



eurex clearing circular 119/16

Date: 23 September 2016
Recipients: All Clearing Members, Non-Clearing Members and Registered Customers of Eurex Clearing AG and Vendors
Authorized by: Heike Eckert

Amendments to the Clearing Conditions of Eurex Clearing AG

Contact: Helpdesk Securities Clearing, T +49-69-211-1 19 40, ccp@eurexclearing.com

Content may be most important for:

➡ All departments

Attachments:

1. and 2.:
Amended sections of the Clearing Conditions of Eurex Clearing AG

Summary:

This circular contains information with respect to Eurex Clearing AG's service offering and corresponding amendments to the Clearing Conditions of Eurex Clearing AG (Clearing Conditions) regarding the following topics:

1. New collateralisation type for Specific Lenders: Title Transfer/Pledge Back Model (Chapter 9 of the Clearing Conditions)
2. Clarification with respect to Changes and Amendments to the Clearing Conditions and the Consultation

The amended sections of the Clearing Conditions are attached to this circular.

The amendments under topics 1 and 2 will come into effect on **19 October 2016**.

The amendments under topics 1 and 2 fell within the scope of Special Provisions and were hence subject to a consultation process (Consultation).

Amendments to the Clearing Conditions of Eurex Clearing AG

This circular contains information with respect to Eurex Clearing AG's service offering and corresponding amendments to the Clearing Conditions of Eurex Clearing AG (Clearing Conditions) regarding the following topics:

1. New collateralisation type for Specific Lenders: Title Transfer/Pledge Back Model
(Chapter 9 of the Clearing Conditions)
2. Clarification with respect to changes and amendments to the Clearing Conditions and the Consultation

The amended sections of the Clearing Conditions are attached to this circular.

The amendments under topics 1 and 2 will come into effect on 19 October 2016.

The amendments under topics 1 and 2 fell within the scope of Special Provisions of the Clearing Conditions and hence were subject to a consultation process (Consultation).

The Consultation on the amendments under topics 1 and 2 started on **23 August 2016** and ended on **22 September 2016**. During such Consultation Eurex Clearing AG did not receive any comments from affected Clearing Members.

1. New collateralisation type for Specific Lenders: Title Transfer/Pledge Back Model (Chapter 9 of the Clearing Conditions)

In the current service, Eurex Clearing AG provides Principal Collateral to Specific Lenders by way of a pledge. Recent regulatory changes applicable to UCITS funds require Principal Collateral to be delivered by way of a title transfer (at least with respect to certain jurisdictions).

Following such regulatory requirements and requests of Agent Lenders, Eurex Clearing AG will introduce an additional optional collateralisation type for Specific Lenders: the Title Transfer/Pledge Back Model.

Provisions in the following parts of the Clearing Conditions will be amended as outlined in Attachment 1:

- Chapter IX Part 1 (4), (6), Numbers 1.1.3, 1.4, 2.1.2, 2.1.5, 2.1.6, 2.2.1, 2.2.2, 2.3.1, 2.3.2, 2.3.3, 2.4.1, 2.4.3, 2.4.4, 2.6.3, 2.7.2, 2.7.3, 2.7.4

2. Clarification with respect to changes and amendments to the Clearing Conditions and the Consultation

In order to enhance their transparency, the rules on changes and amendments to the Clearing Conditions (Chapter I Part 1 Number 17.2) explicitly and exclusively govern publication periods and effective dates; whereas the rules on Consultation (Chapter I Part 1 Number 17.3) only govern the relevant process (conducted only if Special Provisions are being amended). In addition, Eurex Clearing AG will adjust the regular publication period to 15 business days in advance. By this means, the regular publication period will also apply in case of amendments of the Special Provisions, unless the conditions for the application of a prolonged publication period of three months are met.

To reflect the recommended changes, the following provisions of the Clearing Conditions shall be amended as outlined in Attachment 2:

- Chapter I Part 1 Numbers 16, 17.2 and 17.3

As of the effective date 19 October 2016 the full versions of the amended Clearing Conditions will be available for download on the Eurex Clearing AG website www.eurexclearing.com under the following link:

Resources > Rules and Regulations

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Pursuant to Chapter I Part 1 Number 17.2.3 of the Clearing Conditions, the changes and amendments to the Clearing Conditions communicated with this circular are deemed to have been accepted by each Clearing Member, Non-Clearing Member and each Registered Customer unless they object in writing to Eurex Clearing AG prior to the actual effective date of such change and amendment of the Clearing Conditions. The right to terminate the Clearing Agreement or the Clearing License according to Chapter I Part 1 Number 2.1.4 Paragraph 2 Number 7.2.1 Paragraph 4 and Number 13 of the Clearing Conditions remains unaffected.

If you have any questions or require further information, please contact Group Client Services & Administration at tel. +49-69-211-1 17 00 or send an e-mail to memberservices@eurexclearing.com.

23 September 2016

Attachment 1 to Eurex Clearing circular 119/16

Chapter IX of the Clearing Conditions of Eurex Clearing AG

Clearing of Securities Lending Transactions

As of 19.10.2016

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AMENDMENTS ARE MARKED AS FOLLOWS
INSERTIONS ARE UNDERLINED
DELETIONS ARE CROSSED OUT

Preamble

This Chapter IX forms an integral part of the Clearing Conditions of Eurex Clearing AG and respective references in other rules or documents to the Clearing Conditions shall also apply to this Chapter IX.

In accordance with Chapter I Part 2 Number 2.1.1, Chapter I together with this Chapter IX and all references to other Chapters or Annexes of the Clearing Conditions shall apply ~~for~~to all Clearing Members (including FCM Clearing Members) with a respective Clearing License, their Non-Clearing Members, Registered Customers, ICM Clients and FCM Clients as well as all holders of a Specific Lender License and all Interim Participants (in each case, if applicable).

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Part 1 General Provisions

[...]

- (4) The terms of a Securities Loan may either provide (i) for a redemption upon request of either party at any time prior to a final maturity date or, in the absence of any such request, on the final maturity date (an “**Open Term Loan**”) or (ii) only where the Lender Clearing Member is either a ~~holder of a Specific Lender License~~ SLLH (Pledge) (as defined in Number 1.1.3 Paragraph (1)), ~~or a Lender Clearing Member (Pledge) (as defined in Number 2.1.5 Paragraph (6)) or a SLLH (Title Transfer/Pledge) (as defined in Number 1.1.3 Paragraph (1))~~ for a redemption on a specifically agreed maturity date, subject to (x) the entitlement of the Borrower Clearing Member and ~~the holder of a Specific Lender License~~ a SLLH (Pledge), ~~or a Lender Clearing Member (Pledge) or a SLLH (Title Transfer/Pledge)~~ to agree in accordance with Number 1.2.2 Paragraph (3) on a redemption prior to such specifically agreed maturity date, (y) the right of Eurex Clearing AG to request an early redemption pursuant to Number 2.7.2 and (z) the automatic termination upon the occurrence of an Insolvency Event pursuant to Number 2.7.2 Paragraph (5) with respect to Eurex Clearing AG in relation to Securities Lending Transactions concluded between Eurex Clearing Borrower and ~~the holder of a Specific Lender License~~ a SLLH (Pledge), ~~or a Lender Clearing Member (Pledge) or a SLLH (Title Transfer/Pledge)~~ (a “**Fixed Term Loan**”). A Reverse Securities Loan can only be a Fixed Term Loan.
- (5) The Clearing Conditions provide that the borrower (being the Borrower Clearing Member or Eurex Clearing Borrower, as the case may be) to each Securities Lending Transaction is required to provide and maintain principal collateral in form of cash or financial instruments (the “**Principal Collateral**”) to the lender (being the Eurex Clearing Lender or the Lender Clearing Member, as the case may be) with, if such Principal Collateral is provided by way of Title Transfer (as defined in Number 2.1.5 Paragraph (1)) ~~full title transfer~~, a simultaneous agreement by Eurex Clearing Lender or the Lender Clearing Member (as applicable) to transfer to the Borrower Clearing Member or Eurex Clearing Borrower (as applicable) assets equivalent to the Principal Collateral actually delivered (the “**Equivalent Principal Collateral**”) upon redemption of the relevant Securities Lending Transaction. Unless otherwise provided for in this Chapter IX, Clearing Members will in addition be subject to margin requirements determined by Eurex Clearing AG for their Securities Lending Transactions.
- (6) A Lender Clearing Member (other than a holder of a Specific Lender License) may, by way of an election in the relevant Loan Information (as defined in Number 1.2.2 Paragraph (3)), with respect to each individual Securities Lending Transaction, elect that:
- (i) Non-Cash Principal Collateral in respect of such Securities Lending Transaction shall be provided to it by way of a pledge in accordance with Number 2.1.5

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Paragraph (2) (such Lender Clearing Member shall, with respect to such Securities Lending Transaction, be referred to as a “Lender Clearing Member (Pledge)” and any such reference shall refer to the Lender Clearing Member (Pledge) in such capacity only); or

- (ii) only with respect to a Securities Lending Transaction that is an Open Term Loan, Non-Cash Principal Collateral in respect of such Securities Lending Transaction shall be provided to it by way of Title Transfer in accordance with Number 2.1.5 Paragraph (1).

Unless otherwise provided for, references to a “Lender Clearing Member” or “Clearing Member”, as applicable, in these Clearing Conditions shall include the Lender Clearing Member (Pledge).

- (67) The information statement in Annex 13 in accordance with Article 15 of the Regulation on transparency of securities financing transactions and of reuse (Regulation (EU) 2015/2365) is applicable to Eurex Clearing AG and holders of a Clearing License for Securities Lending transactions and which are or will be cleared by Eurex Clearing AG and which contain a collateral transfer by way of a title transfer collateral arrangement.

1.1 Clearing License

[...]

1.1.3 Specific Lender License

[...]

- (2) The Specific Lender License pursuant to this Chapter IX entitles the holder of the Specific Lender License to clear Own Transactions as a lender without being subject to the general Clearing License requirements applicable to Clearing Members, always provided that the terms of the Original Securities Lending Transaction (as defined in Number 1.2.1) which shall be included in the Clearing pursuant to this Chapter IX provide that Principal Collateral is to be delivered in form of Non-Cash Principal Collateral (as defined in Number 2.1.2 Paragraph (1)) only. ~~Principal Collateral is to be delivered by Eurex Clearing Borrower to the holder of the Specific Lender License by way of a pledge as further set out in this Chapter IX.~~

A holder of a Specific Lender License may, by way of an election in the relevant Loan Information, with respect to each individual Securities Lending Transaction, elect that:

- (i) Non-Cash Principal Collateral in respect of such Securities Lending Transaction shall be provided to it in accordance with Number 2.1.5 Paragraph (2) by way of a pledge (such holder of a Specific Lender License shall, with respect to such Securities Lending Transaction, be referred to as a “SLLH (Pledge)” and any such reference shall refer to the SLLH (Pledge) in such capacity only); or

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(ii) Non-Cash Principal Collateral in respect of such Securities Lending Transaction shall be provided to it by way of a Title Transfer in accordance with Number 2.1.5 Paragraph (1) with a corresponding obligation of such holder of a Specific Lender License to grant Eurex Clearing Borrower a pledge over Eligible Principal Collateral Assets in the form of financial instruments equivalent to the Non-Cash Principal Collateral actually delivered to it in accordance with Number 2.1.5 Paragraph (5) (such holder of a Specific Lender License shall, with respect to such Securities Lending Transaction, be referred to as a “**SLLH (Title Transfer/Pledge)**” and any such reference shall refer to the SLLH (Title Transfer/Pledge) in such capacity only).

[...]

- (4) Unless otherwise provided for and subject to further exemptions set out in this Number 1.1.3, references to a “**Lender Clearing Member**” or “**Clearing Member**”, as applicable, in these Clearing Conditions shall – if a Specific Lender License has been granted – include the holder of a Specific Lender License (in its capacity as a SLLH (Pledge) or a SLLH (Title Transfer/Pledge), respectively).
- (5) The prerequisites to be fulfilled for the granting of the Specific Lender License are the following:
- (a) the applicant is (i) (1) licensed as a credit institution, (2) licensed as a financial institution, (3) licensed as an insurance undertaking, (4) licensed as a reinsurance undertaking, (5) licensed as an investment firm, (6) a pension fund, pension scheme or similar arrangement, (7) an Incorporated Fund, (8) an Unincorporated Fund or (9) a Sub-Fund, provided that in case of (1) to (6) above, each of the applicants and, in case of (7) to (9) above, the manager (if any) of the Incorporated Fund, the Unincorporated Fund or the Sub-Fund, as the case may be, must be supervised in accordance with legislation of the European Union relating to the prudential supervision of regulated entities, or (ii) subject to equivalent supervision in its jurisdiction of incorporation as determined by Eurex Clearing AG, provided that the competent supervisory authority is a signatory to Appendix A of the IOSCO Multilateral Memorandum of Understanding or has signed a bilateral memorandum of understanding with the Federal Financial Services Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* – “**BaFin**”), or (iii) a governmental entity or supranational organisation pursuant to Chapter I Part 1 Number 2.1.3 Paragraph (1); provided that in each case of (i) to (iii) above admittance will only be granted by Eurex Clearing AG upon request and upon the sole risk assessment of Eurex Clearing AG;

[...]

- (h) execution of the specific ~~triparte~~ collateral management documentation including and (i) the pledge agreement pursuant to Part 2-Number 2.1.5 Paragraph (2) and/or (ii) the pledge agreement pursuant to Number 2.1.5 Paragraph (5) for Securities Lending Transactions pursuant to this Chapter IX

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with Eurex Clearing AG and a Tri-Party Collateral Agent (the “**TPCA Documentation**”) either by itself or by a representative on behalf of the applicant; and

[...]

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

[...]

- (d) Number 2.3 as far as the provision of Cash Principal Collateral is concerned and, in case of a SLLH (Pledge) only, Number 2.1.5 Paragraph (1) with respect to the transfer of Principal Collateral from Eurex Clearing Borrower to the Lender Clearing Member;

[...]

- (h) in case of a SLLH (Pledge) only, the provisions relating to the failure to deliver Principal Collateral or return Equivalent Principal Collateral during the term of a Securities Lending Transaction pursuant to Number 2.6.3; and

[...]

[...]

1.3 Margin Requirement

- (1) The Borrower Clearing Member, and, unless and to the extent Number 2.1.5 Paragraphs (2) or (5) applies, the Lender Clearing Member, are subject to an own margin requirement (as set out in Chapter I Part 1 Number 3 together with Part 2 Number 6).

[...]

1.4 Set-Off

- (1) A set-off in relation to the following claims is excluded:

[...]

This does not apply to a set-off by the Clearing Member with claims which are undisputed or have been determined as legally binding (*rechtskräftig festgestellt*). The restrictions set out in this Paragraph (1) shall be without prejudice to a netting pursuant to Number 2.7.2 Paragraph (6).

- (2) No set-off shall be permitted in respect of ~~if~~ the holder of a Specific Lender Licence is ~~a contractual investment fund in the form of a Sondervermögen acting through its German management company (Kapitalverwaltungsgesellschaft) within the meaning of the German Capital Investment Act (Kapitalanlagegesetzbuch)~~ if such set-off

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would be in contravention of investment law provisions applicable to such holder of a Specific Lender License.

[...]

[...]

Part 2 Terms and Conditions of Securities Lending Transactions

[...]

2.1 General Provisions of Securities Lending Transactions

[...]

2.1.2 Eligible Principal Collateral Assets and Redelivery Claim

(1) [...]

Principal Collateral to be provided to a Lender Clearing Member (Pledge), a SLLH (Pledge) or a SLLH (Title Transfer/Pledge) may only be provided in the form of Non-Cash Principal Collateral.

(2) [...]. If, during the term of a Securities Lending Transaction, the Principal Collateral provided by the Borrower Clearing Member no longer qualifies as Eligible Principal Collateral Assets, the Borrower Clearing Member shall be obliged to substitute the affected Principal Collateral with Eligible Principal Collateral Assets.

[...]

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

(1) Unless and to the extent Non-Cash Principal Collateral is to be provided by Eurex Clearing Borrower to a Lender Clearing Member (Pledge) or a SLLH (Pledge) ~~Paragraph (2) applies~~, Principal Collateral and Equivalent Principal Collateral shall pass between the parties to a Securities Lending Transaction by transferring to the transferee all right, title and interest in and to the relevant asset free and clear from any and all rights and claims of the transferring party and any third person, including without limitation, pursuant to the applicable regulation or under any statutory or other trust ("**Title Transfer**"). The value of such assets shall, as of the date the transfer is effected, be at least equal to the value at that date of the concerned payment or delivery obligation.

(2) Principal Collateral to be delivered by Eurex Clearing Borrower to the ~~holder of a Specific Lender License~~ SLLH (Pledge) or, in respect of a Fixed Term Loan, to the Lender Clearing Member (Pledge) ~~shall consist of Non-Cash Principal Collateral and shall be provided by Eurex Clearing Borrower to the holder of a Specific Lender~~

~~License SLLH (Pledge) or, in respect of a Fixed Term Loan,~~ to the Lender Clearing Member ~~(Pledge), respectively,~~ only by way of creation of a pledge by Eurex Clearing Borrower for the benefit of such ~~holder of a Specific Lender License SLLH (Pledge) or such Lender Clearing Member (Pledge)~~ over the relevant Eligible Principal Collateral Assets selected. For such purposes, Eurex Clearing Borrower and the ~~SLLH (Pledge) holder of a Specific Lender License or, in respect of a Fixed Term Loan,~~ the Lender Clearing Member ~~(Pledge)~~ will enter into a pledge agreement in the form provided by Eurex Clearing AG with respect to the relevant Tri-Party Collateral Agent.

~~Further, with respect to Open Term Loans only, Lender Clearing Members shall have the right to request by a respective election in the Loan Information that Non-Cash Principal Collateral to be provided from Eurex Clearing Borrower to the Lender Clearing Member under a specific Securities Lending Transaction shall be delivered by way of creation of a pledge by Eurex Clearing Borrower for the benefit of such Lender Clearing Member over the relevant Eligible Principal Collateral Asset. Where such pledge election is made, Principal Collateral shall only be delivered in the form of Non-Cash Principal Collateral under such specific Securities Lending Transaction. For such purposes, Eurex Clearing Borrower and the Lender Clearing Member will enter into a pledge agreement in the form provided by Eurex Clearing AG with respect to the relevant Tri-Party Collateral Agent.~~

~~In relation to such specific Securities Lending Transaction where (i) a Lender Clearing Member has made such a pledge election or (ii) a Lender Clearing Member enters into a Fixed Term Loan, such Lender Clearing Member shall be referred to as a “Lender Clearing Member (Pledge)”. Unless otherwise provided for and subject to the further exemptions set out in this Number 2.1.5, references to a “Lender Clearing Member” or “Clearing Member”, as applicable, in these Clearing Conditions shall with regard to a specific Securities Lending Transaction—with respect to which a pledge election has been made or which is a Fixed Term Loan—include the Lender Clearing Member (Pledge).~~

The purpose of any such pledge is to secure Eurex Clearing Borrower's obligation (i) to ~~(i)~~ deliver the Equivalent Loaned Assets on the Maturity Date (including in the case of a transformed Securities Lending Transaction pursuant to Number 2.7.4 Paragraph (1) (c)) or (ii) to pay the applicable cash amount in the event of a cash settlement pursuant to Number 2.4.1 Paragraph (2) (c) and (d) (ii), Number 2.4.2 Paragraph (1) (a), Number 2.4.5, Number 2.6.4 Paragraph (8), (9) and (10) as well as Number 2.7.2 Paragraph (4) (b) and (c), Number 2.7.3 Paragraph (2) and Number 2.7.4 Paragraph (1) (c) (iii), in each case with regard to the specific Securities Lending Transaction only. The pledge will not secure a Difference Claim of a Clearing Member against Eurex Clearing AG upon the occurrence of a Termination with respect to the Clearing Member or a difference claim of the Clearing Member against Eurex Clearing AG in the event of a close-out with respect to Eurex Clearing AG pursuant to Chapter I Part 1 Number 9.

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The obligation of the Lender Clearing Member (Pledge) or ~~holder of a Specific Lender License~~ SLLH (Pledge) to transfer the Loaned Assets to Eurex Clearing Borrower on the Value Date (as defined in Number 2.2.1 below) will only become due upon creation of the pledge over the relevant Eligible Principal Collateral Assets, and the obligation of the Lender Clearing Member (Pledge) or SLLH (Pledge) ~~holder of a Specific Lender License~~ to release the pledge on the Maturity Date (as defined in Number 2.2.2 below) will only become due after Eurex Clearing Borrower has actually delivered Equivalent Loaned Assets to the Lender Clearing Member (Pledge) or SLLH (Pledge) ~~holder of a Specific Lender License~~.

- (3) ~~If Non-Cash Principal Collateral is to be provided by Eurex Clearing Borrower to a Lender Clearing Member (Pledge) W~~ with respect to a Securities Lending Transaction ~~between Eurex Clearing Borrower and a Lender Clearing Member (Pledge) by way of a 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) ~~is shall not be~~ required to pay Contributions to the Clearing Fund pursuant to Chapter I Part I Number 6.1.1 with regard to such Securities Lending Transactions, accordingly,
 - (b) such Securities Lending Transaction shall not form part of any Standard Agreement or separate master agreement (*Rahmenvertrag*) pursuant to Chapter I Part 2 Number 2.1.4 and shall be treated as legally separate from all other Transactions of the Lender Clearing Member (Pledge) (acting in such capacity or in any other capacity) pursuant to the Clearing Conditions (including other Securities Lending Transactions collateralised by way of a pledge),
 - (c) such Securities Lending Transaction shall not be subject to the provisions governing a Termination and its consequences pursuant to Chapter I Part 1 Number 7 and Chapter I Part 2 Number 8, as well as a close-out with respect to Eurex Clearing AG pursuant to Chapter I Part 1 Number 9, and
 - (d) such Securities Lending Transactions shall not be subject to the provisions governing the failure to deliver Equivalent Principal Collateral at the Maturity Date pursuant to Number 2.6.5, ~~and~~.
- (4e) In addition, with respect to a Securities Lending Transaction between Eurex Clearing Borrower and a Lender Clearing Member (Pledge), such Securities Lending Transactions shall not be subject to the provisions governing the failure to deliver Principal Collateral or return Equivalent Principal Collateral during the term of a Securities Lending Transaction, pursuant to Number 2.6.3.
- (5) Upon delivery of Initial Principal Collateral (as defined in Number 2.3.1) by Eurex Clearing Borrower to a SLLH (Title Transfer/Pledge) in accordance with Paragraph (1) in connection with Number 2.3.1, such SLLH (Title Transfer/Pledge) shall grant to Eurex Clearing Borrower a pledge over Eligible Principal Collateral Assets in the form of financial instruments equivalent to the Non-Cash Principal

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Collateral actually delivered to it (the financial instruments to be so pledged to Eurex Clearing Borrower, the “Pledge-Back Principal Collateral”). For the purposes of providing such Pledge-Back Principal Collateral to Eurex Clearing Borrower, Eurex Clearing Borrower and the SLLH (Title Transfer/Pledge) will enter into a pledge agreement in the form provided by Eurex Clearing AG with respect to the relevant Tri-Party Collateral Agent.

The purpose of any such pledge over Pledge-Back Principal Collateral is to secure the obligation of the SLLH (Title Transfer/Pledge) (i) to deliver Equivalent Principal Collateral pursuant to Number 2.3.3 on the Maturity Date and (ii) to make any payment to Eurex Clearing Borrower resulting from a netting pursuant to Number 2.7.2 Paragraph (6), in each case with regard to the specific Securities Lending Transaction only.

2.1.6 Settlement

[...]

- (2) The delivery of Non-Cash Principal Collateral and Pledge-Back Principal Collateral shall be settled via a tri-party collateral agent (the “**Tri-Party Collateral Agent**”) who provides collateral management services on behalf of the relevant Clearing Member and Eurex Clearing AG as collateral giver or collateral taker, as the case may be, on the basis of the specific tripartite documentation with the Tri-Party Collateral Agent. All parties to the related Securities Lending Transactions must appoint the same Tri-Party Collateral Agent in respect of such related Securities Lending Transactions. The Tri-Party Collateral Agent maintains the required accounts for the relevant Clearing Member and Eurex Clearing AG.
- (3) Substitution of financial instruments comprised in the Principal Collateral and the Pledge-Back Principal Collateral and the handling of distributions and corporate actions with regard to the financial instruments comprised in the Principal Collateral or the Pledge-Back Principal Collateral shall (subject to Number 2.4.3) be handled in accordance with the rules and procedures of the Tri-Party Collateral Agent set out in their specific tripartite documentation.
- (4) Eurex Clearing AG makes no representation, whether expressed or implied, as to the complete and timely performance of the Tri-Party Collateral Agent’s duties and obligations vis-à-vis the Clearing Members. Eurex Clearing AG assumes no liability to the Clearing Members for any act or failure to act by the Tri-Party Collateral Agent in connection with the delivery or substitution of Non-Cash Principal Collateral or Pledge-Back Principal Collateral and the handling of distributions and corporate actions with regard to the Non-Cash Principal Collateral or the Pledge-Back Principal Collateral.

[...]

- (6) The term “**actually delivered**” or “**actually deliver**” when used in this Chapter IX shall be interpreted as to refer to the following point in time:

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[...]

- (d) with respect to the delivery of Principal Collateral in form of Non-Cash Principal Collateral by Eurex Clearing Borrower by way of a pledge pursuant to Number 2.1.5 Paragraph (2): the point in time on a Business Day immediately after the credit to the relevant Eurex Clearing AG securities account (that is used for the granting of such pledge) held with such Tri-Party Collateral Agent; ~~or~~
- (e) with respect to the delivery of Pledge-Back Principal Collateral by the SLLH (Title Transfer/Pledge) by way of a pledge pursuant to Number 2.1.5 Paragraph (5): the point in time on a Business Day immediately after the credit to the relevant securities account (that is used for the granting of such pledge) held with such Tri-Party Collateral Agent; or
- (fe) in all other cases with respect to deliveries by Eurex Clearing AG to Clearing Members, the actual credit of the relevant Underlying Asset or Eligible Principal Collateral Asset to the securities or cash account of the relevant Clearing Member.

[...]

2.2 Delivery and Return of Loaned Assets

2.2.1 Delivery of Loaned Assets

[...]

- (2) On the Value Date,
- (i) the Lender Clearing Member shall transfer the Loaned Assets specified in the Loan Information to Eurex Clearing Borrower against delivery by Eurex Clearing Borrower of Initial Principal Collateral (~~as defined in Number 2.3.1 below~~) to the Lender Clearing Member or, if Principal Collateral is provided by way of a pledge pursuant to Number 2.1.5 Paragraph (2), upon creation of such pledge by Eurex Clearing Borrower; and

[...]

If Principal Collateral is transferred pursuant to Number 2.1.5 Paragraph (1) between Eurex Clearing Borrower and the Lender Clearing Member, all physical deliveries and payments between such parties shall be concurrently (*Zug um Zug*) performed. If Principal Collateral is provided by way of a pledge pursuant to Number 2.1.5 Paragraph (2), the obligation of the Lender Clearing Member (Pledge) or SLLH (Pledge) holder of a Specific Lender License to transfer the Loaned Assets to Eurex Clearing Borrower shall only become due upon creation of such pledge by Eurex Clearing Borrower.

[...]

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2.2.2 Return of Equivalent Loaned Assets

- (1) On the Maturity Date (as defined in Paragraph (8) below), the Borrower Clearing Member and Eurex Clearing Borrower are each required to transfer Equivalent Loaned Assets to Eurex Clearing Lender and the Lender Clearing Member, respectively, against delivery of Equivalent Principal Collateral by each of the Lender Clearing Member to Eurex Clearing Borrower and by Eurex Clearing Lender to the Borrower Clearing Member, respectively, or, if Principal Collateral is provided by Eurex Clearing Borrower by way of a pledge pursuant to Number 2.1.5 Paragraph (2), against release of such pledge by the Lender Clearing Member (Pledge) or ~~holder of a Specific Lender License~~ SLLH (Pledge).

If Principal Collateral is transferred pursuant to Number 2.1.5 Paragraph (1) between Eurex Clearing Borrower and the Lender Clearing Member, all physical deliveries and payments between such parties shall be concurrently (*Zug um Zug*) performed. If Principal Collateral is provided by way of a pledge pursuant to Number 2.1.5 Paragraph (2), the obligation of the Lender Clearing Member (Pledge) or ~~holder of a Specific Lender License~~ SLLH (Pledge) to release such pledge shall only become due after Eurex Clearing Borrower has actually delivered Equivalent Loaned Assets to the Lender Clearing Member (Pledge) or ~~holder of a Specific Lender License~~ SLLH (Pledge).

[...]

2.3 Delivery and Return of Principal Collateral and Pledge-Back Principal Collateral

2.3.1 Initial Delivery of Principal Collateral and Pledge-Back Principal Collateral

[...]

On the Value Date, the SLLH (Title Transfer/Pledge) shall, in accordance with Number 2.1.5 Paragraph (5), provide Pledge-Back Principal Collateral to Eurex Clearing Borrower in the form of Eligible Principal Collateral Assets equivalent to the Initial Principal Collateral actually delivered to such SLLH (Title Transfer/Pledge) by Eurex Clearing Borrower with respect to such Securities Lending Transaction.

2.3.2 Marking to Market of Principal Collateral and Pledge-Back Principal Collateral during the term of a Securities Lending Transaction

- (1) The aggregate Market Value (as defined in Paragraph (4) below) of the Eligible Principal Collateral Assets actually delivered in respect of the Principal Collateral to Eurex Clearing Lender by the Borrower Clearing Member and to the Lender Clearing Member by Eurex Clearing Borrower (excluding any Equivalent Principal Collateral repaid or re-delivered under Paragraph (2)) in respect of a Securities Lending Transaction (the “**Posted Collateral**”) shall equal the Market Value of the number or aggregate nominal amount, as applicable, of the Underlying Assets equivalent to the Loaned Assets ~~plus~~ taking into account the applicable Mark-Up Percentage, if any, (the “**Required Collateral Value**”) in respect of such Securities Lending Transaction.

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[...]

(4) **“Market Value”** means:

- (a) in relation to the valuation of Loaned Securities or Equivalent Loaned Securities, Non-Cash Principal Collateral, ~~or~~ Equivalent Principal Collateral in respect of Non-Cash Principal Collateral or Pledge-Back Principal Collateral, the market value for the relevant securities, as determined by Eurex Clearing AG in its reasonable discretion using, where available, recognised pricing sources and otherwise applying a standard theoretical price calculation.

[...]

(6) The aggregate Market Value of the Pledge-Back Principal Collateral to be provided pursuant to Number 2.1.5 Paragraph (5) shall at all times be equal to the Market Value of Principal Collateral for such Securities Lending Transaction as marked-to-market pursuant to Paragraphs (1) to (5) above. The SLLH (Title Transfer/Pledge) shall provide to Eurex Clearing Borrower such further Eligible Principal Collateral Assets in accordance with Number 2.1.5 Paragraph (5) and Eurex Clearing Borrower shall release the pledge to the SLLH (Title Transfer/Pledge) to the extent necessary to comply with the previous sentence.

2.3.3 **Final return of Principal Collateral and Pledge-Back Principal Collateral**

On the Maturity Date, the Lender Clearing Member shall return to Eurex Clearing Borrower, and Eurex Clearing Lender shall return to the Borrower Clearing Member, the Equivalent Principal Collateral in respect of the Principal Collateral actually delivered until, and including the Maturity Date, in full and in accordance with Number 2.1.5 Paragraph (1) or, if Principal Collateral has been provided by way of a pledge pursuant to Number 2.1.5 Paragraph (2), the Lender Clearing Member (Pledge) or ~~holder of a Specific Lender License~~ SLLH (Pledge) shall release such pledge pursuant to Number 2.1.5 Paragraph (2).

If Pledge-Back Principal Collateral has been provided pursuant to Number 2.1.5 Paragraph (5), Eurex Clearing Borrower shall release the pledge pursuant to Number 2.1.5 Paragraph (5) on the Maturity Date immediately after the SLLH (Title Transfer/Pledge) has returned the Equivalent Principal Collateral pursuant to the previous sentence.

[...]

2.4 **Corporate Actions**

[...]

2.4.1 **Distributions in respect of Underlying Securities**

[...] No such obligation to pay a Distribution pursuant to the preceding sentence applies, if – on the trade date ~~day of novation or, in the case of novation of Settled of the Original~~

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Securities Lending Transactions ~~with delivery of Non-Cash Principal Collateral pursuant to Number 1.2.1 Paragraph (2), on the day on which the Settled Original Securities Lending Transaction was submitted to Eurex Clearing AG pursuant to Number 1.2.2 Paragraph (1)~~— the Underlying Securities did not include a claim to interest, dividends, rights or other distributions resulting from the respective corporate action.

[...]

2.4.3 Principal Collateral Distributions and Principal Collateral Mandatory Reorganisations

[...]

- (2) If a substitution is not effected in accordance with Paragraph (1), the Lender Clearing Member shall pay or deliver to Eurex Clearing Borrower, and Eurex Clearing Lender shall pay or deliver to the Borrower Clearing Member, in each case in accordance with the following provisions, a sum of money, securities or other assets which are equivalent to (i) the amount of the Principal Collateral Distribution or (ii) the amount of the proceeds of the Principal Collateral Mandatory Reorganisation, as the case may be, that the Lender Clearing Member would have received following the Principal Collateral Distribution Record Date or Principal Collateral Mandatory Reorganisation Record Date, as the case may be, (in each case without taking into account any credit, benefit or other relief in respect of Tax under any applicable law) if the Lender Clearing Member had retained the Non-Cash Principal Collateral on the Principal Collateral Distribution Record Date or Principal Collateral Mandatory Reorganisation Record Date, as the case may be (such sum being the **“Principal Collateral Distribution Amount”** and the **“Principal Collateral Mandatory Reorganisation Amount”**, respectively). [...]

Payments or deliveries of Principal Collateral Distribution Amounts and Principal Collateral Mandatory Reorganisation Amounts in the form of cash or Securities shall be made subject to Number 2.1.8 and in accordance with the TPCA Documentation. Any payment or delivery by the relevant Tri-Party Collateral Agent as a result of a Principal Collateral Distribution or a Principal Collateral Mandatory Reorganisation to the relevant party that is entitled to the Principal Collateral Distribution Amount or Principal Collateral Mandatory Reorganisation Amount, respectively, pursuant to this Number 2.4.3 shall discharge the relevant other party’s obligation to pay such amount or make such delivery, in the amount so paid or the delivery so made by the Tri-Party Collateral Agent.

- (3) Paragraph (2) does not apply between Eurex Clearing Borrower and a Lender Clearing Member (Pledge) or a SLLH (Pledge)~~holder of a Specific Lender Licence~~.

2.4.4 Principal Collateral Voluntary Reorganisations

[...]

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- (3) Paragraph (2) does not apply between Eurex Clearing Borrower and a Lender Clearing Member (Pledge) or a SLLH (Pledge)holder of a Specific Lender License.

[...]

2.6 Failure to Deliver

[...]

2.6.3 Failure to Deliver Principal Collateral or Return Equivalent Principal Collateral during the term of a Securities Lending Transaction; Failure to Deliver Pledge-Back Principal Collateral

[...]

- (3) If a SLLH (Title Transfer/Pledge) fails to deliver Pledge-Back Principal Collateral when due, this constitutes a Termination Event pursuant to Chapter I Part 1 Number 7.2.1 Paragraph (2).

[...]

2.7 Specific Provisions relating to Termination Events and Default Management Process

[...]

2.7.2 Termination/Return

- (1) Upon the occurrence of a Termination Event (other than an Insolvency Termination Event) ~~and a Termination Date~~ with respect to a ~~holder of a Specific Lender License~~ SLLH (Pledge), or a Lender Clearing Member (Pledge), ~~or a SLLH (Title Transfer/Pledge)~~, Eurex Clearing Borrower shall be entitled to terminate the Securities Lending Transactions with such defaulted ~~SLLH (Pledge)holder of a Specific Lender License~~, or a Lender Clearing Member (Pledge) ~~(in such capacity only)~~ or SLLH (Title Transfer/Pledge) prior to their Maturity Date. For the purposes of this Number 2.7.2 in relation to Fixed Term Loans, the occurrence of an event which amounts to a serious cause (*wichtiger Grund*), in particular a material deterioration of the asset position (*wesentliche Vermögensverschlechterung*) of a Lender Clearing Member, shall also constitute a Termination Event with respect to such Lender Clearing Member.
- (2) Upon the occurrence of an Insolvency Termination Event ~~and a Termination Date~~ with regard to ~~the a SLLHholder of a Specific Lender License (Pledge)~~, or a Lender Clearing Member (Pledge), ~~or a SLLH (Title Transfer/Pledge)~~, ~~an automatic termination~~ Eurex Clearing Borrower may give a Return request pursuant to Number 2.2.2 Paragraph (2) to such defaulted SLLH (Pledge), Lender Clearing Member (Pledge) or SLLH (Title Transfer/Pledge) with respect to of all Securities Lending Transactions which are Open Term Loans with such defaulted holder of a Specific Lender License or a Lender Clearing Member (Pledge) (in such capacity

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~~only) shall occur with immediate effect. No such automatic termination shall occur with respect to Fixed Term Loans.~~

- (3) If a Securities Lending Transaction is terminated pursuant to Paragraph (1) ~~or subject to an automatic termination pursuant to Paragraph (2)~~, the Maturity Date shall be put forward to the Termination Date and the obligations arising from such Securities Lending Transaction between Eurex Clearing Borrower and the defaulted Clearing Member shall become immediately due on such date.
- (4)
- (a) Upon the occurrence of a Termination Event or Insolvency Termination Event and a Termination Date with respect to a Borrower Clearing Member, Eurex Clearing Borrower shall be entitled to conduct a Return in respect of the related Securities Lending Transactions which are Fixed Term Loans with the relevant SLLH (Pledge), ~~holder of a Specific Lender License or Lender Clearing Member (Pledge) or SLLH (Title Transfer/Pledge)~~ in accordance with Number 2.2.2 (which shall be applied *mutatis mutandis* to Fixed Term Loans as if these were Open Term Loans).
- ~~(b) Eurex Clearing Borrower shall, upon giving a Return request pursuant to Number 2.2.2 Paragraph (2) to the relevant holder of a Specific Lender License or Lender Clearing Member (Pledge) with respect to related Securities Lending Transactions, be entitled to request the release of the pledge over all Equivalent Principal Collateral by the relevant holder of a Specific Lender License or Lender Clearing Member (Pledge) on the Maturity Date as adjusted pursuant to Paragraph (4) (a) and Number 2.2.2.~~
- (b) Eurex Clearing Borrower will buy the Equivalent Loaned Securities on the applicable Maturity Date. If Eurex Clearing Borrower is not able to buy all or some of the Equivalent Loaned Securities on the applicable Maturity Date, it shall be entitled to replace its obligation to return the Equivalent Loaned Securities by a payment of a cash amount determined by Eurex Clearing AG in its reasonable discretion on the next Business Day.
- (c) Eurex Clearing Borrower shall in addition to the return of the Equivalent Loaned Assets pay a Compensation Amount (as defined below) to the relevant SLLH (Pledge), ~~holder of a Specific Lender License or Lender Clearing Member (Pledge) or SLLH (Title Transfer/Pledge)~~.

The "**Compensation Amount**" shall be a one-off compensation amount taking into account the rate that would have been payable to the relevant ~~holder of a Specific Lender License SLLH (Pledge)~~, or Lender Clearing Member (Pledge) or SLLH (Title Transfer/Pledge) pursuant to Number 2.5 (such rate to be discounted at a market interest rate reasonably determined by Eurex Clearing AG) had the related Securities Lending Transactions not been subject to a Return request by Eurex Clearing Borrower, *provided that* if, at the time of a Return of the relevant Equivalent Loaned Assets or, as applicable, cash

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payment, to the relevant holder of a SLLH (Pledge), ~~Specific Lender License or Lender Clearing Member (Pledge) or SLLH (Title Transfer/Pledge)~~, the market rate for a securities or cash lending transaction on such Equivalent Loaned Assets with a term until the original Maturity Date (as amended, as the case may be) of the Securities Lending Transaction to which the Return relates exceeds the lending rate applicable to such Securities Lending Transaction pursuant to the Loan Information, such excess (discounted at the same market interest rate referred to above) shall reduce the Compensation Amount accordingly.

[...]

- (5) Upon the occurrence of an Insolvency Event with respect to Eurex Clearing AG in relation to Securities Lending Transactions concluded between Eurex Clearing Borrower and ~~the a SLLH holder of a Specific Lender License (Pledge), or a Lender Clearing Member (Pledge) or a SLLH (Title Transfer/Pledge)~~, an automatic termination of all such Securities Lending Transactions shall occur. The claim for delivery of Equivalent Loaned Assets pursuant to Number 2.2.2 Paragraph (1) of a SLLH (Title Transfer/Pledge) and the claim for delivery of Equivalent Principal Collateral pursuant to Number 2.3.3 of Eurex Clearing Borrower shall each be replaced by a claim for payment of a cash amount denominated in Euro and determined by reference to the applicable market or exchange price.
- (6) If a Securities Lending Transaction between Eurex Clearing AG and a ~~SLLH holder of a Specific Lender License (Pledge), or a Lender Clearing Member (Pledge) or a SLLH (Title Transfer/Pledge)~~ is subject to an automatic termination pursuant to Paragraph (5), the Maturity Date shall be brought forward to the Business Day on which such termination has occurred and the obligations arising from such Securities Lending Transaction shall become immediately due on such date. The relevant claims for payment of a cash amount established pursuant to Paragraph (5) shall be netted (*verrechnet*) with each other immediately and only such net claim shall be immediately due and payable by the relevant party.

2.7.3 Cash Settlement and Marking to Market upon Termination of Open Term Loans

Upon the occurrence of a Termination Event or Insolvency Termination Event and a Termination Date with respect to a Clearing Member or a termination or Return pursuant to Number 2.7.2 Paragraph (1) to (3), Eurex Clearing Borrower or Eurex Clearing Lender, as applicable, is entitled (but not obliged) to conduct a Return or Recall of the related Securities Lending Transactions which are Open Term Loans with the relevant other Clearing Member in accordance with Number 2.2.2.

If any such Return or Recall request has been given in such circumstances, the following specific provisions apply:

- (1) Upon the occurrence of a Termination Event or Insolvency Termination Event and a Termination Date with respect to a Lender Clearing Member or a termination or Return pursuant to Number 2.7.2 Paragraph (1) to (3), Eurex Clearing Lender may

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upon giving a Recall request pursuant to Number 2.2.2 Paragraph (3) to the relevant Borrower Clearing Member with respect to related Securities Lending Transactions, which are secured by Principal Collateral in form of Non-Cash Principal Collateral,

[...]

2.7.4 Effect of Termination on Process relating to Voluntary Reorganisations

(1) Termination in respect of Borrower Clearing Member

[...]

(c) In the case of a Settlement Time Shortfall, such Return shall not become effective and the following provisions of this Paragraph (1) shall apply (in addition to the provisions of Number 2.4.2 Paragraph (2)). If any of the following provisions of this Paragraph (1) deviates from Number 2.4.2 Paragraph (2), this Paragraph (1) shall prevail.

(i) As long as no Dispute Resolution Procedure has been commenced, the Lender Clearing Member may ~~submit~~

(aa) submit a Lender Election and/or Outturn Instruction; or

[...]

(2) Termination in respect of Lender Clearing Member

If, after the Notification Date of a Voluntary Reorganisation relating to a Securities Lending Transaction and after the submission of a Lender Election and Outturn Instruction in respect of such Voluntary Reorganisation, but prior to the processing of any Outturn relating thereto, a Termination Event or Insolvency Termination Event ~~and a Termination Date~~ occurs in respect of the Lender Clearing Member that is a Lender Clearing Member (Pledge), ~~or a holder of a Specific Lender License~~ SLLH (Pledge) or a SLLH (Title Transfer/Pledge), the following shall apply:

(a) If the Securities Lending Transaction is an Open Term Loan,

(i) Number 2.7.2 Paragraphs (1) to (3) apply with respect to the termination or Return of such Securities Lending Transaction between Eurex Clearing Borrower and such Lender Clearing Member, subject to items (ii) to (v) below;

(ii) the Lender Election and Outturn Instruction (as well as any rejection or dispute by the Borrower Clearing Member) shall automatically lapse on the Termination Date or Maturity Date (as applicable) resulting from such termination or Return;

[...]

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- (iv) if the Equivalent Loaned Securities to which the terminated or returned Securities Lending Transaction relates can be delivered by Eurex Clearing Borrower to the relevant account of the Lender Clearing Member prior to the applicable Market Deadline, the Borrower Clearing Member shall be subject to a contractual penalty (to which Number 2.6.4 Paragraph (2) (c) applies) if the Borrower Clearing Member, upon a Recall request by Eurex Clearing Lender pursuant to item (iii) above, fails to deliver to Eurex Clearing Lender the relevant Equivalent Loaned Securities by such Market Deadline; and
 - (v) Eurex Clearing Borrower shall deliver the Equivalent Loaned Securities to which the terminated or returned Securities Lending Transaction relates to the Lender Clearing Member.
- (b) If the Securities Lending Transaction is a Fixed Term Loan, Number 2.7.2 Paragraphs (1) to (3) shall remain unaffected. The Lender Election and Outturn Instruction (as well as any rejection or dispute by the Borrower Clearing Member) shall, however, lapse upon the occurrence of the ~~Termination Event or Insolvency Termination Event~~ and relevant Termination Date (in the case of a termination pursuant to Number 2.7.2 Paragraph (1)). Any Lender Election and Outturn Instruction validly submitted after the Termination Date in the case of an Insolvency Termination Event will be processed in accordance with Number 2.4.2 Paragraph (2).

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Chapter I of the Clearing Conditions of Eurex Clearing AG

General Provisions

As of 19.10.2016

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED

DELETIONS ARE CROSSED OUT

Chapter I General Provisions

[...]

Part 1 General Clearing Provisions

[...]

16 Publications and Notices

16.1 If provided for in these Clearing Conditions, all notices from Eurex Clearing AG regarding these Clearing Conditions will be published (i) via electronic circular to the Clearing Members (which term shall, in this Number 16, include Clearing Members in their capacity as Clearing Agents), Non-Clearing Members, Registered Customers, FCM Clients and Basic Clearing Members or (ii) on the Eurex Clearing AG website (www.eurexclearing.com) for at least three (3) Business Days. Such notices will become effective immediately upon publication, provided that changes and amendments to the Clearing Conditions will become effective in accordance with Number 17.2 and Number 17.3. ~~Unless otherwise provided for in these Clearing Conditions, such publication will be made at least fifteen (15) Business Days prior to the effective date fixed in the relevant notice, except that in case of changes or amendments (x) of the Special Provisions (as defined in Number 17.3.1), such publication will be made at least three months prior to the effective date fixed in the relevant notice and (y) in the cases set forth in the first paragraph of Number 17.3.1 Paragraph (2), such publication will be made at least ten (10) Business Days prior to the effective date fixed in the relevant notice.~~

~~However, where changes or amendments to the Special Provisions are proposed, such publication need only be made at least fifteen (15) Business Days prior to the effective date fixed in the relevant notice where Eurex Clearing AG announces in the invitation to the Consultation pursuant to Number 17.3.1 Paragraph (1) the application of a shortened publication time period of fifteen (15) Business Days prior to the effective date fixed in the relevant notice and in total no more than two affected Clearing Members, affected Non-Clearing Members, affected Registered Customers affected FCM Clients and/or affected Basic Clearing Members object to the application of such shortened time period within the Consultation as provided for in Number 17.3. If Eurex Clearing AG receives such objections from more than two affected Clearing Members, affected Non-Clearing Members, affected Registered Customers affected FCM Clients and/or affected Basic Clearing Members during the Consultation, Eurex Clearing AG shall notify all Clearing~~

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~~Members, Non-Clearing Members, Registered Customers FCM Clients and/or Basic Clearing Members promptly on receipt of such objections in a further electronic circular.~~

~~16.2 Unless Number 16.1 is specified in these Clearing Conditions to apply, all notices from Eurex Clearing AG regarding these Clearing Conditions will be published on the Eurex Clearing AG website under www.eurexclearing.com for at least three (3) Business Days. Such notices will become effective immediately upon publication.~~

16.32 All notices to be given between Eurex Clearing AG and a Clearing Member or a Non-Clearing Member, Registered Customer, FCM Client or Basic Clearing Member shall be given in such form and at such address as agreed and/or notified from time to time by the relevant party. Notices may be given in the German or in the English language. Upon written request by a Clearing Member, Non-Clearing Member, Registered Customer, FCM Client or Basic Clearing Member all notices from Eurex Clearing AG (except for automated reports) to such requesting party shall be given in the German and in the English language or one of these languages. Unless otherwise specified in these Clearing Conditions notices by Clearing Members, Non-Clearing Members, Registered Customers, FCM Clients or Basic Clearing Members may be made by telefax or e-mail. Forms published by Eurex Clearing AG must be used.

16.43 Each Clearing Member, Non-Clearing Member, Registered Customer, FCM Client and Basic Clearing Member acknowledges that Eurex Clearing AG will send to Clearing Members, Non-Clearing Members, Registered Customers, FCM Clients and Basic Clearing Members notices –and reports in the systems of Eurex Clearing AG in an area which is only individually accessible to it (the “**Access Area**”). Eurex Clearing AG is not entitled to access or change the Access Area of a Clearing Member, Non-Clearing Member, Registered Customer, FCM Client or Basic Clearing Member without its consent. Reports and notifications stored in an Access Area will regularly be exchanged against new notices or reports within ten (10) Business Days of their storage in the Access Area.

16.54 Each Clearing Member, Non-Clearing Member, Registered Customer, FCM Client and Basic Clearing Member acknowledges that the notices and reports which are made accessible in the individual Access Area may also contain declarations (*Willenserklärungen*), in particular acceptances (*Annahmen*) of Transactions and other declarations of particular importance.

17 Miscellaneous

[...]

17.2 Changes and Amendments to the Clearing Conditions

17.2.1 Eurex Clearing AG reserves the right to change or amend the Clearing Conditions and the Procedures Manual at any time; any changes and amendments of these Clearing Conditions shall be published in accordance with Number 16.1 (i) and (ii).

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17.2.2 Unless otherwise provided for in these Clearing Conditions, such publication will be made to all affected Clearing Members, affected Non-Clearing-Members, affected Registered Customers, affected FCM Clients and/or affected Basic Clearing Members ("**Affected Customers**") at least fifteen (15) Business Days prior to the effective date fixed in the relevant notice ("**Regular Notification Period**").

17.2.3 If Special Conditions (as defined below) are to be changed or amended, Eurex Clearing AG will carry out a Consultation prior to the publication of the changes or amendments subject to and in accordance with Number 17.3. If in the Consultation more than two Affected Customers request the application of a Prolonged Notification Period, the publication of changes and amendments will be made three (3) months prior to the effective date fixed in the relevant notice ("**Prolonged Notification Period**").

17.2.24 "**Special Provisions**" are

- Numbers 1.5, 6, 7, 9, 16.1, 17.2 and 17.3,
- Subpart C Number 2.1.2 and 3.3 of the Individual Clearing Model Provisions,
- Chapter III Part 2 Number 2.4 Paragraph (1),
- Chapter IV Part 2 Number 2.6 Paragraph (1) (b),
- Chapter V Part 2 Number 2.2.1 Paragraph (4),
- Chapter VIII Part 2 Number 2.2.5 Paragraph (7),
- Chapter IX Part 2 Number 2.6.4 Paragraph (4),
- Chapter IX Part 2 Number 2.7.2 Paragraph (2),
- each of the Appendices to the Clearing Conditions to the extent that clauses in such Appendices relate to the granting of powers of attorney, the granting of margin or the creation of security interests,
- the Procedures Manual to the extent the issues contained therein may have an impact on the risk management of Eurex Clearing AG, the Clearing Members, Non-Clearing-Members, Registered Customers, FCM Clients and Basic Clearing Members,
- the DMC Rules and the DM Auction Rules and
- any newly added provisions relating to the subject matter of these provisions.

Rules or Agreements (except for those set forth in the preceding sentence), which are referred to in these provisions, do not qualify as Special Provisions. In case of changes or amendments of Special Provisions (as defined in Number 17.3.1) the procedures set forth in Number 17.3 shall apply. In case of all other changes and amendments of the Clearing Conditions (except for changes or amendments pursuant to Number 17.3.1 Paragraph (2))

17.2.5 Notwithstanding a prior Consultation (if any), Affected Customers may submit in writing to Eurex Clearing AG comments to any changes or amendments of the Clearing Conditions within the first 10 Business Days of the Regular Notification Period or the Prolonged Notification Period, as applicable. Eurex Clearing AG shall assess, whether the comments received from affected Clearing Members, affected Non-Clearing Members, affected Registered Customers, affected FCM Clients or affected Basic Clearing Members within ten (10) Business Days in writing of the publication of the change or amendment, taking into account the interests of Eurex Clearing AG, all Clearing Members, Non-Clearing Members, Registered Customers, FCM Clients and Basic Clearing Members whether these comments prevents the published change or amendment from becoming effective taking into account the interests of Eurex Clearing AG, all Clearing Members, Non-Clearing Members, Registered Customers, FCM Clients and Basic Clearing Members. If necessary, Eurex Clearing AG will consult the EMIR Risk Committee within the scope of competence of the EMIR Risk Committee or, where required, seek advice from other sources. There is no obligation of Eurex Clearing AG to implement a comment. To the extent Eurex Clearing AG decides to implement comments of affected Clearing Members, affected Non-Clearing Members, affected Registered Customers, affected FCM Clients or affected Basic Clearing Members Affected Customers the relevant changes and amendments will be published again pursuant to Number 16, in accordance with the initial notification period (i.e. either a Regular Notification Period or a Prolonged Notification Period, as the case may be); there will, however, be no new assessment of the comments of the Clearing Members, Non-Clearing Members, Registered Customers, FCM Clients and Basic Clearing Members Affected Customers pursuant to this Number 17.2.25.

17.2.36 Each Clearing Member, Non-Clearing Member, Registered Customer, FCM Client and Basic Clearing Member Affected Customer accepts each change and amendment of the Clearing Conditions, unless it objects by written notice to Eurex Clearing AG before the end of the Business Day prior to the actual effective date of such change and amendment of the Clearing Conditions within the Regular Notification Period or the Prolonged Notification Period, as applicable. Eurex Clearing AG will inform the Clearing Members, Non-Clearing Members, Registered Customers, FCM Clients and Basic Clearing Members Affected Customers of the effects of such approval in the relevant publication of the changes and amendments of these Clearing Conditions. The right to terminate the Clearing Agreement pursuant to Number 7.2.1 Paragraph (4) shall remain unaffected.

17.3 Consultation in case of changes and amendments of the Clearing Conditions

17.3.1 Scope of Application and Definitions

- (1) Prior to the publication of changes or amendments of the any Special Provisions (as defined below), Eurex Clearing AG will, by notice published in accordance with Number 16.1 (i), invite all affected Clearing Members, affected Non-Clearing Members, affected Registered Customers, affected FCM Clients and affected Basic Clearing Members Affected Customers to submit comments to the proposed changes and amendments and/or to express their desire for the application of a Prolonged

Notification Period within one month after the publication of the relevant invitation (“**Consultation**”).

~~“**Special Provisions**” are Numbers 1.5, 6, 7, 9, 16.1, 17.2 and 17.3, Subpart C Number 2.1.2 and 3.3 of the Individual Clearing Model Provisions, Chapter III Part 2 Number 2.4 Paragraph (1), Chapter IV Part 2 Number 2.6 Paragraph (1) (b), Chapter V Part 2 Number 2.2.1 Paragraph (4), Chapter VIII Part 2 Number 2.2.5 Paragraph (7), Chapter IX Part 2 Number 2.6.4 Paragraph (4), Chapter IX Part 2 Number 2.7.2 Paragraph (2), Appendices 1, 2, 3, 4, 5, 6, 7 and 11 (to the extent that clauses in such Appendices relate to the granting of powers of attorney, the granting of margin or the creation of security interests) as well as the Procedures Manual (to the extent the issues contained therein may have an impact on the risk management of Eurex Clearing AG, the Clearing Members, Non-Clearing Members, Registered Customers, FCM Clients and Basic Clearing Members), the DMC Rules and the DM Auction Rules and any newly added provisions relating to the subject matter of these provisions. Rules or Agreements (except for those set forth in the preceding sentence), which are referred to in these provisions, do not qualify as Special Provisions.~~

- (2) A Consultation pursuant to Paragraph (1) does not take place with regard to (i) editorial changes or amendments, (ii) changes or amendments necessary to comply with statutory or regulatory requirements, as well as (iii) changes or amendments (except for changes or amendments to Numbers 6, 7, 9, 17.2 or 17.3) due to Extraordinary Market Conditions (as defined below); accordingly, the Regular Notification Period applies.

“Extraordinary Market Conditions” are, as determined by Eurex Clearing AG,

- (a) events or circumstances which affect or may affect the orderly Clearing, the orderly settlement and liquidation of Transactions or the existence or orderly functioning of the Clearing Process.
- (b) other market disruptions which render impossible or impracticable the orderly determination of closing prices (*Schlusskursen*) or settlement prices; or
- (c) events or circumstances which establish non tolerable insecurity, volatility or risks with regard to Transactions or the Clearing which may negatively impact on the financial or commodities markets relevant for the Clearing, which, in each case, render it impractical for Eurex Clearing AG to continue to operate the Clearing in accordance with the Clearing Conditions while sufficiently managing its risks.

Extraordinary Market Conditions may also occur if only a single Clearing Member, a single Basic Clearing Member (e.g. in case of a default) or a group of Clearing Members or Basic Clearing Members is/are affected, provided that any of the events or circumstances described in (a) to (c) exist. The default of a Clearing Member or a Basic Clearing Member does not per se constitute Extraordinary Market Conditions.

17.3.2 During a Consultation, Eurex Clearing AG will, taking into account the interests of Eurex Clearing AG and all Clearing Members, Non-Clearing-Members, Registered Customers, FCM Clients and Basic Clearing Members, assess the comments received by the ~~affected Clearing Members, affected Non-Clearing Members, affected Registered Customers, affected FCM Clients and affected Basic Clearing Members~~ Affected Customers in the Consultation and, if necessary, consult the EMIR Risk Committee within the scope of competence of the EMIR Risk Committee or, where required, seek advice from other sources. There is no obligation of Eurex Clearing AG to implement a comment. To the extent Eurex Clearing AG decides to accept proposed changes or amendments by ~~affected Clearing Members, affected Non-Clearing Members, affected Registered Customers, affected FCM Clients or affected Basic Clearing Members~~ Affected Customers, an amended version of the relevant changes or amendments taking into account the proposed changes or amendments will be published following the Consultation pursuant to Number ~~16~~17.2; there shall be no new Consultation pursuant to Number 17.3.

17.3.3 If in a Consultation more than two Affected Customers request the application of the Prolonged Notification Period, Eurex Clearing AG shall notify all Affected Customers promptly, by notice in accordance with Number 16.1 (i), and confirm that the Prolonged Notification Period applies instead of the Regular Notification Period.

17.3.~~4~~3 Eurex Clearing AG will in connection with regular meetings of the EMIR Risk Committee within the scope of competence of the EMIR Risk Committee or, where required, otherwise deliver a summary report of the comments received during the Consultation as well as on the position taken by Eurex Clearing AG.

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