

# **Clearing Model Change Agreement**

between

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as Clearing Member

and

Eurex Clearing AG, Frankfurt am Main.

This clearing model change agreement within the meaning of Chapter 1 Part 1 Number 8.2 of the Clearing Conditions of Eurex Clearing AG (the "**Clearing Model Change Agreement**") is dated \_\_\_\_\_<sup>1</sup> and entered into

**BETWEEN:**

- (1) \_\_\_\_\_ (legal name)  
Member ID \_\_\_\_\_  
 acting through/  having its ( registered) office at

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
as Clearing Member (the "**Clearing Member**"); and

- (2) Eurex Clearing Aktiengesellschaft, a stock company (*Aktiengesellschaft*) incorporated under the laws of the Federal Republic of Germany, registered in the commercial register of the local court (*Amtsgericht*) in Frankfurt am Main under HRB 44828 and having its registered seat in Frankfurt am Main, with its business address at Mergenthalerallee 61, 65760 Eschborn, Federal Republic of Germany, ("**Eurex Clearing AG**").

The Clearing Member and Eurex Clearing AG are hereinafter also referred to as the "**Parties**" and each of them as a "**Party**".

**WHEREAS:**

- (A) The Parties have entered into a Clearing Agreement (as amended from time to time) for the Clearing of
- (1) Own Transactions of the Current Clearing Member, UDC-Related Transactions and DC-Related Transactions pursuant to the Elementary Clearing Model Provisions; and
  - (2) ISA Transactions pursuant to the ISA Provisions.

In addition and only if the Disclosed Direct Client to which the Respective Transactions relate (the "**Respective Disclosed Direct Client**") has to sign an acknowledgement in the form of Annex 3 to this Clearing Model Change Agreement, the Respective Disclosed Direct Client, the Clearing Member and Eurex Clearing AG have entered into (i) a Clearing Agreement (in the form of Appendix 2 to the Clearing Conditions in effect immediately prior to 28 January 2019) for the Clearing of NCM-Related Transactions and RC-Related Transactions pursuant to the Elementary Clearing Model Provisions and/or (ii) a Clearing Agreement(s) for the Clearing of Transactions pursuant to the Individual Clearing Model Provisions under (a) Eurex Clearing AG Documentation (ICM-ECD) and/or (b) Client Clearing Documentation (ICM-CCD).

- (B) With this Clearing Model Change Agreement, the Parties intend to change the clearing model for certain Transaction Types under which DC-Related Transactions relating to a specific Disclosed Direct Client are cleared.

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<sup>1</sup> Please do not include any date, the date of the conclusion of this Clearing Model Change Agreement will be included by Eurex Clearing AG.

**NOW THEREFORE, the Parties agree as follows:**

## **1 Definitions**

**1.1** Unless the context requires otherwise, terms used, but not defined, in this Clearing Model Change Agreement shall have the meaning given to them in the Clearing Conditions of. This Clearing Model Change Agreement incorporates by reference the Clearing Conditions.

**1.2** The following terms shall have the following meanings:

**"Change Date"** (within the meaning of the definition given in Chapter I Part 1 Number 8.2 of the Clearing Conditions) shall be \_\_\_\_\_ or the date to which the Clearing Model Change is postponed in accordance with Number 2.5.

**"Clearing Model Change"** means the change of the clearing model with respect to Respective Transactions and, if applicable, the transfer and treatment of Eligible Margin Assets in the form of cash and Respective Securities, as specified further below. A Clearing Model Change also includes a change within the Individual Segregated Account Provisions between a Security Interest Margin Election and a Title Transfer Margin Election pursuant to Chapter I Part 4 Number 6.3.2.1 of the Clearing Conditions.

**"Current Clearing Agreement"** means the Clearing Agreement to which the Respective Transactions are subject to before the Clearing Model Change, and the applicable provisions are the **"Current Clearing Model Provisions"**.

**"Margin"** means Omnibus Margin, Segregated Margin and/or Margin (as used in Chapter I Part 4 of the Clearing Conditions for the purposes of the ISA Provisions), as the context requires.

**"New Clearing Agreement"** means the Clearing Agreement to which the Respective Transactions will be subject to following the Clearing Model Change, and the applicable provisions are the **"New Clearing Model Provisions"**. For the avoidance of doubt, the New Clearing Agreement may be the same Clearing Agreement as the Current Clearing Agreement.

**"Respective Securities"** means any Eligible Margin Assets in the form of Securities (if any) that constitute Margin in respect of the Current Clearing Model Provisions for Respective Transactions, as specified in Annex 1, excluding any securities excluded pursuant to Number 3.2.

**"Respective Transactions"** means any DC-Related Transactions of the following transaction types:

- as specified for each Disclosed Direct Client or Relevant Fund, Relevant Fund Segment, Incorporated Fund or legal entity in Annex 2 (*may only be elected in combination with (iii)*),
- in case of (i) or (ii),
  - all applicable transaction types,
  - or the following transaction types:

- Chapter II Transactions concluded at Eurex Deutschland (Eurex Exchange)
  - Chapter IV Repo Transactions
  - Chapter V Transactions concluded at the Frankfurter Wertpapierbörse
  - Chapter VIII Part 2 OTC Interest Rate Derivative Transactions
- (i)  relating to the following Disclosed Direct Client:
- Legal Name: \_\_\_\_\_
- Member ID /A-Account no.<sup>2</sup>: \_\_\_\_\_,
- or
- (ii)  relating to all Relevant Fund(s), Relevant Fund Segment(s), Incorporated Fund(s) or legal entity(/-ies) for which the following Authorised Manager is acting on behalf and for the account of:
- Legal Name of the Authorised Manager: \_\_\_\_\_
- Member ID: \_\_\_\_\_,
- or
- (iii)  relating to the Disclosed Direct Client(s) or Authorized Manager(s) acting for the Relevant Fund(s), Relevant Fund Segment(s), Incorporated Fund(s) or legal entity(/ies) as provided in a separate file in accordance with Annex 2 together with this Clearing Model Change Agreement.

## **2 Clearing Model Change**

**2.1** The Parties agree that, as of the Effective Date, the Respective Transactions shall be covered by the New Clearing Model Provisions

- as provided in a separate file in accordance with Annex 2 together with this Clearing Model Change Agreement, or
- as indicated in the following table with respect to each transaction type by marking the relevant box with an "X".

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<sup>2</sup> For the avoidance of doubt, if an A-Account no. is specified to identify the Disclosed Direct Client, the term "Respective Transactions" shall cover all DC-Related Transaction relating to the specific Disclosed Direct Client, irrespective of whether the transaction is booked on this account or to another account which forms part of the respective transaction accounts group relating to the specific Disclosed Direct Client.

clearing model / transactions type	Chapter II Transactions concluded at Eurex Deutschland (Eurex Exchange)	Chapter IV Transactions Repo	Chapter V Part 2 Transactions concluded at the Frankfurter Wertpapierbörse	Chapter VIII Part 2 OTC Interest Rate Derivative Transactions
Elementary Clearing Model Provisions				
Elementary Clearing Model Provisions (CASS)				
Individual Segregated Account Provisions (under a Security Interest Margin Election: by providing Margin in the form of Securities by way of pledge)				
Individual Segregated Account Provisions (under a Title Transfer Margin Election: by providing Margin in the form of Securities by way of title transfer)				
Individual Segregated Account Provisions (CASS) (under a Security Interest Margin Election: by providing Margin in the form of Securities by way of pledge)				

The Parties agree on the amendments of the Respective Transactions pursuant to Chapter I Part 1 Number 8.2 of the Clearing Conditions.

**2.2** The New Clearing Member allows the Disclosed Direct Client to make entries in the systems of Eurex Clearing AG relating to the Post-Trade Management with respect to the DC-Related Transactions (cf. Chapter I Part 1 Number 1.1.8 of the Clearing Conditions):

- no / yes, as specified for each Disclosed Direct Client or Relevant Fund, Relevant Fund Segment, Incorporated Fund or legal entity in Annex 2, or
- no (default) |  yes, applicable for all Disclosed Direct Clients or Relevant Funds, Relevant Fund Segments, Incorporated Funds or legal entity(-ies) affected by this Clearing Model Change Agreement.

**2.3** The Parties agree that, as of the Effective Date, corresponding Redelivery Claims relating to Margin in the form of cash under or allocated to the relevant Standard Agreement under the Current Clearing Model Provisions (in an amount specified in Annex 1) shall become Redelivery Claims relating to Margin in the form of cash under the New Clearing Model provisions.

**2.4** The effectiveness of the amendment of the Respective Transactions pursuant to Number 2.1 and 2.2 is subject to the condition precedent (*aufschiebende Bedingung*), unless waived by Eurex Clearing AG, that the Clearing Member has provided or provides Eligible Margin Assets as Margin for the Respective Transactions that cover the related margin requirement of the Clearing Member resulting from the Respective Transactions under the New Clearing Model Provisions. For the avoidance of doubt, such provision of Margin may be effected through a transfer of Eligible Margin Assets in the form of cash or Respective Securities in accordance with Number 3 or by the provision of Margin in accordance with the Clearing Conditions.

**2.5** Eurex Clearing AG may reject a Clearing Model Change under this Clearing Model Change Agreement, in particular if the Clearing Model Change would result in an adverse risk for Eurex Clearing AG.

**2.6** Eurex Clearing may postpone the Clearing Model Change to a different date, which it shall coordinate with the Clearing Member. If this leads to the Annexes being outdated, the Clearing Member shall provide updated versions of the Annexes.

### **3 Clearing Model Change Impact on Respective Securities**

**3.1** If the Clearing Member requests, by providing the duly completed Annex 1, to include Eligible Margin Assets in the form of Securities (if any) that constitute Margin in respect of the respective Current Clearing Model Provisions for Respective Transactions in the Clearing Model Change, this Number 3 applies.

**3.2** If necessary, Eurex Clearing AG will instruct the respective securities depository bank, custodian or central securities depository to effect the transfer of Respective Securities. The Clearing Member hereby irrevocably authorise (*bevollmächtigt*) Eurex Clearing AG to issue on their behalf all statements and instructions as well as to take all other acts that Eurex Clearing AG considers necessary or expedient (i) to effect the transfer of Respective Securities (if any) pursuant to Number 3.4 – 3.7 and (ii) to debit the Respective Securities from the relevant securities account of the Clearing Member and transfer it to another account of the Clearing Member. If a transfer of Respective Securities to the designated securities account is impossible or impractical due to restrictions of the securities depository bank, custodian or central securities depository used by the Clearing Member or for other reasons, Eurex Clearing AG shall have the right to exclude such Respective Securities.

**3.3** Eurex Clearing AG and the Clearing Member hereby agree that, as of the Effective Date, the security interests held by Eurex Clearing AG in the Respective Securities shall no longer secure rights and claims of Eurex Clearing AG against the Clearing Member under the Current Clearing Model Provisions and instead shall secure rights and claims of Eurex Clearing AG against the Clearing Member under the New Clearing Model Provisions.

#### **3.4 Pledge – Pledge**

If (i) the Respective Securities have been pledged to Eurex Clearing AG by the Clearing Member under the Current Clearing Model Provisions and (ii) the terms of the New Clearing Model Provisions require Margin in the form of securities to be pledged to Eurex Clearing AG, the following shall apply:

The Respective Securities shall become subject to a right of pledge in favour of Eurex Clearing AG granted to it by the Clearing Member under the terms of a pledge agreement satisfactory to Eurex Clearing AG that Eurex Clearing AG and the Clearing Member have separately entered into or will enter into prior to the end of the Change Date.

#### **3.5 Pledge – Title Transfer**

If (i) the Respective Securities have been pledged to Eurex Clearing AG by the Clearing Member under the Current Clearing Model Provisions and (ii) the terms of the New Clearing Model Provisions require Margin in the form of securities to be delivered to Eurex Clearing AG by way of title transfer, the following shall apply:

- 3.5.1** At the end of the Change Date, the Respective Securities shall be transferred from the Clearing Member to Eurex Clearing AG by way of a transfer of title therein. The Clearing Member offers to transfer to Eurex Clearing AG title in all Respective Securities. Eurex Clearing AG hereby accepts any such offer in advance.
- 3.5.2** Upon the transfer of title in the Respective Securities to Eurex Clearing AG becoming effective, a Redelivery Claim of the Clearing Member against Eurex Clearing AG shall be created for the redelivery of Securities equivalent to the Respective Securities. Such Redelivery Claim shall be subject to the terms of the relevant New Clearing Model Provisions.

### **3.6 Title Transfer – Pledge**

If (i) the Respective Securities have been transferred to Eurex Clearing AG by way of title transfer under the Current Clearing Model Provisions and (ii) the terms of the New Clearing Model Provisions require Margin in the form of securities to be pledged to Eurex Clearing AG, the following shall apply:

- 3.6.1** At the end of the Change Date, the Respective Securities shall be transferred from Eurex Clearing AG to the Clearing Member by way of a transfer of title therein. Eurex Clearing AG offers to transfer to the Clearing Member title in all Respective Securities. The Clearing Member hereby accepts any such offer in advance.
- 3.6.2** The transfer of title in the Respective Securities to the Clearing Member shall have a discharging effect with respect to the Redelivery Claim of the Clearing Member against Eurex Clearing AG for redelivery of securities equivalent to the Respective Securities.
- 3.6.3** The Respective Securities shall become subject to a right of pledge in favour of Eurex Clearing AG granted to it by the Clearing Member under the terms of a pledge agreement satisfactory to Eurex Clearing AG that Eurex Clearing AG and the Clearing Member have separately entered into or will enter into prior to the end of the Change Date.

### **3.7 Title Transfer – Title Transfer**

If (i) the Respective Securities have been transferred to Eurex Clearing AG by way of title transfer under the Current Clearing Model Provisions and (ii) the terms of the New Clearing Model Provisions require Margin in the form of securities to be delivered to Eurex Clearing AG by way of title transfer, the following shall apply:

Legal title to the Respective Securities shall remain with Eurex Clearing AG. If necessary, Eurex Clearing AG will instruct the respective securities depository bank, custodian or central securities depository to effect the transfer of Respective Securities specified in a duly completed Annex 1.

## **4 Notices**

Before acting upon an instruction submitted under this Clearing Model Change Agreement, Eurex Clearing AG may ask the sender to confirm the instruction orally (including by telephone) or by letter or fax and it may ask any other recipient of an E-Mail to confirm receipt orally (including by telephone) or by E-Mail, letter or fax.

The Parties agree that completed Annexes (including any attachments) may be provided by E-Mail to another party.

The Parties agree and accept that there are inherent risks connected with a communication by E-Mail and fax (including, but not limited to, the possibility of an unauthorised access, forgery or unauthorised alteration, interception and delays), and each party shall burden any such risk with respect to an E-Mail or fax sent by the respective party.

The completed Annexes may be provided to Eurex Clearing AG using the following E-Mail addresses: [clearing@eurexclearing.com](mailto:clearing@eurexclearing.com)

## 5 Termination of the Current Clearing Agreement

The Clearing Member hereby terminates (*kündigt*) the Current Clearing Agreement in accordance with Chapter I Part 1 Number 13.1 of the Clearing Conditions:

yes / no,

as specified for each Disclosed Direct Client or Relevant Fund, Relevant Fund Segment, Incorporated Fund or legal entity in Annex 2, or

yes |  no,

applicable for all Current Clearing Agreements affected by this Clearing Model Change Agreement.

## 6 Governing Law; Jurisdiction; Place of Performance

### 6.1 Governing Law

**6.1.1** This Clearing Model Change Agreement (subject to Clause 6.1.3) is governed by the substantive laws (*Sachrecht*), excluding German private international law, of the Federal Republic of Germany.

**6.1.2** Any non-contractual rights and obligations arising out of or in connection with this Clearing Model Change Agreement shall also be governed by the substantive laws (*Sachrecht*), excluding German private international law, of the Federal Republic of Germany.

**6.1.3** The effects of this Clearing Model Change Agreement on a Client Clearing Agreement that is governed by English law or on a New Client Clearing Agreement that is subject to English law, is governed by the substantive laws, excluding private international law, of England and Wales.

### 6.2 Jurisdiction

The courts in Frankfurt am Main shall have exclusive jurisdiction (*ausschließlicher Gerichtsstand*) over any action or other legal proceedings arising out of or in connection with this Clearing Model Change Agreement.

### 6.3 Place of Performance

The place of performance shall be Frankfurt am Main.

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**7 Severability Clause**

If any provision contained in this Clearing Model Change Agreement is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected. Such invalid, illegal or unenforceable provision shall be replaced by means of supplementary interpretation (*ergänzende Vertragsauslegung*) by a valid, legal and enforceable provision, which most closely approximates the parties' commercial intention. This shall also apply mutatis mutandis to any gaps (*Vertragslücken*) in this Clearing Model Change Agreement.

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**SIGNATURES to the Clearing Model Change Agreement**

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(as Clearing Member)

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(Place / Date)

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Name:

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Name:

Function:

Function:

**Eurex Clearing Aktiengesellschaft**

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(Eurex Clearing AG)

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(Place / Date)

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Name:

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Name:

Function:

Function:

**Annex 1: Clearing Model Change – Respective Margin Assets**

This Annex 1 complements the Clearing Model Change Agreement dated \_\_\_\_\_ between Eurex Clearing AG, and \_\_\_\_\_ as Clearing Member, Member ID \_\_\_\_\_.

A completed version of this Annex has to be provided by a duly authorized employee of the Clearing Member by E-Mail to clearing@eurexclearing.com latest by \_\_\_\_\_ on the Change Date.

<b>I. Redelivery Claims relating to Margin in the form of cash to be amended in accordance with Number 2.2</b>	
e.g.	Source Pool: "ABCLOXCLIENTNET"      Target Pool: "XYZFRXCLIENTECM"
	Currency: "EUR"      Amount: "25.000.000"
	Source Pool:      Target Pool:
	Currency:      Amount:
<b>II. Respective Securities to be affected by the Clearing Model Change</b>	
e.g.	Source Pool: "ABCLOXCLIENTNET"      Target Pool: "XYZFRXCLIENTECM"
	Central Securities Depository: "CBF/GS"      (only "CBF/GS", "CBF/WR" or "CBL/CR" possible)
	Source Account: "1234-500"      Target Account: "5678-500"
	ISIN: "DE0005810055"      Nominal/Quantity: 50,000
	Source Pool:      Target Pool:
	Central Securities Depository:
	Source Account:      Target Account:
	1. ISIN:      Nominal/Quantity:
	2. ISIN:      Nominal/Quantity:
	3. ISIN:      Nominal/Quantity:
	4. ISIN:      Nominal/Quantity:
	5. ISIN:      Nominal/Quantity:
or	
	<input type="checkbox"/> All securities which are booked to the Source Pool on the Change Date.

or

<input type="checkbox"/>	Additional source pools and/or target pools and/or more than 5 ISINs as provided in a separate file using Microsoft Excel format (.xls file(s)) together with this Annex 1.
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**Annex 2: Information to be provided using a separate file as elected in Number 1.2.**

If the Clearing Member opted to provide information in accordance with Annex 2, the following information shall be provided in a file using Microsoft Excel format (.xls file) by a duly authorized employee of the Clearing Member by E-Mail to clearing@eurexclearing.com latest by \_\_\_\_\_ on the Change Date.

In the first row, the file shall include the following completed sentence “This file complements the Clearing Model Change Agreement dated [X] between Eurex Clearing AG and [X] as the Clearing Member, Member ID [X] and provides information in accordance with Annex 2 of the Clearing Model Change Agreement.”

The following rows shall include the following information:

Legal name of the Disclosed Direct Client / Authorised Manager
Member ID
Name of the Relevant Fund / Relevant Fund Segment / Incorporated Fund / legal entity
Transaction Account number
Transaction types forming part of the Respective Transactions pursuant to Number 1.2
New clearing model of Chapter II Transactions concluded at Eurex Deutschland (Eurex Exchange) Possible elections: Elementary Clearing Model Provisions / Elementary Clearing Model Provisions (CASS) / Individual Segregated Account Provisions (under a Security Interest Margin Election: by providing Margin in the form of Securities by way of pledge) / Individual Segregated Account Provisions (under a Title Transfer Margin Election: by providing Margin in the form of Securities by way of title transfer) / Individual Segregated Account Provisions (CASS) (under a Security Interest Margin Election: by providing Margin in the form of Securities by way of pledge)
New clearing model of Chapter IV Repo Transactions Possible elections: Elementary Clearing Model Provisions / Elementary Clearing Model Provisions (CASS) / Individual Segregated Account Provisions (under a Security Interest Margin Election: by providing Margin in the form of Securities by way of pledge) / Individual Segregated Account Provisions (under a Title Transfer Margin Election: by providing Margin in the form of Securities by way of title transfer) / Individual Segregated Account Provisions (CASS) (under a Security Interest Margin Election: by providing Margin in the form of Securities by way of pledge)
New clearing model of Chapter V Part 2 Transactions concluded at the Frankfurter Wertpapierbörse Possible elections: Elementary Clearing Model Provisions / Elementary Clearing Model Provisions (CASS) / Individual Segregated Account Provisions (under a Security Interest Margin Election: by providing Margin in the form of Securities by way of pledge) / Individual Segregated Account Provisions (under a Title Transfer Margin Election: by providing Margin in the form of Securities by way of title transfer) / Individual Segregated Account Provisions (CASS) (under a Security Interest Margin Election: by providing Margin in the form of Securities by way of pledge)
New clearing model of Chapter VIII Part 2 OTC Interest Rate Derivative Transactions Possible elections: Elementary Clearing Model Provisions / Elementary Clearing Model Provisions (CASS) / Individual Segregated Account Provisions (under a Security Interest Margin Election: by providing Margin in the form of Securities by way of pledge) / Individual Segregated Account Provisions (under a Title Transfer Margin Election: by providing Margin in the form of Securities by way of title transfer) / Individual Segregated Account Provisions (CASS) (under a Security Interest Margin Election: by providing Margin in the form of Securities by way of pledge)
Access to Post-Trade Management granted Possible elections: Yes / No
The Current Clearing Agreement is terminated ( <i>gekündigt</i> ) in accordance with Chapter I Part 1 Number 13.1 of the Clearing Conditions Possible elections: Yes / No

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**Annex 3: Disclosed Direct Client Acknowledgement of the Clearing Model Change Agreement**

This acknowledgement (“**Acknowledgement**”) is given

by \_\_\_\_\_,

Member ID \_\_\_\_\_,

acting through/  having its ( registered) office at \_\_\_\_\_,  
as Disclosed Direct Client.

This Acknowledgement only has to be signed if the Respective Disclosed Direct Client entered into a Clearing Agreement with Eurex Clearing AG and the Clearing Member which has not been terminated.

**1 Acknowledgment**

The Respective Disclosed Direct Client takes note of the Clearing Model Change Agreement entered into on \_\_\_\_\_ between \_\_\_\_\_ as Clearing Member and Eurex Clearing AG and of which a copy was provided to the Respective Disclosed Direct Client and agrees to its provisions, including that the Clearing Model Agreement results in a change of the clearing model applicable to the respective Transaction Type for the DC-Related Transactions which relate to the Respective Disclosed Direct Client, and which will take place on the following Change Date: \_\_\_\_\_, unless postponed.

**2 Further agreements between the Disclosed Direct Client and the Clearing Members**

The Respective Disclosed Direct Client will negotiate and enter into the agreement(s) with its Clearing Member which it deems necessary in connection with the clearing model change.

**3 Authorised Manager as Disclosed Direct Client**

If this Acknowledgement is signed by an Authorised Manager who is set up as a single DC With System Access/Basic DC in accordance with Chapter I Part 1 Number 1.1.12 of the Clearing Conditions, the Authorised Manager is acting on behalf and for the account of the Relevant Fund(s), Relevant Fund Segment(s), Incorporated Fund(s) or legal entity(/-ies) as described in Number 1.2 of the Clearing Model Change Agreement.

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(Location)

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(Date)

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(as Disclosed Direct Client)

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Name:

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Name:

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Title:

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Title: