



## eurex clearing circular 171/14

**Date:** 28 November 2014  
**Recipients:** All Clearing Members of Eurex Clearing AG and Vendors  
**Authorized by:** Thomas Laux



High priority

### **Announcement of Assignment Phase for the Default Management Committee regarding the Equity Liquidation Group**

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**Content may be most important for:**

☞ Front Office/Trading

**Attachment:**

Default Management Committee Rules

**Summary:**

Pursuant to Chapter I Part 1 Number 7.5.1 of the Clearing Conditions of Eurex Clearing AG (Eurex Clearing), the establishment of Default Management Committees (DMCs) is part of Eurex Clearing's Default Management Process (DMP). Eurex Clearing establishes a separate DMC for each eligible Liquidation Group. Each DMC consists of employees of the Participating DMC Member Institution (or of an Affiliate) and serves in a DMC Meeting as an internal advisory committee for Eurex Clearing. DMC Members are nominated for a two year term. During the occurrence of a default scenario in relation to a Clearing Member, the DMC Members will be seconded to Eurex Clearing to assist in the DMP by advising and assisting the Management Board of Eurex Clearing.

Each DMC does not have the status of an independent legal person and its DMC Members are subject to Eurex Clearing's direction rights. The advices and recommendations of the DMCs shall contribute to limit the potential losses which may arise due to the default of a Clearing Member. Eurex Clearing maintains the ultimate decision on whether and under what terms and conditions the DMC proposals are implemented.

With this circular the **Assignment Phase** for the next DMC Term of the Equity Liquidation Group shall be announced. The Assignment Phase shall begin on **31 December 2014** and will end on **1 April 2015**.



**Announcement of Assignment Phase for the Default Management Committee  
regarding the Equity Liquidation Group**

Upon default of a Clearing Member, a meeting of the DMC needs to be convened as part of the Default Management Process initiated by Eurex Clearing. In addition to the internal expertise, Eurex Clearing asks for support from eligible employees of its Clearing Members in order to reduce losses and liquidity shortfalls resulting from a Clearing Member's default. The advisory role of the DMC includes, amongst other things, to submit proposals for Hedging Transactions to hedge market risks arising from the positions of the defaulting Clearing Member, nomination of potential counterparties for an independent sale and determination of Default Management auction parameters. In addition, DMC Members can be requested to assist Eurex Clearing in the execution of Default Management Hedging Transactions.

Each Clearing Member active in the relevant Liquidation Group for which a DMC will be established can apply to nominate a DMC Member voluntarily. The voluntary application can be done informally via e-mail to [DMP\\_Inbox@eurexclearing.com](mailto:DMP_Inbox@eurexclearing.com). The applications need to be submitted no later than on the first business day of the Assignment Phase.

If the selection process for a voluntary participation of Eligible Clearing Members does not result in a sufficient number of Participating DMC Member Institutions, Eurex Clearing will select Participating DMC Member Institutions to nominate DMC Members. Non-voluntary selections by Eurex Clearing will be based on the clearing volumes of the last three months preceding the Assignment Phase in the respective Liquidation Group.

With this circular the Assignment Phase for the next DMC Term of the Equity Liquidation Group shall be announced. The Assignment Phase will begin on 31 December 2014 and end on 1 April 2015.

The DMC Composition Table detailing the exact number of DMC Members for each DMC and the identity of the Participating DMC Member Institutions will be published by Eurex Clearing after the completion of the Assignment Phase on its website [www.eurexclearing.com](http://www.eurexclearing.com). The exact details on DMC Terms, DMC Member Eligibility Criteria and any other DMP-related information are contained in the attached Default Management Committee Rules.

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

28 November 2014

## **DEFAULT MANAGEMENT COMMITTEE RULES**

### **1 General Provisions for Default Management Committees**

#### **1.1 Default Management Committees**

Default Management Committees (each, a "**DMC**") are committees established by Eurex Clearing AG pursuant to Chapter I Part 1 Number 7.5.1 of the Clearing Conditions of Eurex Clearing AG (the "**Clearing Conditions**") for purposes of advising and assisting the management board of Eurex Clearing AG with respect to the occurrence of a Termination (as defined in Chapter I Part 1 Number 7 of the Clearing Conditions) and all other DMC Matters (as defined in Chapter I Part 1 Number 7.5.1 Paragraph (2) of the Clearing Conditions). Each DMC is governed by the rules set forth in these default management committees rules (the "**DMC Rules**").

#### **1.2 DMC Secretary**

Eurex Clearing AG shall serve as the secretary of each DMC (the "**DMC Secretary**") and shall perform the administrative duties set out herein.

#### **1.3 Definitions**

Terms used and not otherwise defined in these DMC Rules shall have the meanings ascribed to them in the Clearing Conditions. In addition, the terms set out below shall have the meaning ascribed to them below:

**"Affiliate"** means, in respect of a Participating DMC Member Institution, any undertaking which is or becomes (i) a subsidiary undertaking or parent undertaking of such Participating DMC Member Institution or (ii) a subsidiary undertaking of a parent undertaking of such Participating DMC Member Institution.

**"Assignment Phase"** means a period of six months immediately prior to each DMC Term which shall commence on 30 September of each calendar year (including) and shall end on 1 April of each calendar year (excluding) during which Eurex Clearing AG shall determine which Eligible Clearing Members shall participate in a DMC in the following DMC Term in accordance with Number 2.2. With respect to the first DMC Term such period may be different depending on the start date of the relevant DMC Term.

**"DMC Composition Table"** means the DMC composition table published by Eurex Clearing AG on its website ([www.eurexclearing.com](http://www.eurexclearing.com)) detailing the exact numbers of DMC Members for each DMC and the identity of the Participating DMC Member Institutions.

**"DMC Deputy"** shall have the meaning given to such term in Chapter I Part 1 Number 7.5.1 Paragraph (5) of the Clearing Conditions

**"DMC Member"** shall have the meaning given to such term in Chapter I Part 1 Number 7.5.1 Paragraph (5) of the Clearing Conditions.

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**"DMC Member Eligibility Criteria"** means the following cumulative eligibility criteria for each DMC Member:

- (a) It must be an employee of the Participating DMC Member Institution (or of an Affiliate) and shall have agreed to participate in a DMC;
- (b) it must be able to demonstrate relevant experience with respect to products of the relevant Liquidation Group and have appropriate expertise in relation to the relevant DMC Matters;
- (c) it is not subject to on-going investigations regarding misdemeanour in any trading related matter;
- (d) it is not already a member of a default management committee or a similar committee of another central counterparty or exchange;
- (e) it will not be subject to conflicts of interest following its acceptance as a DMC Member or will not be unable to act as DMC Member for whatever reasons; and
- (f) it must be available for prompt participations in person in a DMC Meeting (as defined in Number 3.1) within two hours after receipt of an Invitation (as defined in Number 3.1).

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

**"Eligible Clearing Member"** means for the purposes of each Liquidation Group, a Clearing Member which (i) holds the respective license to clear all products of that Liquidation Group and (ii) has cleared at least one trade in a product from such Liquidation Group within the three months prior to the beginning of the relevant Assignment Phase.

**"Invitation"** means a meeting request notice delivered by Eurex Clearing AG to all DMC Members of the relevant DMC in accordance with Number 3.1.

**"Participating DMC Member Institution"** means the Eligible Clearing Members which have been selected by Eurex Clearing AG in accordance with Number 2.2 and 2.4 and which are participating in a DMC.

**"Required Number"** means, with respect to each DMC, the required numbers of DMC Members set forth in the DMC Composition Table.

## **2 Composition of Default Management Committees**

### **2.1 Establishment of DMCs**

Eurex Clearing AG will establish a DMC with respect to one or more Liquidation Groups as specified in the DMC Composition Table with respect to the relevant DMC Term, provided that a DMC with respect to a Liquidation Group will only be established if there are at least five (5) Eligible Clearing Members.

Eurex Clearing AG may, in its discretion, decide not to establish a DMC with respect to a Liquidation Group which does not have a substantial size. However, Eurex Clearing AG will

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establish a DMC for any Liquidation Group if such Liquidation Group is expected to comprise at least one OTC Derivative Transaction (as defined in Chapter VIII Part 1 of the Clearing Conditions).

**2.2 Selection of Participating DMC Member Institutions**

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

**2.3 DMC Rotation Process**

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

**2.3.1** At the end of the first DMC Term for a DMC, Eurex Clearing AG will replace, at its sole discretion, Participating DMC Member Institutions as follows: (i) in case of a DMC consisting of two (2) Participating DMC Member Institutions, Eurex Clearing AG will replace one (1) Participating DMC Member Institution and, after each further DMC Term, one (1) Participating DMC Member Institution; (ii) in case of a DMC consisting of four (4) Participating DMC Member Institutions, Eurex Clearing AG will replace two (2) Participating DMC Member Institutions and, after each further DMC Term, two (2) Participating DMC Member Institutions, and (iii) in case of a DMC consisting of three (3) Participating DMC Member Institutions, Eurex Clearing AG will replace one (1) Participating DMC Member Institution and after each further DMC Term, two (2) Participating DMC Member Institutions.

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

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

**2.4.1 General Principles**

Subject to Number 2.4.4 Paragraph (2), no Eligible Clearing Member shall be selected as Participating DMC Member Institution

- (i) for more than one DMC in any DMC Term; and
- (ii) if such Eligible Clearing Member served as Participating DMC Member Institution with respect to this particular DMC in any of the previous two consecutive DMC Terms.

Without prejudice to the right of an Eligible Clearing Member to volunteer to serve as Participating DMC Member Institution in more than one DMC in accordance with the selection process in Number 2.4.2 below, Eurex Clearing AG shall, if an Eligible Clearing Member qualifies as Participating DMC Member Institution with respect to more than one DMC, in its discretion, in accordance with the DMC Rotation Process decide in which DMC such Eligible Clearing Member shall serve as Participating DMC Member Institution.

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

- (1) All Eligible Clearing Members which intend to volunteer as Participating DMC Member Institution shall (i) inform Eurex Clearing AG thereof no later than on the first Business Day of the Assignment Phase and (ii) specify in which DMC they wish to participate.
- (2) Eurex Clearing AG will then rank (whereby Eligible Clearing Members with higher cleared volumes (such cleared volumes will be calculated based on the aggregate notional amounts (actual or implied, as applicable), the "**Cleared Volumes**") will be ranked above those with lower Cleared Volumes) the volunteering Eligible Clearing Members based on their respective Cleared Volumes in the three months preceding the Assignment Phase in the relevant Liquidation Group. Volunteering Eligible Clearing Members will be selected by Eurex Clearing AG in accordance with such ranking.
- (3) Eurex Clearing AG will inform the Eligible Clearing Members so selected no later than 30 October of their selection as Participating DMC Member Institution for the up-coming DMC Term.
- (4) If the Required Number of Eligible Clearing Members cannot be successfully selected due to the general principles set forth in Number 2.4.1, further Participating DMC Member Institutions shall be selected by Eurex Clearing AG in accordance with the non-voluntary selection process pursuant to Number 2.4.3.

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

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

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Participating DMC Member Institution shall not be obliged to participate in the relevant DMC.

**2.4.4 Further Selection Process**

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

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

Each Participating DMC Member Institution may by giving not less than 30 calendar days' prior written notice request its substitution by an affiliated Non-Clearing Member or Registered Customer. Upon acceptance of such substitution by Eurex Clearing AG, which acceptance shall not be unreasonably withheld, the relevant Eligible Clearing Member shall cease to be a Participating DMC Member Institution and the affiliated Non-Clearing Member or Registered Customer shall instead become a Participating DMC Member Institution (and shall be obliged to sign the Agreement for the Participation in a Default Management Committee applicable to Non-Clearing Members and Registered Customers in the form provided by Eurex Clearing AG).

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**2.6 DMC Member Nomination**

The relevant Participating DMC Member Institutions shall nominate DMC Members which comply with the DMC Member Eligibility Criteria.

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

**2.6.2** Procedures for becoming a DMC Member

- (1) Upon receipt of a Designation Notice, Eurex Clearing AG validates the nominated DMC Member on the basis of the information provided by the Participating DMC Member Institution to evidence compliance with the DMC Member Eligibility Criteria. The Participating DMC Member Institution shall provide any further information or evidence of compliance with the DMC Member Eligibility Criteria as reasonably requested by Eurex Clearing AG.
- (2) Upon acceptance of a nominated DMC Member by Eurex Clearing AG, such nominated DMC Member shall, subject to Number 2.9, be a DMC Member for the DMC Term of the relevant DMC.
- (3) Eurex Clearing AG shall only reject a nominated DMC Member if the nominated DMC Member does not satisfy the DMC Member Eligibility Criteria. Eurex Clearing AG shall notify the relevant Participating DMC Member Institution of such rejection and the reasons therefor.
- (4) Upon a rejection of a nominated DMC Member by Eurex Clearing AG, the relevant Participating DMC Member Institution shall nominate a further individual as DMC Member in accordance with this Number 2.5 within five (5) Business Days upon receipt of a rejection by Eurex Clearing AG.

If Eurex Clearing AG also rejects such further individual nominated as DMC Member the relevant Participating DMC Member Institution shall cease to be a Participating DMC Member Institution and another Eligible Clearing Member shall be selected by Eurex Clearing AG in accordance with Number 2.2 to nominate a DMC Member. Eurex Clearing AG shall notify the relevant Participating DMC Member Institution of its failure to nominate a further DMC Member.

**2.7** Rotation of Participating DMC Member Institutions

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



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

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

Each Participating DMC Member Institution shall inform Eurex Clearing AG without undue delay (i) if the Participating DMC Member Institution becomes aware that its DMC Member no longer complies with the DMC Member Eligibility Criteria or (ii) if it merges with any other Participating DMC Member Institution(s) and if therefore more than one DMC Member nominated by Participating DMC Member Institutions which are Affiliates are DMC Members in the same DMC.

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

Any DMC Member that resigns or is replaced or removed from a DMC pursuant to these DMC Rules shall no longer be a DMC Member, as the case may be, and Eurex Clearing AG shall, in each case, accept a successor DMC Member for the DMC Term of the relevant DMC in accordance with the DMC Member Eligibility Criteria.

**2.9.1 Resignation**

A DMC Member may at any time resign from its appointment by giving not less than 30 calendar days' prior written notice of its resignation to the DMC Secretary provided that in any event such resignation shall only become effective upon the acceptance of a successor DMC Member.

**2.9.2 Automatic Removal**

A DMC Member shall be automatically removed from a DMC on which it serves without any further notice upon (i) the occurrence of a Termination Date in relation to the Participating DMC Member Institution which has nominated such DMC Member or (ii) ceasing to be an employee of the Participating DMC Member Institution or of an Affiliate.

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

If two or more Participating DMC Member Institutions are subject to a merger and become affiliates, Eurex Clearing AG will upon consultation with these Participating DMC Member Institution(s), remove all appointed DMC Members and DMC Deputies of such original Participating DMC Member Institutions except for one DMC Member.

**2.9.4 Removal by Eurex Clearing AG**

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

- (1) the DMC Member fails to participate in one DMC Meeting without reasonable excuse, or
- (2) the DMC Member fails to comply with the DMC Rules and such failure (if capable of remedy) has not been remedied after receipt of written notice thereof from the DMC Secretary giving a reasonable remedy period; or

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- (3) the DMC Member no longer complies with either of the DMC Member Eligibility Criteria (a) or (c) through (f).

The notice period set forth in the preceding sentence does not apply in the case of (i) material breaches of the DMC Rules, (ii) a repeated breach of the DMC Rules or (iii) in case of another important reason (*wichtiger Grund*).

**2.9.5** Removal by Participating DMC Member Institution

A Participating DMC Member Institution is only entitled to remove the DMC Member nominated by it from the DMC on which it serves upon occurrence of an important reason in the person of the DMC Member (*wichtiger Grund*) provided that in any event such removal shall only become effective upon the acceptance of a successor DMC Member.

**2.9.6** Suspension of Membership in a DMC

Eurex Clearing AG may suspend with immediate effect a DMC Member from its capacity as DMC Member (i) upon the occurrence of a Termination Event in relation to the Participating DMC Member Institution which has nominated such DMC Member or in case of (ii) material breaches of the DMC Rules, (iii) a repeated breach of the DMC Rules or (iv) another important reason (*wichtiger Grund*).

**2.10** Request to exercise Direction Right

Eurex Clearing AG may prior to exercising its rights pursuant to Number 2.9.4 Sentence 2 or Number 2.9.6 request the Participating DMC Member Institution (i) to use its direction right vis-à-vis the DMC Member or (ii) if the DMC Member is employed with an Affiliate, to request such Affiliate to use its direction right.

**2.11** List of DMC Members

Eurex Clearing AG maintains a list of all DMC Members of the relevant DMC, including the relevant contact details (address, phone number, fax number, email address) in accordance with the statutory data protection rules.

Eurex Clearing AG shall not be obliged to make available such list to Clearing Members, Non-Clearing Members or Registered Customers.

**3** **Procedures of DMCs**

**3.1** Convening a DMC Meeting

**3.1.1** Request for a DMC Meeting

The DMC Secretary may at any time convene a meeting of a DMC (a "**DMC Meeting**") upon the occurrence of a Termination Event or Insolvency Termination Event, for a Default Simulation or to obtain advice on any DMC Matters as deemed appropriate by Eurex Clearing AG by delivering a meeting request notice (the "**Invitation**") in accordance with this Number 3.1 to all DMC Members of the relevant DMC.

If there is at least one OTC Derivative Transaction (as defined in Chapter VIII Part 1 of the Clearing Conditions) among the Terminated Transactions, Eurex Clearing AG shall in any event convene a DMC Meeting of the DMC related to the relevant Liquidation Group.

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**3.1.2 Invitation**

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

**3.1.3 Preparation of DMC Meeting**

The DMC Secretary may convene a DMC Meeting in such manner as it reasonably considers appropriate to discuss the envisaged DMC Matters taking into account the urgency of such DMC Matters. The DMC Secretary may consult with the Chairman (as defined in Number 3.2.3) and/or the Deputy Chairman (as defined in Number 3.2.3) prior to convening a DMC Meeting as it deems appropriate in view of the given circumstances. The DMC Secretary will prepare a meeting agenda which shall be distributed to the DMC Members once the DMC Meeting has been opened by the Chairman (the "**DMC Meeting Agenda**").

**3.2 Meeting, Participation, Chairman, Participation Duties**

**3.2.1 Meeting**

DMC Meetings shall take place at premises in London and Frankfurt am Main (or Eschborn). The premises shall be linked to each other by video conference.

**3.2.2 Participation**

Each Participating DMC Member Institution shall use reasonable endeavours to ensure that

- (1) its DMC Member participates in each DMC Meeting in person,
- (2) if its DMC Member is unable to attend a DMC Meeting it provides evidence to the DMC Secretary of its inability to attend the DMC Meeting in person,
- (3) if its DMC Member does not attend the DMC Meeting for whatever reason, the relevant DMC Deputy attends instead of the DMC Member, and
- (4) if the DMC Deputy is unable to attend such DMC Meeting it provides evidence to the DMC Secretary of its inability to attend the DMC Meeting in person.

The DMC Members (or subject to the above, any DMC Deputies) attending a DMC Meeting shall be referred hereinafter as the "**Participating DMC Members**" and each a "**Participating DMC Member**".

**3.2.3 Chairman and Deputy Chairman**

Once all DMC Members for a respective DMC and a respective DMC Term have been appointed, these DMC Members shall, upon notification of Eurex Clearing AG, appoint a DMC Member via email by Majority (as defined in Number 3.3) vote as the chairman of the DMC (the "**Chairman**") and as the deputy chairman who shall perform the functions of the Chairman at any DMC Meeting at which the Chairman is not present (the "**Deputy Chairman**"). The appointment as Chairman and Deputy Chairman shall be valid for the

DMC Term of the relevant DMC. Only a DMC Member and not a DMC-Deputy may be appointed as Chairman or Deputy Chairman.

The Participating DMC Members have the right to replace the Chairman or Deputy Chairman by Majority vote, provided that such replacement does not occur in time critical situations, in particular if a Termination Event has occurred.

#### **3.2.4 Duties of Participating DMC Members**

Each Participating DMC Member Institution shall use reasonable endeavours to ensure that its Participating DMC Members comply with the following rules:

- (1) Participating DMC Members are not permitted to engage in any communication with the relevant Participating DMC Member Institution or any other third party with respect to DMC Matters or any other information obtained during DMC Meetings.
- (2) No Participating DMC Member may engage in any communication with another DMC Member outside of the DMC Meeting with respect to DMC Matters (except for any briefings between a DMC Member and its DMC Deputy that are indispensable in order to procure that each of them is in a position to attend the relevant DMC Meeting for the relevant other person).
- (3) Participating DMC Members are not permitted to bring any own means of electronic communication to the DMC Meeting.
- (4) Participating DMC Members are not permitted to leave the DMC Meeting, unless the DMC Meeting has been officially closed by the DMC Secretary.

### **3.3 Voting Procedure**

Subject to Number 3.2.3, all decisions to be made by the DMC shall be made at a DMC Meeting by Majority vote of the Participating DMC Members. "**Majority**" shall mean at least 50% of the Participating DMC Members. Each Participating DMC Member shall have one single vote. In the event that any vote is tied, the Chairman shall have the casting vote.

### **3.4 Minutes of Meetings, Statements**

#### **3.4.1 Minutes**

Minutes shall be taken of all DMC Meetings and signed by the DMC Secretary ("**DMC Minutes**"). The DMC Minutes shall set forth the place and date of the DMC Meeting, the Participating DMC Members, the DMC Matters on the DMC Meeting Agenda, the substance of the deliberations and the votes taken by the DMC. The DMC Secretary shall record in the DMC Minutes the identity of each Participating DMC Member with respect to any matter raised by such Participating DMC Member in the DMC Meeting.

#### **3.4.2 Statements**

The DMC may appoint by Majority vote one or more Participating DMC Members to prepare, on behalf of the DMC, any proposal, response, statement or other document setting out the views of the DMC with respect to any DMC Matter (a "**Statement**"). The Chairman may refer the Statement to a DMC Meeting for approval by Majority vote or may, if the Chairman is satisfied that the Statement represents the views of the Majority of

Participating DMC Members after circulating such Statement to the Participating DMC Members, deliver such Statement to Eurex Clearing AG, whereupon such Statement shall be incorporated into the Minutes and shall be deemed to set out the view of the DMC.

### **3.5 Participation of Non-DMC Members in DMC Meetings**

#### **3.5.1 External Experts and other Attendees**

- (1) Eurex Clearing AG may invite any external counsel or other external experts or may invite Non-Clearing Members, Registered Customers or clients to designate one of its employees to attend one or more DMC Meetings of a specific DMC to the extent and as long as such attendance is considered appropriate by Eurex Clearing AG (each an "**Attendee**").
- (2) Each Attendee must sign an acknowledgement and undertaking letter provided by the DMC Secretary prior to its attendance in a DMC Meeting.
- (3) All Attendees shall form part of the relevant DMC but shall not have the right to vote in a DMC Meeting.
- (4) The costs of an Attendee for participating in a DMC Meeting shall be borne by Eurex Clearing AG.

#### **3.5.2 Participation of Employees of Eurex Clearing AG**

Employees of Eurex Clearing AG may attend DMC Meetings for the purpose of handling the DMC Matters at any time but shall not have a right to vote and shall not be deemed to be DMC Members.

### **3.6 Assistance by Participating DMC Members as *Bote* of Eurex Clearing AG**

Eurex Clearing AG may request one or more Participating DMC Members of a DMC to assist Eurex Clearing AG in the execution of DM Hedging Transactions or other legal declarations. Any such Participating DMC Member must act as messenger (*Bote*) of Eurex Clearing AG and shall not have the rights of an attorney in fact (*Stellvertreter*) of Eurex Clearing AG. Eurex Clearing AG will at all times maintain the ultimate decision on whether or not and under what terms and conditions a DM Hedging Transactions or a certain legal act is executed or not.

Each Participating DMC Member Institution shall instruct its Participating DMC Member to always inform (potential) contractual counterparties of Eurex Clearing AG that it is acting as messenger (*Bote*) of Eurex Clearing AG and not as an attorney in fact (*Stellvertreter*) of Eurex Clearing AG and to prevent any acts or indications which could be interpreted as its entitlement to act as an attorney in fact (*Stellvertreter*) (*Anscheinsvollmacht*).

## **4 Legal Relationship**

### **4.1 Status**

Each DMC Member always remains an employee of the respective Participating DMC Member Institution or, if applicable, its Affiliate, and does not qualify as an employee of Eurex Clearing AG. The DMC Members act under a mandate (*Auftrag*) of Eurex Clearing AG in their capacity as DMC Members.

## **4.2 Direction Rights**

Each Participating Member Institution shall instruct its DMC Members to follow the instructions of Eurex Clearing AG during a DMC Meeting with respect to all acts requested by Eurex Clearing AG in connection with the DMC Matters provided for in the DMC Rules.

During a DMC Meeting and with respect to all other acts requested by Eurex Clearing AG in connection with the DMC Matters provided for in the DMC Rules, a Participating DMC Member Institution shall not exercise, and if its DMC Member is employed by its Affiliate shall use reasonable endeavours to ensure that such Affiliate does not exercise, its employer direction rights vis-à-vis the DMC Member nominated by it unless it is requested by Eurex Clearing AG to use its direction rights in accordance with Number 2.10.

## **5 General Duties of DMC Members**

### **5.1 Duty of Care**

The Participating DMC Member Institution shall instruct, and if its DMC Member is employed by its Affiliate shall use reasonable endeavours to ensure that such Affiliate instructs, its DMC Member when acting in such capacity, to comply with any instructions of Eurex Clearing AG and to always act in the best interest of a successful default management process of Eurex Clearing AG.

### **5.2 Information Undertakings**

The Participating DMC Member Institution shall instruct its DMC Member and if its DMC Member is employed by its Affiliate shall use reasonable endeavours to ensure that such Affiliate instructs its DMC Member, to inform Eurex Clearing AG without undue delay

**5.2.1** and, if possible, in advance if it is unable to attend DMC Meetings due to holidays, gardening leave, sickness or any other absence or unavailability; and

**5.2.2** of any change of its contact details.

## **6 Communications**

Unless otherwise provided for in these DMC Rules, any communication hereunder shall be made via-email to and from (as applicable) the relevant DMP-coordinator appointed by each Clearing Member and the relevant Eurex Clearing AG representatives, provided that any invitations to actual DMC Meetings will be addressed directly to the DMC Members or DMC Deputies.

## **7 Governing Law; Place of Jurisdiction**

**7.1** Unless provided otherwise, the rights and obligations arising out of, and in connection with, these DMC Rules shall be governed by the substantive laws (*Sachrecht*), excluding German private international law, of the Federal Republic of Germany. Only the German version of these DMC Rules is legally binding.

**7.2** Any non-contractual rights and obligations arising out of, and in connection with, these DMC Rules shall be governed by the substantive laws (*Sachrecht*), excluding German private international law, of the Federal Republic of Germany.

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**DEFAULT MANAGEMENT COMMITTEE RULES**

- 7.3** Exclusive place of jurisdiction for all disputes arising out of, or in connection with, these DMC Rules is Frankfurt am Main.

**8 Amendments**

Eurex Clearing AG reserves the right to amend the DMC Rules in accordance with Chapter I Part 1 Number 17.2 of the Clearing Conditions; any amendments to these DMC Rules shall be published in accordance with Chapter I Part 1 Number 16.1 of the Clearing Conditions.

The current valid version of the DMC Rules is available via the internet ([www.eurexclearing.com](http://www.eurexclearing.com)).