



# eurex clearing circular 077/13

**Date:** 28 June 2013  
**Recipients:** All Clearing Members of Eurex Clearing AG and Vendors  
**Authorized by:** Thomas Laux

- 1. Amendments to the Default Management Committee Rules and to the Agreement for the Participation in a Default Management Committee;**  
**2. Clarification of Eurex Clearing AG's right to deny granting of a Clearing License;**  
**3. Change in allocation of Eurex Clearing AG's Dedicated Amounts to Clearing Funds**

**Related Eurex Clearing Circulars:** 092/12, 055/13

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**Content may be most important for:**

Ü All departments

**Attachments:**

1. Updated Default Management Committee Rules, effective 15 July 2013
2. Updated Agreement for the Participation in a Default Management Committee as Appendix 5 to the Clearing Conditions for Eurex Clearing AG, effective 15 July 2013
3. Updated sections of the Clearing Conditions for Eurex Clearing AG, effective 15 July 2013

**Summary:**

1. Eurex Clearing amends the Default Management Committee Rules and the Agreement for the Participation in a Default Management Committee to further optimise the framework for Clearing Members to support and advise the CCP in handling a Clearing Member's default.
2. Eurex Clearing clarifies that the granting of a Clearing License shall only be denied by the CCP, if such rejection is required to control the risk for the CCP, in accordance with Article 37(1) EMIR.
3. Eurex Clearing changes the allocation of its Dedicated Amounts to the Clearing Funds.

Attached to this circular you will find the updated Default Management Committee Rules, the updated Agreement for the Participation in a Default Management Committee and the updated sections of the Clearing Conditions for Eurex Clearing AG, as - after consultation of the Risk Committee - approved by the Executive Board of Eurex Clearing AG on 8 May 2013, 27 May 2013 and 10 June 2013, which will come into effect on **15 July 2013**.

## **1. Amendments to the Default Management Committee Rules and to the Agreement for the Participation in a Default Management Committee**

Eurex Clearing amends the Default Management Committee Rules and the Agreement for the Participation in a Default Management Committee (DMC) to further optimise the framework for Clearing Members to support and advise the CCP in handling a Clearing Member's default.

The amendments include:

- a) Amendments of the rotation process by which Clearing Members are selected to serve on any respective Default Management Committee (the DMC Rota);
- b) Amendments of the criteria to be fulfilled by an individual to qualify as DMC Member;
- c) Amendments of the legal set-up of Default Management Committees, and in particular the contractual relationship between Eurex Clearing, the Clearing Member and the individual acting as DMC Member;
- d) Editorial changes.

### **a) Amendments of DMC Rota**

The DMC Rota, i.e. the process by which Clearing Members are selected to serve on any particular Default Management Committee will be amended.

The amended DMC Rota accommodates a voluntary selection component, in which all Clearing Members can indicate towards Eurex Clearing their interest to volunteer for participation in any respective DMC. Only if this voluntary component results in an insufficient number of DMC Members for any particular DMC, a non-voluntary selection component is triggered. This non-voluntary component provides that Eurex Clearing selects Clearing Members to serve on a respective DMC, in accordance to their relative size in the respective asset classes.

Hereby, Clearing Members can waive their participation in a DMC, if they can evidence towards Eurex Clearing that they serve on a similar committee for the same asset class at another CCP, in the respective term.

Clearing Members are selected to serve on a DMC for two consecutive DMC Terms, of which each lasts for one year. Further, the DMC Rota ensures that Clearing Members (and DMC Members) are selected to serve on a DMC at different times, to ensure continuous transfer of knowledge within each DMC.

### **b) Criteria for qualification as DMC Member (DMC Member Eligibility Criteria)**

The DMC Member Eligibility Criteria for an individual to qualify as eligible DMC Member will be amended as follows:

- Individual must be an employee of the nominating Clearing Member (or an affiliate of such Clearing Member) and must have agreed to participate in the DMC;
- Individual must be able to demonstrate relevant experience and appropriate expertise in the relevant products and with respect to the matters the DMC is dealing with;
- Individual must not be subject to on-going investigations regarding a misdemeanour in a trading related matter;
- Individual is not already a member of a similar committee at another CCP;
- Individual will not be subject to conflicts of interest and will not be unable to act as DMC Member;
- Individual must be available for prompt participation in DMC Meetings.

**c) Legal set-up of Default Management Committees**

Any Clearing Member participating in a DMC enters into a dedicated contractual agreement with Eurex Clearing, the Agreement for the Participation in a Default Management Committee. By signing this agreement, each Clearing Member represents towards Eurex Clearing that its respective DMC Member is obliged to keep confidentiality with respect to all information received in connection with the DMC

Due to this regulation, a dedicated confidentiality agreement to be signed by the DMC Member will not be required.

**2. Clarification of Eurex Clearing's right to deny granting of a Clearing License**

Eurex Clearing clarifies that the granting of a Clearing License shall only be denied by the CCP, if such rejection is required to control the risk for the CCP, in accordance with Article 37(1) EMIR.

When deciding on whether or not a Clearing License should be granted, Eurex Clearing will, in particular, consider the following criteria:

- External credit ratings of the applicant;
- Internal credit ratings of the applicant;
- Market indications relating to the applicant (such as share price, or a widening of Credit Default Swaps spreads);
- Potential governmental guarantees or supports received by the applicant.

**3. Change in allocation of Eurex Clearing's Dedicated Amounts to Clearing Funds**

Eurex Clearing changes the allocation of its Dedicated Amounts to the Clearing Funds.

In particular, Eurex Clearing's Dedicated Amounts shall be allocated to the two Clearing Funds, based on the ratio of the overall risk exposure secured by the CDS Clearing Fund to the overall risk exposure secured by the General Clearing Fund. Hereby, the overall risk exposure shall be defined as the aggregate value of all Clearing Members' forward looking margin components for all transactions secured by the CDS Clearing Fund on one hand and the aggregate value of all Clearing Members' forward looking margin components for all transactions secured by the General Clearing Fund on the other hand.

In accordance with Article 28 EMIR, Eurex Clearing received the Risk Committee's advice with respect to all changes announced in this circular.

Attached to this circular you will find the amended Default Management Committee Rules, the amended Agreement for the Participation in a Default Management Committee and the amended sections of the Clearing Conditions for Eurex Clearing AG, as approved by the Executive Board of Eurex Clearing AG on 8 May, 27 May 2013 and 10 June 2013 and approved by the Supervisory Board of Eurex Clearing AG on 20 June 2013, which will come into effect on 15 July 2013.

As of 15 July 2013, the complete Clearing Conditions for Eurex Clearing AG (including the Agreement for the Participation in a Default Management Committee as Appendix 5) and the Default Management Committee Rules, with the amendments described in this circular will be available for download on the Eurex Clearing website [www.eurexclearing.com](http://www.eurexclearing.com) under the following link:

**Resources > Rules and Regulations**

Pursuant to Chapter I, Part 1, Number 17.2.2 of the Clearing Conditions, each Clearing Member or Non-Clearing Member or Registered Customer accepts each amendment and addition to the Clearing Conditions,

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unless it objects by written notice to Eurex Clearing AG before the end of the Business Day prior to the actual effective date of such amendment or addition to the Clearing Conditions. The right to terminate the Clearing Agreement and the Clearing License according to Chapter I, Part 1, Number 2.1.4 Paragraph 1 of the Clearing Conditions shall remain unaffected.

If you have any questions, please contact the Risk Control team on tel. +49-69-211-1 24 52 or e-mail: [risk@eurexclearing.com](mailto:risk@eurexclearing.com).

28 June 2013

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**AMENDMENTS ARE MARKED AS FOLLOWS**

**INSERTIONS ARE UNDERLINED**

**DELETIONS ARE CROSSED OUT**

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**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) 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.

"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 Types Establishment of DMCs and DMC Members**

Eurex Clearing AG will establish a DMC with respect to one or more Liquidation Groups as specified in the DMC Composition Table published by Eurex Clearing AG on its website ([www.eurexclearing.com](http://www.eurexclearing.com)) (the "DMC Composition Table") with respect to the relevant DMC Term (as defined in Number 2.6 below) 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 5 Clearing Members participating in the Clearing with respect to such Liquidation Group. A DMC will consist of at least two DMC Members, each being employees of Clearing Members (or, if permissible pursuant to these DMC Rules, of affiliated Non-Clearing Members or Registered Customers) selected by Eurex Clearing AG for such purpose in accordance with these DMC Rules (the "**Participating DMC Member Institutions**" and each a "**Participating DMC Member Institution**"). The number of DMC Members of each DMC is specified in the DMC Composition Table five (5) Eligible Clearing Members.

Eurex Clearing AG may, in its discretion, decide not to establish a DMC with respect to a Liquidation Group (except for any Liquidation Group including any OTC Derivative Transaction) which does not have a substantial size. However, Eurex Clearing AG will 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).

The DMC Composition Table will be updated or adjusted by Eurex Clearing AG annually for each upcoming DMC Term.

### **2.2 Membership Requirements**

~~DMC Members will be nominated by the relevant Participating DMC Member Institutions and accepted and appointed by Eurex Clearing AG with respect to the relevant DMC Term in accordance with the membership requirements to select DMC Members in this Number 2.2 (the "**Membership Requirements**").~~

### **2.2 2.2.1 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 2.2.2.3.

### **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 2.2.2 Guidelines for the Selection of Participating DMC Member Institutions

~~(1) With respect to each DMC and the relevant DMC Term, Eurex Clearing AG will compile a list of eligible Participating DMC Member Institutions according to and ordered by the level of activity of each Clearing Member in its Own Account and its Customer Accounts in the relevant Liquidation Group (each an "Applicable List"). The applicable number of Clearing Members of each Applicable List will in the order of appearance automatically qualify as Participating DMC Member Institutions for the relevant DMC unless Eurex Clearing AG determines in its reasonable discretion a serious cause for excluding any such qualifying Clearing Member.~~

##### 2.4.1 General Principles

~~(2) No Clearing Member shall be obliged to be a 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~~

~~(3) Each Participating DMC Member Institution may request its substitution by a qualified affiliated Non Clearing Member or Registered Customer. Upon acceptance of such substitution by Eurex Clearing AG, which acceptance shall not be unreasonably withheld, the affiliated Non Clearing Member or Registered Customer shall be a Participating DMC Member Institution (and shall be obliged to sign the Agreement for the Participation in a Default Management Committee, as applicable to Non Clearing Members and Registered Customers, in the form provided by Eurex Clearing AG) and the relevant Clearing Member shall cease to be a Participating DMC Member Institution.~~

~~(ii) (4) Eurex Clearing AG will inform each Participating DMC Member Institution of its selection if such Eligible Clearing Member served as Participating DMC Member Institution at least 3 months prior to the commencement of the relevant DMC Term 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.

~~2.2.3 Designated DMC Members and Designated DMC Deputies~~

- ~~(1) Eurex Clearing AG will notify each Participating DMC Member Institution of its identification as a Participating DMC Member Institution in writing.~~
- ~~(2) If a Participating DMC Member Institution has been selected as such for more than one DMC it may request by written notice to Eurex Clearing AG (which shall be given without undue delay) that it only serves on one DMC. Upon receipt of such notification Eurex Clearing AG shall notify such Participating Member Institution in which DMC it shall serve and shall select one or more other Clearing Member(s) in accordance with Number 2.2.1 to nominate a Designated DMC Member and a Designated DMC Deputy (each as defined below) for the DMC Term of the relevant DMC(s).~~
- ~~(3) Participating DMC Member Institutions shall nominate an individual to serve on the DMC (the "Designated DMC Member") and another individual as its deputy (the "Designated DMC Deputy") for the DMC Term of the relevant DMC by notifying the DMC Secretary in writing or by fax of the identities and contact information (including personal telephone number and email address) of the nominated individuals (the "Designation Notice") by no later than two months following receipt of Eurex Clearing AG's notice pursuant to Paragraph (1) above. In any case the Participating DMC Member Institution shall use reasonable endeavours to ensure that both the Designated DMC Member and the Designated DMC Deputy will return a completed DMC Rules Acknowledgement and~~

Undertaking Letter to Eurex Clearing AG, in accordance with Number 2.5 below, by no later than on the last Business Day prior to the commencement of the relevant DMC Term (the "**Designation Cut-Off Time**").

~~(4) Designated DMC Members and Designated DMC Deputies must satisfy the following eligibility criteria evidenced by adequate information provided by the relevant (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 to Eurex Clearing AG 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 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.

**2.4.5 Contractual Penalty in case of unsuccessful Set-up of DMC**

- ~~(a) the designated individual must be an employee of the Participating DMC Member Institution and shall have agreed to participate in a DMC;~~
- ~~(b) the designated individual 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) the designated individual is not already a DMC Member or DMC Deputy (as defined in Number 2.4.1) in a DMC or a similar committee of another central counterparty or exchange;~~
- ~~(d) the designated individual will not be subject to conflicts of interest following its acceptance as a DMC Member or DMC Deputy or will not be unable to act as DMC Member or DMC Deputy for whatever reasons; and~~
- ~~(e) the designated individual must be available for prompt participations in person in a DMC Meeting within two hours after receipt of an Invitation (as defined in Number 3.1.1 below).~~

- ~~(5) If Eurex Clearing AG does not receive the Designation Notice by the Designation Cut-Off Time, the relevant Participating DMC Member Institution shall cease to be a Participating DMC Member Institution and another Clearing Member shall be selected by Eurex Clearing AG in accordance with Number 2.2.1 to nominate a Designated DMC Member and a Designated DMC Deputy for the DMC Term of the relevant DMC. Eurex Clearing AG shall notify the relevant Participating DMC Member Institution of its failure to give the Designation Notice.~~

~~2.3 Failure of the Participating DMC Member Institution to comply with nomination requirement~~

~~If a Participating DMC Member Institution fails to comply with its obligation to nominate a Designated DMC Member or a Designated DMC Deputy in accordance with Number 2.2.3 Paragraph (5) or Number 2.4.1 Paragraph (4), Eurex Clearing AG is entitled to exclude such Participating DMC Member Institution from the selection process according to Number 2.2 for the next three consecutive upcoming DMC Terms and to report such failure to the respective regulatory authorities. Irrespective of whether Eurex Clearing AG has suffered any damage, the Participating DMC Member Institution shall pay, in accordance with the instructions received from Eurex Clearing AG, (1) Subject to Paragraph (2), if the selection process pursuant to Number 2.4.2 to Number 2.4.4 does not lead to the selection of the Required Number of Participating DMC Member Institutions and the DMC Members are not selected by 1 January, each Eligible Clearing Member of the relevant Liquidation Group (subject to the following paragraph) shall (irrespective of whether Eurex Clearing AG has suffered any damage) pay a contractual penalty in the amount of EUR 1,000,000 (or the corresponding equivalent in another Clearing Currency as determined by Eurex Clearing AG). Any such penalty received by Eurex Clearing AG shall be added to and forthwith form part of the Reserve of Eurex Clearing AG in accordance with Chapter I, Part 1, Number 6.1.3. of the Clearing Conditions, in accordance with the instructions received from Eurex Clearing AG via e-mail or fax.~~

~~Eligible Clearing Members that (i) are Participating DMC Member Institutions for any other Liquidation Group in the respective DMC Term; (ii) have been Participating DMC Member Institutions in any of the previous two DMC Terms for that particular Liquidation Group or (iii) have volunteered or agreed to participate shall not be obliged to pay such contractual penalty. Any such penalty received by Eurex Clearing AG shall be added to and forthwith form part of the Dedicated Amount of Eurex Clearing AG in accordance with Chapter I Part 1 Number 6.1.3 of the Clearing Conditions.~~

- ~~(2) The right of Eurex Clearing AG to claim further damages shall remain unaffected in excess of the amount of the contractual penalty remains unaffected. Eurex Clearing AG shall, however, not claim any damages from the relevant Participating DMC Member Institution, if and to the extent that the Participating DMC Member Institution has paid such penalty.~~

## 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).

## 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 ~~2.4~~ Procedures for becoming a DMC Member or DMC Deputy

2.4.1 Validation and Acceptance by Eurex Clearing AG

- (1) Upon receipt of a Designation Notice, Eurex Clearing AG validates the Designated nominated DMC Member and the Designated DMC Deputy on the basis of the information given provided by the Participating DMC Member Institution to evidence compliance with the Membership Requirements DMC Member Eligibility Criteria. The Participating DMC Member Institution shall provide any further information or evidence of compliance with the Membership Requirements DMC Member Eligibility Criteria as reasonably requested by Eurex Clearing AG.
- (2) Upon acceptance of a Designated nominated DMC Member and Designated DMC Deputy by Eurex Clearing AG, such Designated nominated DMC Member shall be a DMC Member for the DMC Term of the relevant DMC be a DMC Member and such Designated DMC Deputy shall for the DMC Term of the relevant DMC be a deputy for such DMC Member (the "DMC Deputy"; where these DMC Rules refer to a DMC Member, such reference shall also or only refer to the DMC Deputy if and to the extent the context so requires).
- (3) Eurex Clearing AG shall only reject a Designated nominated DMC Member or a Designated DMC Deputy if the Designated nominated DMC Member or the Designated DMC Deputy does not satisfy the eligibility criteria pursuant to Number 2.2.3 Paragraph (4) DMC Member Eligibility Criteria. Eurex Clearing AG

shall notify the relevant Participating DMC Member Institution of such rejection and the reasons therefor in writing.

- (4) Upon a rejection of a ~~Designated~~ nominated DMC Member and/or a ~~Designated DMC Deputy~~ by Eurex Clearing AG, the relevant Participating DMC Member Institution may nominate a second individual as ~~Designated DMC Member or Designated DMC Deputy~~, as the case may be, in accordance with 2.2.3 Paragraph (2) 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 ~~second~~ further individual nominated as ~~Designated DMC Member or Designated DMC Deputy~~, as the case may be, 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 2.2.4 to nominate a Designated DMC Member and a Designated DMC Deputy for the DMC Term of the relevant DMC. Eurex Clearing AG shall notify the relevant Participating DMC Member Institution of its failure to nominate a ~~second Designated DMC Member or Designated DMC Deputy~~ 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 2.10, 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 DMC Member Institution on the same DMC in any previous DMC Term to be its DMC Member again on that DMC.

## 2.8 Contractual Penalty in case of Non-Compliance with Nomination Requirement

### 2.4.2 List of DMC Members

~~Eurex Clearing AG maintains a list of all DMC Members and DMC Deputies of the relevant DMC, including the relevant contact details (address, phone number, fax number, email address).~~

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

## 2.5 DMC Member Acknowledgement and Undertaking Letter

~~Eurex Clearing AG will prepare and provide to each Designated DMC Member and Designated DMC Deputy a form of letter (the "**DMC Rules Acknowledgement and Undertaking Letter**"), pursuant to which a Designated DMC Member or Designated DMC Deputy will inter alia~~

~~acknowledge and agree to its respective rights and responsibilities as described in the DMC Rules. Each Designated DMC Member and Designated DMC Deputy shall return to Eurex Clearing AG a properly completed and executed DMC Rules Acknowledgement and Undertaking Letter by the earlier of (a) five Business Days after becoming a Designated DMC Member or a Designated DMC Deputy and (b) the last Business Day prior to the commencement of the relevant DMC Term.~~

~~Failure by a Designated DMC Member or a Designated DMC Deputy to return a properly completed and executed DMC Rules Acknowledgement and Undertaking Letter by the deadline specified in this Number 2.5 will result in the relevant Designated DMC Member or a Designated DMC Deputy ceasing to be a Designated DMC Member or a Designated DMC Deputy and Eurex Clearing AG shall request the Participating DMC Member Institution to nominate a new DMC Member or DMC Deputy in accordance with Number 2.2.3.~~

## ~~2.6~~ Term of Membership in a DMC

~~The membership of a DMC Member or DMC Deputy in a DMC shall end on the last day of the calendar year in which it commenced (the "DMC Term"). Eurex Clearing AG is entitled to extend the DMC Term of a DMC if the DMC Matters for which a DMC Meeting has been convened are not resolved before the end of such DMC Term.~~

~~Nothing herein shall prevent the individual appointed as a DMC Member or DMC Deputy from serving in the same DMC for consecutive DMC Terms if duly appointed in accordance with this Number 2.2.~~

If a Participating DMC Member Institution fails to comply with its obligation to nominate a DMC Member) in accordance with this Number 2, Eurex Clearing AG is entitled to exclude such Participating DMC Member Institution from the selection process for the next two (2) up-coming DMC Terms and to report such failure to the respective regulatory authorities.

Irrespective of whether Eurex Clearing AG has suffered any damage, the Participating DMC Member Institution shall pay, in accordance with the instructions received from Eurex Clearing AG via e-mail or fax, a contractual penalty in the amount of EUR 1,000,000 (or the corresponding equivalent in another Clearing Currency as determined by Eurex Clearing AG). Any such penalty received by Eurex Clearing AG shall be added to and forthwith form part of the Dedicated Amount of Eurex Clearing AG in accordance with Chapter I Part 1 Number 6.1.3 of the Clearing Conditions.

The right of Eurex Clearing AG to claim damages in excess of the amount of the contractual penalty remains unaffected. Eurex Clearing AG Clearing shall, however, not claim any damages from the relevant Participating DMC Member Institution, if and to the extent that the Participating DMC Member Institution has paid such penalty.

## ~~2.9~~ ~~2.7~~ Information Undertakings of Participating DMC Member Institutions

Each Participating DMC Member Institution shall inform Eurex Clearing AG without undue delay (i) if the relevant Participating DMC Member or DMC Deputy Institution becomes aware that its DMC Member no longer complies with the Membership Requirements 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 ~~or DMC Deputy~~ nominated by ~~affiliated~~ Participating DMC Member Institutions is ~~a DMC Member or DMC Deputy~~ which are Affiliates are DMC Members in the same DMC.

## **2.10** ~~2.8~~ Removal of DMC Members, Suspension of DMC Membership

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

### **2.10.1** ~~2.8.1~~ Resignation

A DMC Member ~~or DMC Deputy~~ 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 ~~or DMC Deputy~~.

### **2.10.2** ~~2.8.2~~ Automatic Removal

A DMC Member ~~or DMC Deputy~~ 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 ~~(or the affiliated Clearing Member in the case of Number 2.2.2 Paragraph (3))~~ which has nominated such DMC Member ~~or DMC Deputy~~ or (ii) ceasing to be an employee of the Participating DMC Member Institution or of an Affiliate.

### **2.10.3** ~~2.8.3~~ 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 ~~and one DMC Deputy~~.

### **2.10.4** ~~2.8.4~~ Removal by Eurex Clearing AG

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

- (1) the DMC Member ~~or DMC Deputy~~ fails to participate in ~~at least two~~ one DMC ~~Meetings~~ Meeting without reasonable excuse, or
- (2) the DMC Member ~~or DMC Deputy~~ fails to comply with its ~~duties~~ under 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



- (3) the DMC Member ~~or DMC Deputy~~ no longer complies with the ~~eligibility criteria under Number 2.2.3 Paragraph either of the DMC Member Eligibility Criteria (4a) or (c) through (ef).~~

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*).

#### **2.10.5** ~~2.8.5~~ Removal by Participating DMC Member Institution

A Participating DMC Member Institutions are Institution is only entitled to remove the DMC Member ~~or DMC Deputy~~ 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.

#### **2.10.6** ~~2.8.6~~ Suspension of Membership in a DMC

A ~~Eurex Clearing AG may suspend with immediate effect a~~ DMC Member ~~or DMC Deputy~~ shall be suspended from its capacity as DMC Member ~~or DMC Deputy~~ (i) upon the occurrence of a Termination Event in relation to the Participating DMC Member Institution (or the affiliated Clearing Member in the case of Number 2.2.2 Paragraph (2)) which has nominated such DMC Member or DMC Deputy, 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*).

### **2.11** Request to exercise Direction Right

Eurex Clearing AG may prior to exercising its rights pursuant to Number 2.10.4 Sentence 2 or Number 2.10.6 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.

### **2.12** 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~~ 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.

### 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 ~~given in the DMC Rules Acknowledgement and Undertaking Letter provided in the Designation Notice, or notified under Number 5.2.2,~~ and addressed to such DMC Member personally. Invitations ~~may~~ 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 ~~determines~~ considers appropriate to discuss the envisaged DMC Matters ~~in consideration of 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 ~~determines~~ deems appropriate ~~with respect to~~ 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

~~DMC Members must participate~~ 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 who are Member is unable to attend a DMC Meeting must provide it provides evidence to the DMC Secretary of their 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

~~The relevant DMC Deputy shall attend the DMC Meeting if the DMC Member does not attend for whatever reason. DMC Deputies who are~~ (4) if the DMC Deputy is

unable to attend such DMC Meeting ~~must provide~~ it provides evidence to the DMC Secretary of ~~their~~ 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 ~~Designated~~ DMC Members for a respective DMC and a respective DMC Term have been appointed, these ~~Designated~~ DMC Members shall, upon notification of Eurex Clearing AG, appoint a ~~Designated~~ 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 ~~do not~~ have the right to replace the Chairman or Deputy Chairman by Majority ~~Vote~~ 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 ~~during a DMC Meeting and general undertakings~~

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 ~~Meeting~~ Meetings**

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

- (1) Eurex Clearing AG may invite any ~~outside~~ external counsel or other ~~outside~~ 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.

~~The relevant~~ Each Participating DMC Member ~~is obliged~~ Institution shall instruct its Participating DMC Member to always inform ~~contractual counterparties or (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 (*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 ~~qualify as "hired-out" employees (*überlassene Arbeitnehmer*) and act under a mandate (*Auftrag*) of Eurex Clearing AG in their capacity as DMC Members.~~

### 4.2 Direction Rights

~~Eurex Clearing AG is authorised to~~ Each Participating Member Institution shall instruct the its DMC Members to follow the instructions of Eurex Clearing AG 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 ~~as if the DMC Member would be an employee of Eurex Clearing AG.~~

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 ~~is not allowed to exercise~~ 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 2.11.

## 5 General Duties of DMC Members

### 5.1 Duty of Care

~~When acting as a DMC Member pursuant to the DMC Rules, the relevant individual shall be obliged vis-à-vis Eurex Clearing AG to comply with the general duties of care and loyalty of an employee with regard to its employer. The DMC Member shall~~ 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

Each The Participating DMC Member shall 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** Each DMC Member shall promptly inform Eurex Clearing AG of any change of its contact details provided to Eurex Clearing AG.

## **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** **6Governing Law; Place of Jurisdiction**

**7.1** ~~6.1~~ 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** ~~6.2~~ 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.

**7.3** ~~6.3~~ Exclusive place of jurisdiction for all disputes arising out of, or in connection with, these DMC Rules is Frankfurt am Main.

## **8** **7Amendments**

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)).

\*\*\*\*\*

CHANGES ARE MARKED AS FOLLOWS:

AMENDMENTS ARE UNDERLINED

DELETIONS ARE CROSSED OUT

\*\*\*\*\*

**Appendix 5 to the Clearing Conditions: Agreement for the Participation in a Default Management Committee**

# **Agreement for the Participation in a Default Management Committee**

between

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Clearing Member

and

Eurex Clearing AG, Frankfurt/Main.

**Clearing Conditions for Eurex Clearing AG**

This agreement for the Participation in a Default Management Committee (the "**Agreement**") is dated \_\_\_\_\_ and entered into

**BETWEEN:**

(1) \_\_\_\_\_  
(legal name)  
 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 on \_\_\_\_\_ (the "**Clearing Agreement**") which incorporates Eurex Clearing AG's clearing conditions, as amended from time to time (the "**Clearing Conditions**").
- (B) Eurex Clearing AG maintains a default management process to reduce the risks following a default by a Clearing Member and the occurrence of a Termination Event resulting in a Termination and the calculation of one or more Difference Claims, as described in the Clearing Conditions, ~~and~~ Eurex Clearing AG establishes default management committees (each a "**DMC**") for the purpose of advising and assisting the Executive Board of Eurex Clearing AG with respect to the consequences of a Termination and all other matters specified in the Clearing Conditions, as further set out in Chapter I Part 1 Number 7.5 of the Clearing Conditions.
- (C) Each DMC is governed by the rules set forth in the default management committee rules ~~(the "**DMC Rules**")~~, ~~as~~ and published by Eurex Clearing AG on its website www.eurexclearing.com; ~~(the "**DMC Rules**").~~ (the "**DMC Rules**").
- (D) Each DMC consists of individuals generally nominated by certain Clearing Members that are selected in accordance with the DMC Rules (each a "**Participating DMC Member Institution**") ~~or by an Affiliate.~~



- (E) Eurex Clearing AG may invite any ~~outside external~~ counsel or other ~~outside external~~ experts or may invite Non-Clearing Members, Registered Customers or clients of a Clearing Member to designate one of its employees to attend one or more DMC Meetings.
- (F) When selected as Participating DMC Member Institution ~~in accordance with~~ pursuant to the DMC Rules, the Clearing Member is obliged to nominate one of its employees or an employee of an Affiliate as DMC Member and another one of its employees or another employee of an Affiliate as DMC Deputy; ~~pursuant to the DMC Rules~~. The Participating DMC Member Institution is obliged to ~~temporarily assign~~ make the nominated DMC Member (or its DMC Deputy) available to Eurex Clearing AG for the purposes set out in the DMC Rules and ~~in accordance with~~ pursuant to this Agreement.

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

## 1 Definitions and Interpretation

Unless the context requires otherwise, capitalised terms used in this Agreement shall have the meaning given to them in the DMC Rules and the Clearing Conditions. ~~This Agreement incorporates by reference~~ The DMC Rules and the Clearing Conditions form an integral part of this Agreement.

## 2 Obligation to nominate a DMC Member and its DMC Deputy

Whenever ~~the Clearing Member has been selected by Eurex Clearing AG~~ as a Participating DMC Member Institution pursuant to the DMC Rules with respect to a DMC, the Clearing Member is obliged pursuant to the DMC Rules to nominate one of its employees or an employee of an Affiliate as a ~~potential~~ DMC Member and ~~one~~ another of its employees or an employee of an Affiliate as its ~~potential~~ DMC Deputy for a participation in the relevant DMC ~~in accordance with~~ pursuant to the requirements of ~~and as~~ further set out in the DMC Rules.

## 3 Assignment of DMC Member or DMC Deputy

- 3.1 The Clearing Member and Eurex Clearing AG agree, that upon acceptance by Eurex Clearing AG of the Clearing Member's nominated employee or the employee of its Affiliate as "DMC Member" or "DMC Deputy" in accordance with the DMC Rules ~~(the "Assignee", which term shall include the DMC Deputy as nominated by~~ the Clearing Member from time to time), ~~the Clearing Member shall be~~ is obliged, for the duration of the DMC Term, to make ~~the relevant Assignee~~ its DMC Member or DMC Deputy available to Eurex Clearing AG for the duration of the DMC Terms for the participation in all DMC Meetings convened from time to time in accordance with the DMC Rules and for all other matters requested by Eurex Clearing AG in connection with the DMC Matters provided for in the DMC Rules (each such meeting or ~~attendance on~~ activity in respect of such other matters, ~~an~~ **"Assignment" (Arbeitnehmerüberlassung)** a "DMC Activity").

1.1.1—Subject to compliance with mandatory laws applicable to the Clearing Member and ~~the Assignee~~ its DMC Member or DMC Deputy, the Clearing Member shall not prevent or restrict but support and enable ~~the Assignee~~ its DMC Member or its DMC Deputy to perform ~~its~~ their duties in their respective capacities as a DMC Member or

DMC Deputy. The Clearing Member shall procure, if the DMC Member or the DMC Deputy is employed by an Affiliate that such Affiliate does not prevent or restrict but supports and

~~1.1.2~~ arrange for the Assignee enables its DMC Member or its DMC Deputy to execute and to send to Eurex Clearing AG without undue delay the signed Acknowledgment and Undertaking Letter set out in the **Schedule** to this Agreement.

~~3.2~~ The Clearing Member hereby acknowledges the acknowledgements, agreements and undertakings given by the Assignee perform their duties in the Acknowledgment and Undertaking Letter their respective capacities as DMC Member or DMC Deputy.

~~3.3~~ The Assignee DMC Member or its DMC Deputy will be assigned made available to Eurex Clearing AG for the duration of each Assignment DMC Activity (including travelling times and breaks). The duration of each Assignment DMC Activity will be determined by Eurex Clearing AG.

~~3.4~~ Each Assignment DMC Activity of the Assignee DMC Member or its DMC Deputy is personal.

~~3.5~~ Eurex Clearing AG is aware of and accepts that the Assignee DMC Member or its DMC Deputy will not be assigned made available for periods of permitted absences from work (e.g. holiday, gardening leave, sickness or maternity leave) or post termination of the employment contract relationship with the Clearing Member or an Affiliate. If the DMC Member or the DMC Deputy has neither an employment relationship with the Clearing Member. The relevant individual shall cease to be an Assignee upon termination of the employment contract with the Clearing Member. Upon any such termination becoming effective nor with its Affiliate, the Clearing Member shall be obliged to notify Eurex Clearing AG thereof and nominate a replacement DMC Member in accordance with or a replacement DMC Deputy pursuant to Clause 22 above.

~~3.6~~ The Clearing Member shall use reasonable endeavours to ensure that At the Assignee is reliable (*zuverlässig*) for fulfilling its duties as time when the Clearing Member nominates a DMC Member or a DMC Deputy, in particular the Clearing Member shall use reasonable endeavours to ensure represent (*zusichern*) that it has no knowledge or information that the Assignee may suggest that the DMC Member and its DMC Deputy nominated by it cannot be relied upon (*zuverlässig*) to fulfil their respective duties or that the DMC Member or DMC Deputy is or was not subject to any criminal proceedings or any regulatory proceedings. If the DMC Member or the DMC Deputy is employed by an Affiliate the Clearing Member shall, prior to making such representation, enquire with such Affiliate whether such representation can reasonably be made.

~~3.7~~ Subject to Clause 6.5, the Clearing Member or its Affiliate shall, to the extent legally possible, not be liable, neither for breach of contract, nor in tort or on any other basis for any acts or omissions by the Assignee DMC Member and its DMC Deputy in connection with an Assignment a DMC Activity. In connection with any Assignment DMC Activity, the

~~Assignee is~~ DMC Member and its DMC Deputy are neither an authorised agent (*Bevollmächtigter*) nor a vicarious agent (*Erfüllungsgehilfe*) of the Clearing Member or its Affiliate.

- 3.8** The liability of the Clearing Member under and in connection with this Agreement shall, ~~except in the case of a wrongful selection (*fehlerhafte Auswahl*) of the Assignee~~, be limited to wilful misconduct (*Vorsatz*) and gross negligence (*grobe Fahrlässigkeit*).

#### **4 Remuneration**

Eurex Clearing AG will neither reimburse the Clearing Member, ~~nor, if the Clearing Member is not the employer of the DMC Member and/or the DMC Deputy, the relevant Affiliate for the personnel costs of the Assignee~~ DMC Member or the DMC Deputy nor pay the ~~Assignee~~ DMC Member or the DMC Deputy a remuneration. The Clearing Member will continue to pay the ~~Assignee~~ DMC Member or the DMC Deputy nominated by it its usual remuneration for the duration of ~~an Assignment~~ any DMC Activity and will reimburse any costs incurred by the ~~Assignee~~ DMC Member or the DMC Deputy in connection with ~~an Assignment~~ a DMC Activity, or shall procure, if the DMC Member or the DMC Deputy is employed by an Affiliate, that such company continues to pay its usual remuneration and reimburses any costs.

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

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

**5.1.1** ~~Eurex Clearing AG shall be entitled to the employer direction rights with respect to the Assignee and the Clearing Member will not~~ may only exercise any employer direction rights vis-à-vis the DMC Member or the DMC Deputy nominated by it upon request by Eurex Clearing AG and if the DMC Member or the DMC Deputy is employed by an Affiliate, the Clearing Member shall procure that such company only exercises its direction rights vis-à-vis the Assignee DMC Member or the DMC Deputy upon request by Eurex Clearing AG, provided, however, that the ~~Assignee will continue to remain~~ DMC Member or the DMC Deputy remains employed by the Clearing Member, or Affiliate (as applicable).

**5.1.2** ~~the Assignee~~ the DMC Member or the DMC Deputy (as applicable) shall be independent in exercising its duties as DMC Member or DMC Deputy and it shall not be prevented by the Clearing Member (or, if the DMC Member or the DMC Deputy is employed by an Affiliate, such Affiliate) from complying with its duty of independence ~~according to its employment contract~~,

**5.1.3** the ~~Assignee~~ DMC Member or the DMC Deputy (as applicable) shall neither be obliged nor entitled to report to the Clearing Member, and, if the DMC Member or the DMC Deputy is employed by an Affiliate, to report to such Affiliate, and

**5.1.4** during a DMC Activity with respect to any DMC Member or the DMC Deputy only the compliance rules and restrictions as well as all other code of conduct and organisational requirements applicable to employees of the Clearing Member shall not apply to the Assignee if and to the extent they are contrary to the Assignee's Compliance Obligations

~~set forth in the DMC Rules of Eurex Clearing AG as well as the DMC Rules and the Clearing Conditions shall apply.~~

- 5.2** Any participation of the Assignee ~~DMC Member or the DMC Deputy in Assignments~~ DMC Activities shall be supervised by Eurex Clearing AG.

#### **1** ~~Right of Reimbursement~~

~~If claims are asserted against Eurex Clearing AG by the competent collection authority pursuant to section 28 e para. 2 of the German Social Insurance Code IV (*Sozialgesetzbuch IV – SGB IV*) and/or similar provisions under other laws, Eurex Clearing AG shall be indemnified by the Clearing Member in the amount of the receivable asserted by the respective collection authority.~~

#### **6** Confidentiality

- 6.1** ~~The~~ Except as expressly contemplated otherwise in this Agreement or as required by applicable law, court order, regulation or as required or requested by any regulatory, self-regulatory or supervisory authority having appropriate jurisdiction, the Clearing Member is obliged to maintain confidentiality regarding any current or past Assignment agrees (i) not to disclose any Confidential Information (as defined below) and any information received from the Assignee with respect to all aspects of any current or past Assignment in which the Assignee is or was involved, including any discussions, deliberations, proceedings, or results of any votes, or any determinations or acts made under the DMC Rules, and shall not (ii) not to use any such Confidential Information for its own benefit or the benefit of any third party.

- 6.16.2** The Clearing Member represents and warrants by way of an independent guarantee and irrespective of fault (*selbständiges, verschuldensunabhängiges Garantieversprechen*) that the DMC Member or the DMC Deputy and, if the DMC Member or the DMC Deputy is employed by an Affiliate, such Affiliate is obliged to keep confidentiality vis-a-vis all third parties with respect to Confidential Information (as defined below). The Clearing Member undertakes to keep up this confidentiality obligation does not apply if (i) the Clearing Member is otherwise required by applicable law, court order, regulation or by any supervisory authority to disclose information as described above or (ii) such confidential information is part of the public domain without any breach of this Agreement by the Clearing Member (and procures that such confidentiality obligation is kept up) until the earlier of two years after (i) the end of the employment relationship with the DMC Member or the DMC Deputy or the employment relationship of the Affiliate with the DMC Member or the DMC Deputy, (ii) the termination of this Agreement and (iii) the DMC Term with respect to which the Confidential Information was obtained during the respective DMC Activity.

- 6.26.3** The Clearing Member shall direct (or, if the Clearing Member is not interfere with the Assignee's obligation, as set out in the form of the Acknowledgment and Undertaking Letter in the Schedule hereto, (i) to maintain absolute confidentiality regarding any and all information relating to Eurex Clearing AG and any and all business and trade secrets of

~~Eurex~~the employer of the DMC Member or its DMC Deputy shall use reasonable endeavours to ensure that its employer directs) the DMC Member or the DMC Deputy (i) not to disclose any Confidential Information (as defined below) to the Clearing AG both towards Member (and, if different to the Clearing Member and towards third parties, (ii) to maintain absolute confidentiality with respect to all aspects of any DMC Matters, the employer of any current or past Assignment in which the Assignee was involved, including any discussions, deliberations, proceedings, or results of any votes, or any determinations or acts made under the DMC Rules (the "**Confidential Information**") both towards the Clearing Member the DMC Member and/or the DMC Deputy) and towards to third parties and (iii) ~~ii~~ not to use any Confidential Information pursuant to item (i) or (ii) for its own benefit or the benefit of the Clearing Member (and, if different to the Clearing Member, the employer of the DMC Member and/or the DMC Deputy) or for the benefit of any third parties.

~~6.36.4~~ The Clearing Member's obligation under Clause 6.17.4 above shall continue to apply until the earlier of two years after (i) ~~two years after~~ the end of the employment relationship with the Assignee and (ii) ~~two years after termination of this Agreement~~ DMC Member and/or the DMC Deputy nominated by the Clearing Member or the employment relationship of its Affiliate with the DMC Member and/or the DMC Deputy, (ii) the termination of this Agreement and (iii) the DMC Term with respect to which the Confidential Information was obtained during the respective DMC Activity.

**6.5** The Clearing Member shall indemnify Eurex Clearing AG for all damages resulting from any breach by the DMC Member or the DMC Deputy of the confidentiality obligation set forth in Clause 6.2 and the direction set forth in Clause 6.3.

~~6.46.6~~ Subject to compliance with the terms of this Clause 6.7, the Clearing Member is not prevented from carrying out any transactions in respect of investments, provided that the Clearing Member does not make use of any Confidential Information obtained from the Assignee DMC Member or the DMC Deputy nominated by it in breach of the Assignee's DMC Member's or the DMC Deputy's confidentiality obligations.

**6.7** "**Confidential Information**" means (a) any and all business and trade secrets of Eurex Clearing AG obtained from the DMC or in connection therewith, and (b) all matters arising out of the DMC or any current or past DMC Activity in which the DMC Member or the DMC Deputy is or was involved, including any discussions, deliberations, proceedings, or results of any votes, or any determinations or acts made under the DMC Rules except for information which

- (a) is or becomes public information other than as a direct or indirect result of a breach (of which the DMC Member or the DMC Deputy is aware) of the confidentiality obligation in this Clause ~~6.1~~ Information; or
- (b) is identified in writing at the time of delivery as non-confidential by Eurex Clearing AG or any of its advisers; or
- (c) was already known to the DMC Member or the DMC Deputy before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is

lawfully obtained by such DMC Member or such DMC Deputy after that date, from a source which is, as far as that DMC Member or the DMC Deputy is aware, unconnected with Eurex Clearing AG and which, in either case, as far as that DMC Member or the DMC Deputy is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

## 7 Undertakings of the Clearing Member

The Clearing Member shall inform Eurex Clearing AG without undue delay of any developments, ~~including developments involving the Clearing Member and/or the Assignee, its Affiliate employing a DMC Member and/or its DMC Deputy~~ of which the Clearing Member has become aware and which ~~(i) may affect the ability or suitability of the Assignee to perform its duties~~ its obligations as a Participating DMC Member Institution or DMC Deputy or ~~(ii) may result in a breach of the DMC Rules.~~

The Clearing Member undertakes to remove its DMC Member and/or DMC Deputy from the DMC pursuant to Number 2.10.5 of the DMC Rules if it becomes aware of a development involving the DMC Member and/or its DMC Deputy which affects the ability or suitability of the DMC Member and/or DMC Deputy to perform its duties as such or results in a breach of the DMC Rules.

## 8 Term

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

## 9 Amendments

~~Number 17.2 of the General Eurex Clearing Provisions shall apply mutatis mutandis~~ AG reserves the right to amend this Agreement in accordance with Chapter I Part 1 Number 17.2 of the Clearing Conditions.

## 10 Governing Law; Jurisdiction, Place of Performance

### 10.1 Governing Law

10.1.1 This Agreement is governed by the substantive laws (*Sachrecht*), excluding German private international law, of the Federal Republic of Germany.

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

### 10.2 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 Agreement.

## **11 Severability Clause**

If any provision contained in this 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 Agreement.

**SIGNATURES  
to the Agreement**

---

(Place)

---

(Date)

---

(as Clearing Member)

---

Name:

---

Name:

Function:

Function:

**Eurex Clearing Aktiengesellschaft**

---

(Eurex Clearing AG)

---

Name:

---

Name:

Function:

Function:



**Schedule**  
**Form of Acknowledgment and Undertaking Letter**

~~[Letterhead of Assignee]~~

To:

Eurex Clearing AG  
~~- Member Services -~~  
Mergenthalerallee 61  
65760 Eschborn  
~~("Eurex Clearing AG")~~

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

~~("Clearing Member")~~

**Acknowledgment and Undertaking Letter ("Letter")**

Dear Sirs,

I refer to the Agreement for the Participation in a Default Management Committee between Eurex Clearing AG and the Clearing Member stated above dated \_\_\_\_\_ and to the default management committee rules dated \_\_\_\_\_ (the "**DMC Rules**"), a copy of which has been provided to me by the Clearing Member. The purpose of this letter is to acknowledge and to agree to the DMC Rules and to give the representations and undertakings set out herein.

**Clearing Conditions for Eurex Clearing AG**

~~Terms used and not otherwise defined in this Letter shall have the meanings ascribed to them in the DMC Rules.~~

~~I have been nominated by the Clearing Member as~~

~~Designated DMC Member,~~

~~Designated DMC Deputy~~

~~for the current DMC Term of the DMC with respect to the Liquidation Group(s)~~

~~**1 Acknowledgments and Agreements**~~

~~**1.1** I hereby acknowledge that I have received, read and understood the DMC Rules and agree to comply with the DMC Rules at all times.~~

~~**1.2** I hereby accept my appointment by Eurex Clearing AG as DMC Member / DMC Deputy pursuant to the DMC Rules for the current DMC Term and agree that I will not be an employee of Eurex Clearing AG. Thus, I will not receive any remuneration or cost compensation from Eurex Clearing AG.~~

~~**1 Undertakings**~~

~~For the period of any Assignment, I hereby undertake~~

~~**1.1** to comply with the duties and obligations set out in the DMC Rules;~~

~~**1.2** to follow the day-to-day instructions given by Eurex Clearing AG in relation to work performance or to be performed as a DMC Member/DMC Deputy and not to take instructions from the Clearing Member which relate to or have any connection with an Assignment or which reasonably may or may appear to prejudice my role as a DMC Member/DMC Deputy;~~

~~**1.3** to be independent in exercising my duties as DMC Member or DMC Deputy and to perform my work and take decisions in the best interest of a successful default management process of Eurex Clearing AG;~~

~~**1.4** to inform Eurex Clearing AG and the Clearing Member without undue delay in case there is any doubt of myself being fit and proper (*zuverlässig*) to fulfil my duties as DMC Member or~~

**Clearing Conditions for Eurex Clearing AG**

~~DMC Deputy, in particular if there are or were criminal proceedings or regulatory proceedings;~~

- ~~1.5 — not to, without any exceptions, purchase, sell and/or otherwise enter into any transaction regarding securities, stocks, bonds or other financial instruments during an Assignment for my Clearing Member and to comply with applicable insider trading rules;~~
- ~~1.6 — when assisting in the execution of DM Hedging Transactions or other legal declarations, not to hold myself out vis-à-vis third parties as having received a power of attorney from Eurex Clearing AG authorising me to enter into DM Hedging Transactions or to issue other legal declarations on behalf of Eurex Clearing AG, i.e. not to act as messenger ("*Bote*") of Eurex Clearing AG and not to 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 Transaction is executed;~~
- ~~1.7 — to report promptly any information received as messenger ("*Bote*") to Eurex Clearing AG;~~
- ~~1.8 — to observe, and comply with, the Clearing Conditions and all compliance rules and restrictions as well as all other code of conducts and organisational requirements applicable to employees of Eurex Clearing AG;~~
- ~~1.9 — to follow the compliance-related rules of conduct as set out in this Number 2.9 and, in particular,~~
- ~~1.9.1 — to comply with all applicable statutory requirements for the prevention of money laundering and terrorist financing;~~
- ~~1.9.2 — to keep the professional and the banking secrecy by refraining from disclosing confidential information of Eurex Clearing AG or its Clearing Members to unauthorised persons; exemptions from professional or banking secrecy are limited to those exceptional cases as specifically defined by applicable law, such as — in particular — requests from supervisory or judicial authorities;~~
- ~~1.9.3 — to report incidences of fraud or so-called potentially fraudulent conduct to Eurex Clearing AG (group compliance department);~~
- ~~1.9.4 — to endeavour in order to avoid or resolve conflicts of interest, by ensuring that my decisions will always be guided by principles of objectivity and integrity and be made in the best interest of Eurex Clearing AG and its Clearing Members, and shall not be influenced by my personal interest; in cases of a conflict of interest or in cases of uncertainty, whether such conflict of interest actually exists, I understand that I may contact Eurex Clearing AG (group compliance department) at any time, which will then provide guidance regarding a potential conflict of interest;~~

**Clearing Conditions for Eurex Clearing AG**

~~1.9.5~~ — not to accept of any gifts or other benefits offered to me, unless explicitly authorized by Eurex Clearing AG (group compliance department); and

~~1.9.6~~ — to appreciate the importance of personal data; I understand and appreciate that the protection of privacy in the context of processing personal data is an important concern to which I will pay special attention and that I will collect, process and use personal data in accordance with applicable national data protection regulations.

~~1.10~~ — to (i) maintain absolute confidentiality regarding any and all information relating to Eurex Clearing AG and any and all business and trade secrets of Eurex Clearing AG both towards the Clearing Member and towards third parties, (ii) maintain absolute confidentiality with respect to all aspects of any DMC Matters of any current or past Assignment in which I was involved, including any discussions, deliberations, proceedings, or results of any votes, or any determinations or acts made under the DMC Rules (the "**Confidential Information**") both towards the Clearing Member and towards third parties, and (iii) not to use any Confidential Information or business and trade secrets of Eurex Clearing AG for my own benefit or the benefit of the Clearing Member or the benefit of third parties;

~~this confidentiality obligation does not apply if (i) I am otherwise required by applicable law, court order, regulation or by any supervisory authority to disclose such Confidential Information or (ii) such Confidential Information is part of the public domain without any breach of this Letter by me; this confidentiality obligation does further not prevent me from disclosing to the Clearing Member the mere fact of my attendance to an Assignment or the requirement to attend an Assignment;~~

~~this undertaking applies until the earlier of (i) two years after the termination of my appointment as DMC Member / DMC Deputy, and (ii) two years after the end of my employment relationship with the Clearing Member, and~~

~~1.11~~ — to share only business and trade secrets and/or Confidential Information gained during my Assignment or in connection with being a DMC Member or DMC Deputy with employees of Eurex Clearing AG, other DMC Members and (to the extent necessary) DMC Deputies or other persons expressly named for this purpose by Eurex Clearing AG.

**2 — Limitation of liability**

~~My liability shall be limited to wilful misconduct (*vorsätzlich*) and gross negligence (*grobe Fahrlässigkeit*) and shall further be limited by the principles applicable to employee liability which shall apply by way of analogy.~~

**3 — Representation and Warranty**

~~I hereby represent and warrant by way of an independent guarantee and irrespective of fault (*selbständiges, vorschuldensunabhängiges Garantievorsprechen*) to Eurex Clearing~~

**Clearing Conditions for Eurex Clearing AG**

~~AG that, in connection with this Letter and all matters related thereto, I comply and will comply with the standards of the Federal Data Protection Act (*Bundesdatenschutzgesetz*) and/or similar laws in other jurisdictions.~~

**4 ~~Governing Law~~**

~~This Letter is governed by the substantive laws (Sachrecht), excluding German private international law, of the Federal Republic of Germany.~~

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

~~Yours faithfully,~~

## Clearing Conditions for Eurex Clearing AG

\*\*\*\*\*

CHANGES ARE MARKED AS FOLLOWS:

AMENDMENTS ARE UNDERLINED

DELETIONS ARE CROSSED OUT

\*\*\*\*\*

### Chapter I General Provisions

[...]

#### Part 1 General Clearing Provisions

[...]

#### 2. Clearing Members

[...]

##### 2.1.4 Rejection and Termination of Clearing Licenses

- (1) Eurex Clearing AG may reject to grant a Clearing Licence, if Eurex Clearing AG, based on its evaluation, determines that this is necessary to avoid or mitigate risks for Eurex Clearing AG. In respect of the evaluation pursuant to sentence 1 Eurex Clearing AG will take the following criteria into account: (i) credit ratings by generally accepted rating agencies relating to the applicant, (ii) Eurex Clearing AG's credit ratings relating to the applicant, (iii) market indications relating to the applicant (e.g. share price and CDS spreads), (iv) a state guarantee or state support relating to the applicant, and (v) the type of Clearing Licence applied for.

[...]

## Clearing Conditions for Eurex Clearing AG

\*\*\*\*\*

CHANGES ARE MARKED AS FOLLOWS:

AMENDMENTS ARE UNDERLINED

DELETIONS ARE CROSSED OUT

\*\*\*\*\*

### Chapter I

#### General Provisions

[...]

#### Part 1

#### General Clearing Provisions

[...]

#### 6. Clearing Funds

[...]

##### 6.1.3 Eurex Clearing AG's dedicated own resources and Contributions of Link Clearing Houses to the Clearing Funds

(1) Eurex Clearing AG will dedicate own resources for the relevant Clearing Fund (each a "**Dedicated Amount**") to be used if a Termination Date occurs with respect to one or more Clearing Members. The Dedicated Amounts will be published on the Eurex Clearing AG website ([www.eurexclearing.com](http://www.eurexclearing.com)). Such Dedicated Amounts shall be allocated to the relevant Clearing Fund as follows:

- (a) Eurex Clearing AG will determine (i) the aggregate Additional Margin requirement, Spread Margin requirement and Initial Margin requirement ~~total Margin Requirements~~ (i) of all Clearing Members with respect to which no Termination Date has occurred (the "**Non-Affected Clearing Members**") and which are holding (one or several) Clearing License(s) pursuant to Chapters II to VII, VIII Part 3 and (subject to the special regulations in Chapter IX) pursuant to Chapter IX and (ii) the aggregate Next Day Margin requirement of all Non-Affected Clearing Members which are holding a Clearing License

## Clearing Conditions for Eurex Clearing AG

- pursuant to Chapter VIII Part 2 (each a "**Clearing Fund Related ~~Total~~ Forward Looking Margin Requirement**");
- (b) Eurex Clearing AG will calculate the sum of all ~~total~~ Margin Requirements determined pursuant to Paragraph (1)(a)(i) and (ii) above (the "**Overall Forward Looking Margin Requirement**"); and
- (c) Eurex Clearing AG will use the Dedicated Amounts by allocating them to the General Clearing Fund and the Credit Clearing Fund (Chapter VIII Part 2 Number 2.1.9) in accordance with the ratio of the relevant Clearing Fund Related ~~Total~~ Forward Looking Margin Requirement over the Overall Forward Looking Margin Requirement.
- (2) Link Clearing Houses are not obliged to contribute to the Clearing Funds, unless otherwise provided for in the relevant Clearing Link Agreement.

[...]