



eurex circular 269/07

Date: Frankfurt, December 28, 2007
Recipients: All Clearing Members of Eurex Clearing AG and Vendors
Authorized by: Thomas Book

 Action required

 High priority

**Clearing Conditions: Insertion of a Close-Out Netting
Regulation for regulatory Purposes; Change due to Inclusion
of a Clause for unilateral Modification of the Clearing Agreement**

Contact: Member Services & Admission Team, tel.: +49-211-1 17 00

Content may be most important for:

 All departments

Attachments:

1. Updated Sections of the Clearing Conditions for Eurex Clearing AG
2. Clearing Agreement
3. NCM-CM Agreement
4. Sample Agreement (in German only)

Summary:

The Executive Board of Eurex Clearing AG decided to include a Close-Out netting regulation for derivatives trades in the ECAG-NCM-CM agreement, which gives both Clearing Members and Non-Clearing Members the opportunity to carry out netting for regulatory purposes. This offers the potential for a reduction of own capital backing pursuant to the Solvency Regulation and for relief of large credit limits.

In conjunction with the necessary new signing, the Executive Board of Eurex Clearing AG decided to include a clause in both the CM-Clearing Agreement and the NCM-CM agreement, which grants Eurex Clearing AG a right of unilateral modification by means of announcement to the parties. The unilateral right of modification shall minimize former organizational efforts on the customer's side. It accommodates the grown number of customers of Eurex Clearing AG. Any changes shall not lead to Clearing Members and Non-Clearing Members being placed in a worse situation. Therefore, in conjunction with any modifications, Eurex Clearing AG is obliged to appropriately consider the interests of the Clearing Member and the Non-Clearing Member.

As for changes of the Clearing Conditions, Clearing Members and Non-Clearing Members have the right to object to changes to the agreement within currently ten business days after their publication. Otherwise they will be considered as approved.

Insofar as the Clearing Conditions are concerned, the new regulations will become effective on **January 11, 2008**. Any modifications to the CM-Clearing agreement and the NCM-CM agreement will become effective upon signing of the agreements by the parties.



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Peter Reitz

Aktiengesellschaft mit
Sitz in Frankfurt/Main
HRB Nr. 44828
Amtsgericht
Frankfurt/Main

**Clearing Conditions: Insertion of a Close-Out Netting
Regulation for regulatory Purposes: Change due to Inclusion
of a Clause for unilateral Modification of the Clearing Agreement**

The Executive Board of Eurex Clearing AG decided to include a Close-Out netting regulation for derivatives transactions in the NCM-CM agreement, which will give Clearing Members and Non-Clearing Members the opportunity to carry out netting for regulatory purposes. Clearing Members and Non-Clearing Members include in their agreement the General Agreement, which is attached as sample (attachment 4). The regulation is based on the German General Agreement for Financial Derivatives (version 2001).

In view of the revision of the Solvency Regulation (Solvabilitätsverordnung (SolvV)) which will become generally binding as of January 1, 2008, and the Large Credit and Million Credit Regulation (Groß- und Millionenkreditverordnung (GroMiKV)) the new regulation will create the opportunity for institutes which are subject to the German Banking Act (Kreditwesengesetz (KWG)) to generate reductions of own capital backing of transactions as well as their consideration for large credit limits of these transactions. Clearing Members or Non-Clearing Members domiciled outside of Germany are requested to clarify with their respective supervisory authority to what extent the netting regulation will be recognized.

In conjunction with the necessary new signing, the Executive Board of Eurex Clearing AG decided to change both the CM-Clearing Agreement and the ECAG-NCM-CM Agreement. A clause will be included, which grants Eurex Clearing AG the right to modify the Clearing Agreement and the NCM-CM Agreement and/or individual components thereof under appropriate consideration of the interests of the Clearing Member and/or the Non-Clearing Member.

This means that in the future, modifications of these agreements no longer need to be signed by all parties (except for the limitation explained in number 6 concerning the Close-Out netting regulation (chapter III of the NCM-CM agreement)). In the future, the modified agreements will be announced to the Clearing Members and Non-Clearing Members by means of circulars, whereby the modified regulations will be highlighted. If either Clearing Member or Non-Clearing Member does not object to the modification within ten business days, the modification is considered as accepted.

Further modifications are of editorial nature. They concern the exact term of the subject of the contract and the integral parts of the contract included by means of the Clearing Agreement, i.e. the Clearing Conditions and the Price List.

The modification procedure described results in less administration effort for all parties involved. It is based on the regulation for the possibility of unilateral modification of the Clearing Conditions by Eurex Clearing AG. As such it is aimed at avoiding Clearing Members and Non-Clearing Members being placed in a worse situation. For this purpose, as for changes of the Clearing Conditions, Clearing Members and Non-Clearing Members have the right to object to the changes within ten business days after their publication. If this is done, changes will not become effective for the respective Clearing Member and/or Non-Clearing Member. Furthermore, Eurex Clearing AG determined that modifications of the agreements are only feasible, if they consider the interests of the Clearing Member and Non-Clearing Member in an adequate way.

For acknowledgement of the modified agreements, Eurex Clearing AG kindly asks the Clearing Members to sign the CM agreement and the Clearing Members and Non-Clearing Members to sign the NCM-CM Agreement.

The new regulations will become effective on January 11, 2008, insofar as they concern modifications of the Clearing Conditions. The modification of the CM-Clearing agreement and NCM-CM agreement shall become effective upon signing the agreement by the parties.

Please return by post two original copies of the CM Agreement or three original copies of the NCM-CM Agreement, respectively, to the address listed below by February 29, 2008, the latest.

The General Agreement for Financial Derivatives between NCM and CM included in the regulation pursuant to chapter III does not need to be submitted.

Eurex Clearing AG
Member Services & Admission
5.01.004
Neue Börsenstraße 1
D-60487 Frankfurt

Should you have any questions, please contact the Member Services & Admission Team at tel. +49-69-211-1 17 00.

For any questions regarding the Close-Out Netting regulation, please refer to Andreas Bail, Legal Affairs, Section Markets & Regulatory at tel. +49-69-211-1 31 36.

Please note: Attachments 2 and 3 also contain changes with regard to the German Insolvency Law, which have already been published (see Eurex circular 232/07), and the cooperation of Eurex and the EEX (see Eurex circular 236/07).

Frankfurt, December 28, 2007

[....]

Chapter I General Provisions

[....]

Part 9

Legal Relationships between Eurex Clearing AG, Clearing Members and with Link Clearing Houses as well as their Clearing Members

[.....]

9.2 Rights and Obligations of Clearing Members of Eurex Clearing AG

[.....]

9.2.2 Non-fulfilment of Duties of a Non-Clearing Member

- (1) If a Non-Clearing Member fails to provide the margin fixed by its Clearing Member or to effect any daily settlement payment in a timely manner, the Non-Clearing Member may – upon written request to the Management Board by the Clearing Member - be excluded from trading at the respective market or may be restricted to the trading of specified products (whose clearing is not carried out by Eurex Clearing AG) for the duration of such failure by a decision of the Boards of Management of the respective market. Eurex Clearing AG shall immediately be informed about the submission of such request by both the Clearing Member and the Management Board of the respective market.

From the time of decision by the Management Board of the respective market pursuant to Clause 1, the provisions pursuant to Number 1.2 Paragraph 1 with regard to the transactions resulting from the entry of orders and quotes into the trading system of the respective market by Non-Clearing Members do not apply any more.

- (2) If a Non-Clearing Member fails to pay to its Clearing Member any payments (e.g. premiums and fees) owed to it under these Conditions or these Clearing Conditions or under the provisions valid for the respective market in a timely manner, the Management Board of the respective market may, at the request of the Clearing Member, exclude such Non-Clearing Member from trading at the respective market for the duration of the non-payment or it may restrict such Non-Clearing Member to the trading of specified products. Any such request made by telephone must promptly be confirmed in writing.

- (3) Exclusively for banks with a clearing license pursuant to Chapter I Number 2.1 Paragraph 1 item a (Clearing of Eurex transactions) or item f (Clearing of EEX transactions), the following applies:
- In case a Non-Clearing Member which is admitted to trading on the Eurex Exchanges or the EEX (hereinafter jointly referred to as "Markets") does not fulfil the other conditions pursuant to Number 9.2.3 agreed upon with its Clearing Member, or if it does not provide in due time the margin determined by or the payments owed to its Clearing Member (e.g. premiums and fees) within the meaning of Paragraph 2, such payments being based on these Clearing Conditions, the respective Clearing Member may – instead of a written application pursuant to Paragraph 1 or 2 – declare vis-à-vis the respective Market and Eurex Clearing AG by way of a respective entry ("Stop Button") in the system of the Eurex Exchanges, the EEX or the system of Eurex Clearing AG (hereinafter jointly referred to as "System") pursuant to Number 9.2.3.2 that it is no longer willing to conduct the clearing of Eurex Transactions and Eurex OTC Transactions of the concerned Clearing Member on the respective Market or the Markets.
 - By way of such a system entry ("Stop Button"), the Clearing Member at the same time applies vis-à-vis the respective Market or Markets and Eurex Clearing AG that the respective Non-Clearing Member shall be excluded from trading at the respective Market or Markets for the term of non-fulfillment of its above-mentioned duties and that the authorization of participation in the clearing of transactions concluded off-exchange via the OTC Trade Entry Facility shall be revoked. In this case, the regulations pursuant to Number 9.2.3.3.2 and 9.2.3.3.3 shall apply.
- (4) Clearing Members themselves may not close positions or exercise or close positions opened by their Non-Clearing Members.

If a Non-Clearing Member has been excluded from trading on one of the markets named in the following Chapters or has been restricted to the trading of specified products, the Clearing Member may request that Eurex Clearing AG close the transactions or positions of such Non-Clearing Member by Eurex Clearing AG. The costs of such closing shall be borne by the Clearing Member.

- (5) If a Clearing Member fails to make any payments or deliveries due to Eurex Clearing AG, the Management Board of the respective market may, upon request of Eurex Clearing AG, exclude such Clearing Member, as well as the Non-Clearing Members represented by it pursuant to the provisions of the respective market from trading for the duration of such failure or may restrict it to the trading of specified products;

From the time of decision by the Management Board of the respective market pursuant to Clause 1, the provisions pursuant to Number 1.2 Paragraph 1 with regard to the transactions resulting from the entry of orders and quotes into the trading system of the respective market by Non-Clearing Members do not apply any more.

Clearing AG reserves the right to also close defaulting transactions or positions in all accounts for the Clearing of which the Clearing Member is responsible, according to Number 1.8.1. Eurex Clearing AG shall not be liable for any losses suffered by a Non-Clearing Member due to the exclusion of its Clearing Member from trading or due to a restriction of its Clearing Member to specified products on the respective market.

- (6) Eurex Clearing AG shall inform the Clearing Member of any measures taken with respect to one of its Non-Clearing Members to the extent that such measures may affect the risk assessment of such Non-Clearing Member and the respective measures are known to Eurex Clearing AG.

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9.2.3.3.2 Non-Fulfilment of Other Conditions (“Stop Button”)

- (1) As soon as a Clearing Member, by way of a respective system entry (“Stop Button”), declares vis-à-vis the Markets and Eurex Clearing AG that it is no longer willing to execute in whole the clearing of transactions of a certain Non-Clearing Member, since the concerned Non-Clearing Member does not fulfil the Other Conditions agreed upon pursuant to Number 9.2.3.2, the Management Boards of these Markets shall immediately order the preliminary exclusion of the concerned Non-Clearing Member from trading pursuant to Number 9.2.3.3.3 (Suspension of Trading Admission). At the same time, the authorization of the concerned Non-Clearing Member to have the Transactions concluded off-exchange cleared by Eurex Clearing AG. The authorization to use the OTC Trade Entry Facilities to enter Transactions in the System shall entirely be revoked for a limited period.

From this point, the regulations on the matching of trades pursuant to the respective rules and regulations of the Markets and the Conditions for Utilization of the OTC Trade Entry Facilities (General Conditions for Participation) of Eurex Clearing AG, with regard to orders, quotes and transactions concluded off-exchange of the concerned Non-Clearing Member, shall not apply any more.

- (2) The preliminary exclusion from trading at the Markets and the preliminary revocation of the authorization to have Transactions concluded off-exchange cleared by Eurex Clearing AG as well as the revocation of the authorization to use the OTC Trade Entry Facilities shall be ordered or directed by the Markets and Eurex Clearing AG until the Clearing Member, by way of a new system entry (deactivation of Stop-Button) within the meaning of Number 9.2.3.3 Paragraph 2 declares vis-à-vis the Markets and Eurex Clearing AG that it is again willing to execute the clearing of transactions concluded at the Eurex Exchanges and of Transactions concluded off-exchange of the concerned Non-Clearing Member.

- (3) From the point of ordering the suspension of the Exchange admission of the concerned Non-Clearing Member by the Markets and of revocation of the authorization of the Non-Clearing Member to have its Transactions concluded off-exchange cleared by Eurex Clearing AG and of revocation of the utilization authorization of the OTC Trade Entry Facilities pursuant to Paragraph 1, the system shall prevent other orders, quotes or Transactions of the concerned Non-Clearing Member from being entered into the system. Orders and quotes of the concerned Non-Clearing Member already existing in the System shall be deleted.

At the same time, the system ensures that the concerned Non-Clearing Member cannot modify or release Transactions already entered into the System. In addition, Transactions already entered into the System by this Non-Clearing Member cannot be released any more by its counterparty.

Furthermore, the concerned Non-Clearing Member shall from this point onwards not be authorized to conduct the measures for account keeping, such as Trade Adjustments, Closing Position Adjustments, Member Position Transfer or Give-Up Trades provided for in the rules and regulations of the Markets. The possibility to use the respective facilities of the system shall be technically prevented for the concerned Non-Clearing Member.

- (4) Clearing Members are obligated to submit written documentation to the Management Boards of the Markets of each single case on the business day on which they have declared vis-à-vis the Markets and Eurex Clearing AG via the respective system function ("Stop-Button") pursuant to Paragraph 1 that they are no longer willing to execute the clearing of Transactions and Transactions concluded off-exchange of one of their Non-Clearing Members. This documentation shall contain details on the facts, in particular the amount of the agreed limit(s) respectively positions, the orders/quotes, type of agreed other duties (e.g. compliance with economic stability criteria) and conditions, the time of submission of a declaration pursuant to Paragraph 1 and the time of revocation of a declaration pursuant to Paragraph 1.

[.....]

9.3 Termination of NCM-CM Clearing Agreements

- (1) Eurex Clearing AG may terminate any NCM-CM Clearing Agreement with immediate effect in the event that the Non-Clearing Member or General Clearing Member concerned has violated the Clearing Conditions despite receiving notice concerning the violation. If a NCM-CM Clearing Agreement is terminated by Eurex Clearing AG, the Non-Clearing Member concerned may not enter new orders or quotes, must cancel all outstanding orders and quotes, and must close all existing positions or transfer such transactions respectively positions to another Clearing Member. If the closing respectively transfer of transactions or positions has not been concluded within a period fixed in particular cases by Eurex Clearing AG, Eurex Clearing AG may exercise the closing pursuant to Number 8.1. The Clearing Member concerned is required to fulfill all obligations under any remaining transactions and contracts of such Non-Clearing Member.
- (2) A Clearing Member may terminate a NCM-CM Clearing Agreement at any time upon one month's notice. Upon the expiration of such notice period, the Non-Clearing Member must cancel all outstanding orders and quotes and must close or transfer to another Clearing Member all existing transactions respectively positions or – if the clearing of transactions on the respective markets is, according to the regulations of the home country, permissible - transfer it to this Clearing Member; such Non-Clearing Member may thereafter enter no new orders or quotes that would be cleared through the terminating Clearing Member. Paragraph 1 Clause 3 and 4 shall apply mutatis mutandis.
- (3) A Non-Clearing Member may terminate a NCM-CM Clearing Agreement at any time, provided that such Non-Clearing Member has closed or transferred all transactions respectively open positions, canceled all orders and quotes and fulfilled all obligations to the Clearing Member concerned and Eurex Clearing AG.
- (4) The termination of a NCM-CM Clearing Agreement shall become effective only upon the receipt of a notice of termination in writing by the other two parties.
- (5) Eurex Clearing AG shall inform the Management Board of the respective market in writing about a termination of the NCM-CM Clearing Agreement pursuant Paragraph 1 through 3 and about the time when the termination becomes effective. From the time at which the termination of the NCM-CM Clearing Agreement becomes effective, the provisions pursuant Number 1.2 Paragraph 1 and 2 do not apply any more to the orders and quotes entered into the trading system of the respective market by the respective Clearing Member and its affiliated Non-Clearing Members.

From the point in time named in the notification under Clause 1, the Management Board of the respective market excludes the respective Clearing Member (in its function as trading participant) and its affiliated Non-Clearing Members from trading or restricts them to the conclusion of transactions whose clearing is not carried out by Eurex Clearing AG.

(6) The regulations on a close-out of transactions between Clearing Member and Non-Clearing Member on basis of the NCM-CM Clearing Agreement shall not be affected by the provisions of this Number.

[.....]

Appendices: Form Agreements

1. Clearing Agreement (Eurex Clearing AG / Clearing Member)

1.1 CM Clearing Agreement

Clearing Agreement

between

Eurex Clearing AG, Frankfurt/Main,
(hereinafter referred to as "AG")

and

Clearing Member (hereinafter referred to as the "CM")

1. Subject Matter of Agreement, Applicable Legal Provisions

The respective rights and obligations of AG and the CM are set forth in the Clearing Conditions of AG; the Clearing Conditions, in the respective German version valid at the time, are an integral part of this Agreement. Furthermore, the rules and regulations set forth in the Appendix hereto shall apply. Eurex Clearing AG operates a system in order to provide margin for the performance transactions concluded at the markets named in the Appendix as well as off such markets.

Parts of this Agreement are the Clearing Conditions and the Price List of Eurex Clearing AG in their current German version. Both contractual parts may be viewed and printed out via internet on the website www.eurexchange.com.

2. Provision of Margin in the Form of Securities

In order to provide margin in accordance with Part "Provision and Rights of Margin" of the Clearing Conditions of AG, the CM hereby pledges to AG all securities which are at present or will in the future be deposited in the pledged securities account maintained exclusively for the AG by the CM with a Bank for central depository of securities which is recognised by AG or at a Custodian oder Central Securities Depository ("CSD"). For the purpose of such pledge, the CM hereby assigns its rights to claim these securities from such CSD to AG. The CM shall promptly notify the CSD of the conclusion of this agreement to pledge securities.

The CM represents and warrants that it is the owner of the pledged securities and that such securities are not subject to any prior or equal claims of third parties. The CM shall not, for the duration of such pledge, permit any such claims to arise without the prior consent of AG.

In the event of a default by the CM, AG may according to the provisions of subpart "Default" of the Clearing Conditions sell the pledged securities without prior notice in a private sale.

3. Cash Clearing

- (1) The CM hereby agrees to instruct a Branch of the Central Bank of the Federal Republic of Germany (Deutsche Bundesbank) to honour any debit instructions (Lastschriften) in EUR submitted by AG against the account of the CM for all cash claims in EUR against the CM, to debit the relevant amount from its account maintained with a Branch of the Central Bank of the Federal Republic of Germany (Deutsche Bundesbank), and to transfer such amount to AG's account at a Branch of the Central Bank of the Federal Republic of Germany (Deutsche Bundesbank). AG shall provide that any surplus cash balance that the CM may have in its internal EUR cash clearing account with AG is credited to the account at a Branch of the Central Bank of the Federal Republic of Germany (Deutsche Bundesbank).
- (2) AG may allow the use of accounts of a correspondent bank recognised by AG for purposes of cash clearing with AG.

4. Authorisation to Give Delivery Instructions

The CM hereby agrees to authorise AG, by providing the appropriate power of attorney, to give, release and transmit all delivery instructions in the name of the CM vis-à-vis the respective CSD recognised by AG and binding for and against the CM and to supplement, change or cancel the delivery instructions necessary for the timely and correct fulfilment of its delivery and payment obligations vis-à-vis AG arising from transactions which are included in the Clearing License granted to the CM (see Appendix).

5. Revocation of Powers of Attorney and Debit Instructions

The powers of attorney and debit instructions provided within the context of this Agreement may not be revoked by the CM until its Clearing License has been terminated. Any such revocation shall result in the immediate termination of the Clearing License. If the Clearing License ends, all powers of attorney and debit instructions shall be deemed revoked.

6. Term

This Agreement shall be entered into for an indefinite period of time and shall remain in effect until it is terminated by one of the contracting parties pursuant to the Clearing Conditions of AG.

7. Amendments

The AG shall be entitled to make amendments to this agreement and/or to individual parts thereof at any time under due consideration of the interests of the CM. For according amendments, Chapter I Number 1.10 of the Clearing Conditions shall apply.

8. Governing Law, Place of Performance

This Agreement shall be governed by, and construed in accordance with, German law. The place of performance and the jurisdiction for any legal proceedings shall be Frankfurt/Main.

98. Severability Clause

If individual provisions are invalid or unenforceable, this shall not affect the validity of the Agreement as a whole. If this Agreement contains an invalid or unenforceable provision or an omission, the invalid provision should be replaced with an appropriate provision which corresponds as closely as possible to the economic content of the invalid provision; in the case of an omission, the omission should be rectified with a provision which most closely corresponds to that which the contractual parties would have intended had they considered the point in question.

Place and Date

On behalf of the CM

Place and Date

On behalf of AG

Appendix / Appendices

[.....]

2. Clearing Agreement (Eurex Clearing AG / Non Clearing Member / Clearing Member)

2.1 NCM CM Clearing Agreement

NCM-CM Agreement

between

as Clearing Member (hereinafter referred to as the "CM")

and

as Non-Clearing Member (hereinafter referred to as the "NCM")

and

Eurex Clearing AG (hereinafter referred to as "AG"), Frankfurt/Main.

1. Subject Matter of Agreement, Applicable Legal Provisions

Eurex Clearing AG operates a system in order to provide margin for the performance transactions concluded at the markets named in the Appendix as well as off such markets.

Parts of this Agreement are the Clearing Conditions and the Price List of Eurex Clearing AG in their current German version. Both contractual parts may be viewed and printed out via internet on the website www.eurexchange.com. The respective rights and obligations of AG, the CM and the NCM are set forth in the Clearing Conditions of AG; the Clearing Conditions in the respective German version valid at the time are an integral part of this Agreement. Furthermore, the rules and regulations set forth in the Appendix hereto shall apply.

2. Legal Relationships; Liability

- (1) All entries made by the NCM into the trading system shall in accordance with Chapter II of the attachment to the NCM-CM-Clearing Agreement be directly binding for and against the CM. If an order or quote entered by the NCM is matched with another order or quote, a transaction shall be effected thereby between the NCM and the CM and a further, equivalent transaction shall be effected thereby between the CM and Eurex Clearing AG pursuant to the Clearing Conditions, unless provided otherwise.
- (2) The CM is required to notify the management of the respective Exchange or trading platform, as the case may be, promptly if a Non-Clearing Member represented by it fails to meet its margin requirements in a timely manner pursuant to the respective provisions of the Clearing Conditions.
- (3) Neither AG nor the CM shall be liable for any losses incurred by the NCM due to interruption of its operations as a consequence of force majeure, riot, acts of war or natural disasters or other events for which either AG or the CM, as the case may be, is not responsible (e.g., strikes, lock-outs, disruption of communications, disruptions in the supplier chain) or that may result from the actions of domestic or foreign governmental authorities. For damages suffered by the NCM or the CM as a consequence of technical problems or of the full or partial unavailability of the EDP devices or EDP system of the Exchange(s) or of the operator of the trading platform used by such NCM or CM, AG or the CM shall be liable to the extent that intentional misconduct or gross negligence by AG or the CM or third parties assisting in their performance can be demonstrated, unless the damage has resulted from a culpable breach by AG or the CM of their principal duties. The liability of AG or the CM shall be limited, however, in such a case if only ordinary negligence occurred to the amount of damages typically foreseeable at the time of execution of the agreement.

3. Netting Procedure in the Relationship between CM and its NCM

The CM and the NCM hereby agree on the following netting procedure:

- (1) At the end of each trading day, the CM shall net against the NCM its claims and liabilities regarding cash payments or securities transfers arising out of transactions of the NCM, in the clearing process of which the CM is involved pursuant to the Clearing Conditions for Eurex Clearing AG and this Clearing Agreement. Such netting procedure shall result in one net claim or liability, with the consequence that there is only one such net claim or liability regarding a cash payment or securities transfer in the relationship between CM and NCM.
- (2) The netting of the cash payments and securities transfers pursuant to Paragraph 1 shall be made separately with respect to the transactions as set forth in the individual Chapters of the Clearing Conditions for Eurex Clearing AG, in the clearing process of which the CM is involved. The claims or liabilities regarding cash payments and securities transfers resulting from such netting shall not be netted against each other.

- (3) The netting procedure pursuant to Paragraphs 1 and 2 shall be conducted separately with respect to transactions on Principal Position Accounts and Agent Position Accounts.

4. Termination of Non-Performed Transactions between CM and NCM

- (1) In case clearing licenses of the CM expire pursuant to the regulations in Chapter I Section 2 Number 2.4 Paragraph 2 item c in connection with Paragraph 7 of the Clearing Conditions because Eurex Clearing AG has gained notice of the fact that measures pursuant to §§ 45 et sqq. KWG have been taken against the Clearing Member or insolvency proceedings have been initiated and that, in addition, the Concerned Clearing Member has failed to fulfil in whole or in part its obligations arising from the clearing of its transactions or other obligations existing vis-à-vis Eurex Clearing AG pursuant to the Clearing Conditions, CM and NCM agree upon the following:
- a) All mutual payment and delivery obligations existing between the CM and NCM arising from Non-Performed Transactions between CM and NCM shall automatically expire without notice pursuant to Chapter I Number 2.4 Paragraph 7 in connection with Chapter I Number 8.2.1 of the Clearing Conditions; this expiry shall be at the same time as the termination of the clearing license of the CM at the point given in Chapter I Number 2.4 Paragraph 2 item c Clause 1. The expired payment and delivery obligations shall each immediately be substituted by an immediately due obligation to make a unilateral payment due to non-performance ("Unilateral Difference Claim"). The parties to these transactions shall not be obligated to perform the original obligations and may no longer claim the performance.
- b) The CM shall be obligated to determine the unilateral difference claims, each substituting the original payment and delivery obligations of the non-performed transactions between CM and NCM, in application of the provisions in Chapter I Number 8.2 of the current version of the Clearing Conditions. The difference claims so determined shall be netted against each other so that one single payment claim (Final Unilateral Difference Claim) results in favour of the NCM or CM. The CM shall immediately notify the NCM of the result and provide the NCM with the data forming the basis of the determination.

The measures pursuant to §§ 45 et sqq. KWG and the opening of insolvency proceedings shall correspond to similar measures and proceedings pursuant to the laws of the state of the Clearing Member's registered offices. Insolvency proceedings shall be deemed initiated if an application or (provided such application is not required) a measure which may lead to such proceedings is presented, submitted or taken at respectively by a court, a public authority, a company body or a person with respective authority.

- (2) From the point of termination of the clearing licenses of the CM pursuant to the respective regulations of the Clearing Conditions and, in particular, within the meaning of Paragraph 1, CM and NCM shall no longer be entitled to enter into new transactions with Eurex Clearing AG or to open new positions. In this case, Eurex Clearing AG as central counterparty shall not be obligated to clear new transactions or positions of CM and NCM.

5. Term

This Agreement shall remain in effect until it is terminated by one of the parties thereto in accordance with Chapter I Number 9.3 of the Eurex Clearing Conditions.

6. Amendments

The AG shall be entitled to make amendments to this agreement and/or to individual parts thereof – with the exception of Chapter III – at any time under due consideration of the interests of the CM and NCM. For according amendments, Chapter I Number 1.10 of the Clearing Conditions shall apply.

7. Governing Law; Place of Performance

This Agreement shall be governed by, and construed in accordance with, German law. The place of performance and the jurisdiction for any legal proceedings shall be Frankfurt/Main.

78. Saving Clause

If individual provisions are invalid or unenforceable, this shall not affect the validity of the Agreement as a whole. If this Agreement contains an invalid or unenforceable provision or an omission, the invalid provision should be replaced with an appropriate provision which corresponds as closely as possible to the economic content of the invalid provision; in the case of an omission, the omission should be rectified with a provision which most closely corresponds to that which the contractual parties would have intended had they considered the point in question.

Place and Date

On behalf of the CM

On behalf of the NCM

On behalf of AG

Appendix/Appendices

2.2 Appendix to the NCM-CM Clearing Agreement

[.....]

Chapter III: Close-Out Netting Regulation

With regard to Futures and Options transactions within the meaning of Chapter II Part 1 Paragraph 1 of the Clearing Conditions, the CM and NCM shall – upon approval of the AG – agree for all transactions respectively accomplished between the NCM and CM pursuant to the Clearing Conditions (“NCM Futures and Options transactions”) with respect to insolvency of NCM or CM (as defined as follows) the following:

1. Insolvency of NCM or CM is given if an opening of insolvency proceedings or comparable proceedings on the capital of the NCM or CM is applied for and either the NCM or CM itself has filed the application or if the NCM or CM is either insolvent or in any other situation justifying the opening of such proceedings.
2. In the relationship between CM and NCM, the regulations in Number 7 Paragraph 1 Clause 4 (Exclusion of the right to partial termination), Number 7 Paragraph 2 and 3 (Insolvency, Claim for compensation payment), Number 8 (Compensation and set-off of benefits) and Number 9 Paragraph 1 (arrears) of the sample text of the framework agreement for financial futures transactions (Version 2001), as published by the Federal Association of German Banks (“Framework Agreement”) and added to this Agreement by the CM and NCM, shall apply with the following requirements:
 - (a) References in aforementioned regulations of the Framework Agreement on the „Agreement” shall – provided they concern NCM Futures and Options transactions – be read as references to the NCM-CM Agreement.
 - (b) For purposes of aforementioned regulations of the Framework Agreement, each NCM Futures and Options transaction is deemed to be an individual conclusion within the meaning of this Framework Agreement.
3. In case of insolvency of the CM, the regulations of this Chapter shall not oppose to the exercise of rights of the AG pursuant to Number 4 of the NCM-CM Clearing Conditions.
4. In case of an inconsistent regulation or a discrepancy between the provisions of the Clearing Conditions or the regulations of the NCM-CM Clearing Agreement – apart from Chapter III – on the one side and the regulations of Chapter III on the other side, the latter shall prevail.
5. The obligations of the CM vis-à-vis the AG resulting from the clearing of the transactions of the NCM shall not be affected by aforementioned close-out netting regulation. Insofar, Chapter I Part 9 Number 9.2.2 Paragraph 4 of the Clearing Conditions shall particularly apply.

Place and Date

On behalf of the CM

On behalf of the NCM

On behalf of AG

Clearing Agreement (Eurex Clearing AG / Clearing Member)

CM-Clearing Agreement

Clearing Agreement

between

Eurex Clearing AG, Frankfurt am Main
(hereinafter referred to as "AG")

and

Clearing Member (hereinafter referred to as the "CM")

1. Subject Matter of Agreement, Applicable Legal Provisions

Eurex Clearing AG operates a system in order to provide margin for the performance transactions concluded at the markets named in the Appendix as well as off such markets. Parts of this Agreement are the Clearing Conditions and the Price List of Eurex Clearing AG in their current German version. Both contractual parts may be viewed and printed out via internet on the website www.eurexchange.com.

2. Provision of Margin in the Form of Securities

In order to provide margin in accordance with Part "Provision and Rights of Margin" of the Clearing Conditions of AG, the CM hereby pledges to AG all securities which are at present or will in the future be deposited in the pledged securities account maintained exclusively for the AG by the CM with a Bank for central depository of securities which is recognised by AG or at a Custodian or Central Securities Depository ("CSD"). For the purpose of such pledge, the CM hereby assigns its rights to claim these securities from such CSD to AG. The CM shall promptly notify the CSD of the conclusion of this agreement to pledge securities.

The CM represents and warrants that it is the owner of the pledged securities and that such securities are not subject to any prior or equal claims of third parties. The CM shall not, for the duration of such pledge, permit any such claims to arise without the prior consent of AG.

In the event of a default by the CM, AG may according to the provisions of subpart "Default" of the Clearing Conditions sell the pledged securities without prior notice in a private sale.

3. Cash Clearing

(1) The CM hereby agrees to instruct a Branch of the Central Bank of the Federal Republic of Germany (Deutsche Bundesbank) to honour any debit instructions (Lastschriften) in EUR submitted by AG against the account of the CM for all cash claims in EUR against the CM, to debit the relevant amount from its account maintained with a Branch of the Central Bank of the Federal Republic of Germany (Deutsche Bundesbank), and to transfer such amount to AG's account at a Branch of the Central Bank of the Federal Republic of Germany (Deutsche Bundesbank). AG shall provide that any surplus cash balance that the CM may have in its internal EUR cash clearing account with AG is credited to the account at a Branch of the Central Bank of the Federal Republic of Germany (Deutsche Bundesbank).

(2) AG may allow the use of accounts of a correspondent bank recognised by AG for purposes of cash clearing with AG.

4. Authorisation to Give Delivery Instructions

The CM hereby agrees to authorise AG, by providing the appropriate power of attorney, to give, release and transmit all delivery instructions in the name of the CM vis-à-vis the respective CSD recognised by AG and binding for and against the CM and to supplement, change or cancel the delivery instructions necessary for the timely and correct fulfillment of its delivery and payment obligations vis-à-vis AG arising from transactions which are included in the Clearing License granted to the CM (see Appendix).

5. Revocation of Powers of Attorney and Debit Instructions

The powers of attorney and debit instructions provided within the context of this Agreement may not be revoked by the CM until its Clearing License has been terminated. Any such revocation shall result in the immediate termination of the Clearing License. If the Clearing License ends, all powers of attorney and debit instructions shall be deemed revoked.

6. Term

This Agreement shall be entered into for an indefinite period of time and shall remain in effect until it is terminated by one of the contracting parties pursuant to the Clearing Conditions of AG.

7. Amendments

The AG shall be entitled to make amendments to this agreement and/or to individual parts thereof at any time under due consideration of the interests of the CM. For according amendments, Chapter I Number 1.10 of the Clearing Conditions shall apply.

8. Governing Law, Place of Performance

This Agreement shall be governed by, and construed in accordance with, German law. The place of performance and the jurisdiction for any legal proceedings shall be Frankfurt/Main.

9. Severability Clause

If individual provisions are invalid or unenforceable, this shall not affect the validity of the Agreement as a whole. If this Agreement contains an invalid or unenforceable provision or an omission, the invalid provision should be replaced with an appropriate provision which corresponds as closely as possible to the economic content of the invalid provision; in the case of an omission, the omission should be rectified with a provision which most closely corresponds to that which the contractual parties would have intended had they considered the point in question.

Place and Date

On behalf of the CM

Place and Date

On behalf of AG

Appendix to the CM Clearing Agreement

Appendix to the Clearing Agreement between Eurex Clearing AG and
..... [Company/CM] dated [Date]

In addition to the above-mentioned Clearing Agreement, the following shall apply:

Chapter I: Type of the Clearing License

The CM shall be granted:

General Clearing License.

A General Clearing License entitles the General Clearing Member (GCM) to clear its own transactions, customers' transactions as well as transactions of Exchange Participants without Clearing Licenses (referred to as "Non-Clearing Member" or "NCM").

or

Direct Clearing License.

A Direct Clearing License entitles the Direct Clearing Member (DCM) to clear its own transactions, customers' transactions as well as transactions of affiliated Non-Clearing Members. The type and scope of the group of affiliated companies shall be determined by AG.

Chapter II: Scope of the Clearing-License

The Clearing License granted pursuant to Chapter I refers to the clearing of the following transactions:

Clearing of transactions concluded at Eurex Deutschland and Eurex Zürich and included in the clearing, comprising Eurex contracts concluded off-exchange and Eurex contracts concluded off-exchange whose specifications deviate from the contract specifications of the respective Eurex contracts according to the provisions of Eurex Clearing AG (together "Eurex Transactions")

In this respect, the following rules shall apply:

a) Applicable Legal Provisions

The Exchange Rules for Eurex Deutschland and Eurex Zürich, the Conditions for Trading at Eurex Deutschland and Eurex Zürich, all other regulations of Eurex Deutschland and Eurex Zürich and the Conditions for Utilization of the OTC Trade Entry Facilities (General Terms of Participation) of Eurex Clearing AG shall apply in the German version valid at the time.

b) Provision of Margin

If the CM is domiciled in Switzerland, margin may also be provided in the form of book-entry securities deposited in the pledged securities account with a CSD recognised by AG. If book-entry securities are deposited in the pledged securities account of the CSD, such book-entry securities shall hereby be assigned by the CM to AG. In all other respect, the provision pursuant to No. 2 Paragraph 1 of the CM Clearing Agreement between AG and the CM dated <Date> shall apply mutatis mutandis.

Furthermore, the CM represents and warrants that it is the holder of the assigned book-entry securities and is authorised to assign these book-entry securities, and that such securities are not subject to any prior or equal claims of third parties. The CM shall not, for the duration of such assignment, permit any such claims to arise without the prior consent of AG. The CM hereby authorises AG in the event of realisation in its name to require from the CSD recognised by AG that the assigned registered shares be deleted from the respective shareholders' registers.

c) Cash Clearing

- 1) The CM undertakes to authorise AG to debit all claims in CHF against the CM as calculated by AG from the account of the CM (SIC account) at the Schweizerische Nationalbank (SNB). AG shall provide that any surplus cash balance that CM may have on its CHF money clearing account with AG shall be credited to the CM's account at SNB (SIC account).
- 2) The CM hereby agrees to provide for a timely cover of the foreign currency accounts maintained with the bank recognised by AG for the daily settlement payments from foreign currency products calculated by AG. Furthermore, the CM shall instruct such bank to honour any debit instructions (Lastschriften) in foreign currency submitted by AG against the accounts of the CM for all cash claims against the CM, to debit the relevant amount from its foreign currency account maintained with such bank, and to transfer such amount to the respective account of AG. AG shall provide that any surplus cash balance that the CM may have in its respective cash clearing account with AG shall be credited to the respective foreign currency accounts of the CM with the bank recognised by AG.

Clearing of transactions concluded at Eurex Bonds GmbH and included in the clearing

Applicable Legal Provisions

The Terms and Conditions for Participation and Trading on Eurex Bonds GmbH shall apply in the respective German version valid at the time.

Clearing of transactions concluded at Eurex Repo GmbH and included in the clearing

Applicable Legal Provisions

The Terms and Conditions for Participation and Trading on Eurex Repo GmbH shall apply in the respective German version valid at the time.

Clearing of transactions concluded at the Frankfurt Stock Exchange and included in the clearing

Applicable Legal Provisions

The Exchange Rules for the Frankfurt Stock Exchange, the Conditions for Transactions at the Frankfurt Stock Exchange and other rules and regulations of the Frankfurt Stock Exchange shall apply in the respective German version valid at the time.

Clearing of transactions concluded at the Irish Stock Exchange (ISE) and included in the clearing

a) Applicable Legal Provisions

The Rules and Regulations of the Irish Stock Exchange as well as the Rules and the Manual of CRESTCo Ltd. ("CREST") And the Terms and Conditions for CREST-Members shall apply.

b) Authorisation to Grant Delivery Instructions

The granting of a Clearing License for transactions at the Irish Stock Exchange does not require the granting of an authorisation to AG to give delivery instructions pursuant to Number 4 of this Agreement.

Clearing of transactions concluded at the European Energy Exchange (EEX) and included in the Clearing, comprising EEX contracts concluded off-exchange (together "EEX Transactions")

a) Applicable Legal Provisions

The Rules and Regulations for the European Energy Exchange (EEX), the Conditions for Trading at EEX, the other Rules and Regulations of EEX and the Clearing Conditions of the European Commodity Clearing AG in their current German version shall apply.

b) Modification of the legal relationships arising from EEX Transactions

The CM shall herewith declare vis-à-vis the AG its approval regarding the modification of the legal relationships of all EEX transactions concluded with the AG pursuant to Chapter VII Number 1.4 Paragraph 2 item a of the Clearing Conditions.

Place and Date

On behalf of the CM

On behalf of AG

**Clearing Agreement
(Eurex Clearing AG / Non Clearing Member / Clearing Member)**

NCM CM Clearing Agreement

NCM-CM Agreement

between

|

_____ as Clearing Member (hereinafter referred to as the "CM")

and

|

_____ as Non-Clearing Member (hereinafter referred to as the "NCM")

and

Eurex Clearing AG (hereinafter referred to as "AG"), Frankfurt/Main

1. Subject Matter of Agreement, Applicable Legal Provisions

Eurex Clearing AG operates a system in order to provide margin for the performance transactions concluded at the markets named in the Appendix as well as off such markets.

Parts of this Agreement are the Clearing Conditions and the Price List of Eurex Clearing AG in their current German version. Both contractual parts may be viewed and printed out via internet on the website www.eurexchange.com.

2. Legal Relationships; Liability

- (1) All entries made by the NCM into the trading system shall in accordance with Chapter II of the attachment to the NCM-CM-Clearing Agreement be directly binding for and against the CM. If an order or quote entered by the NCM is matched with another order or quote, a transaction shall be effected thereby between the NCM and the CM and a further, equivalent transaction shall be effected thereby between the CM and Eurex Clearing AG pursuant to the Clearing Conditions, unless provided otherwise.
- (2) The CM is required to notify the management of the respective Exchange or trading platform, as the case may be, promptly if a Non-Clearing Member represented by it fails to meet its margin requirements in a timely manner pursuant to the respective provisions of the Clearing Conditions.
- (3) Neither AG nor the CM shall be liable for any losses incurred by the NCM due to interruption of its operations as a consequence of force majeure, riot, acts of war or natural disasters or other events for which either AG or the CM, as the case may be, is not responsible (e.g., strikes, lock-outs, disruption of communications, disruptions in the supplier chain) or that may result from the actions of domestic or foreign governmental authorities. For damages suffered by the NCM or the CM as a consequence of technical problems or of the full or partial unavailability of the EDP devices or EDP system of the Exchange(s) or of the operator of the trading platform used by such NCM or CM, AG or the CM shall be liable to the extent that intentional misconduct or gross negligence by AG or the CM or third parties assisting in their performance can be demonstrated, unless the damage has resulted from a culpable breach by AG or the CM of their principal duties. The liability of AG or the CM shall be limited, however, in such a case if only ordinary negligence occurred to the amount of damages typically foreseeable at the time of execution of the agreement.

3. Netting Procedure in the Relationship between CM and its NCM

The CM and the NCM hereby agree on the following netting procedure:

- (1) At the end of each trading day, the CM shall net against the NCM its claims and liabilities regarding cash payments or securities transfers arising out of transactions of the NCM, in the clearing process of which the CM is involved pursuant to the Clearing Conditions for Eurex Clearing AG and this Clearing Agreement. Such netting procedure shall result in one net claim or liability, with the consequence that there is only one such net claim or liability regarding a cash payment or securities transfer in the relationship between CM and NCM.
- (2) The netting of the cash payments and securities transfers pursuant to Paragraph 1 shall be made separately with respect to the transactions as set forth in the individual Chapters of the Clearing Conditions for Eurex Clearing AG, in the clearing process of which the CM is involved. The claims or liabilities regarding cash payments and securities transfers resulting from such netting shall not be netted against each other.
- (3) The netting procedure pursuant to Paragraphs 1 and 2 shall be conducted separately with respect to transactions on Principal Position Accounts and Agent Position Accounts.

4. Termination of Non-Performed Transactions between CM and NCM

- (1) In case clearing licenses of the CM expire pursuant to the regulations in Chapter I Section 2 Number 2.4 Paragraph 2 item c in connection with Paragraph 7 of the Clearing Conditions because Eurex Clearing AG has gained notice of the fact that measures pursuant to §§ 45 et sqq. KWG have been taken against the Clearing Member or insolvency proceedings have been initiated and that, in addition, the Concerned Clearing Member has failed to fulfill in whole or in part its obligations arising from the clearing of its transactions or other obligations existing vis-à-vis Eurex Clearing AG pursuant to the Clearing Conditions, CM and NCM agree upon the following:
- a) All mutual payment and delivery obligations existing between the CM and NCM arising from Non-Performed Transactions between CM and NCM shall automatically expire without notice pursuant to Chapter I Number 2.4 Paragraph 7 in connection with Chapter I Number 8.2.1 of the Clearing Conditions; this expiry shall be at the same time as the termination of the clearing license of the CM at the point given in Chapter I Number 2.4 Paragraph 2 item c Clause 1. The expired payment and delivery obligations shall each immediately be substituted by an immediately due obligation to make a unilateral payment due to non-performance (“Unilateral Difference Claim”). The parties to these transactions shall not be obligated to perform the original obligations and may no longer claim the performance.
 - b) The CM shall be obligated to determine the unilateral difference claims, each substituting the original payment and delivery obligations of the non-performed transactions between CM and NCM, in application of the provisions in Chapter I Number 8.2 of the current version of the Clearing Conditions. The difference claims so determined shall be netted against each other so that one single payment claim (Final Unilateral Difference Claim) results in favour of the NCM or CM. The CM shall immediately notify the NCM of the result and provide the NCM with the data forming the basis of the determination.

The measures pursuant to §§ 45 et sqq. KWG and the opening of insolvency proceedings shall correspond to similar measures and proceedings pursuant to the laws of the state of the Clearing Member's registered offices. Insolvency proceedings shall be deemed initiated if an application or (provided such application is not required) a measure which may lead to such proceedings is presented, submitted or taken at respectively by a court, a public authority, a company body or a person with respective authority.

- (2) From the point of termination of the clearing licenses of the CM pursuant to the respective regulations of the Clearing Conditions and, in particular, within the meaning of Paragraph 1, CM and NCM shall no longer be entitled to enter into new transactions with Eurex Clearing AG or to open new positions. In this case, Eurex Clearing AG as central counterparty shall not be obligated to clear new transactions or positions of CM and NCM.

5. Term

This Agreement shall remain in effect until it is terminated by one of the parties thereto in accordance with Chapter I Number 9.3 of the Eurex Clearing Conditions.

6. Amendments

The AG shall be entitled to make amendments to this agreement and/or to individual parts thereof - with the exception of Chapter III - at any time under due consideration of the interests of the CM and NCM. For amending amendments, Chapter I Number 1.10 of the Clearing Conditions shall apply.

7. Governing Law; Place of Performance

This Agreement shall be governed by, and construed in accordance with, German law. The place of performance and the jurisdiction for any legal proceedings shall be Frankfurt/Main.

8. Saving Clause

If individual provisions are invalid or unenforceable, this shall not affect the validity of the Agreement as a whole. If this Agreement contains an invalid or unenforceable provision or an omission, the invalid provision should be replaced with an appropriate provision which corresponds as closely as possible to the economic content of the invalid provision; in the case of an omission, the omission should be rectified with a provision which most closely corresponds to that which the contractual parties would have intended had they considered the point in question.

Place and Date

On behalf of the CM

On behalf of the NCM

On behalf of AG

Appendix/Appendices

Appendix to the NCM-CM Clearing Agreement

Appendix to the NCM-CM Agreement between Eurex Clearing AG,
..... [Company/NCM] and[Company/CM]
dated[Date]

In addition to the above-mentioned Clearing Agreement, the following shall apply:

Chapter I: NCM-DCM Relationship

To the extent that an NCM-CM Agreement shall be entered into by an NCM and a DCM, this is only permissible if the NCM is, in relation to the DCM, an affiliated company. The type and scope of the group of affiliated companies shall be determined by the Executive Board of AG. The CMs shall be notified thereof. NCM and DCM shall be obligated to inform the Executive Board of AG promptly in the event that they cease to meet such prerequisites.

Chapter II: Transactions Included in the NCM-CM Agreement

Clearing of transactions concluded at Eurex Deutschland and Eurex Zürich and included in the clearing, comprising Eurex contracts concluded off-exchange and Eurex contracts concluded off- exchange whose specifications deviate from the contract specifications of the respective Eurex contracts according to the provisions of Eurex Clearing AG (together “Eurex Transactions”)

a) Scope of Entries into the Trading System by the NCM

The NCM may enter, with immediate effect, on behalf of the CM into the trading system of Eurex Deutschland and Eurex Zürich.

[Please tick what is applicable]

- all tradable products
- all tradable products except products approved by the Commodity Trading Futures Commission (CFTC), USA

b) Applicable Legal Provisions

The Exchange Rules for Eurex Deutschland and Eurex Zürich, the Conditions for Trading at Eurex Deutschland and Eurex Zürich, all other regulations of Eurex Deutschland and Eurex Zürich and the Conditions for Utilization of the OTC Trade Entry Facilities (General Conditions of Participation) of Eurex Clearing AG shall apply in the respective German version valid at the time.

c) General Obligations

If an affiliated NCM is also an Exchange Participant at Eurex Zürich, any obligation to be fulfilled vis-à-vis the Management Board of Eurex Deutschland pursuant to the Clearing Conditions shall also be fulfilled vis-à-vis the Management Board of Eurex Zürich. In this case, the transmission of a notification regarding the fulfillment of such obligation to Eurex Deutschland or Eurex Zürich shall be deemed sufficient.

Clearing of transactions concluded at Eurex Bonds GmbH and included in the clearing

Applicable Legal Provisions

The Terms and Conditions for Participation and Trading on Eurex Bonds GmbH shall apply in the respective German version valid at the time.

Clearing of transactions concluded at Eurex Repo GmbH and included in the clearing

a) Applicable Legal Provisions

The Terms and Conditions for Participation and Trading on Eurex Repo GmbH shall apply in the respective German version valid at the time.

b) Legal Relationships

A Repo Transaction designates a purchase/sale of securities and their simultaneous forward resale/repurchase. Thus, it consists of a purchase agreement ("Front Leg") and the simultaneous repurchase agreement ("Term Leg") for securities at a set date.

Clearing of transactions concluded at the Frankfurt Stock Exchange and included in the Clearing

Applicable Legal Provisions

The Exchange Rules for the Frankfurt Stock Exchange, the Conditions for Transactions at the Frankfurt Stock Exchange and other rules and regulations of the Frankfurt Stock Exchange shall apply in the respective German version valid at the time.

Clearing of transactions concluded at the Irish Stock Exchange (ISE) and included in the Clearing

a) Applicable Legal Provisions

The Rules and Regulations of the Irish Stock Exchange as well as the Rules and the Manual of CRESTCo Ltd. ("CREST") And the Terms and Conditions for CREST-Members shall apply.

b) Netting Procedure in the Relationship between the CM and its NCM

The netting procedure pursuant to Number 3 of this Agreement in the relationship between the CM and its NCM pursuant to Number 3 does not apply.

c) Model B Settlement

The NCM shall notify the AG and the CM in writing in advance if it intends to settle due to Model B pursuant to Number 8.1.8 and 8.1.18 of the ISE Rules and upon becoming

aware of any matter, circumstance or event that an existing Model B settlement arrangement might be endangered or if it intends to terminate its Model B arrangement.

Clearing of transactions concluded at the European Energy Exchange (EEX) and included in the Clearing, comprising EEX contracts concluded off-exchange (together “EEX Transactions”)

a) Applicable Legal Provisions

The Rules and Regulations for the European Energy Exchange (EEX), the Conditions for Trading at EEX, the other Rules and Regulations of EEX and the Clearing Conditions of the European Commodity Clearing AG in their current German version shall apply.

b) Modification of the legal relationships arising from EEX Transactions

The NCM shall herewith declare vis-à-vis the CM its approval regarding the modification of the legal relationships of all EEX transactions concluded with its CM pursuant to Chapter VII Number 1.4 Paragraph 2 item b of the Clearing Conditions.

Chapter III: Close-Out Netting Regulation

With regard to Futures and Options transactions within the meaning of Chapter II Part 1 Paragraph 1 of the Clearing Conditions, the CM and NCM shall - upon approval of the AG - agree for all transactions respectively accomplished between the NCM and CM pursuant to the Clearing Conditions (“NCM Futures and Options transactions”) with respect to insolvency of NCM or CM (as defined as follows) the following:

1. Insolvency of NCM or CM is given if an opening of insolvency proceedings or comparable proceedings on the capital of the NCM or CM is applied for and either the NCM or CM itself has filed the application or if the NCM or CM is either insolvent or in any other situation justifying the opening of such proceedings.
2. In the relationship between CM and NCM, the regulations in Number 7 Paragraph 1 Clause 4 (Exclusion of the right to partial termination), Number 7 Paragraph 2 and 3 (Insolvency, Claim for compensation payment), Number 8 (Compensation and set-off of benefits) and Number 9 Paragraph 1 (arrears) of the sample text of the framework agreement for financial futures transactions (Version 2001), as published by the Federal Association of German Banks (“Framework Agreement”) and added to this Agreement by the CM and NCM, shall apply with the following requirements:
 - a) References in aforementioned regulations of the Framework Agreement on the „Agreement” shall - provided they concern NCM Futures and Options transactions - be read as references to the NCM-CM Agreement.
 - b) For purposes of aforementioned regulations of the Framework Agreement, each NCM Futures and Options transaction is deemed to be an individual conclusion within the meaning of this Framework Agreement.

3. In case of insolvency of the CM, the regulations of this Chapter shall not oppose to the exercise of rights of the AG pursuant to Number 4 of the NCM-CM Clearing Conditions.
4. In case of an inconsistent regulation or a discrepancy between the provisions of the Clearing Conditions or the regulations of the NCM-CM Clearing Agreement - apart from Chapter III - on the one side and the regulations of Chapter III on the other side, the latter shall prevail.
5. The obligations of the CM vis-à-vis the AG resulting from the clearing of the transactions of the NCM shall not be affected by aforementioned close-out netting regulation. Insofar, Chapter I Part 9 Number 9.2.2 Paragraph 4 of the Clearing Conditions shall particularly apply.

Place and Date

On behalf of the CM

On behalf of the NCM

On behalf of AG

Rahmenvertrag für Finanztermingeschäfte

Zwischen

Name und Anschrift des Vertragspartners

(nachstehend „Vertragspartner“ genannt)

und

Name und Anschrift der Bank

(nachstehend „Bank“ genannt)

wird Folgendes vereinbart:

1. Zweck und Gegenstand des Vertrages

(1) Die Parteien beabsichtigen, zur Gestaltung von Zinsänderungs-, Währungskurs- und sonstigen Kursrisiken im Rahmen ihrer Geschäftstätigkeit Finanztermingeschäfte abzuschließen, die

- a) den Austausch von Geldbeträgen in verschiedenen Währungen oder von Geldbeträgen, die auf der Grundlage von variablen oder festen Zinssätzen, Kursen, Preisen oder sonstigen Wertmessern, einschließlich diesbezüglicher Durchschnittswerte (Indices), ermittelt werden, oder
- b) die Lieferung oder Übertragung von Wertpapieren, anderen Finanzinstrumenten oder Edelmetallen oder ähnliche Leistungen

zum Gegenstand haben. Zu den Finanztermingeschäften gehören auch Options-, Zinsbegrenzungs- und ähnliche Geschäfte, die vorsehen, dass eine Partei ihre Leistung im Voraus erbringt oder dass Leistungen von einer Bedingung abhängig sind.

(2) Für jedes Geschäft, das unter Zugrundelegung dieses Rahmenvertrages abgeschlossen wird (nachstehend „Einzelabschluss“ genannt), gelten die nachfolgenden Bestimmungen. Alle Einzelabschlüsse bilden untereinander und zusammen mit diesem Rahmenvertrag einen einheitlichen Vertrag (nachstehend der „Vertrag“ genannt); sie werden im Sinne einer einheitlichen Risikobetrachtung auf dieser Grundlage und im Vertrauen darauf getätigt.

2. Einzelabschlüsse

(1) Haben sich die Parteien über einen Einzelabschluss geeinigt, so wird die Bank dem Vertragspartner schriftlich, fernschriftlich, telegraphisch, durch Telefax oder in ähnlicher Weise dessen Inhalt bestätigen.

(2) Jede Partei ist berechtigt, eine unterzeichnete Ausfertigung des Einzelabschlusses zu verlangen, die jedoch keine Voraussetzung für dessen Rechtswirksamkeit ist.

(3) Die Bestimmungen des Einzelabschlusses gehen den Bestimmungen dieses Rahmenvertrages vor.

3. Zahlungen und sonstige Leistungen

(1) Jede Partei wird die von ihr geschuldeten Zahlungen und sonstigen Leistungen spätestens an den im Einzelabschluss genannten Fälligkeitstagen an die andere Partei erbringen.

(2) Sämtliche Zahlungen sind in der aufgrund des Einzelabschlusses geschuldeten Vertragswährung kostenfrei und in der für Zahlungen in dieser Währung handelsüblichen Weise auf das im Einzelabschluss genannte Konto des Zahlungsempfängers in am Fälligkeitstag frei verfügbaren Mitteln zu leisten.

(3) Haben beide Parteien an demselben Tag aufgrund des Vertrages Zahlungen in der gleichen Währung zu leisten, zahlt die Partei, die den höheren Betrag schuldet, die Differenz zwischen den geschuldeten Beträgen. Die Bank wird dem Vertragspartner den zu zahlenden Differenzbetrag rechtzeitig vor dessen Fälligkeit mitteilen.

(4) Zahlt eine Partei nicht rechtzeitig, so werden bis zum Zeitpunkt des Eingangs der Zahlung des fälligen Betrages Zinsen hierauf zu dem Satz berechnet, der um den in Nr. 12 Abs. 3 festgelegten Zinszuschlag über dem Zinssatz liegt, den erstklassige Banken für jeden Tag, für den diese Zinsen zu berechnen sind, untereinander für täglich fällige Einlagen am Zahlungsort in der Währung des fälligen Betrages berechnen. Die Geltendmachung eines weiteren Schadens ist nicht ausgeschlossen.

(5) Ist ein Fälligkeitstag kein Bankarbeitstag, so sind die Zahlungen und sonstigen Leistungen nach Maßgabe des Einzelabschlusses wie folgt zu erbringen:

- a) am unmittelbar vorhergehenden Bankarbeitstag oder
- b) am unmittelbar folgenden Bankarbeitstag oder
- c) am unmittelbar folgenden Bankarbeitstag; sofern dieser jedoch in den nächsten Kalendermonat fällt, am unmittelbar vorhergehenden Bankarbeitstag.

4. Bankarbeitstag

„Bankarbeitstag“ im Sinne dieses Vertrages ist jeder Tag, an dem die Banken an dem/den im Einzelabschluss genannten Finanzplatz/Finanzplätzen für Geschäfte, einschließlich des Handels in Fremdwährungen und der Entgegennahme von Fremdwährungseinlagen, geöffnet sind (mit Ausnahme des Samstags und des Sonntags).

5. Bezugsgröße

(1) Ist in einem Einzelabschluss ein variabler Zinssatz, Kurs, Preis oder sonstiger Wertmesser („variable Größe“) vereinbart, so wird die Bank dem Vertragspartner an dem Tag, an dem diese variable Größe zu bestimmen ist („Feststellungstag“), oder unverzüglich danach die zugrunde liegende Bezugsgröße mitteilen.

(2) Sollte die im jeweiligen Einzelabschluss vereinbarte Bezugsgröße an einem Feststellungstag nicht ermittelt werden können, werden die Parteien diese unter Rückgriff auf Berechnungsgrundlagen festlegen, die den im Einzelabschluss vereinbarten möglichst nahe kommen. Falls die Bezugsgröße ein Interbanken-Zinssatz ist und innerhalb von 20 Tagen nicht einvernehmlich festgelegt worden ist, gilt als Bezugsgröße das arithmetische Mittel der Zinssätze, zu denen zwei von der Bank zu benennende, international angesehene Banken auf dem Interbankenmarkt erstklassigen Banken Termingelder mit entsprechender Laufzeit in der Vertragswährung in ungefährer Höhe des Bezugsbetrages gegen 11:00 Uhr (Ortszeit am betreffenden Interbankenmarkt) am Feststellungstag angeboten haben.

(3) Ein als Bezugsgröße dienender Zinssatz („Basis-Satz“) ist gegebenenfalls auf den nächsten $\frac{1}{100.000}$ Prozentpunkt aufzurunden.

6. Berechnungsweise bei zinssatzbezogenen Geschäften

(1) Der aufgrund eines Einzelabschlusses jeweils zu zahlende variable Betrag ist das Produkt aus (a) dem dafür vereinbarten Bezugsbetrag, (b) dem nach Nr. 5 und dem Einzelabschluss errechneten variablen Zinssatz („variabler Satz“), als Dezimalzahl ausgedrückt, sowie (c) dem Quotienten im Sinne des Abs. 5.

(2) Der aufgrund eines Einzelabschlusses jeweils zu zahlende Festbetrag ist, falls er im Einzelabschluss betragsmäßig festgelegt wird, der dort genannte Betrag. Anderenfalls ist er das Produkt aus (a) dem dafür vereinbarten Bezugsbetrag, (b) dem im Einzelabschluss vereinbarten festen Zinssatz („Festsatz“), als Dezimalzahl ausgedrückt, sowie (c) dem Quotienten im Sinne des Abs. 5.

(3) Im Fall von Zinsbegrenzungsgeschäften ist der variable Satz nach Maßgabe des Einzelabschlusses vorbehaltlich Absatz 4 jeweils

- a) für Zahlungen durch die als Überschuss-Zahler (oder Cap- bzw. FRA-Verkäufer) bezeichnete Partei der vereinbarte Basis-Satz abzüglich des Satzes, der im Einzelabschluss als Höchstsatz (oder Cap-Rate) bzw. Terminsatz festgelegt wird, und
- b) für Zahlungen durch die als Minderbetrags-Zahler (oder Floor-Verkäufer bzw. FRA-Käufer) bezeichnete Partei der Satz, der im Einzelabschluss als Mindestsatz (oder Floor-Rate) bzw. Terminsatz festgelegt wird, abzüglich des vereinbarten Basis-Satzes.

(4) Wird eine Zahlung nicht nach Ablauf, sondern zu Beginn des betreffenden Berechnungszeitraums geleistet, so wird der nach Abs. 1 oder 2 zu ermittelnde Betrag diskontiert, indem er durch einen Betrag dividiert wird, der sich bei einem Berechnungszeitraum von einem Jahr oder weniger nach der Formel

$$1 + \frac{L \times D}{B}$$

und bei einem Berechnungszeitraum von mehr als einem Jahr nach der Formel

$$(1 + L)^{\frac{D}{B}}$$

errechnet.

Dabei ist

- L der für den betreffenden Berechnungszeitraum ermittelte Basis-Satz oder sonstige vereinbarte Diskontsatz, als Dezimalzahl ausgedrückt, also z. B. 0,07 im Fall eines Basis- oder Diskontsatzes von 7%;
- D die Anzahl der Tage des Berechnungszeitraums;
- B 360, es sei denn, die vereinbarte Vertragswährung ist eine Währung, für die der Basis- oder sonstige vereinbarte Diskontsatz nach Marktusage auf der Grundlage von 365 bzw. im Falle eines Schaltjahres 366 Tagen berechnet wird; in diesem Fall ist B = 365 bzw. 366.

Diese Regelung gilt, sofern nichts anderes vereinbart ist, stets für Terminsatzvereinbarungen (Forward Rate Agreements). Bei

sonstigen Geschäften gilt sie nur dann, wenn im Einzelabschluss eine Diskontierung vereinbart ist.

(5) „Quotient“ ist nach Maßgabe des Einzelabschlusses

- a) die Anzahl der tatsächlich abgelaufenen Tage des Berechnungszeitraums, für den der Betrag zu berechnen ist, dividiert durch die Zahl 360 („365/360“), oder
- b) die Anzahl der abgelaufenen Tage dieses Berechnungszeitraums, berechnet auf der Basis eines 360-Tage-Jahres mit 12 Monaten zu je 30 Tagen, dividiert durch die Zahl 360 („360/360“), oder
- c) die Anzahl der tatsächlich abgelaufenen Tage dieses Berechnungszeitraums, dividiert durch die Zahl 365 bzw. im Fall von Schaltjahren 366 („365/365“), oder
- d) die Anzahl der tatsächlich abgelaufenen Tage dieses Berechnungszeitraums, dividiert durch die Zahl 365 („366/365“).

(6) „Berechnungszeitraum“ ist der Zeitraum, der mit dem Anfangsdatum des Einzelabschlusses oder einem Zahlungstermin (einschließlich) beginnt und mit dem nächstfolgenden Zahlungstermin oder dem Enddatum (ausschließlich) endet, oder, sofern die Parteien im Einzelabschluss in Bezug auf variable Beträge „Fälligkeitstag/Fälligkeitstag“ vereinbart haben, der Zeitraum, der mit dem Anfangsdatum des Einzelabschlusses oder einem Fälligkeitstag (einschließlich) beginnt und mit dem nächstfolgenden Fälligkeitstag oder dem Enddatum (ausschließlich) endet. „Zahlungstermin“ im Sinne dieses Vertrages ist der Tag, an dem, gegebenenfalls aufgrund einer Anpassung gemäß Nr. 3 Abs. 5, die Zahlung tatsächlich zu leisten ist; „Fälligkeitstag“ ist der vertraglich vorgesehene Zahlungstag ohne Berücksichtigung einer solchen Anpassung.

(7) Ist ein variabler Betrag oder ein nach Abs. 2 Satz 2 zu berechnender Festbetrag zu zahlen, so wird die Bank diesen, im ersten Fall zugleich mit der jeweils anwendbaren Bezugsgröße, dem Vertragspartner mitteilen.

7. Beendigung

(1) Sofern Einzelabschlüsse getätigt und noch nicht vollständig abgewickelt sind, ist der Vertrag nur aus wichtigem Grund kündbar. Ein solcher liegt auch dann vor, wenn eine fällige Zahlung oder sonstige Leistung – aus welchem Grund auch immer – nicht innerhalb von fünf Bankarbeitstagen nach Benachrichtigung des Zahlungs- oder Leistungspflichtigen vom Ausbleiben des Eingangs der Zahlung oder sonstigen Leistung beim Empfänger eingegangen ist. Die Benachrichtigung und die Kündigung müssen schriftlich, fernschriftlich, telegraphisch, durch Telefax oder in ähnlicher Weise erfolgen. Eine Teilkündigung, insbesondere die Kündigung einzelner und nicht aller Einzelabschlüsse, ist ausgeschlossen. Nr. 12 Abs. 5 (B) bleibt unberührt.

(2) Der Vertrag endet ohne Kündigung im Insolvenzfall. Dieser ist gegeben, wenn das Konkurs- oder ein sonstiges Insolvenzverfahren über das Vermögen einer Partei beantragt wird und diese Partei entweder den Antrag selbst gestellt hat oder zahlungsunfähig oder sonst in einer Lage ist, die die Eröffnung eines solchen Verfahrens rechtfertigt.

(3) Im Fall der Beendigung durch Kündigung oder Insolvenz (nachstehend „Beendigung“ genannt) ist keine Partei mehr zu Zahlungen oder sonstigen Leistungen nach Nr. 3 Abs. 1 verpflichtet, die gleichtägig oder später fällig geworden wären; an die Stelle dieser Verpflichtungen treten Ausgleichsforderungen nach Nrn. 8 und 9.

8. Schadensersatz und Vorteilsausgleich

(1) Im Fall der Beendigung steht der kündigenden bzw. der solventen Partei (nachstehend „ersatzberechtigte Partei“ genannt) ein Anspruch auf Schadensersatz zu. Der Schaden wird auf der Grundlage von unverzüglich abzuschließenden Ersatzgeschäften ermittelt, die dazu führen, dass die ersatzberechtigte Partei alle Zahlungen und sonstigen Leistungen erhält, die ihr bei ordnungsgemäßer Vertragsabwicklung zugestanden hätten. Sie ist berechtigt, nach ihrer Auffassung dazu geeignete Verträge abzuschließen. Wenn sie von dem Abschluss derartiger Ersatzgeschäfte absieht, kann sie denjenigen Betrag der Schadensberechnung zugrunde legen, den sie für solche Ersatzgeschäfte auf

der Grundlage von Zinssätzen, Terminalsätzen, Kursen, Marktpreisen, Indices und sonstigen Wertmessern sowie Kosten und Auslagen zum Zeitpunkt der Kündigung bzw. der Kenntniserlangung von dem Insolvenzfall hätte aufwenden müssen. Der Schaden wird unter Berücksichtigung aller Einzelabschlüsse berechnet; ein finanzieller Vorteil, der sich aus der Beendigung von Einzelabschlüssen (einschließlich solcher, aus denen die ersatzberechtigte Partei bereits alle Zahlungen oder sonstigen Leistungen der anderen Partei erhalten hat) ergibt, wird als Minderung des im übrigen ermittelten Schadens berücksichtigt.

(2) Erlangt die ersatzberechtigte Partei aus der Beendigung von Einzelabschlüssen insgesamt einen finanziellen Vorteil, so schuldet sie vorbehaltlich Nr. 9 Abs. 2 und, falls vereinbart, Nr. 12 Abs. 4 der anderen Partei einen Betrag in Höhe dieses ihres Vorteils, höchstens jedoch in Höhe des Schadens der anderen Partei. Bei der Berechnung des finanziellen Vorteils finden die Grundsätze des Absatzes 1 über die Schadensberechnung entsprechende Anwendung.

9. Abschlusszahlung

(1) Rückständige Beträge und sonstige Leistungen und der zu leistende Schadenersatz werden von der ersatzberechtigten Partei zu einer einheitlichen Ausgleichsforderung in Euro zusammengefasst, wobei für rückständige sonstige Leistungen entsprechend Nr. 8 Abs. 1 Sätze 2 bis 4 ein Gegenwert in Euro ermittelt wird.

(2) Eine Ausgleichsforderung gegen die ersatzberechtigte Partei wird nur fällig, soweit diese keine Ansprüche aus irgendeinem rechtlichen Grund gegen die andere Partei („Gegenansprüche“) hat. Bestehen Gegenansprüche, so ist deren Wert zur Ermittlung des fälligen Teils der Ausgleichsforderung vom Gesamtbetrag der Ausgleichsforderung abzuziehen. Zur Berechnung des Werts der Gegenansprüche hat die ersatzberechtigte Partei diese, (i) soweit sie sich nicht auf Euro beziehen, zu einem nach Möglichkeit auf der Grundlage des am Berechnungstag geltenden, amtlichen Devisenkurses zu bestimmenden Brief-Kurs in Euro umzurechnen, (ii) soweit sie sich nicht auf Geldzahlungen beziehen, in eine in Euro ausgedrückte Schadenersatzforderung umzuwandeln und (iii) soweit sie nicht fällig sind, mit ihrem Barwert (unter Berücksichtigung auch der Zinsansprüche) zu berücksichtigen. Die ersatzberechtigte Partei kann die Ausgleichsforderung der anderen Partei gegen die nach Satz 3 errechneten Gegenansprüche aufrechnen. Soweit sie dies unterlässt, wird die Ausgleichsforderung fällig, sobald und soweit ihr keine Gegenansprüche mehr gegenüberstehen.

10. Übertragung

Die Übertragung von Rechten oder Verpflichtungen aus dem Vertrag bedarf der vorherigen schriftlichen, fernschriftlichen, telegraphischen, durch Telefax oder in ähnlicher Weise mitgeteilten Zustimmung der jeweils anderen Partei. Nr. 2 Abs. 2 gilt entsprechend.

11. Verschiedenes

(1) Sind Bestimmungen des Vertrages unwirksam oder undurchführbar, so bleiben die übrigen Vorschriften hiervon unberührt. Gegebenenfalls hierdurch entstehende Vertragslücken werden durch ergänzende Vertragsauslegung unter angemessener Berücksichtigung der Interessen der Parteien geschlossen.

(2) Der Vertrag unterliegt dem Recht der Bundesrepublik Deutschland.

(3) Nicht ausschließlicher Gerichtsstand ist der Ort der Niederlassung der Bank, durch die der Vertrag abgeschlossen wird.

(4) Der Rahmenvertrag in der hiermit vereinbarten Fassung gilt auch für alle etwaigen Einzelabschlüsse der Parteien unter dem Rahmenvertrag in einer früheren Fassung. Diese gelten als Einzelabschlüsse unter dem Rahmenvertrag in dieser neuen Fassung. Für diese Einzelabschlüsse bleibt die bisherige Fassung jedoch insoweit maßgeblich, als dies zum Verständnis der in ihnen getroffenen Regelungen erforderlich ist.

12. Besondere Vereinbarungen

(1) Die folgenden Absätze 2 bis 5 gelten nur, soweit die dazu bestimmten Felder angekreuzt oder ausgefüllt sind.

(2) In Nr. 3 Abs. 3 werden die Worte „des Vertrages“ durch „desselben Einzelabschlusses“ ersetzt.

(3) Der Zinszuschlag gemäß Nr. 3 Abs. 4 beträgt

% p. a.

(4) Nach Nr. 8 Abs. 2 Satz 1 wird folgender Satz eingefügt:

entweder

Dies gilt vorbehaltlich Nr. 12 Abs. 5 (C) a) nur, falls die ersatzberechtigte Partei aus mindestens einem Einzelabschluss (i) alle von der anderen Partei geschuldeten Zahlungen oder sonstigen Leistungen endgültig und unanfechtbar erhalten hat und (ii) bei Fortführung des Vertrages selbst noch unbedingte oder bedingte Zahlungs- oder sonstige Leistungsverpflichtungen hätte.

oder

Dies gilt vorbehaltlich Nr. 12 Abs. 5 (C) a) nur, falls die ersatzberechtigte Partei (i) aus sämtlichen Einzelabschlüssen alle von der anderen Partei geschuldeten Zahlungen oder sonstigen Leistungen endgültig und unanfechtbar erhalten hat und (ii) bei Fortführung des Vertrages selbst noch unbedingte oder bedingte Zahlungs- oder sonstige Leistungsverpflichtungen hätte.

(5) Internationale Geschäfte

(A) Falls eine Partei verpflichtet ist oder verpflichtet sein wird, von einer durch sie zu leistenden Zahlung einen Steuer- oder Abgabenbetrag abzuziehen oder einzubehalten, wird sie die zusätzlichen Beträge an die andere Partei zahlen, die erforderlich sind, damit die andere Partei den vollen Betrag erhält, der ihr im Zeitpunkt einer solchen Zahlung zustehen würde, wenn kein Abzug oder Einbehalt erforderlich wäre. Dies gilt nicht, wenn die betreffende Steuer oder Abgabe vom Heimatstaat des Zahlungsempfängers oder einer in diesem Staat ansässigen Steuerbehörde auferlegt oder erhoben wird. Heimatstaat ist der Staat, in dem der Zahlungsempfänger seinen Sitz hat bzw. als ansässig angesehen wird oder in dem sich die Niederlassung des Zahlungsempfängers befindet, die unter dem betreffenden Einzelabschluss handelt.

(B) Falls aufgrund einer nach dem Abschlussdatum eines Einzelabschlusses erfolgenden Änderung von Rechtsvorschriften oder von deren Anwendung oder amtlichen Auslegung

a) zu erwarten ist, dass eine Partei am nächsten Fälligkeitstag in Bezug auf eine durch sie zu leistende Zahlung zusätzliche Beträge gemäß vorstehendem Unterabsatz (A) zu zahlen hat außer auf Zinsen gemäß Nr. 3 Abs. 4 oder

b) eine Partei den Vertrag nicht mehr erfüllen darf,

so kann diese Partei (nachstehend die „betroffene Partei“ genannt) und im Falle b) auch die andere Partei (nachstehend die „Gegenpartei“ genannt) den von der Änderung betroffenen Einzelabschluss unter Einhaltung einer Frist von zwei Wochen auf einen von ihr zu bestimmenden Termin kündigen; dieser Termin darf nicht mehr als einen Monat vor dem Zeitpunkt liegen, an dem die Änderung wirksam wird. Nr. 7 Abs. 3 bezieht sich im Fall einer solchen Kündigung nur auf den oder die betroffenen Einzelabschlüsse. Die Gegenpartei bzw. im Falle einer Kündigung durch die Gegenpartei die betroffene Partei kann jedoch innerhalb einer Woche nach Zugang der Kündigungserklärung durch Erklärung an die kündigende Partei bestimmen, dass die Kündigung für den Vertrag insgesamt gilt. Für die Form der Kündigung und der Erklärung nach Satz 3 gilt Nr. 7 Abs. 1 Satz 3.

(C) Im Falle einer Kündigung aufgrund eines der in Unterabsatz (B) genannten Kündigungsgründe gilt Nr. 8 mit folgender Maßgabe:

- a) Ersatzberechtigte Partei ist die Gegenpartei. Nr. 12 Abs. 4, falls vereinbart, findet keine Anwendung.
- b) Sind beide Parteien betroffene Parteien und erleidet eine von ihnen einen Schaden, so hat die Partei, die insgesamt einen Vorteil aus der Beendigung erlangt oder den kleineren Schaden erleidet, der anderen Partei einen Betrag in Höhe der Hälfte der Differenz zwischen Vorteil und Schaden bzw. zwischen dem größeren und kleineren Schaden zu zahlen. Diese Rechtsfolge tritt auch dann ein, wenn die Kündigung nach Unterabsatz (B) Satz 1 Buchstabe b) oder die Erklärung nach Unterabsatz (B) Satz 3 durch die Gegenpartei abgegeben wird.
- c) Für Zwecke der Berechnung des eigenen Vorteils oder Schadens gilt in vorstehendem Fall b) jede Partei als ersatzberechtigte Partei.

(D) Für etwaige Rechtsstreitigkeiten oder sonstige Verfahren vor deutschen Gerichten bestellt der Vertragspartner hiermit die unter (F) oder gegebenenfalls in mindestens einem Einzelabschluss zu diesem Zweck benannte Person zum Zustellungsbevollmächtigten.

(E) Jede Partei verzichtet hiermit unwiderruflich darauf, in Verfahren betreffend sie selbst oder ihr Vermögen aufgrund etwaiger Souveränitäts- oder ähnlicher Rechte Immunität vor Klage, Urteil, Vollstreckung, Pfändung (sei es vor oder nach Urteilserslass) oder anderen Verfahren zu genießen oder geltend zu machen.

(F) Anschrift des Zustellungsbevollmächtigten in der Bundesrepublik Deutschland:

(6) Sonstige Vereinbarungen:

Unterschrift(en) der Bank	
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Unterschrift(en) des Vertragspartners	
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