



## eurex clearing circular 066/17

**Date:** 5 July 2017  
**Recipients:** All Clearing Members, Non-Clearing Members and 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**

**Contact:** Risk Control, T +49-69-211-1 24 52, [DMP\\_Inbox@eurexclearing.com](mailto:DMP_Inbox@eurexclearing.com)

**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 Auction Rules of Eurex Clearing AG
5. Amended sections of the Default Management Committee Rules of Eurex Clearing AG
6. Form for appointment of individuals entitled to submit comments

**Summary:**

In line with the feedback received from the Clearing Members and the continuous improvement of the Default Management Process (DMP), Eurex Clearing AG (Eurex Clearing) proposes to:

1. Clarify the DMP regarding the FWB Transactions in case a defaulted Clearing Member has been acting as a seller;
2. Clarify the definition of the "Liquidation Group Ratio" for the Dedicated Amount consumption;
3. Clarify the provisions relating to the OTC Interest Rate Derivatives Transactions auction format;
4. Clarify the Default Management Auction Rules; and
5. Further clarify the Default Management Committee Rules.

The amended sections of the Clearing Conditions of Eurex Clearing AG (Clearing Conditions), the Default Management Committee Rules and the Default Management Auction 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. Such Consultation will commence on **6 July 2017** and shall end on **7 August 2017** at midnight (Consultation Period).

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

In line with the feedback received from the Clearing Members and the continuous improvement of the Default Management Process, Eurex Clearing proposes to:

1. Clarify the DMP regarding the FWB Transactions in case a defaulted Clearing Member has been acting as a seller;
2. Clarify the definition of the "Liquidation Group Ratio" for the Dedicated Amount consumption;
3. Clarify the provisions relating to the OTC Interest Rate Derivatives Transactions auction format;
4. Clarify the Default Management Auction Rules; and
5. Further clarify the Default Management Committee Rules.

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

Eurex Clearing has decided to amend Special Provisions in the Clearing Conditions which requires a Consultation on the proposed amendments, pursuant to Chapter I Part 1 Number 17.3 of the Clearing Conditions. The respective amendments have been consulted with the EMIR Risk Committee and approved by the Supervisory Board of Eurex Clearing AG. This Consultation will commence on **6 July 2017** and shall end on **7 August 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 Attachment 1 to 5 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 **4 September 2017**, provided that in total no more than two Affected Customers request a Prolonged Notification Period (three months).

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

**1. Clarification of the DMP regarding the FWB Transactions in case a defaulted Clearing Member acted as a seller**

Eurex Clearing intends to clarify the DMP rules for FWB Transactions by reusing the existing process for Bond Liquidation Group in case of a bond seller default.

Upon the default of a Clearing Member, Eurex Clearing will attempt an independent sale of the entire open FWB Transactions portfolio. Only if short positions remain after the independent sale, Eurex Clearing will initiate a buy-in process. The buy-in process is voluntary for all Clearing Members.

To avoid Clearing Members from being cornered and to decrease the risk of wrong prices, Eurex Clearing defines a maximum price accepted in the purchasing process per ISIN, which is similar to the existing buy-in operations outside of a DMP. The maximum prices take into account the last available settlement price, as well as the applicable margin parameter.

Only if all attempts to purchase a respective ISIN fail, Eurex Clearing will, cash settle respective positions at the above-defined maximum price to rebalance the CCP - in line with regular business processes.

To reflect the changes the Clearing Conditions will be amended as outlined in attachment 1.

## **2. Clarification of the definition of the “Liquidation Group Ratio” for the Dedicated Amount consumption**

The rules and regulations of Eurex Clearing state that the Dedicated Amount of Eurex Clearing will be used based on the applicable Liquidation Group (LG) Ratio. Such ratio is defined as follows: the Total Margin Requirement (TMR) for the relevant LG over the aggregated TMR across all LGs. In this context, TMR is defined as a sum of additional margin and initial margin. However, standard market terminology defines TMR as a sum of forward- and backward-looking components.

In order to align the terminology with the market standards and avoid confusion, Eurex Clearing substitutes the notion of TMR with „the sum of additional margin and initial margin“.

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

## **3. Clarification of the provisions relating to the OTC Interest Rate Derivatives Transactions auction format**

Current provisions state that OTC Interest Rate Derivatives Transactions auction format will be applied if relevant transactions qualify as OTC Interest Rate Derivative Transactions.

It will be clarified that OTC Interest Rate Derivatives Transactions auction format can be applied if at least one of the relevant transactions is an OTC Interest Rate Derivative Transaction, i.e. if the auction portfolio consists of OTC IRS and Fixed Income (FI) products, Eurex Clearing can apply the OTC Interest Rate Derivative Transaction auction format.

To reflect the changes, the following will be amended:

- Clearing Conditions, as outlined in attachment 3
- Number 7.2 of the Default Management Auction Rules, attachment 4

## **4. Clarification of the Default Management Auction Rules**

It will be clarified that Auction Rules generally apply to respective auction participants regardless whether the bid was actually submitted or not.

In addition, it is intended to further clarify that the “Specific Terms for DM Auctions” will also be provided to Clearing Members bidding on behalf of their clients.

To reflect the changes, the Default Management Auction Rules will be amended as outlined in attachment 4.

## **5. Further clarification of the Default Management Committee Rules**

According to current Default Management Committee Rules a Clearing Member may request to be represented in the DMC by its Non-Clearing-Member (NCM) or Registered Customer (RC). It will be clarified that the Default Management Committee Rules and the Agreement for the Participation in a Default Management Committee shall also apply to these representatives.

Further, it is proposed to clarify the wording around the confidentiality provisions. In particular, a DMC Member will be allowed to disclose confidential information to its compliance department if this is required to ensure compliance with internal compliance requirements.

It is proposed to add a provision clarifying the termination of the Agreement for the Participation in a Default Management Committee. In particular, a DMC Member may terminate the agreement at any point in time with a notice period of 30 days.

It is proposed to add a standard provision clarifying the amendment process with respect to the Default Management Committee Rules and the Agreement for the Participation in a Default Management Committee. A

Clearing Member will accept the changes to the rules unless it objects by sending a written notice within the defined notification period.

To reflect the changes, the Default Management Committee Rules will be amended as outlined in attachment 5.

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 6 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, Default Management Committee Rules and the Default Management Auction Rules 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**

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

5 July 2017

Chapter I of the Clearing Conditions of Eurex Clearing AG

## General Provisions

As of 04.09.2017

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AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

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[...]

## Part 1 General Clearing Provisions

[...]

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

[...]

#### 7.5 Default Management Process

[...]

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

[...]

- (6) Special provisions relating to Eurex Bonds Transactions and FWB Transactions, under which the Affected Clearing Member acted as seller, and Eurex Repo Transactions, under which the Affected Clearing Member acted as Cash Provider
- (i) With respect to terminated Eurex Bonds Transactions and FWB Transactions under which the Affected Clearing Member acted as seller, and with respect to terminated Eurex Repo Transactions under which the Affected Clearing Member acted as Cash Provider, Eurex Clearing AG shall purchase the bonds and securities (as applicable) underlying these Transactions via independent trades.
- (ii) Eurex Clearing AG will determine for each bond and security (as applicable) a Maximum Price<sub>1</sub> which it is willing to pay in an independent trade. "Maximum Price" means the lower amount of either (I) the sum of (i) the last settlement

price for the relevant bond or security (as applicable) on the preceding Business Day ~~and~~ (ii) the product of (a) 0.5 and (b) the relevant Risk Parameter for the ~~relevant~~ relevant bond or security (as applicable), or (II) the sum of (i) the last settlement price for the relevant bond or security (as applicable) on the Business Day immediately preceding the Termination Date and (ii) the product of (a) 1.1 and (b) the relevant Risk Parameter for the relevant bond or security (as applicable). In individual cases, Eurex Clearing AG is entitled to adjust the relevant multiplier of 0.5 or 1.1 after consultation of the relevant DMC.

- (iii) If Eurex Clearing AG is not able to purchase a bond or a security (as applicable) via independent trades, Eurex Clearing AG is entitled to determine a cash settlement regarding such bond or security (as applicable) with respect to one or more other Clearing Member(s), to which the relevant bond or security (as applicable) shall be delivered under a Eurex Bond Transaction, ~~or~~ a Eurex Repo Transaction, or a FWB Transaction.

The cash settlement amount is the product of (i) the relevant Maximum Price and (ii) the relevant number of bonds or securities (as applicable) which were not delivered under the relevant Eurex Bonds Transaction, ~~or~~ Eurex Repo Transaction, or FWB Transaction due to the cash settlement. If there are more than one Clearing Member to which the relevant bond or security (as applicable) shall be delivered under a Eurex Bond Transaction, ~~or~~ a Eurex Repo Transaction or a FWB Transaction, the relevant cash settlement shall be performed between such Clearing Members on a pro rata basis.

Upon determination of the cash settlement, the claims of the relevant Clearing Member against Eurex Clearing AG for the delivery of the owed bonds or securities (as applicable) expire with debt-discharging effect to the extend equalling the number of bonds or securities (as applicable) owed and not delivered by Eurex Clearing AG to the relevant Clearing Member. Eurex Clearing shall instead pay the cash settlement amount to the relevant Clearing Member or set off such amount with payment claims Eurex Clearing AG may have against the relevant Clearing Member.

[...]

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[...]

## Part 1 General Clearing Provisions

[...]

### 3 General Provisions regarding Margin

[...]

#### 3.1 Margin Requirement and Types of Margin

[...]

3.1.4 Each margin requirement calculated by Eurex Clearing AG shall equal, in respect of a Transaction or a group of Transactions after a netting thereof, if applicable, the sum of the Current Liquidating Margin requirement and the Premium Margin requirement ~~and the Spread Margin requirement~~ and the Additional Margin requirement and the Initial Margin requirement and any other margin type requirement, as specified in the Special Clearing Provisions, (the "**Margin Type**"). The Current Liquidating Margin requirement and the Additional Margin requirement apply to all securities transactions (*Wertpapiergeschäfte*) pursuant to Chapters II through VI.

[...]

3.1.7 ~~The "**Spread Margin**" requirement equals the aggregate value of the potential loss Eurex Clearing AG would suffer as of the time of the determination of the margin requirement from a closing of a futures contract by entering into an inverse transaction (*Glattstellung*). When determining the Spread Margin, Eurex Clearing AG will net long and short positions with regard to identical expiration dates and, to the extent possible, net long positions and net short positions in contracts with different expiration dates.~~

3.1.7~~8~~ The "**Additional Margin**" requirement equals the amount of any potential losses from a closing of the Transaction(s) by entering into (an) inverse transaction(s) (*Glattstellung*) taking into account assumed price changes due to extreme price movements in the

market (worst case scenario) and shall be in addition to the amount calculated by the Current Liquidating Margin, the Premium Margin, ~~the Spread Margin~~ or any other Margin Type.

3.1.89 The “**Initial Margin**” requirement equals the amount of any potential losses Eurex Clearing AG would suffer as of the time of the determination of the margin requirement from a closing of the Transaction(s) in a particular Liquidation Group by entering into (an) inverse transaction(s) (*Glattstellung*) within the respectively applicable holding period for the respective Liquidation Group, as published by Eurex Clearing AG on its website ([www.eurexclearing.com](http://www.eurexclearing.com)), taking into account assumed price changes due to extreme price movements in the market, and shall be in addition to the amount calculated by the Premium Margin or any other Margin Type.

[...]

## 6. Clearing Fund

[...]

### 6.2 Realisation of the Clearing Fund

[...]

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):

[...]

With respect to each Relevant Liquidation Group, the term “**Liquidation Group Ratio**” means the fraction of the amount which may be realised, in each case, under Paragraph (1) – (12) which is to be determined as follows:

[...]

- (v) with respect to Paragraph (5), the ratio of (A) the part of the sum of the Initial Margin requirement and the Additional Margin requirement~~Total Margin Requirement~~ determined for such Relevant Liquidation Group and (B) the aggregate sum of the Initial Margin requirement and the Additional Margin requirement determined for all Relevant Liquidation Groups~~Total Margin Requirement~~,

- (vi) with respect to Paragraph (6), the ratio of (A) the part of the sum of the Initial Margin requirement and the Additional Margin requirement~~Total Margin Requirement~~ determined for such Relevant Liquidation Group and (B) the sum of the Initial Margin requirement and the Additional Margin requirement determined for all Relevant Liquidation Groups~~aggregate Total Margin Requirement~~ (not taking into account Relevant Liquidation Groups in respect of which the relevant claims have already been discharged pursuant to the respective preceding Paragraphs),

[...]

~~“Total Margin Requirement” means the sum of the Additional Margin requirement, the Spread Margin requirement and the Initial Margin requirement of all Clearing Members and Basic Clearing Members in respect to which no Termination Date or Basic Clearing Member Termination Date, as applicable, has occurred.~~

- 6.2.2 If, subsequent to a realisation of the Clearing Fund, an Affected Clearing Member or Affected BCM makes a payment to Eurex Clearing AG to fulfil the Clearing Fund Secured Claims, or if the Clearing 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, 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 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.

[...]

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Chapter I of the Clearing Conditions of Eurex Clearing AG

## General Provisions

As of 04.09.2017

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[...]

**Part 1    General Clearing Provisions**

[...]

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

[...]

**7.5          Default Management Process**

[...]

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

[...]

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

If at least one of the relevant DM Auction Transactions qualifies as OTC Interest Rate Derivative Transactions, the following shall apply:

[...]

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[...]

#### **4 Pre-Auction Procedures**

4.1 For each DM Auction Eurex Clearing AG will provide all Mandatory Participants, all Representing Participating Bidders, and all Selected Invitees (together the “**Invitees**” and each an “**Invitee**”) with the Specific Terms and with any further relevant information relating to this DM Auction in accordance with Number 11. The distribution of the Specific Terms constitutes an invitation of Eurex Clearing AG to the Invitees to submit a Bid to enter into each of the DM Auction Transactions comprised in the relevant Auction Unit with Eurex Clearing AG at the Auction Price.

[...]

#### **7 Auction Format**

7.1 The Specific Terms will specify the format of the relevant DM Auction with regard to the content of a Bid, the specific procedures of the bidding and the determination of the winning Bid (the “**Auction Format**”).

7.2 When conducting a DM Auction in accordance with these DM Auction Rules, Eurex Clearing AG shall, unless stated otherwise in the Specific Terms, apply the Auction Format of a “Multi Unit – Pay as you bid” as described in Number 7.3. Notwithstanding the provisions in Sentence 1, if at least one of the relevant DM Auction Transactions qualify as OTC Interest Rate Derivative Transactions, Eurex Clearing AG shall generally conduct separate DM Auctions per currency and shall apply the Auction Format of a “Single Unit – Pay as you bid” as described in Number 7.4.

[...]

#### **10 Representations, Warranties and Undertakings**

~~By submitting a Bid in accordance with the DM Auction Rules, e~~Each Participating Bidder (for itself) and each Representing Participating Bidder (for itself and on behalf of its relevant Selected Invitee(s))

- 10.1** agrees ~~at the time of the submission of its Bid,~~ with Eurex Clearing AG (and repeats this agreement with Eurex Clearing AG at any time it submits a Bid) that
- 10.1.1** it accepts the DM Auction Rules;
  - 10.1.2** it accepts that Eurex Clearing AG is under no obligation to accept a Bid which does not comply with Number 7.3.3 or Number 7.4.3, or which is not made in accordance with Number 9.2; and
  - 10.1.3** it shall indemnify on an after tax basis Eurex Clearing AG against all and any losses, costs, claims, liabilities, expenses, charges, actions or demands which Eurex Clearing AG may incur or which may be made against Eurex Clearing AG as a result of any breach of any of the DM Auction Rules of, or any of the acknowledgements, representations, warranties and/or undertakings given pursuant to, the DM Auction Rules (including any Bid thereunder) by it;
- 10.2** acknowledges ~~at the time of the submission of its Bid,~~ to Eurex Clearing AG (and repeats this acknowledgement to Eurex Clearing AG at any time it submits a Bid) that
- 10.2.1** it understands that Eurex Clearing AG may, at its own discretion, extend, re-open, amend or waive any condition of, or cancel ~~the a~~ DM Auction at any time in accordance with Number 4.3 hereof, and that in the event of a cancellation of the DM Auction, the Bids will be released;
  - 10.2.2** it understands that acceptance by Eurex Clearing AG of a submitted Bid will constitute a binding contract regarding the entering into the DM Auction Transactions comprised in the relevant Auction Unit;
  - 10.2.3** that Eurex Clearing AG will rely upon the truth and accuracy of the foregoing and the following acknowledgments, agreements, representations, warranties and undertakings; and
  - 10.2.4** that a margin requirement with respect to the respective DM Auction Transactions comprised in the relevant Auction Unit may become due at the relevant Settlement Time; and
- 10.3** represents and warrants ~~at the time of the submission of its Bid,~~ to Eurex Clearing AG (and repeats this representation and warrant to Eurex Clearing AG at any time it submits a Bid) that

[...]

**Form of Specific Terms for DM Auctions**

**[Letterhead of Eurex Clearing AG]**

To

~~the all~~ Mandatory Participants,

all Representing Participating Bidders, and

all Selected Invitees

[Date]

**SPECIFIC TERMS FOR DM AUCTIONS**

You have been invited by Eurex Clearing AG to participate in a DM Auction (as further described by the details below).

These Specific Terms must be read in conjunction with the ~~General DM~~ Default Management -Auction Rules published as of the date hereof by Eurex Clearing AG on its website [www.eurexclearing.com](http://www.eurexclearing.com). ~~These Specific Rules and constitute~~ in conjunction with the General DM Auction Rules constitute the applicable DM Auction Rules for this DM Auction. In case of any differences between the General DM Auction Rules and these Specific Terms, these Specific Terms shall prevail.

Each Mandatory Participant, Representing Participating Bidder, and Selected Invitee will keep confidential and will not disclose directly or indirectly the Specific Terms or any other information regarding the relevant DM Auction, including any information with respect to the DM Auction Transactions or the Auction Units set forth therein, unless permitted to do so in accordance with Number 3.2 above. It will further respect to be permitted to use any such information solely for the purpose of evaluating the relevant Auction Unit and it will, unless it has provided the winning Bid in accordance with Number 7.3.3 or Number 7.4.3 of the General DM Auction Rules, immediately delete and destroy such information after the respective Expiration Time and will promptly certify to Eurex Clearing AG in writing that such deletion has been completed. ~~Each Representing Participating Bidder shall procure that the Selected Invitees for which it acts as Representing Participating Bidder will comply with the foregoing obligations.~~

Capitalised terms used in this letter but not defined herein shall have the same meaning given to them in the Default Management Auction Rules or the Clearing Conditions of Eurex Clearing AG.

[...]

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[...]

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. 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 (Annex 1) applicable to Non-Clearing Members and Registered Customers in the form provided by Eurex Clearing AG.~~ If such affiliated Non-Clearing Member or affiliated Registered Customer does not comply with its obligations under such agreement, the relevant Eligible Clearing Member remains responsible for the fulfillment of its obligations under the DMC Rules.

[...]

# Appendix 1

## Agreement

for the Participation in a Default Management Committee

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**DEFAULT MANAGEMENT COMMITTEE RULES**

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[...]

**WHEREAS:**

[...]

(F) When selected as Participating DMC Member Institution pursuant to the DMC Rules, the Clearing Member is obliged to nominate one of its employees or an employee of an Affiliate as DMC Member and another one of its employees or another employee of an Affiliate as DMC Deputy pursuant to the DMC Rules. The Participating DMC Member Institution is obliged to make the nominated DMC Member (or its DMC Deputy) available to Eurex Clearing AG for the purposes set out in the DMC Rules and pursuant to this Agreement.

(G) If a Participating DMC Clearing Member Institution requested its substitution by an affiliated Non-Clearing Member or Registered Customer in accordance with Number 2.5 of the DMC Rules and Eurex Clearing AG accepted such substitution, any reference to the Clearing Member in this Agreement and within the DMC Rules shall be read as references to the relevant Non-Clearing Member or Registered Customer.

[...]

**5 Limitation of Clearing Member's direction rights**

5.1 The Clearing Member and Eurex Clearing AG agree for the period of an a DMC Activity that,

[...]

5.1.4 during a DMC Activity with respect to any DMC Member or the DMC Deputy ~~only~~ the compliance rules and restrictions as well as all other code of conduct and organisational requirements of Eurex Clearing AG as well as the DMC Rules and the Clearing Conditions shall apply.

[...]

**6 Confidentiality**

6.1 Except as expressly contemplated otherwise in this Agreement or as required by applicable law, court order, regulation or as required or requested by any regulatory, self-regulatory or supervisory authority having appropriate jurisdiction, the Clearing Member agrees (i) not to disclose any Confidential Information (as defined below) and (ii) not to use any such Confidential Information for its own benefit or the benefit of any third party. The Clearing Member's obligation under this Clause 6.1 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 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

**DEFAULT MANAGEMENT COMMITTEE RULES**

DMC Term with respect to which the Confidential Information was obtained during the respective DMC Activity.

- 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 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 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 (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 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.~~
- 6.45 The Clearing Member shall indemnify Eurex Clearing AG for all damages resulting from any intentional (*vorsätzlich*) or grossly negligent (*grob fahrlässig*) breach by the DMC Member or the DMC Deputy of the confidentiality obligation set forth in Clause 6.2 and the direction set forth in Clause 6.3.
- 6.56 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.
- 6.6 The relevant DMC Member or the DMC Deputy shall be entitled to disclose Confidential Information to employees working in the compliance departments of the Clearing Member or (if the Clearing Member is not the employer of the DMC Member or its DMC Deputy) the Affiliate, provided that such disclosure is required to ensure compliance with internal compliance requirements of the Clearing Member or (if the Clearing Member is not the

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**DEFAULT MANAGEMENT COMMITTEE RULES**

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employer of the DMC Member or its DMC Deputy) the Affiliate. Clauses 6.2 to 6.4 shall apply accordingly with respect to such employees working in the compliance departments.

[...]

**8 Term**

8.1 This Agreement shall remain in effect until all Clearing Agreements with the Clearing Member have been terminated, in which case this Agreement will terminate at the same time.

8.2 Eurex Clearing AG and the Clearing Member may terminate this Agreement at any time. Such termination requires a written notice to the Clearing Member or to Eurex Clearing AG, respectively, with a prior notice period of 30 days.

**9 Amendments**

9.1 Eurex Clearing AG reserves the right to amend this Agreement in accordance with Chapter I Part 1 Number 17.2 of the Clearing Conditions.

9.2 The Clearing Member accepts each change and amendment to the DMC Rules and this Agreement, unless it objects by sending a written notice to Eurex Clearing AG within the Regular Notification Period or the Prolonged Notification Period, as applicable. Eurex Clearing AG will inform the Clearing Member of the effects of such approval in the relevant publication of such changes and amendments. The right to terminate the Agreement pursuant to Clause 8.2 shall remain unaffected.

[...]

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