eurex Clearing offers to inform a DMC Member Institution's compliance department in case of a DMC meeting, provided that Eurex Clearing has been provided with the relevant contact information.

To reflect the changes, the following provisions in the Default Management Committee Rules will be amended, as outlined in Attachment 4:

- Number 3

During the Consultation period, comments on proposed changes or amendments shall be submitted through a web-based commenting service provided by Eurex Clearing, only. Any Affected Customer intending to submit comments shall appoint one or more individuals for the Consultation who may submit comments on behalf of the respective Affected Customer using the form in Attachment 5 to this circular.

The form has to be duly signed and returned to Eurex Clearing via e-mail to **[SpecialProvisions@eurexclearing.com](mailto:SpecialProvisions@eurexclearing.com)** in order to obtain a User ID and Password together with a link for accessing the web-based commenting service.

To the extent that Eurex Clearing decides to implement any comments of Affected Customers, the so-amended version will be published again applying the initial notification period, i.e. either the Regular Notification Period or the Prolonged Notification Period, as applicable.

When the amended Clearing Conditions come into effect, they will be available for download on the Eurex Clearing website [www.eurexclearing.com](http://www.eurexclearing.com) under the following link:

### **[Resources > Rules and Regulations > Clearing Conditions](#)**

Terms used and not otherwise defined in this circular shall have the meanings ascribed to them in the Clearing Conditions and Default Management Committee Rules.

If you have any questions or require further information, please contact Risk Control at tel. +49-69-211-1 24 52 or the Default Management Team by sending an e-mail to [DMP\\_Inbox@eurexclearing.com](mailto:DMP_Inbox@eurexclearing.com).

27 January 2017

Chapter I of the Clearing Conditions of Eurex Clearing AG

# General Provisions

As of 27.03.2017

\*\*\*\*\*

THE CLEARING CONDITIONS WILL BE AMENDED.

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

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[...]

## **Chapter I General Provisions**

[...]

### **Part 1 General Clearing Provisions**

[...]

#### **6 Clearing Fund**

##### **6.1 Contributions to the Clearing Fund**

##### **6.1.1 Contributions and Calculation of the Contributions to the Clearing Fund**

[...]

(4) The Clearing Member may with respect to the relevant CM Contribution or the Clearing Agent may with respect to the relevant BCM Contribution provide cash amounts or Securities to Eurex Clearing AG in accordance with Number 6.1.2 in excess of the relevant CM Contribution Requirement or relevant BCM Contribution Requirement (each such excess, the “**Excess Contribution**”).

[...]

## 6.2 Realisation of the Clearing Fund

[...]

6.2.1 In case of a Realisation Event, the (Further) Contributions will be realised (with respect to Interim Participants as modified by the specific provisions set out in Subpart A Number 15 of the Individual Clearing Model Provisions) in accordance with the following order of priority with respect to each **“Relevant Liquidation Group”**, i.e. each Liquidation Group (as defined in Number 7.5.1) to which Terminated Transactions (as defined in Number 7.5) belong (whereby each Paragraph (1) to (12) of such order of priority shall be applied to all Relevant Liquidation Groups simultaneously before, in each case, the respective next paragraph is applied and whereby all Terminated Transactions which do not form part of any Liquidation Group shall collectively be treated as one **“Relevant Liquidation Group”** within the scope of the Clearing Fund for the purposes of this Number 6):

- (1) first, the applicable Liquidation Group Ratio of the CM Contribution and (if available) of the Excess Contribution of the CM Affected Clearing Member (such CM Contribution, the **“Affected CM Contribution”**) or the applicable Liquidation Group Ratio of the BCM Contribution and (if available) of the Excess Contribution of the BCM Affected Clearing Member relating to the Basic Clearing Member with respect to which a Basic Clearing Member Termination has occurred (such Basic Clearing Member, the **“Affected BCM”** and such BCM Contribution, the **“Affected BCM Contribution”**), as applicable;

[...]

## 6.3 Further Contributions to the Clearing Fund (Assessments); Replenishment of Contributions to the Clearing Fund

6.3.1 If, following a Realisation Event, Eurex Clearing AG determines that the Contributions may not be sufficient to cover the respective claims secured by the Clearing Fund in accordance with Number 6.2.1 above, it shall at its discretion be entitled to require within a Capped Period, by making one or several demands

- (i) from the BCM Affected Clearing Member further Affected BCM Contributions (the **“Affected BCM Further Contributions”**) and
- (ii) from the ~~the~~ Non-Affected Clearing Members and the BCM Affected Clearing Member, further CM Contributions (the **“CM Further Contributions”**) and further BCM Contributions (other than Affected BCM Contributions) (the **“Non-Affected BCM Further Contributions”**)

(the Affected BCM Further Contributions and the Non-Affected BCM Further Contributions together, the **“BCM Further Contributions”**; and the BCM Further Contributions and the CM Further Contributions together, the **“Further Contributions”**). When determining the relevant CM Further Contributions or the relevant Non-Affected BCM Further Contribution with respect to the relevant Clearing Member, Eurex Clearing

AG shall reduce the relevant Further Contributions by the relevant Excess Contribution actually delivered to Eurex Clearing AG by such Clearing Member (if any). ~~and~~ The BCM Affected Clearing Member and the Non-Affected Clearing Members shall, subject to the Liability Cap, be obliged to make, such Further Contributions to the Clearing Fund, in each case as soon as possible but no later than one Business Day following receipt of Eurex Clearing AG's demand.

[...]

**6.4 Release of the Contributions to the Clearing Fund**

6.4.1 With respect to each Excess Contribution, the Clearing Member or the Clearing Agent may at any time request from Eurex Clearing AG the release of cash amounts or Securities with a maximum value corresponding to the relevant Excess Contribution.

6.4.2 If all Clearing Licenses of a Clearing Member or the Basic Clearing Member Clearing Licenses of a Basic Clearing Member of such Clearing Member (acting in its capacity as a Clearing Agent) have been terminated, Eurex Clearing AG shall release the relevant Contributions of the respective Clearing Member to the Clearing Fund as follows:

[...]

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Attachment 2 to Eurex Clearing circular 010/17	Eurex04e
Clearing Conditions of Eurex Clearing AG	As of 27.03.2017
	Page 1

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CHAPTER I, IV, VI, VIII, IX AND APPENDICES 1, 8 AND 9  
OF THE CLEARING CONDITIONS OF EUREX CLEARING AG  
WILL BE AMENDED.

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

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## Chapter I of the Clearing Conditions of Eurex Clearing AG

[...]

### Part 1 General Clearing Provisions

#### 1 General Rules

[...]

#### 1.5 EMIR Risk Committee

[...]

1.5.2 “**EMIR Matters**” shall be the following risk-related matters beyond daily-operations if and to the extent they may have an impact on the risk management of Eurex Clearing AG:

[...]

(6) all other matters beyond daily-operations which may have an impact on the risk management of Eurex Clearing AG including, but not limited to, material changes to the Clearing Conditions, such as (without limitation)

(i) to the provisions regarding the ~~Clearing Fund~~ Default Fund (as in particular defined in Number 6);

[...]

1.5.3 The Executive Board shall seek advice from the EMIR Risk Committee with respect to the following “**Consultation Matters**” (and together with the EMIR Matters the “**Relevant Matters**”):

Attachment 2 to Eurex Clearing circular 010/17	Eurex04e
Clearing Conditions of Eurex Clearing AG	As of 27.03.2017
	Page 2

[...]

- (2) material revisions and adjustments to Eurex Clearing AG's policies used to test its margins, ~~Default Fund~~ ~~default fund~~ and other financial resources methodologies and framework for calculating liquid financial resources;

[...]

## **2 Clearing Members**

### **2.1 Clearing License**

[...]

#### **2.1.2 General Prerequisites for Clearing Licenses**

[...]

- (5) The applicant shall provide evidence for compliance with the following requirements:

[...]

- (d) Payment of the Contribution to the ~~Clearing Fund~~ ~~Default Fund~~ in accordance with Number 6.1.

[...]

#### **2.1.3 Prerequisites for Governmental Entities and Supranational Organisations**

[...]

- (2) Applicants within the meaning of Paragraph (1) are required to fulfil the general prerequisites set out in Number 2.1.2 Paragraphs (3) to (6) and the special prerequisites for the relevant Transaction Type, unless they have been exempted in whole or in part from the fulfilment of these prerequisites by Eurex Clearing AG.

Applicants within the meaning of Paragraph (1) (a) to (d) may in particular be exempted from the requirement to:

[...]

- (c) pay Contributions to the ~~Clearing Fund~~ ~~Default Fund~~ pursuant to Number 2.1.2 Paragraph (5) (d);

[...]

## **6 ~~Clearing Fund~~ Default Fund**

Eurex Clearing AG maintains the general ~~clearing fund~~ ~~Default Fund~~ regulated by this Number 6 which relates to Transactions pursuant to Chapters II through VII, Chapter VIII Part 2 and, unless otherwise specified in Chapter IX, Chapter IX (the "**Clearing**

**FundDefault Fund**) to cover the ~~Clearing FundDefault Fund~~ Secured Claims (as defined in Number 6.2). The ~~Clearing FundDefault Fund~~ is not a legal person.

## 6.1 Contributions to the ~~Clearing FundDefault Fund~~

### 6.1.1 Contributions and Calculation of the Contributions to the ~~Clearing FundDefault Fund~~

- (1) Notwithstanding any Margin Requirement applicable to the Clearing Member in accordance with the Clearing Conditions, (i) each Clearing Member and (ii) subject to Number 9 of the Basic Clearing Member Provisions, each Clearing Agent separately with respect to each of its Basic Clearing Members, shall pay contributions to the ~~Clearing FundDefault Fund~~ as further set out in this Number 6 (a contribution pursuant to (i) a “**CM Contribution**”, each contribution pursuant to (ii) a “**BCM Contribution**” and each such contribution to the ~~Clearing FundDefault Fund~~ a “**Contribution**”).

[...]

### 6.1.2 Provision of the Contributions to the ~~Clearing FundDefault Fund~~

- (1) The Clearing Members and Clearing Agents shall provide the Contributions to the ~~Clearing FundDefault Fund~~ in cash amounts and/or in Securities accepted by Eurex Clearing AG by way of a transfer of all rights, title and interest in respect of such cash amounts and/or Securities to Eurex Clearing AG using the security accounts with Clearstream Banking AG or Clearstream Banking S.A., unless otherwise specified below. In Xemac the relevant transfer is effected by labelling the relevant Securities with “pledge” by way of Earmarking. For Contributions provided in the form of cash amounts, Numbers 3.4.4 and 3.4.5 of these General Clearing Provisions apply *mutatis mutandis*, and for Contributions provided in the form of Securities, Part 3 Subpart A Numbers 16.1, 16.2 and 16.4 apply *mutatis mutandis*.
- (2) In case the Clearing Member or Clearing Agent provides Contributions in the form of Swiss intermediated securities, the Clearing Member or Clearing Agent shall transfer the Swiss intermediated securities to the relevant pledged securities account maintained with SIX SIS AG exclusively in favor of Eurex Clearing AG (“**Swiss Clearing FundDefault Fund Pledged Securities Account**”).

The Clearing Member or Clearing Agent shall instruct SIX SIS AG in a timely manner to transfer the relevant Swiss intermediated securities to the Swiss ~~Clearing FundDefault Fund~~ Pledged Securities Account and inform Eurex Clearing AG of such transfer. In relation to voting rights or other optional rights, which may arise from the Swiss intermediated securities, Number 6.6.1 (2) of the Elementary Clearing Model Provisions applies accordingly.

The security purpose (*Sicherungszweck*) of the pledges granted to Eurex Clearing AG in relation to the Swiss intermediated securities is to secure all ~~Clearing FundDefault Fund~~ Secured Claims.

[...]

In the pledge agreement in the form appended to the Clearing Conditions or in such form as may be required by Eurex Clearing AG, the Clearing Member or the Clearing Agent will grant a pledge to Eurex Clearing AG over all Swiss intermediated securities which are at present or will in the future be credited to the Swiss ~~Clearing Fund~~Default Fund Pledged Securities Account.

- (3) If a Clearing Member or Clearing Agent does not provide the relevant Contribution or Further Contribution (as defined in Number 6.3) within five Business Days in full, Eurex Clearing AG shall be entitled to collect the (outstanding parts of the) relevant (Further) Contributions to the ~~Clearing Fund~~Default Fund from the relevant Clearing Member or Clearing Agent in accordance with the daily cash clearing procedure pursuant to Number 1.4.1.

### 6.1.3 **Eurex Clearing AG's dedicated own resources to the ~~Clearing Fund~~Default Fund**

Eurex Clearing AG will dedicate own resources to the ~~Clearing Fund~~Default Fund (the "**Dedicated Amount**") to be used if a Termination Date with respect to one or more Clearing Members or a Basic Clearing Member Termination Date with respect to one or more Basic Clearing Members occurs. The Dedicated Amount will be published on the website of Eurex Clearing AG ([www.eurexclearing.com](http://www.eurexclearing.com)).

### 6.2 **Realisation of the ~~Clearing Fund~~Default Fund**

Eurex Clearing AG shall have a claim for payment of the ~~Clearing Fund~~Default Fund Secured Claims (as defined below) against (i) the Affected Clearing Member and (ii) any other Clearing Member (including, for the avoidance of doubt, any other Clearing Member that is a Clearing Agent), provided that the claims under (ii) shall only become due following a Realisation Event (as defined below) and shall only be payable out of the Contributions and, subject to this Number 6.2 and Number 6.3, the Further Contributions; the order of priority set forth in Number 6.2.1 applies.

[...]

The "**~~Clearing Fund~~Default Fund Secured Claims**" shall be all claims of Eurex Clearing AG for payments of amounts which are necessary to cover the losses and financial consequences of the occurrence of a Termination or Basic Clearing Member Termination with respect to all relevant Liquidation Groups and/or Terminated Transactions (as defined in Number 7.5) within the scope of the ~~Clearing Fund~~Default Fund and, in particular, any outstanding Difference Claim(s) (as defined in Number 8.3.2 of the Elementary Clearing Model Provisions, Subpart A Number 7.3.2 of the Individual Clearing Model Provisions, Number 8.4.2 of the Net Omnibus Clearing Model Provisions, Number 8.6.3 of the U.S. Clearing Model Provisions and Number 10.5.2 of the Basic Clearing Member Provisions) of Eurex Clearing AG against the Affected Clearing Member (including, in the case of a FCM Clearing Member, any claims of Eurex Clearing AG against such FCM Clearing Member under its FCM Clearing Member Guarantee) or its relevant Basic Clearing Member, respectively.

[...]

- 6.2.1 In the case of a Realisation Event, the (Further) Contributions will be realised (with respect to Interim Participants as modified by the specific provisions set out in Subpart A Number 15 of the Individual Clearing Model Provisions) in accordance with the following order of priority with respect to each **“Relevant Liquidation Group”**, i.e. each Liquidation Group (as defined in Number 7.5.1) to which Terminated Transactions (as defined in Number 7.5) belong (whereby each Paragraph (1) to (12) of such order of priority shall be applied to all Relevant Liquidation Groups simultaneously before, in each case, the respective next paragraph is applied and whereby all Terminated Transactions which do not form part of any Liquidation Group shall collectively be treated as one **“Relevant Liquidation Group”** within the scope of the Clearing Fund for the purposes of this Number 6):

[...]

- 6.2.2 If, subsequent to a realisation of the ~~Clearing Fund~~ Default Fund, an Affected Clearing Member or Affected BCM makes a payment to Eurex Clearing AG to fulfil the ~~Clearing Fund~~ Default Fund Secured Claims, or if the ~~Clearing Fund~~ Default Fund Secured Claims are otherwise discharged, after Eurex Clearing AG has realised the Dedicated Amount or Non-Affected CM Contributions (or CM Further Contributions) or Non-Affected BCM Contributions (or Non-Affected BCM Further Contributions) to the ~~Clearing Fund~~ Default Fund, Eurex Clearing AG shall use the funds received in order to (i) repay the realised CM Further Contributions and Non-Affected BCM Further Contributions to the relevant Clearing Member(s) and Clearing Agent(s), respectively, (ii) repay the realised Non-Affected CM Contributions and Non-Affected BCM Contributions to the ~~Clearing Fund~~ Default Fund to the relevant Clearing Member(s) and Clearing Agent(s), respectively, (iii) reinstate the realised Dedicated Amount and (iv) repay the realised Affected BCM Contributions (and Affected BCM Further Contributions) to the BCM Affected Clearing Member. The payments by Eurex Clearing AG shall be made in reverse order of Number 6.2.1 and shall in the aggregate be limited to the amounts received by Eurex Clearing AG.

### **6.3 Further Contributions to the ~~Clearing Fund~~ Default Fund (Assessments); Replenishment of Contributions to the ~~Clearing Fund~~ Default Fund**

- 6.3.1 If, following a Realisation Event, Eurex Clearing AG determines that the Contributions may not be sufficient to cover the respective claims secured by the ~~Clearing Fund~~ Default Fund in accordance with Number 6.2.1 above, it shall at its discretion be entitled to require within a Capped Period, by making one or several demands:

[...]

The BCM Affected Clearing Member and the Non-Affected Clearing Members shall, subject to the Liability Cap, be obliged to make such Further Contributions to the ~~Clearing Fund~~ Default Fund, in each case as soon as possible but no later than one Business Day following receipt of Eurex Clearing AG's demand.

The “**Liability Cap**” with respect to each of the Affected BCM Further Contributions, the Non-Affected BCM Further Contributions and the CM Further Contributions shall be two times the related originally applicable Contribution Requirement to the ~~Clearing Fund~~Default Fund and shall apply for the relevant Capped Period.

A “**Capped Period**” shall, with respect to the ~~Clearing Fund~~Default Fund, be a period of twenty (20) Business Days which shall commence on the Termination Date or the Basic Clearing Member Termination Date and which, if one or more further Termination Date(s) or Basic Clearing Member Termination Date(s) occur within such twenty (20) Business Day period shall, in the case of each such further Termination Date or Basic Clearing Member Termination Date, be extended by twenty (20) Business Days from (and including) the relevant further Termination Date or further Basic Clearing Member Termination Date, subject to a maximum duration of three (3) months. If, following the occurrence of a Termination Date or a Basic Clearing Member Termination Date, the ~~Clearing Fund~~Default Fund will not be realised, the Capped Period shall end upon finalisation of the default management process with respect to such Termination Date or such Basic Clearing Member Termination Date as notified by Eurex Clearing AG to the Clearing Members.

[...]

Without undue delay after the end of each Capped Period each Non-Affected Clearing Member shall be obliged to replenish the ~~Clearing Fund~~Default Fund up to the relevant Contribution Requirements; this shall not apply if (i) a Non-Affected Clearing Member has terminated all its Clearing Licenses and such terminations have become effective before such replenishment obligation has become due and (ii) if the Basic Clearing Member Clearing Licenses of all Basic Clearing Members of the Non-Affected Clearing Member (in its capacity as a Clearing Agent) have been terminated and such terminations have become effective before such replenishment obligation has become due.

[...]

- 6.3.2 Where Eurex Clearing AG requires Further Contributions, Eurex Clearing AG will allocate further own funds to the ~~Clearing Fund~~Default Fund (“**Further Dedicated Amount**”). Eurex Clearing AG will determine the Further Dedicated Amount separately for each Liquidation Group. The Further Dedicated Amount is determined by reference to the pro rata amount of Further Contributions actually delivered to Eurex Clearing AG as set out in item (III) of Number 6.2.1 (ix). Eurex Clearing AG will allocate a Further Dedicated Amount to the ~~Clearing Fund~~Default Fund up to a maximum amount of EUR 300.000.000. Such maximum amount shall cover all future Realisation Events irrespective of whether they occur within one or more Capped Period.

#### 6.4 **Release of the Contributions to the ~~Clearing Fund~~Default Fund**

If all Clearing Licenses of a Clearing Member or all Basic Clearing Member Clearing Licenses of a Basic Clearing Member of such Clearing Member (acting in its capacity as a Clearing Agent) have been terminated, Eurex Clearing AG shall release the relevant

Attachment 2 to Eurex Clearing circular 010/17	Eurex04e
Clearing Conditions of Eurex Clearing AG	As of 27.03.2017
	Page 7

Contributions of the respective Clearing Member to the ~~Clearing Fund~~Default Fund as follows:

[...]

## **7 Termination Rules with respect to the Clearing Member**

[...]

### **7.3 Consequences of a Termination**

[...]

7.3.4 Upon the occurrence of a Termination with respect to a Clearing Member, all Clearing Agreements to which such Clearing Member is a party shall terminate upon all Difference Claims have been paid in full in cash or otherwise been satisfied in full as determined by Eurex Clearing AG (irrespective whether or not this results from an enforcement of Margin or a use of Contributions to the Default Fund ~~Clearing Funds~~) and upon the effective release of the Contributions to the Default Fund ~~Clearing Funds~~ in accordance with the Clearing Conditions.

[...]

### **7.5 Default Management Process**

[...]

#### **7.5.3 Establishment of Transactions by way of independent trades or by conducting DM Auctions**

[...]

##### **(3) General Provisions**

Unless otherwise provided in (4) to (6~~8~~), the following provisions shall apply:

[...]

(v) Each Mandatory Participant that does not submit a valid Mandatory Bid for an Auction Unit (in respect of all its capacities as a Clearing Member and a Clearing Agent, as applicable) during such DM Auction, is a "Non-Bidding Participant". A Non-Bidding Participant shall be subject to the following contractual penalty which shall be paid in accordance with Number 1.4.1:

[...]

(b) if, following a Realisation Event in relation to the relevant Affected Clearing Member (but not with respect to any other Realisation Event) the Contributions of the Non-Affected Clearing Members to the ~~Clearing Fund~~Default Fund are realised, the Contributions of the Non-Bidding

Participant (in respect of all its capacities as a Clearing Member and a Clearing Agent, as applicable) shall in such DM Auction, in accordance with Number 6.2.1, be realised prior to the Contributions of the other Non-Affected Clearing Members to the ~~Clearing Fund~~Default Fund; and

[...]

(4) Special provisions relating to OTC Interest Rate Derivative Transactions

[...]

- (iii) Each Mandatory Participant that does not submit a Sufficient Bid for the relevant Auction Unit in accordance with the DM Auction Rules during the relevant DM Auction shall be subject to the following contractual penalty:
- (a) If the Mandatory Participant submits an Insufficient Bid and if, following a Realisation Event in relation to the relevant Affected Clearing Member (but not with respect to any other Realisation Event), the Contributions of the Non-Affected Clearing Members to the ~~Clearing Fund~~Default Fund are realised, the Contributions of the Mandatory Participants (in respect of all their capacities as Clearing Members and Clearing Agents, as applicable) submitting an Insufficient Bid shall in such DM Auction, in accordance with Number 6.2.1, be realised prior to the Contributions of the other Non-Affected Clearing Members.
  - (b) If the Mandatory Participant submits a Medium Bid and if, following a Realisation Event with respect to the relevant Affected Clearing Member (but not with respect to any other Realisation Event), the Contributions of the Non-Affected Clearing Members to the ~~Clearing Fund~~Default Fund are realised, the Contributions of the Mandatory Participants (in respect of all their capacities as Clearing Members and Clearing Agents, as applicable) submitting a Medium Bid shall in such DM Auction, in accordance with Number 6.2.1, be realised prior to the Contributions of the other Non-Affected Clearing Members, but simultaneously to the Contributions of those Mandatory Participants, who have submitted Insufficient Bids in such DM Auction, up to an amount which shall be calculated by Eurex Clearing AG as follows: the difference between (i) the winning Bid minus the product of 0.5 and the Auction Unit Margin Amount and (ii) the respective Medium Bid, such difference divided by the Auction Unit Margin Amount and subsequently multiplied by the relevant Mandatory Participant's Contributions. Any remainder of the Contributions of the Mandatory Participant submitting a Medium Bid shall be considered as Contributions of a Non-Affected Clearing Member.
- (iv) If a Mandatory Participant does not submit a Mandatory Bid for any relevant Auction Unit in accordance with the DM Auction Rules during such DM Auction (an "IRS Non-Bidding Participant"), the IRS-Non-Bidding Participant shall pay to Eurex Clearing AG in accordance with Number 1.4.1, an amount which shall be



calculated by Eurex Clearing AG as follows: the fraction of (i) the IRS-Non-Bidding Participant's Contributions (in respect of all its capacities as a Clearing Member and a Clearing Agent, as applicable) with respect to the Relevant Liquidation Group and in the relevant currency (numerator) and (ii) the aggregate sum of all Contributions with respect to the Relevant Liquidation Group and in the relevant currency (denominator), such fraction, multiplied by 100 and further multiplied by EUR 500,000 (or the corresponding equivalent in any other Clearing Currency as determined by Eurex Clearing AG), but subject to a maximum aggregate amount of EUR 5,000,000 (or the corresponding equivalent in any other Clearing Currency as determined by Eurex Clearing AG) per DM Auction. If, upon the occurrence of a Realisation Event, any Contributions of the IRS Non-Bidding Participant are realised, the amount calculated in accordance with the preceding sentence shall be reduced by the sum of the realised Contributions (but shall in no case be a negative amount). The provisions under Number 6.2.1 (5) and (6) shall apply accordingly with respect to the Contributions to the ~~Clearing Fund~~Default Fund of the relevant IRS Non-Bidding Participant. Any amount received by Eurex Clearing AG from the relevant IRS Non-Bidding Participant shall be added to, and forthwith be part of, the Dedicated Amount of Eurex Clearing AG in accordance with Number 6.1.3.

[...]

- (5) Special provisions relating to Eurex Bonds Transactions, under which the Affected Clearing Member acted as buyer, and Eurex Repo Transactions, under which the Affected Clearing Member acted as Cash Taker

[...]

- (v) If a Bonds Mandatory Participant submits a Mandatory Bid for a DM Bonds Auction which is below the Reference Price, Eurex Clearing AG may, subject to the following restrictions and following a Realisation Event in relation to the relevant Affected Clearing Member (but not with respect to any other Realisation Event), realise the Contributions to the ~~Clearing Fund~~Default Fund of such Clearing Member prior to the Contributions to the ~~Clearing Fund~~Default Fund of the other Non-Affected Clearing Members.

[...]

If, following a Realisation Event with respect to the relevant Affected Clearing Member (but not with respect to any other Realisation Event), the Contributions to the ~~Clearing Fund~~Default Fund of the Non-Affected Clearing Members are realised, parts of the Contributions to the ~~Clearing Fund~~Default Fund of the Mandatory Participants whose Debits exceed the Credits shall be realised prior to the Contributions to the ~~Clearing Fund~~Default Fund of the other Non-Affected Clearing Members,

The amount of the Contributions to the ~~Clearing Fund~~Default Fund of the Bonds Mandatory Participant, which shall be realised prior to the Contributions to the ~~Clearing Fund~~Default Fund of the other Non-Affected Clearing Members, shall be calculated as follows: the product of (i) the fraction of (a) the sum of all Credits minus the sum of all Debits and Non-Bidding Debits and (b) the sum of the Additional Margin requirements for all Bonds Auction Units, for which the Bonds Mandatory Participant has submitted a Mandatory Bid and for which the Bonds Mandatory Participant should have submitted a Mandatory Bid, but failed to submit, and (ii) the parts of the Contributions to the ~~Clearing Fund~~Default Fund of the Bonds Mandatory Participant which is allocated to the Liquidation Group comprising the Eurex Bonds Transactions and the Eurex Repo Transactions.

[...]

- (vi) If a Bonds Mandatory Participant does not submit a Mandatory Bid for any Bonds Auction Unit in accordance with the DM Auction Rules during such DM Auction ("**Bonds Non-Bidding Participant**") and Contributions to the ~~Clearing Fund~~Default Fund of Non-Affected Clearing Members are realised, the Bonds-Non-Bidding Participant shall pay to Eurex Clearing AG in accordance with Number 1.4.1, an amount which shall be calculated by Eurex Clearing AG as follows: the lower amount of either (I) the product of (i) the fraction of (a) the sum of the Additional Margin requirements for all Bonds Auction Units within the relevant Liquidation Group for which the Bonds Mandatory Participant did not submit a Mandatory Bid, and (b) the sum of the Additional Margin requirement for all Bonds Auction Units within the relevant Liquidation Group for which the Bonds Mandatory Participant submitted a Mandatory Bid and for which the Bonds Mandatory Participant should have submitted a Mandatory Bid, but failed to submit, and (ii) EUR 5,000,000, or (II) the sum of the Additional Margin requirement for all Bonds Auction Units within the relevant Liquidation Group for which the Bonds Mandatory Participant submitted a Mandatory Bid and for which the Bonds Mandatory Participant should have submitted a Mandatory Bid, but failed to submit. Such amount is limited to a maximum aggregate amount of EUR 5,000,000 (or the corresponding equivalent in any other Clearing Currency as determined by Eurex Clearing AG) with respect to the relevant Liquidation Group.

[...]

If, upon the occurrence of a Realisation Event, any Contributions to the ~~Clearing Fund~~Default Fund of the Bonds Non-Bidding Participant are realised, the amount calculated in accordance with this provision shall be reduced by the sum of the realised Contributions (but shall in no case be a negative amount).

[...]

Attachment 2 to Eurex Clearing circular 010/17	Eurex04e
Clearing Conditions of Eurex Clearing AG	As of 27.03.2017
	Page 11

#### 7.5.4 Cash Settlement of a Liquidation Group

##### (1) Cash Settlement of Liquidation Group Transactions

[...]

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 Transactions falling within the Relevant Liquidation Group that all Contributions and Further Contributions to the ~~Clearing Fund~~Default Fund would not be sufficient to settle all ~~Clearing Fund~~Default Fund Secured Claims relating to such Relevant Liquidation Group as of the time of determination by Eurex Clearing AG.

[...]

#### 9 Termination Rules with respect to Eurex Clearing AG

[...]

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

[...]

9.3.6 A “**Redelivery Default**” occurs if:

- (1) Eurex Clearing AG fails, when due, to perform a redelivery claim of a **Clearing Member**, a FCM Client or a Basic Clearing Member against Eurex Clearing AG with respect to (i) **Eligible Margin Assets** provided as cover, (ii) Contributions to the ~~Clearing Fund~~Default Fund, or (iii) collateral to cover a shortfall of own funds or equivalent regulatory capital as prerequisite for a Clearing License, or to release the relevant Securities in case of a pledge;

[...]

#### 13 Termination of Clearing Agreements, Clearing Licenses and Basic Clearing Member Clearing Licenses

##### 13.1 Termination of Clearing Agreements, Clearing Licenses and Basic Clearing Member Clearing Licenses

[...]

13.1.5 If a Basic Clearing Member Clearing Agreement has been terminated, Eurex Clearing shall release the Contributions of the Clearing Agent (that has been a party to such Basic Clearing Member Clearing Agreement) to the ~~Clearing Fund~~Default Fund that are attributable to this Clearing Agent acting as Clearing Agent for the Basic Clearing Member in respect of the Basic Clearing Member Transactions to which such Basic Clearing Member Clearing Agreement related, no later than four weeks after (i) in the case of Number 13.1.4, all such Basic Clearing Member Transactions have been closed

Attachment 2 to Eurex Clearing circular 010/17	Eurex04e
Clearing Conditions of Eurex Clearing AG	As of 27.03.2017
	Page 12

or settled and (ii) in the case of the appointment of a new Clearing Agent in respect of such Basic Clearing Member Transactions, such new Clearing Agent has made the Contributions to the ~~Clearing Fund~~Default Fund in respect of such Basic Clearing Member Transactions.

[...]

Attachment 2 to Eurex Clearing circular 010/17	Eurex04e
Clearing Conditions of Eurex Clearing AG	As of 27.03.2017
	Page 13

### **Part 3 The Individual Clearing Model Provisions**

[...]

### **Part 3 Subpart A: General Provisions for ICM-ECD and ICM-CCD**

[...]

#### **4 Internal Accounts of Eurex Clearing AG and the Clearing Member**

[...]

##### **4.1 Internal Accounts of Eurex Clearing AG**

[...]

##### **4.1.4 Use of Sub Pools**

[...]

In case the Sub Pool Provisions apply, the Clearing Member represents and warrants by way of an independent guarantee and irrespective of fault (*selbständiges, verschuldensunabhängiges Garantieverprechen*) to Eurex Clearing AG, that

[...]

- (ii) the ICM Client is willing to bear the potential economic risks and adverse effects which are related to a usage of Sub-Pools, in particular, without limitation, in terms of potentially higher Default Margin Requirements and ~~Clearing Fund~~Default Fund Contribution requirements resulting from the operational treatment associated with the usage of Sub Pools.

[...]

#### **8 Creation of Security Interests**

[...]

##### **8.1 Pledges**

[...]

##### **8.1.1 Pledge by the Clearing Member to Eurex Clearing AG**

[...]

- (7) Unless the Interim Participation pursuant to and in accordance with Number 11 becomes effective, Eurex Clearing AG shall enforce its pledge pursuant to Paragraph (1) against the ICM Client only after the full realisation of all Contributions of all Clearing Members to the ~~Clearing Fund~~Default Fund in accordance with the order of priority set out in Number 6.2 of the General Clearing Provisions.

Attachment 2 to Eurex Clearing circular 010/17	Eurex04e
Clearing Conditions of Eurex Clearing AG	As of 27.03.2017
	Page 14

[...]

## 11 Re-Establishment of Transactions upon request by ICM-Client

[...]

### 11.3 Interim Participation of the ICM Client

[...]

11.3.2 The following conditions (the “**Interim Participation Conditions**”) must be satisfied by the expiry of the ICM Porting Period to enable an Interim Participation of the ICM Client:

- (1) Eurex Clearing AG has received (i) all Interim Margin, (ii) all Interim Variation Margin, (iii) all Opening Margin, (iv) all Reimbursement Costs and (v) the ICM Client’s contribution to the ~~Clearing Fund~~Default Fund determined by Eurex Clearing AG in accordance with Number 11.3.5 Paragraph (6) and Number 6 of the General Clearing Provisions;

[...]

#### 11.3.5 Further Terms and Conditions applicable during Interim Participation

[...]

- (6) The ICM Client is required to pay contributions to the ~~Clearing Fund~~Default Fund in accordance with Number 6 of the General Clearing Provisions subject to the modifications set out in Number 15.

[...]

## 14 ~~Clearing Fund~~Default Fund

For the purpose of the Individual Clearing Model Provisions and in addition to Number 6 of the General Clearing Provisions, the following provisions apply to all Clearing Members and ICM Clients while acting as Interim Participant under the Clearing Conditions pursuant to Number 11.1:

[...]

- (iii) all contributions to the ~~Clearing Fund~~Default Fund of a Clearing Member with respect to which a Termination has occurred shall be available to cover the ~~Clearing Fund~~Default Fund Secured Claims with respect to the financial consequences and losses of any one or more Terminations that may occur with respect to any of its ICM Clients while any such ICM Client is an Interim Participant and references in Number 6.2.1 of the General Clearing Provisions to the Affected Clearing Member shall therefore include that Clearing Member and the ICM Client acting as Interim Participant provided that the contributions of the ICM Client acting as Interim Participant to the ~~Clearing Fund~~Default Fund shall be used first and only thereafter the contributions of that Clearing Member;

[...]

## **Part 5 U.S. Clearing Model Provisions**

[...]

### **7 ~~Default Fund~~ ~~Clearing Fund~~ Contributions for FCM Client Transactions**

The FCM Clearing Member shall also pay Contributions to the Default Fund ~~Clearing Fund~~ with respect to all FCM Client Transactions under each FCM Client Standard Agreement in accordance with Chapter I Part 1 Number 6 of the Clearing Conditions. A FCM Client shall not be entitled or obliged to make contributions to the Default Fund ~~Clearing Fund~~.

[...]

## **Part 6 Basic Clearing Member Provisions**

[...]

### **9 ~~Clearing Fund~~ Default Fund Contributions for Basic Clearing Member Transactions and DM Auctions**

#### **9.1 ~~Default Fund~~ Clearing Fund Contribution**

9.1.1 The Clearing Agent shall make Contributions to the ~~Clearing Fund~~ Default Fund with respect to all Basic Clearing Member Transactions under each Basic Clearing Member Standard Agreement in accordance with Part 1 Number 6. For the avoidance of doubt, the Basic Clearing Member is in accordance with Article 2 Paragraph 14 of EMIR responsible for discharging the financial obligations arising from its participation in the Clearing as Basic Clearing Member. Accordingly, without imposing any additional obligations on the Basic Clearing Member, any failure to pay or deliver by the Clearing Agent with respect to the Contributions that have been determined by Eurex Clearing AG in relation to a Basic Clearing Member shall constitute a Basic Clearing Member Termination Event for the relevant Basic Clearing Member. For as long as any such failure continues to exist, Eurex Clearing AG may one or more times suspend or limit the Clearing of new Basic Clearing Member Transactions of such Basic Clearing Member in accordance with Number 10.2 and/or may terminate the clearing membership of the Basic Clearing Member by giving a Basic Clearing Member Termination Notice in accordance with Number 10.3.

[...]

9.1.4 If, following a Realisation Event with respect to a Basic Clearing Member, the Contribution attributable to the Basic Clearing Member is not sufficient to cover the ~~Clearing Fund~~Default Fund Secured Claims against the Basic Clearing Member, Eurex Clearing AG is entitled at its discretion to require from the Clearing Agent of the Basic Clearing Member further Contributions in accordance with Part 1 Number 6.3. Those further Contributions shall be used to cover the ~~Clearing Fund~~Default Fund Secured Claims against the Basic Clearing Member in accordance with Part 1 Number 6, in particular, the order of priority set out in Part 1 Number 6.2.1.

[...]

## 10 Basic Clearing Member Termination Event

[...]

10.3.1 “**Basic Clearing Member Termination Event**” means

[...]

(f) any failure to pay or deliver by the Clearing Agent with respect to the Contributions to the ~~Clearing Fund~~Default Fund determined by Eurex Clearing AG for the Basic Clearing Member pursuant to Number 9.1.1.

[...]

## 11 Consequences of a Termination Event with respect to a Clearing Agent

[...]

11.2.3 Replacement Election

[...]

(a) “**Clearing Agent Replacement Requirements**” means all of the following requirements:

[...]

(v) the Replacement Clearing Agent has made the Contribution to the ~~Clearing Fund~~Default Fund with respect to its capacity as the Clearing Agent of the Basic Clearing Member.

[...]

11.2.4 DCM Election

[...]

(a) “**DCM Requirements**” means all of the following requirements:



Attachment 2 to Eurex Clearing circular 010/17	Eurex04e
Clearing Conditions of Eurex Clearing AG	As of 27.03.2017
	Page 17

[...]

- (v) the Basic Clearing Member has made the Contribution to the ~~Clearing Fund~~Default Fund with respect to its capacity as the new Direct Clearing Member; and

[...]

11.2.9 In the case of a Replacement, Eurex Clearing shall release the Contributions of the Affected Clearing Agent to the ~~Clearing Fund~~Default Fund that are attributable to the Affected Clearing Agent acting as Clearing Agent for the Basic Clearing Member without undue delay (*unverzüglich*) following receipt of the Contributions to the ~~Clearing Fund~~Default Fund from the Replacement Clearing Agent or the new Direct Clearing Member, as applicable.

[...]

## **12 Replacement of Clearing Agent that is not an Affected Clearing Agent**

[...]

12.3 In the case of a replacement of a Clearing Agent in accordance with this Number 12, Eurex Clearing shall, without undue delay (*unverzüglich*) following receipt of the Contributions to the ~~Clearing Fund~~Default Fund from the Replacement Clearing Agent, release the Contributions of the existing Clearing Agent to the ~~Clearing Fund~~Default Fund that are attributable to the existing Clearing Agent acting as Clearing Agent for the Basic Clearing Member in respect of the Basic Clearing Member Transactions to which such replacement relates.

Attachment 2 to Eurex Clearing circular 010/17	Eurex04e
Clearing Conditions of Eurex Clearing AG	As of 27.03.2017
	Page 18

## Chapter IV of the Clearing Conditions of Eurex Clearing AG

[...]

### **Part 3 Special Conditions regarding the Clearing of GC Pooling Repo Transactions with holders of a Specific Repo License and corresponding GC Pooling Repo Transactions with Clearing Members**

[...]

#### **3.1 Specific Repo License**

[...]

(6) The following provisions are not applicable to holders of a Specific Repo License:

[...]

- f) the Default Fund Clearing Fund contribution requirement pursuant to Chapter I Part 1 Number 6;

[...]

## Chapter VI of the Clearing Conditions of Eurex Clearing AG

[...]

### Part 1 General Provisions

[...]

#### 1.2 ~~Default Fund~~Clearing Fund

##### 1.2.1 Contribution to the ~~Default Fund~~Clearing Fund

Regardless of other margin provisions, each Clearing Member is obliged to pay a contribution to the ~~Default Fund~~clearing fund pursuant to Chapter I Part 1 Number 6.1.

##### 1.2.2 Realisation of the ~~Default Fund~~Clearing Fund

The realisation of a contribution to the ~~Default Fund~~clearing fund paid by a Clearing Member is subject to Chapter I Part 1 Number 6.2.

##### 1.2.3 Replenishment of Contributions to the ~~Default Fund~~Clearing Fund

The raising of contributions to the ~~Default Fund~~Clearing Fund shall be subject to Chapter I Part 1 Number 6.3.

##### 1.2.4 Release of the Contributions to the ~~Default Fund~~Clearing Fund

The release of contributions to the ~~Default Fund~~clearing fund shall be subject to Chapter I Part 1 Number 6.4.

[...]

Attachment 2 to Eurex Clearing circular 010/17	Eurex04e
Clearing Conditions of Eurex Clearing AG	As of 27.03.2017
	Page 20

## **Chapter VIII of the Clearing Conditions of Eurex Clearing AG**

[...]

### **Part 2 Clearing of OTC Interest Rate Derivative Transactions**

#### **2.1 General Provisions**

[...]

##### **2.1.7 Default Fund~~Clearing Fund~~**

Contributions to the Default Fund ~~Clearing Fund~~ are made in accordance with Chapter I Part 1 Number 6 and, if applicable, Chapter I Part 3 Subpart A Number 15 and Part 5 Number 7 or Chapter I Part 6 Number 9.

[...]

Attachment 2 to Eurex Clearing circular 010/17	Eurex04e
Clearing Conditions of Eurex Clearing AG	As of 27.03.2017
	Page 21

## Chapter IX of the Clearing Conditions of Eurex Clearing AG

[...]

### Part 1 General Provisions

[...]

#### 1.1 Clearing License

[...]

##### 1.1.3 Specific Lender License

[...]

(6) The following provisions of Chapter I and this Chapter IX are not applicable to holders of a Specific Lender License:

[...]

(e) the ~~Default Fund~~ Clearing Fund contribution requirement pursuant to Chapter I Part 1 Number 6;

[...]

### Part 2 Terms and Conditions of Securities Lending Transactions

[...]

#### 2.1 General Provisions of Securities Lending Transactions

[...]

##### 2.1.5 Provision of Principal Collateral, Equivalent Principal Collateral and Pledge-Back Principal Collateral

[...]

(3) With respect to a Securities Lending Transaction between Eurex Clearing Borrower and a Lender Clearing Member (Pledge),

(a) the Lender Clearing Member (Pledge) (i) shall not be subject to a margin requirement pursuant to Number 1.3 with regard to such Securities Lending Transaction and (ii) shall not be required to pay Contributions to the ~~Default Fund~~ Clearing Fund pursuant to Chapter I Part I Number 6.1.1 with regard to such Securities Lending Transactions, accordingly,

[...]

Attachment 2 to Eurex Clearing circular 010/17	Eurex04e
Clearing Conditions of Eurex Clearing AG	As of 27.03.2017
	Page 22

Appendix 1 to the Clearing Conditions of Eurex Clearing AG:

## Clearing Agreement

between Eurex Clearing AG and a Clearing Member

[...]

7. Unless otherwise agreed between the Clearing Member and Eurex Clearing AG, the Clearing Member undertakes to enter into a pledge agreement with Eurex Clearing AG in the form appended to the Clearing Conditions as Appendix 8 (the "**Pledge Agreement**") or in such form as may be required by Eurex Clearing AG in order to grant all pledges required pursuant to the following provisions of the Clearing Conditions:

[...]

- (2) Chapter I Part 1 Number 6.1.2 Paragraph (2) in order to make Contributions to the Default Fund~~Clearing Fund~~, if applicable; and

[...]

Attachment 2 to Eurex Clearing circular 010/17	Eurex04e
Clearing Conditions of Eurex Clearing AG	As of 27.03.2017
	Page 23

Appendix 8 to the Clearing Conditions of Eurex Clearing AG:

# Pledge Agreement

relating to pledges of Eligible Margin Assets in the form of Securities

## WHEREAS:

[...]

- (B) The Clearing Member intends to grant pledges for the benefit of Eurex Clearing AG for purposes of providing Margin in accordance with the Elementary Clearing Model Provisions or the Net Omnibus Clearing Model Provisions or Contributions to the ~~Default Fund~~ ~~Clearing Fund~~ (in respect of itself or in its capacity as Clearing Agent for its Basic Clearing Members in accordance with the General Clearing Provisions), respectively. The Clearing Member will arrange for the due filing and registration of any security interest granted under this Agreement with any relevant competent authority or any relevant competent authority register, if such registration is required for the creation or enforceability of a security interest or if Eurex Clearing AG considers a registration of such security interest expedient.

[...]

## 2 Granting of Pledges

### 2.1 Securities Accounts

[...]

Attachment 2 to Eurex Clearing circular 010/17	Eurex04e
Clearing Conditions of Eurex Clearing AG	As of 27.03.2017
	Page 24

### 2.1.3 Swiss Securities Accounts

[...]

*Securities Account number:*

(the "**Swiss Default Fund Clearing Fund Pledged Securities Account**" for the purposes of making Contributions in the form of securities to the Default Fund Clearing Fund in accordance with the General Clearing Provisions)

*Securities Account number:*

(each account specified (if any) a "**Swiss Clearing Agent Pledged Securities Account**" for the purposes of making Contributions in the form of securities to the Default Fund Clearing Fund in accordance with the General Clearing Provisions and the Basic Clearing Member Provisions in the capacity as a Clearing Agent)

[...]

### 2.4 Pledges of Securities in Swiss Accounts

[...]

#### 2.4.4 Contributions to the Default Fund Clearing Fund/**Swiss Default Fund Clearing Fund Pledged Securities Account**

If the Swiss Default Fund Clearing Fund Pledged Securities Account has been established pursuant to Clause 2.1.3, in order to make Contributions to the Default Fund Clearing Fund in accordance with the General Clearing Provisions, the Clearing Member hereby pledges to Eurex Clearing AG Swiss intermediated securities which are at present or are in the future deposited in the Swiss Default Fund Clearing Fund Pledged Securities Account.

The Clearing Member further undertakes to enter into a control agreement between the Clearing Member, SIX SIS AG and Eurex Clearing AG in respect of all securities which are at present or are in the future deposited in the Swiss Default Fund Clearing Fund Pledged Securities Account.

#### 2.4.5 Contributions to the Default Fund Clearing Fund/**Clearing Agent Pledged Securities Account(s)**

[...]

### 2.5 Security Purpose (*Sicherungszweck*) of the Pledges

[...]



Attachment 2 to Eurex Clearing circular 010/17	Eurex04e
Clearing Conditions of Eurex Clearing AG	As of 27.03.2017
	Page 25

2.5.3 The pledges of the Swiss intermediated Securities pursuant to Clause 2.4.4 shall secure all present and future ~~Default Fund~~~~Clearing Fund~~ Secured Claims of Eurex Clearing AG.

2.5.4 The pledges of the Swiss intermediated Securities pursuant to Clause 2.4.5 shall secure all present and future ~~Default Fund~~~~Clearing Fund~~ Secured Claims of Eurex Clearing AG in respect of all Basic Clearing Members of the Clearing Member acting as Clearing Agent.

[...]

## 2.8 Existing Pledges

[...]

2.8.4 With respect to securities credited to any accounts identified in Clause 2.1.3, Eurex Clearing AG hereby releases the respective pledges already granted over such Eligible Margin Assets pursuant to or in accordance with the Clearing Agreement and in connection with the Clearing Conditions in order to provide Margin or Net Omnibus Margin or in order to make Contributions to the ~~Default Fund~~~~Clearing Fund~~, subject to the conditions precedent that (i) all pledges pursuant to or in accordance with Clause 2.4 have been validly granted and, if relevant, duly registered with any relevant competent authority or register, (ii) a control agreement has been entered into between the Clearing Member, SIX SIS AG and Eurex Clearing AG and (iii), to the extent required, Eurex Clearing AG has been provided with the relevant evidence in accordance with Clause 2.7.

## 3 Limitation on Realisation of the Pledged Securities

[...]

### 3.3 Pledged Securities deposited in Swiss Securities Accounts

If the Clearing Member has established one or more Swiss Elementary Omnibus Pledged Securities Accounts, one or more Swiss Net Omnibus Pledged Security Accounts or one or more Clearing Agent Pledged Securities Account(s) pursuant to Clause 2.1.3 and, in the systems of Eurex Clearing AG, any pledged securities deposited in any such account are allocated to a particular Elementary Omnibus Standard Agreement or a particular Net Omnibus Standard Agreement or are identified as Contributions to the ~~Default Fund~~ with respect to a particular Basic Clearing Member, as applicable, Eurex Clearing AG shall, upon the pledge pursuant to Clause 2.4.2, Clause 2.4.3 or Clause 2.4.5 becoming enforceable, only enforce the pledge with respect to such pledged securities, and only apply any proceeds from the enforcement of the pledge over such pledged securities, to satisfy those Secured Elementary Omnibus Claims that relate to such particular Elementary Omnibus Standard Agreement, those claims arising under all Net Omnibus Transactions under such particular Net Omnibus Standard Agreement or those ~~Default Fund~~~~Clearing Fund~~ Secured Claims that relate to such Basic Clearing Member, respectively.

[...]

Attachment 2 to Eurex Clearing circular 010/17	Eurex04e
Clearing Conditions of Eurex Clearing AG	As of 27.03.2017
	Page 26

Appendix 9 to the Clearing Conditions of Eurex Clearing AG:

# Form of Security Trust Agreement and Pledge and Assignment Agreement

for the Individual Clearing Model Provisions  
(Clearing Members in England and Wales)

[...]

## **Part 3 Pledges and Assignments by Clearing Member to Eurex Clearing AG**

[...]

### **2 Pledge by the Clearing Member to Eurex Clearing AG**

[...]

2.8 Unless the Interim Participation pursuant to and in accordance with Chapter I Part 3 Subpart A Number 11 of the Clearing Conditions becomes effective, Eurex Clearing AG shall enforce its pledges pursuant to Clause 2.1 of this Part 3 against the ICM Client only after the full realisation of all Contributions of all Clearing Members to the Default Fund ~~Clearing Fund~~ in accordance with the order of priority set out in Number 6.2 of the General Clearing Provisions.

\* \* \*

Chapter I of the Clearing Conditions of Eurex Clearing AG

# General Provisions

As of 27.03.2017

\*\*\*\*\*

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

\*\*\*\*\*

[...]

## Part 1 General Clearing Provisions

[...]

### 6 Clearing Fund

Eurex Clearing AG maintains the general clearing fund regulated by this Number 6 which relates to Transactions pursuant to Chapters II through VII, Chapter VIII Part 2 and, unless otherwise specified in Chapter IX, Chapter IX (the “**Clearing Fund**”) to cover the Clearing Fund Secured Claims (as defined in Number 6.2) The Clearing Fund is not a legal person.

#### 6.1 Contributions to the Clearing Fund

##### 6.1.1 Contributions and Calculation of the Contributions to the Clearing Fund

(1) [...]

(2) Eurex Clearing AG shall from time to time determine the amount of the Contribution to be paid and maintained by a Clearing Member or a Clearing Agent (each a “**Contribution Requirement**”) in accordance with the relevant applicable calculation method published by Eurex Clearing AG pursuant to Number 16.1 (the “**Contribution Calculation Method**”); any such published Contributionss Calculation Method shall form part of the Clearing Conditions.

Basis for the calculation of (i) the Contribution Requirement of a Clearing Member are all Transactions of such Clearing Member (and, in respect of a FCM Clearing Member, in addition, all Transactionsbetween Eurex Clearing AG and FCM Clients of such FCM Clearing Member)(a “**CM Contribution Requirement**”) and (ii) the Contribution Requirement of a Clearing Agent with respect to a particular Basic Clearing Member are all Basic Clearing Member Transactions of such Basic Clearing Member (a “**BCM Contribution Requirement**”). Eurex Clearing AG may re-evaluate and adjust each Contribution Requirement in accordance with the relevant Contribution Calculation Method at any time and will ~~at least do so by the end of each calendar quarter on a regular basis~~ in accordance with the relevant Contribution Calculation Method.

(3) [...]

[...]

\*\*\*\*\*

**DEFAULT MANAGEMENT COMMITTEE RULES**

\*\*\*\*\*

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED

DELETIONS ARE CROSSED OUT

\*\*\*\*\*

**DEFAULT MANAGEMENT COMMITTEE RULES**

**1 General Provisions for Default Management Committees and Market Advisers**

[...]

**1.3 Definitions**

[...]

"**Assignment Phase**" means a period of six months ~~immediately prior to the start of each DMC Term, which shall commence on 30 September of each calendar year (including) and shall end on 1 April of each calendar year (excluding) during which~~ During the Assignment Phase, Eurex Clearing AG shall determine which the Eligible Clearing Members which shall participate in a DMC in the following DMC Term in accordance with Number 2.2. Eurex Clearing AG shall inform all Eligible Clearing Members with respect to the relevant DMC about the commencement of the relevant Assignment Phase at least one month prior to the start of such Assignment Phase. In case of the establishment of a new DMC, Eurex Clearing may deviate from the six months period. With respect to the first DMC Term such period may be different depending on the start date of the relevant DMC Term.

[...]

"**DMC Term**" means the period commencing as of the time the Agreement for the Participation in a Default Management Committee has been signed and has become effective, on 1 April of each calendar year (including) and ending after one on the 31 March of each calendar year, (including) ~~provided that the first DMC term may be a shorter term, if and to the extent necessary to ensure that the Assignment Phase has taken place, and further provided that the relevant period may be extended~~ Eurex Clearing AG may extent the relevant period if the DMC Matters for which a DMC Meeting (as defined in Number 3.1) has been convened may not be finalised before the relevant term would have otherwise ended.

[...]

**2 Composition of Default Management Committees**

[...]

## 2.2 Selection of Participating DMC Member Institutions

Eurex Clearing AG will select the Participating DMC Member Institutions which shall participate in a DMC for the first DMC Term, and for any further DMC Terms, if and to extent required in accordance with the process set out in Numbers 2.3 and 2.4 below.

## 2.3 DMC Rotation Process

~~Eurex Clearing AG will implement a rotation process to replace Participating DMC Member Institutions of each DMC following the below parameters and subject to Number 2.4:~~

2.3.1 Each Participating DMC Member Institution will be selected for two consecutive DMC Terms.

2.3.2 At the end of the first DMC Term with respect to all Participating DMC Member Institutions of a newly established for a DMC, Eurex Clearing AG will replace, at its sole discretion, Participating DMC Member Institutions pursuant to Number 2.4 and in accordance with the following provisions as follows:

(i) in case of a DMC consisting of two (2) Participating DMC Member Institutions, Eurex Clearing AG will replace one (1) Participating DMC Member Institution and, after each further DMC Term, one (1) Participating DMC Member Institution;

(ii) in case of a DMC consisting of three Participating DMC Member Institutions, Eurex Clearing AG will replace one Participating DMC Member Institution and, after each further DMC Term, two Participating DMC Member Institutions; and

~~(i)(iii) in case of a DMC consisting of four (4) Participating DMC Member Institutions, Eurex Clearing AG will replace two (2) Participating DMC Member Institutions and, after each further DMC Term, two (2) Participating DMC Member Institutions, and~~  
~~(iii) in case of a DMC consisting of three (3) Participating DMC Member Institutions, Eurex Clearing AG will replace one (1) Participating DMC Member Institution and after each further DMC Term, two (2) Participating DMC Member Institutions.~~

2.3.3 Any further replacements of Participating DMC Member Institutions following the first DMC Term will be made once the relevant Participating DMC Member Institutions have served as such for two consecutive DMC Terms.

2.3.4 If Eurex Clearing AG is not able to select a Participating DMC Member Institution in accordance with Number 2.4 below, no rotation of the relevant Participating DMC Member Institution shall take place.

## 2.4 Guidelines for the Selection of Participating DMC Member Institutions

[...]

### 2.4.2 Selection Process for voluntarily participating Eligible Clearing Members

(1) All Eligible Clearing Members which intend to volunteer as Participating DMC Member Institution shall (i) inform Eurex Clearing AG thereof no later than on the first Business Day of the relevant Assignment Phase and (ii) specify in which DMC they wish to participate.

- (2) Eurex Clearing AG will then rank (whereby Eligible Clearing Members with higher cleared volumes (such cleared volumes will be calculated based on the aggregate notional amounts (actual or implied, as applicable), the "**Cleared Volumes**") will be ranked above those with lower Cleared Volumes) the volunteering Eligible Clearing Members based on their respective Cleared Volumes in the three months preceding the relevant Assignment Phase in the relevant Liquidation Group. Volunteering Eligible Clearing Members will be selected by Eurex Clearing AG in accordance with such ranking.
- (3) Eurex Clearing AG will inform the Eligible Clearing Members of their selection as Participating DMC Member Institutions~~so selected~~ no later than one month after the start of the relevant Assignment Phase ~~30 October of their selection as Participating DMC Member Institution for the up-coming DMC Term.~~

[...]

#### 2.4.3 Selection Process for non-voluntarily participating Eligible Clearing Members

- (1) If the selection process for a voluntary participation of Eligible Clearing Members pursuant to Number 2.4.2 does not result in a sufficient number of Participating DMC Member Institutions, Eurex Clearing AG will rank (whereby Eligible Clearing Members with higher Cleared Volumes will be ranked first) the other Eligible Clearing Members based on their respective Cleared Volumes in the three months preceding the relevant Assignment Phase in the relevant Liquidation Group. Eurex Clearing AG will select the Participating DMC Member Institutions in accordance with such ranking.
- (2) Eurex Clearing AG will inform the Participating DMC Member Institutions ~~selected in accordance with Number 2.4.3 Paragraph (1) above~~ no later than on 15 October of their selection as Participating DMC Member Institution for the up-coming DMC Term, in accordance with Number 2.4.3 Paragraph (1) above, at the latest 10 Business Days after the start of the relevant Assignment Phase.
- (3) Such Participating DMC Member Institutions shall, subject to Paragraph (4) below, be obliged to participate in the relevant DMC and shall confirm to Eurex Clearing AG their participation in the relevant DMC at the latest ten Business Days after receiving the information regarding their selection as Participating DMC Member Institutions pursuant to paragraph (2) above ~~until 30 October at the latest.~~
- (4) If a Participating DMC Member Institution ~~selected by Eurex Clearing AG in accordance with pursuant to~~ Number 2.4.3 Paragraph (2) above can evidence by no later than 30 October to the satisfaction of Eurex Clearing AG at the latest ten Business Days after receiving the information regarding its selection as Participating DMC Member Institution, that it participates in a DMC or fulfils a similar function for the same Liquidation Group or asset class with respect to another central counterparty or exchange during the proposed DMC Term, such Participating DMC Member Institution shall not be obliged to participate in the relevant DMC.

#### 2.4.4 Further Selection Process

- (1) If a sufficient number of Participating DMC Member Institutions cannot be selected by Eurex Clearing AG in accordance with ~~Numbers 2.4.2 or Number~~ and 2.4.3 above, Eurex Clearing AG will inform the DMP-coordinators (Chapter I Part 1 Number 7.5 of the Clearing Conditions) of all Eligible Clearing Members which have not already been selected as Participating DMC Member Institutions pursuant to Number 2.4.2 or 2.4.3 at the latest six weeks after the start of the relevant Assignment Phase, by 15 November and will ask all such Eligible Clearing Members again whether they want to volunteer as Participating DMC Member Institutions of the relevant DMC.
- (2) All Eligible Clearing Members which intend to volunteer then (irrespective of whether the general principles set forth in Number 2.4.1 Paragraph (1) are met) as Participating DMC Member Institution for the relevant DMC shall inform Eurex Clearing AG thereof at the latest two weeks after the receipt of the information pursuant to paragraph (1) above, no later than 1 December.
- (3) Eurex Clearing AG will then rank (whereby Eligible Clearing Members with higher Cleared Volumes will be ranked first) the volunteering Eligible Clearing Members based on their respective Cleared Volumes in the three months preceding the relevant Assignment Phase in the relevant Liquidation Group. Volunteering Eligible Clearing Members will be selected by Eurex Clearing AG in accordance with such ranking.
- (4) Eurex Clearing AG will inform the Eligible Clearing Members ~~so selected no later than 15 December~~ of their selection as Participating DMC Member at the latest three months after the start of the relevant Assignment Phase. Institution for the upcoming DMC Term.
- (5) If Eurex Clearing AG was able to ~~has then~~ selected the Required Number of Participating DMC Member Institutions for the relevant a particular DMC according to the DMC Composition Table, the relevant DMC shall be established ~~for the upcoming DMC Term.~~
- (6) If Eurex Clearing AG was not able to ~~cannot~~ select thesuch Required Number of Participating DMC Member Institutions for the relevant DMC according to the DMC Composition Table, no DMC shall be established ~~for the upcoming DMC Term.~~

#### 2.5 Substitution of Participating DMC Member Institution by an affiliated Non-Clearing Member or Registered Customer

Each Participating DMC Member Institution may ~~by giving not less than 30 calendar days' prior written notice~~ request its substitution by an affiliated Non-Clearing Member or Registered Customer by giving written notice at least one month in advance of the intended substitution. Upon acceptance of such substitution by Eurex Clearing AG, which acceptance shall not be unreasonably withheld, the relevant Eligible Clearing Member shall cease to be a Participating DMC Member Institution and the affiliated Non-Clearing Member or Registered Customer shall instead become a Participating DMC Member Institution (and shall be obliged to sign the Agreement for the Participation in a



Default Management Committee applicable to Non-Clearing Members and Registered Customers in the form provided by Eurex Clearing AG).

## 2.6 DMC Member Nomination

[...]

**2.6.1** Each Participating DMC Member Institution shall notify Eurex Clearing AG of the identities and contact information (including names, phone numbers, email addresses and CVs) of the DMC Members nominated by it by no later than three months after the start of the relevant Assignment Phase on 1 January of the relevant calendar year in which the relevant DMC Term commences (the "**Designation Notice**"). The relevant Participating DMC Member Institution shall evidence by adequate information to Eurex Clearing AG that its DMC Members satisfy the DMC Member Eligibility Criteria.

**2.6.2** The nominated DMC Member is, subject to Number 2.8, expected to serve on the relevant DMC for two consecutive DMC Terms. A Participating DMC Member Institution may nominate a person as DMC Member who has already served as DMC Member for that Participating DMC Member Institution on the same DMC in any previous DMC Term.

### ~~2.6.2.2.3~~ 2.6.3 Procedures for becoming a DMC Member

[...]

- (2) Upon acceptance of a nominated DMC Member by Eurex Clearing AG, such nominated DMC Member shall, subject to Number 2.89, be a DMC Member for the DMC Term of the relevant DMC.
- (3) Eurex Clearing AG shall only reject a nominated DMC Member if the nominated DMC Member does not satisfy the DMC Member Eligibility Criteria. Eurex Clearing AG shall immediately notify the relevant Participating DMC Member Institution of such rejection and the reasons therefor.
- (4) [...]

If Eurex Clearing AG also rejects such further individual nominated as DMC Member the relevant Participating DMC Member Institution shall cease to be a Participating DMC Member Institution and another Eligible Clearing Member shall be selected by Eurex Clearing AG in accordance with Number 2.42 to nominate a DMC Member. Eurex Clearing AG shall immediately notify the relevant Participating DMC Member Institution of its failure to nominate a further DMC Member.

## ~~2.7~~ 2.7 Rotation of Participating DMC Member Institutions

~~Subject to the process set forth in Number 2.3, each Participating DMC Member Institution will be selected for two consecutive DMC Terms and will then be replaced by a new Participating DMC Member Institution selected in accordance with the selection mechanism set forth in Number 2.2 to Number 2.5. The DMC Member nominated by a Participating DMC Member Institution is, subject to Number 2.9, expected to serve on the relevant DMC for two consecutive DMC Terms. These DMC Rules do not prevent a Participating DMC Member Institution from nominating a person who has already served as the DMC Member for that Participating~~

DMC Member Institution on the same DMC in any previous DMC Term to be its DMC Member again on that DMC.

**2.82.7** Information Undertakings of Participating DMC Member Institutions

[...]

**2.92.8** Removal of DMC Members, Suspension of DMC Membership

[...]

**2.9.42.8.1** Resignation

[...]

**2.9.22.8.2** Automatic Removal

[...]

**2.9.32.8.3** Removal in the case of a merger

[...]

**2.9.42.8.4** Removal by Eurex Clearing AG

Eurex Clearing AG has the right to remove a DMC Member from the DMC on which it serves by giving not less than five (~~5~~) calendar days prior written notice to the Participating DMC Member Institution if

[...]

**2.9.52.8.5** Removal by Participating DMC Member Institution

[...]

**2.9.62.8.6** Suspension of Membership in a DMC

[...]

**2.102.9** Request to exercise Direction Right

Eurex Clearing AG may prior to exercising its rights pursuant to Number 2.89.4 Sentence 2 or Number 2.89.6 request the Participating DMC Member Institution (i) to use its direction right vis-à-vis the DMC Member or (ii) if the DMC Member is employed with an Affiliate, to request such Affiliate to use its direction right.

**2.112.10** List of DMC Members

[...]

**3 Procedures of DMCs**

**3.1** Convening a DMC Meeting

[...]

### 3.1.2 Invitation

Invitations shall be provided to each DMC Member by telephone and/or email at the telephone number and/or email address provided in the Designation Notice, or notified under Number 5.2.2, and addressed to such DMC Member personally. Invitations shall be delivered to DMC Members as soon as practical, but not less than 2 hours, before the DMC Meeting giving details about the date, time and place of the DMC Meeting.

If a Participating DMC Member Institution has provided Eurex Clearing AG with the identity and contact information of its chief compliance officer (“**Chief Compliance Officer**”) or a designee of the chief compliance officer (“**Chief Compliance Officer Designee**”) (including names, phone numbers, and email addresses), Eurex Clearing AG shall inform the Chief Compliance Officer or the Chief Compliance Officer Designee (if applicable) by e-mail about any DMC Meeting of the relevant Participating DMC Member Institution , giving details about the date, time and place of the relevant DMC Meeting.

The Participating DMC Member Institution informs Eurex Clearing AG without undue delay of any changes with respect to the Chief Compliance Officer or the Chief Compliance Officer Designee.

[...]

## 7 Provisions for Market Advisors

[...]

### 7.7 Confidentiality

[...]

**7.7.4 “Confidential Market Advisor Information”** means (a) any and all business and trade secrets of Eurex Clearing AG obtained by the Market Advisor during the Market Advisor Activities or in connection therewith, and (b) all matters arising from any current or past Market Advisor Activities in which the Market Advisor is or was involved, including any discussions or deliberations, any determinations or acts made under the DMC Rules except for information which

- (a) is or becomes public information other than as a direct or indirect result of a breach (of which such Market Advisor, the Clearing Member or the Affiliate is aware) of the confidentiality obligation in this Clause 7.7;
- (b) is identified in writing at the time of delivery as non-confidential by Eurex Clearing AG or any of its advisers; or
- (c) was already known to the Market Advisor, the Clearing Member or the Affiliate before the date the information is disclosed to it in accordance with Paragraphs (a) or (b) above or is lawfully obtained by such Market Advisor, Clearing Member or Affiliate after that date, from a source which is, as far as such Market Advisor, Clearing Member or Affiliate is aware, unconnected with Eurex Clearing AG and which, in either case, as far as such Market Advisor, Clearing Member or Affiliate is aware,

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**DEFAULT MANAGEMENT COMMITTEE RULES**

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has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

[...]

# Appendix 1

## Agreement

### for the Participation in a Default Management Committee

[...]

#### **6 Confidentiality**

[...]

- 6.2 The Clearing Member represents and warrants by way of an independent guarantee and irrespective of fault (selbständiges, verschuldensunabhängiges Garantieverprechen) that the DMC Member or the DMC Deputy and, if the DMC Member or the DMC Deputy is employed by an Affiliate, such Affiliate, and the Chief Compliance Officer or the Chief Compliance Officer Designee (if applicable), is obliged to keep confidentiality vis-a-vis all third parties with respect to Confidential Information (as defined below). The Clearing Member undertakes to keep up this confidentiality obligation (and procures that such confidentiality obligation is kept up) until the earlier of two years after (i) the end of the employment relationship with the DMC Member, ~~or the DMC Deputy,~~ the Chief Compliance Officer or the Chief Compliance Officer Designee (if applicable), or the employment relationship of the Affiliate with the DMC Member or the DMC Deputy, (ii) the termination of this Agreement and (iii) the DMC Term with respect to which the Confidential Information was obtained during the respective DMC Activity.
- 6.3 The Clearing Member shall direct (or, if the Clearing Member is not the employer of the DMC Member or its DMC Deputy shall use reasonable endeavours to ensure that its employer directs) the DMC Member, ~~or the DMC Deputy,~~ the Chief Compliance Officer or the Chief Compliance Officer Designee (if applicable), (i) not to disclose any Confidential Information (as defined below) to the Clearing Member (and, if different to the Clearing Member, the employer of the DMC Member and/or the DMC Deputy) and to third parties and (ii) not to use any Confidential Information for its own benefit or the benefit of the Clearing Member (and, if different to the Clearing Member, the employer of the DMC Member and/or the DMC Deputy) or for the benefit of any third parties.
- 6.4 The Clearing Member's obligation under Clause 6.1 above shall continue to apply until the earlier of two years after (i) the end of the employment relationship with the DMC Member, ~~and/or the DMC Deputy nominated by the Clearing Member,~~ the Chief Compliance Officer or the Chief Compliance Officer Designee (if applicable), or the employment relationship of its Affiliate with the DMC Member and/or the DMC Deputy, (ii) the termination of this Agreement

and (iii) the DMC Term with respect to which the Confidential Information was obtained during the respective DMC Activity.

[...]

6.6 Subject to compliance with the terms of this Clause 6, the Clearing Member is not prevented from carrying out any transactions in respect of investments, provided that the Clearing Member does not make use of any Confidential Information obtained from the DMC Member or the DMC Deputy nominated by it in breach of the DMC Member's or the DMC Deputy's confidentiality obligations.

**"Confidential Information"** means (a) any and all business and trade secrets of Eurex Clearing AG obtained from the DMC or in connection therewith, and (b) all matters arising out of the DMC or any current or past DMC Activity in which the DMC Member or the DMC Deputy is or was involved, including any discussions, deliberations, proceedings, or results of any votes, or any determinations or acts made under the DMC Rules except for information which

- (a) is or becomes public information other than as a direct or indirect result of a breach (of which the DMC Member, ~~or the DMC Deputy, the Chief Compliance Officer or the Chief Compliance Officer Designee (if applicable), the Clearing Member, or the Affiliate~~ is aware) of the confidentiality obligation in this Clause 6; or
- (b) is identified in writing at the time of delivery as non-confidential by Eurex Clearing AG or any of its advisers; or
- (c) was already known to the DMC Member, ~~or the DMC Deputy, the Chief Compliance Officer or the Chief Compliance Officer Designee (if applicable), the Clearing Member, or the Affiliate~~ before the date the information is disclosed to it in accordance with Paragraphs (a) or (b) above or is lawfully obtained by such DMC Member, ~~or such DMC Deputy, Chief Compliance Officer or Chief Compliance Officer Designee (if applicable), Clearing Member or Affiliate~~ after that date, from a source which is, as far as that DMC Member, ~~or the DMC Deputy, Chief Compliance Officer or Chief Compliance Officer Designee (if applicable), Clearing Member or Affiliate~~ is aware, unconnected with Eurex Clearing AG and which, in either case, as far as that DMC Member, ~~or the DMC Deputy, Chief Compliance Officer or Chief Compliance Officer Designee (if applicable), Clearing Member or Affiliate~~ is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

[...]

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