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MODIFICATIONS WITHIN THE FOLLOWING CHAPTERS I to VII

OF THE CLEARING CONDITIONS ARE MARKED AS FOLLOWS:

- AMENDMENTS ARE UNDERLINED
- DELETIONS ARE STRIKED THROUGH

CHAPTER VIII OF THE CLEARING CONDITIONS IS NEW AND NOT MARKED:

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## Preamble

Eurex Clearing AG with registered office in Frankfurt am Main shall operate a system to ensure the performance of transactions in securities, rights and derivatives and transactions with regard to emission rights on the markets Eurex Deutschland, Eurex Zürich, Eurex Bonds, Eurex Repo, Frankfurt Stock Exchange, Irish Stock Exchange and European Energy Exchange (hereinafter referred to as "Market" or "Trading Platform").

Moreover, the system operated by Eurex Clearing AG ensures the performance of transactions which have been traded and privately negotiated directly between two parties, particularly off-exchange ("OTC") in derivatives ("OTC Derivatives Transactions"), e. g. credit default swaps ("OTC Credit Default Swaps").

In relation to the transactions concluded on certain markets, Eurex Clearing AG performs clearing services for its Clearing Members in cooperation with another clearing house (Link Clearing House) on the basis of a separate agreement (the "Clearing Link Agreement").

The performance and the maintenance of margin in respect of all transactions (clearing) shall be carried out subject to the following General Terms and Conditions (Clearing Conditions). For the case that insolvency proceedings have been filed against a Clearing Member pursuant to Sections 45 et seqq German Banking Act or if such insolvency proceedings have been applied for, the Clearing Conditions are a framework agreement in terms of Section 104 Paragraph 2 Clause 3 of the German Insolvency Regulations (Insolvenzenordnung). Actions pursuant to Sections 45 et seqq German Banking Act and the application of insolvency proceedings shall be identical to respective actions and proceedings pursuant to the law of the Clearing Member's country of its offices.

## Chapter I General Provisions

### Part 1 General Rules

#### 1.1. Scope of Application, Definitions

- (1) The rights and obligations resulting from Eurex Clearing AG's clearing of securities, rights and derivatives transactions and transactions with regard to emission rights shall be governed by the law of the Federal Republic of Germany, insofar as no contrary provisions are expressly stated to apply.
- (2) The Clearing Conditions, in their respective and most recent German version, shall be binding on all Clearing Members of Eurex Clearing AG. For Link Clearing Houses, the provisions of the Clearing Link Agreements which are to be concluded between Eurex Clearing AG and the Link Clearing Houses take precedence over these Clearing Conditions which are supplementary.
- (3) For each Market, a respective clearing license is required in order to participate in Eurex Clearing AG's clearing of transactions involving securities, rights and derivatives and transactions with regard to emission rights. The license can be granted if the relevant prerequisites listed in Chapter I and for the respective Market in the following Chapters of the Clearing Conditions are fulfilled. Sentences 1 and 2 apply to the participation in the clearing of OTC Derivatives Transactions, pursuant to Chapter VIII which requires a respective clearing license, mutatis mutandis.
- (4) The authorization of a Link Clearing House to participate in the clearing procedure of Eurex Clearing AG shall be ruled in the Clearing Link Agreement with Eurex Clearing AG.
- (5) The terms "Clearing-Member", "General-Clearing Member" or "Direct-Clearing Member" refer to institutes which, by possessing an according clearing license, participate in the clearing process of securities, rights and derivatives transactions or transactions with regard to emission rights provided by Eurex Clearing AG concluded in Markets listed in the following Chapters. The term "Clearing Member" includes General and Direct Clearing Members.
- (6) Transactions in Futures contracts and Options contracts pursuant to Chapter II concluded at Eurex Deutschland and Eurex Zürich ("Eurex Exchanges"), including Eurex contracts concluded off-exchange and Eurex contracts concluded off-exchange whose specifications deviate from the contract specifications of Eurex contracts according to the provisions of Eurex Clearing AG, shall hereinafter be referred to as "Eurex transactions".
- (7) Transactions in Futures contracts and Options contracts concluded at the European Energy Exchange ("EEX") pursuant to Chapter VII and EEX contracts concluded off-exchange shall hereinafter be referred to as "EEX transactions".

- (8) Business days of Eurex Clearing AG are
- a) for the Clearing of derivatives transactions pursuant to Chapter II: the Exchange days determined by the Boards of Management of the Eurex exchanges;
  - b) for the Clearing of Eurex Bonds transactions pursuant to Chapter III: the trading days determined by the Management Board of Eurex Bonds;
  - c) for the Clearing of Eurex Repo transactions pursuant to Chapter IV: the trading days determined by the Boards of Management of Eurex Repo;
  - d) for the Clearing of FWB transactions pursuant to Chapter V: the Exchange days determined by the Management Board of FWB;
  - e) for the Clearing of ISE transactions pursuant to Chapter VI: the days determined by Eurex Clearing AG on which a clearing of ISE transactions is carried out;
  - f) for the Clearing of EEX transactions pursuant to Chapter VII: the days determined by the Management Board of EEX.
  - g) for the Clearing of OTC Derivatives Transactions pursuant to Chapter VIII: the days determined by the Management Board of Eurex Clearing AG.

## 1.2 Conclusion of Transactions, Assignment of Securities, Rights and Emission Rights

### 1.2.1 Conclusion of Transactions

- (1) The transactions resulting from the matching of orders and quotes ("Matching") of the Clearing Member in the systems of the Markets whose clearing is carried out by Eurex Clearing AG according to the following Chapters, shall only be concluded between Eurex Clearing AG and a Clearing Member. These transactions of the Clearing Member ("CM Transactions") shall be booked on accounts for CM Transactions kept by Eurex Clearing AG for the Clearing Member pursuant to Chapter I Number 4.1.
- (2) If a Trading Participant of a Market pursuant to Paragraph 1 is not itself authorised to engage in Clearing activities (a "Non-Clearing Member"), its transactions may only be effected through the General Clearing Member (Number 1.7 Paragraph 1) or an affiliated Direct Clearing Member (Number 1.7 Paragraph 2) through which its respective transactions are settled.

Whenever an order or quote entered into the systems of the Markets pursuant to Paragraph 1 by a Non-Clearing Member is matched with another order or quote, a transaction takes place between such Non-Clearing Member and the General Clearing Member or the Direct Clearing Member, and a corresponding transaction simultaneously takes place between the General Clearing Member or the Direct Clearing Member and Eurex Clearing AG.

- (3) Insofar as Eurex Clearing AG – in cooperation with a Link Clearing House – conducts the clearing of transactions on basis of a Clearing Link Agreement, the following – in deviation of

Paragraph 1 and 2 - applies with regard to such transactions.

Whenever an order or quote entered into the trading system of a market named in the following Chapters, by a Non-Clearing Member of the Link Clearing House is matched with another order or quote, transactions between the Clearing Member of the Link Clearing House and the Link Clearing House, as well as an identical transaction between the Link Clearing House and Eurex Clearing AG takes place.

Whenever an order or quote entered into the system of a Market named in the following Chapters by a Non-Clearing Member is matched with another order or quote, an identical transaction takes place between the Non-Clearing Member of the Link Clearing House and the Clearing Member of the Link Clearing House, in addition to the transactions taking place pursuant to Clause 2.

- (4) For the clearing of transactions pursuant to Chapter VII of these Clearing Conditions, Eurex Clearing AG uses services of a Link Clearing House named in Chapter VII, on basis of a Link Clearing Agreement. In case, transaction conclusions between Eurex Clearing AG and [European Commodity Clearing AG \("ECC"\)](#), and with Eurex Clearing AG, pursuant to Paragraph 1 to 3, only if at least one trading participant of EEX ("EEX trading participant"), as Clearing Member of Eurex Clearing AG or under inclusion of such Clearing Member or Link Clearing House pursuant to Paragraph 3, has the clearing of its EEX transactions conducted by Eurex Clearing AG.
- (5) [For the clearing of OTC-Derivatives Transactions pursuant to Chapter VIII, the rules on the conclusion of transactions between Eurex Clearing AG and the relevant Clearing Members and between the Clearing Members and their Registered Customers \(Chapter VIII Part 1 Paragraph 2\) by way of novation are set out in Chapter VIII Sub-Part 1.2.](#)
- (6) [With regard to the transactions included in the clearing, claims of civil law of the business parties – such claims referring to the cancellation of such transactions – in particular an appeal due to mistakes, other appeal rights and claims of civil law requiring an adjustment of the content of such transactions, are excluded. In case of cancellation or price correction or assumption of such transactions, mutual claims for damages of the parties are excluded. Sentence 1 does not apply to the right to request to cancel CCP Transactions pursuant to Chapter VIII Number 1.2.5 of the Clearing Conditions.](#)

[...]

## 1.4 Setoff

Unless otherwise provided in the following chapters of the Clearing Conditions, Eurex Clearing AG shall set off any claims vis-à-vis the Clearing Members according to the procedure described in the following. The setoff of partial claims shall be admitted.

### 1.4.1 Setoff Procedure

- (1) Due claims from transactions on purchase or sale of securities whose clearing is conducted by Eurex Clearing AG pursuant to Chapter III to V of the Clearing Conditions and separately the claims for delivery of deliverable obligations pursuant to Chapter VIII of the Clearing Conditions shall be set off. Furthermore, claims regarding futures transactions pursuant to Chapter II which form the basis of the delivery of securities against cash payment shall be set off.
- (2) Clearing Members may declare vis-à-vis Eurex Clearing AG that claims of Eurex Clearing AG regarding one or several transaction/s defined by the Clearing Members shall not be set off. Such declaration shall be made according to a certain form and timeline defined by Eurex Clearing AG.

Eurex Clearing AG is authorized to unilaterally terminate the setoff restriction pursuant to Clause 1 with immediate effect by submitting an informal declaration vis-à-vis the Clearing Member.

Regarding the procedure for determination of claims which can be set off, the provisions of Number 1.6 Paragraph 1 b), c) and d) continue to apply.

- (3) Paragraph 2 Clause 1 shall not apply in case a Clearing Member is in default or the clearing license of a Clearing Member expires.
- (4) For each Link Clearing House, the transactions concluded on the respective Markets whose clearing is executed by Eurex Clearing AG pursuant to the following Chapters of the Clearing Conditions, will be netted in accordance with the relevant provisions of the Clearing Link Agreement to be concluded with Eurex Clearing AG.

### 1.4.2 Setoff Declaration

Eurex Clearing AG declares the setoff through transfer of data of the set-off claims to the Clearing Member. The setoff declaration shall take place one day before or upon maturity of the claims.

### 1.4.3 Setoff Effectiveness

The setoff shall become effective at the time of the declaration, however, not earlier than the due date of the set-off claims

[...]

## Part 2 Clearing License

### 2.1 Granting of Clearing Licenses

- (1) In order to participate in Clearing
  - a) in respect of transactions of Futures contracts and Options contracts carried out at Eurex Deutschland and Eurex Zürich pursuant to Chapter II, including Eurex Contracts concluded off-exchange and Eurex Contracts concluded off-exchange whose specifications deviate from the Contract Specifications of Eurex Contracts according to Eurex Clearing AG (referred to as “Eurex transactions”);
  - b) in respect of transactions of securities at Eurex Bonds GmbH (“Eurex Bonds”) pursuant to Chapter III;
  - c) in respect of transactions of securities at Eurex Repo GmbH (“Eurex Repo”) pursuant to Chapter IV;
  - d) in respect of transactions of securities at Frankfurter Wertpapierbörse (“FWB”) pursuant to Chapter V;
  - e) in respect of transactions of securities at Irish Stock Exchange (“ISE”) pursuant to Chapter VI;
  - f) in respect of transactions in Futures contracts and Options contracts at EEX pursuant to Chapter VII, including EEX contracts concluded off-exchange (together referred to as “EEX transactions”),

[g\) in respect of transactions in OTC Derivatives pursuant to Chapter VIII;](#)

Eurex Clearing AG may grant one License each upon written application.

To the extent a Link Clearing House has entered into a Clearing Link Agreement with Eurex Clearing AG in order to participate in the clearing procedure of Eurex Clearing AG, granting of one of aforementioned clearing licenses is not necessary. The authorization of the Link Clearing House to participate in the clearing procedure of Eurex Clearing AG shall be ruled in the Clearing Link Agreement.

- (2) A Clearing License is issued either as a General Clearing License or a Direct Clearing License. General Clearing or Direct Clearing Licenses shall be granted with the conclusion of the appropriate Clearing Agreement, in the form appended to these Clearing Conditions. A General Clearing License entitles the holder thereof to clear its own transactions, customers’ transactions as well as transactions of Trading Participants without Clearing Licenses (Number 1. 7 Paragraph 1). A Direct Clearing License entitles the holder thereof to clear its own transactions, customers’ transactions as well as transactions of affiliated Trading Participants without Clearing Licenses (Number 1. 7 Paragraph 2).

- (3) A Clearing License to participate in the Clearing pursuant to Chapter I Number 2.1 Paragraph 1 may be applied for by:
- a) Any institution domiciled in a country of the European Union or in Switzerland provided that this institution has been licensed by the responsible authorities of its country of origin, the license covers the conduct of safe custody business, lending operations and the receipt of collateral in the form of cash or securities, and said institution is under surveillance of the responsible authorities according to the regulatory standards of the European Union or, if domiciled in Switzerland, by the Swiss Banking Commission (Eidgenössische Bankenkommission).
  - b) Any institution domiciled in the United States of America ("U.S. Institution"), limited to a Clearing License regarding the clearing of transactions in OTC Derivatives pursuant to Chapter VIII must meet the additional conditions specified in a separate document to be executed by the U.S. Institution, which reflects the conditions specified in an Order of the U.S. Securities and Exchange Commission.  
  
With respect to such U.S. Institutions Paragraph 3 a) applies mutatis mutandis.
  - ~~cb)~~ In individual cases, Eurex Clearing AG may – as an exception – grant a Clearing License to an institution upon written application even if such applying institution's license by the responsible authorities of its country of origin does not cover the conduct of safe custody business, lending operations and / or the receipt of collateral in the form of cash or securities.
  - ~~ce)~~ Any branch of institutions within the meaning of § 53, 53 b or 53 c KWG provided that the respective branch, branch office or institution shows compliance with the conditions set forth in Item a and Number 2.2.
  - ~~cd)~~ Any branch within the meaning of Art. 2 Paragraph 1 of the Swiss Federal Banking and Savings-Bank Act in connection with Section 1 et seq. of the Regulation of the Swiss Banking Commission (Eidgenössische Bankenkommission) concerning Foreign Banks in Switzerland, if said branch shows compliance with the conditions set forth in Number 2.2.
  - ~~fe)~~ Any other branch domiciled in a country of the European Union ("host member state") provided that the respective main office (financial institution, securities trading enterprise) domiciled in a country of the European Union ("home member state") has been licensed by, and is under the corresponding supervision of, its national supervisory authority for custodian services, lending operations and receipt of collateral in the form of securities and cash; that there are no legal restrictions in the home member state for institutions domiciled in a country of the European Union to establish subsidiaries abroad; that a notification procedure has been completed in the host member state; and that the subsidiary or the institution complies with the requirements of Number 1.1.2.
- (4) Institutions within the meaning of Paragraph 3 Items c, d and e must guarantee in writing that, upon the first request of Eurex Clearing AG, they will meet all obligations of its branches, its

offices or its branch offices out of the clearing activities without limitation. In order to verify the legal validity of this guarantee, Eurex Clearing AG may demand from said institution at their expense all necessary information and evidence, including the opinion of a legal expert designated by Eurex Clearing AG.

## 2.2 Prerequisites for Clearing Licenses

- (1) Prerequisite for a Clearing License for Clearing Members is a liable equity capital (haftendes Eigenkapital) of the applying institution in an amount determined by Eurex Clearing AG. For institutions beyond the scope of the KWG, own funds must be equivalent to the liable equity capital.
- a) When calculating the liable equity capital for granting a clearing license for clearing futures transactions in accordance with Chapter II, that equity capital shall be considered which the applicant has already provided evidence for when applying for a clearing license for clearing transactions in accordance with Chapters IV, Chapter VII and with respect to a clearing license covering OTC Credit Derivatives transactions pursuant to Chapter VIII Part 2.
- Such equity capital which the applicant has already provided evidence for when applying for a clearing license for clearing transactions in accordance with Chapter III, in accordance with Chapter V and/or in accordance with Chapter VI shall not be considered.
- b) When calculating the liable equity capital for granting a clearing license for the clearing of transactions pursuant to Chapter III, that equity capital shall be considered which the applicant has already provided evidence for when applying for a clearing license for clearing transactions in accordance with Chapter IV and with respect to a clearing license covering OTC Credit Derivatives transactions pursuant to Chapter VIII Part 2.
- Such equity capital which the applicant has already provided evidence for when applying for a clearing license for clearing transactions in accordance with Chapter II, in accordance with Chapter V to Chapter VII shall not be considered.
- c) When calculating the liable equity capital for granting a clearing license for the clearing of transactions pursuant to Chapter IV, that equity capital which the applicant has already provided evidence for due to the granting of a clearing license for the clearing of transactions pursuant to Chapter II, Chapter III, Chapter VII and with respect to a clearing license covering OTC Credit Derivatives transactions pursuant to Chapter VIII Part 2 shall be considered.
- Such equity capital which the applicant has already provided evidence for when applying for a clearing license for clearing transactions in accordance with Chapter V and/or with Chapter VI shall not be considered.
- d) When calculating the liable equity capital for granting a clearing license for the clearing of transactions pursuant to Chapter V, that equity capital shall be considered which the applicant has already provided evidence for when applying for a clearing license for



clearing transactions in accordance with Chapter VI with respect to a clearing license covering OTC Credit Derivatives Transactions pursuant to Chapter VIII Part 2.

Such equity capital which the applicant has already provided evidence for when applying for a clearing license for clearing transactions in accordance with Chapter II, in accordance with Chapter III, Chapter IV and/or with Chapter VII shall not be considered.

- e) When calculating the liable equity capital for granting a clearing license for the clearing of transactions pursuant to Chapter VI, that equity capital shall be considered which the applicant has already provided evidence for when applying for a clearing license for clearing transactions in accordance with Chapter V and with respect to a clearing license covering OTC Credit Derivatives Transactions pursuant to Chapter VIII Part 2.

-Such equity capital which the applicant has already provided evidence for when applying for a clearing license for clearing transactions in accordance with Chapter II, with Chapter III, Chapter IV and/or Chapter VII shall not be considered.

- f) When calculating the liable equity capital for granting a clearing license for the clearing of transactions pursuant to Chapter VII, that equity capital shall be considered which the applicant has already provided evidence for due to the granting of a clearing license for the clearing of transactions pursuant to Chapter II and Chapter IV and with respect to a clearing license covering OTC Credit Derivatives Transactions pursuant to Chapter VIII Part 2.

Such equity capital which the applicant has already provided evidence for when applying for a clearing license for clearing transactions in accordance with Chapter III, with Chapter III, Chapter V and/or Chapter VI shall not be considered.

- g) When calculating the liable equity capital for granting a clearing license for the clearing of certain OTC Derivatives Transactions pursuant to Chapter VIII, the following applies:

With respect to a clearing license covering OTC Credit Derivatives transactions pursuant to Chapter VIII Part 2, that equity capital which the applicant has already provided evidence for due to the granting of a clearing license for the clearing of transactions pursuant to Chapters II up to Chapter VII shall be considered.

- (2) The liable equity capital or equivalent own funds shall be calculated in accordance with the legal provisions in force in the country in which the institution is domiciled. Evidence of the amount of the liable equity capital or the equivalent own funds as of 31 December of every year (*Stichtag* – “Qualifying Date”) shall, in an appropriate manner, be provided to Eurex Clearing AG not only together with the application but thereafter once every year during the Clearing Membership. Such yearly evidence of the liable equity capital or the equivalent own funds as of the Qualifying Date must be provided to Eurex Clearing AG by no later than 30 June of the year following the respective Qualifying Date. In case the business year of a Clearing Member deviates from the calendar year, yearly evidence of the amount of the liable equity capital or the liable own funds at the end of the respective business year has to be provided for with both the application and once every year at the latest six months after the end of the respective business

year. Any change in the liable equity capital or the equivalent own funds as a result of which the value of the liable equity or the equivalent own funds determined by Eurex Clearing AG pursuant to Paragraph 1 would be undercut must be notified to Eurex Clearing AG immediately. Eurex Clearing AG may request such evidence at any time and may assign an auditor for verification of the liable equity capital or the equivalent own funds at the expense of the applying institution.

- (3) Should the applying institution have insufficient liable equity capital or equivalent own funds for a Clearing License, Eurex Clearing AG may determine that the shortfall may be made up by a bank guarantee and/or collateral in cash or securities.

The bank guarantee shall be furnished by a bank domiciled in the European Union or Switzerland recognised by Eurex Clearing AG. The applying institution and the bank which furnishes the guarantee must be different legal entities. The form and extent of an admissible group relation between the applying institution and the bank which furnishes the guarantee shall be determined by Eurex Clearing AG. The bank guarantee shall contain the bank's unconditional and irrevocable obligation to provide for payment of the guaranteed amount into an account indicated by Eurex Clearing AG upon its first demand. The type, contents and form of the bank guarantee shall be determined by Eurex Clearing AG.

Cash margin shall be provided according to Number 3.3. Securities collateral and margin in the form of book-entry securities (Wertrechte) in accordance with Number 3.4 shall be provided via transfer of ownership by way of security or assignment for security purposes onto a safe custody with Clearstream Banking AG or SegalIntersettle AG to be determined by Eurex Clearing AG.

The bank guarantees as well as the cash and securities collateral shall safeguard compliance with the contractual obligations of the respective Clearing Member and with all other claims of Eurex Clearing AG vis-à-vis the respective Clearing Member in connection with the Clearing of its contracts (provision of margin).

- (4) The applicant shall meet the following additional requirements:
- a) Evidence shall be provided for a pledged securities account with Clearstream Banking AG or with SegalIntersettle AG.
  - b) Evidence shall be provided for at least one securities account and a corresponding cash account at a bank for central depository of securities which is recognised by Eurex Clearing AG or respectively at a Custodian or a Central Securities Depository by which the settlement of securities held in collective safe custody is possible, as well as evidence for another securities account and a corresponding cash account at a bank for central depository of securities which is recognised by Eurex Clearing AG or respectively at a Custodian or a Central Securities Depository by which the settlement of securities held in cash account (Treuhandgiroverkehr) is possible. Upon written request of a Clearing Member, Eurex Clearing AG may do without evidence of a further securities account and a corresponding cash account. In case the settlement of securities held in collective safe custody or cash account (Treuhandgiroverkehr) can be carried out via only one securities account and a corresponding cash account, such evidence will also be accepted.

- c) Evidence shall be provided for the following accounts for the provision of securities in cash
- aa) for cash netting in Euro:
- an account within the payment module at a central bank of the Euro system which participates in TARGET2 with its TARGET2 component system or an account at another central bank which is no central bank of the Euro system and, due to a special agreement, connected to TARGET2 (hereinafter respectively referred to as "RTGS Account") or
  - an account at the SECB Swiss Euro Clearing Bank ("SECB Account") and
  - an account at the Swiss Interbank Clearing AG ("euroSIC Account")
- bb) or for cash netting in CHF:
- an account with the Swiss National Bank ("SNB Account") and
  - an account with the Swiss Interbank Clearing AG ("SIC Account").
- Eurex Clearing AG may, upon written application, allow the use of accounts of a correspondent bank recognised by Eurex Clearing AG.
- d) Technical connection to the systems of Eurex Clearing AG under inclusion of the respective current version of the General Terms of Use for the network of Eurex Clearing AG.
- e) The use of appropriate technical equipment (back-office facilities) to ensure the orderly recording, booking and supervision of all transactions, as well as the provision of margin and the calculation of margin requirements with respect to the customers pursuant to the minimum requirements of Eurex Clearing AG (clearing obligations).
- f) The use of at least one sufficiently qualified member of staff in the back-office for the orderly fulfilment of the clearing obligations is required; such member shall be available via telephone and fax for the business days until 7 p.m. CET valid for the respective Market. From 7 p.m. CET on and up to the end of the business day valid for the respective Market, the applicant shall guarantee that a sufficiently qualified staff member is available via telephone.
- g) Payment of the contribution to the Clearing Fund according to Number 6.1.
- h) Granting of an authorisation to Eurex Clearing AG for purposes of delivery instructions by Eurex Clearing AG vis-à-vis a Securities Depository Bank or Custodian or Central Securities Depository, provided this is necessary for the clearing of transactions named in the following chapters.

- i) Evidence of a waiver of obligation to pay the US American withholding tax in case of clearing of transactions in securities which the US American revenue authority (Internal Revenue Service) defines as underlying the US American withholding tax. In case of clearing of securities underlying the US-American withholding tax pursuant to Clause 1, Eurex Clearing AG complies with the legal obligation to register under consideration of its fiscal status as well as the fiscal status of the respective applicant vis-à-vis the US-American revenue authority (Internal Revenue Service). In case evidence pursuant to Clause 1 is not provided by the applicant, Eurex Clearing AG shall, in case of clearing of transactions pursuant to Clause 1, comply with its obligation to register vis-à-vis the US-American revenue authority (Internal Revenue Service) and retain the accrued revenues where applicable and pay them to the US-American revenue authority (Internal Revenue Service). In case the applicant uses one or more settlement institutions pursuant to Paragraph 6 and 7, evidence pursuant Clause 1 with regard to accounts and securities depositories made available in connection with the settlement institutions used or authorised in connection with transactions concluded on the Markets.
- (5) Evidence of compliance with the prerequisites set forth in ~~Number~~ Paragraphs 1 to 4 must be provided upon submission of the application. Clearing Members are obligated, upon request by Eurex Clearing AG, to provide Eurex Clearing AG with evidence of compliance with the prerequisites for a Clearing License as set forth in Number 2.2 Paragraph 1 by no later than six months after the end of each fiscal year of the Clearing Member.
- (6) Eurex Clearing AG may, upon written application and upon submission of relevant evidence, permit the applicant or a Clearing Member that the prerequisites for the granting of a clearing license pursuant to Paragraph 4 Item b as well as – optionally – the prerequisites pursuant to Paragraph 4 Item f will be fulfilled and proved completely by one or more settlement institutions on behalf of and for the applicant respectively the Clearing Member.

The permission of Eurex Clearing AG to fulfil the prerequisites listed in Paragraph 4 Item b and, optionally, in Paragraph 4 Item f of the applicant or Clearing Member by a company in its function as settlement institution pursuant to Clause 1 requires the conclusion of a standard contract between the applicant or the affected Clearing Member, the settlement institution and Eurex Clearing AG, such contract being provided by Eurex Clearing AG. Eurex Clearing AG may at any time and at the settlement institution's or Clearing Member's expenses, require written evidence with regard to the fulfilment of aforementioned prerequisites for the granting of a clearing license from such settlement institutions or Clearing Member or commission a recognised expert in order to verify these prerequisites on the premises of the settlement institution or Clearing Member.

- (7) In case a Clearing Member or a settlement institution uses other third parties not listed in Paragraph 4 and 6, it has to ensure the compliance with the Clearing Conditions also by such third parties. If the third party is supposed to perform tasks listed under Paragraph 4 independently, evidence of the third party's obligation pursuant to Clause 1 is required by conclusion of a respective agreement between such third party, the Clearing Member, Eurex Clearing AG and the settlement institution, provided the Clearing Member makes use of the latter.

[...]

## 2.4 Termination and Suspension of Clearing Licenses

- (1) Each Clearing Member may terminate its Clearing License in writing; no reasons need be given. In this case, the termination shall take effect only after all transactions or positions for which the respective Clearing Member is responsible have been closed or transferred to another Clearing Member and all outstanding delivery and payment obligations of the respective Clearing Member have been fulfilled.
- (2) A General or Direct Clearing License
  - a) shall be terminated by Eurex Clearing AG
    - in the event that the prerequisites for licensing have not been met, above all if the Clearing License has been granted on the basis of incorrect or incomplete information of the Clearing Member; or
    - in the event the prerequisites for licensing have subsequently ceased to exist; or
    - in the event a Clearing Member violates essential clearing conditions or, despite receiving warning notice, has repeatedly violated the clearing conditions; lack of fault of the Clearing Member is of no significance in this respect; or
  - b) may be terminated by Eurex Clearing AG if the Concerned Clearing Member objects to an amendment of the Clearing Conditions pursuant to Number 1.10 Paragraph 1; or
  - c) may be terminated by Eurex Clearing AG with immediate effect, if Eurex has gained notice of the fact that measures against the Clearing Member have been ordered pursuant to §§ 45 et seq. of the KWG or insolvency proceedings have been initiated and that, in addition, the Concerned Clearing Member does not fulfil in whole or in part its obligations resulting from the clearing of its transactions or other obligations existing pursuant to these conditions vis-à-vis Eurex Clearing AG. Respective measures and proceedings under the law of the country in which the Clearing Member is domiciled shall be considered equivalent to the measures pursuant to §§ 45 et seq. of the KWG and the initiation of insolvency proceedings. Insolvency proceedings shall be deemed initiated if an application or – provided such application is not required – a measure which may lead to such proceedings is presented, submitted or taken at respectively by a court, a public authority, a company body or a person with respective authority. In this event, Paragraph 3 shall not apply.
  - d) shall expire if insolvency proceedings regarding the assets of a Clearing Member have been opened pursuant to the Insolvency Code (dated 5 October 1994; BGBl. I S. 2866); (hereinafter “InsO”). The opening of insolvency proceedings pursuant to InsO is comparable to respective measures and proceedings pursuant to the laws of the state of the Clearing Member’s registered offices.

For this event, it shall be agreed pursuant to § 104 Paragraph 3 InsO, that the claims arising from non-performance of transactions of the Clearing Member shall aim at the difference between the respectively agreed price and the Market- or Exchange price of these transactions which is relevant for transactions with the agreed performance time at a Market named in one of the following Chapters on the day of opening of insolvency proceedings.

For determination of the claims resulting from non-performance ("Final Unilateral Difference Claim"), the regulations in Chapter I Number 6.2 et sqq. and Number 8.2 et sqq. apply accordingly. This does not apply if a Clearing License pursuant to Chapter VIII Number 2.1.4 ("Credit Derivatives Clearing License") expires. In this case the regulations in Chapter VIII Number 2.1.6 et sqq. and Number 8.2 et sqq. apply accordingly.

- e) Eurex Clearing AG shall notify the respective Clearing Member in writing of the termination of the Clearing License, indicating the reasons therefore. The clearing conditions also apply after termination of the Clearing License with regard to the procedure, respectively closing of transactions or open positions of the relevant Clearing Member.
- (3) Eurex Clearing AG shall determine the suspension of a General or Direct Clearing License if Eurex Clearing AG becomes aware of the fact that measures pursuant §§ 45 et sqq. KWG have been ordered against the Clearing Member or that insolvency proceedings within the meaning of Number 2.4.2 Paragraph 2 item c have been opened. The measures pursuant to §§ 45 et sqq. KWG and the opening of insolvency proceedings are comparable to respective measures and proceedings pursuant to the laws of the state of the Clearing Member's registered offices. In case of an order of suspension of a General- or Direct Clearing License, Paragraph 5 shall apply.
- (4) If there is a reasonable suspicion that the requirements for a termination pursuant to Paragraph 2 Item a through item c have been met, Eurex Clearing AG may order the suspension of a General or Direct Clearing License for a period not in excess of six months. Eurex Clearing AG may demand from the respective Clearing Member at its own expense such information and evidence as may be necessary for purposes of an appropriate investigation. Number 2.3 Clauses 2 and 3 shall apply mutatis mutandis. The suspension of the General or Direct Clearing License may also be ordered for the duration of any default under Number 7.1 et seq.
- (5) In case of termination of a Clearing License pursuant to Paragraph 2 item a or item b or suspension of a Clearing License pursuant to Paragraph 3 or 4, the Clearing Member concerned is not permitted to conclude new transactions or open new positions any more. At the same time, Non-Clearing Members are not permitted to conclude new transactions or open new positions through the Clearing Member concerned. All existing transactions or positions of such Clearing Member must be closed by conclusion of an inverse transaction (the "Closing") or transferred by the respective General or Direct Clearing Member to another Clearing Member in accordance with Eurex Clearing AG. A General or Direct Clearing Member may, within the scope of closing of all existing transactions or positions, use one or more trading participants of the respective Market. A General or Direct Clearing Member shall promptly notify all Non-Clearing Members for whom it is acting to allow them to transfer their transactions or positions to another General Clearing Member or another affiliated Direct Clearing Member. Eurex Clearing AG shall supervise the closing or transfer of such open transactions or positions.

If such transactions or positions has not been closed or transferred by the respective Clearing Member within an adequate period set by Eurex Clearing AG on a case-by-case basis for this purpose and according to the instructions of Eurex Clearing AG, Eurex Clearing AG may close the transactions or positions pursuant to Number 8.1 on behalf of the respective Clearing Member.

- (6) If, in case of termination of a clearing license pursuant to Paragraph 1, Paragraph 2 item a or Paragraph 2 item b respectively in case of suspension of a clearing license pursuant to Paragraph 3 and 4, the prerequisites for a termination of a clearing license are retroactively fulfilled pursuant to Paragraph 2 item c, from this point only the provisions of Paragraph 2 item c and Paragraph 7 apply with regard to the respective clearing licenses and the transactions not yet completely settled ("Non-Performed Transactions") of the Concerned Clearing Member with Eurex Clearing AG.
- (7) In case of termination of a clearing license pursuant to Paragraph 2 item c, all mutual payment and delivery obligations between the Concerned Clearing Member and Eurex Clearing AG resulting from Non-Performed Transactions shall automatically expire without notice at the same time as the termination of the clearing license pursuant to Paragraph 2 item c Clause 1. The legal consequences therefrom shall be ruled by Number 8.2.

From this point, the Concerned Clearing Member shall no longer be authorized to enter into new transactions with Eurex Clearing AG respectively to open new positions. At the same time, the Non-Clearing Members of the Concerned Clearing Member shall no longer be authorized to enter into transactions with the Concerned Clearing Member respectively to open new positions. Therefore, Eurex Clearing AG as central counterparty is no longer obligated to enter into new transactions with the Concerned Clearing Member respectively to clear its positions which are initiated by its Non-Clearing Members.

Furthermore, all mutual payment and delivery obligations resulting from Non-Performed Transactions between the Concerned Clearing Member and its Non-Clearing Members pursuant to the NCM-CM Agreements concluded between them shall automatically expire without notice at the same time as the termination of the clearing license of the Clearing Member pursuant to Paragraph 2 item c Clause 1. Furthermore, Paragraph 2 item c shall apply accordingly to these transactions.

The Concerned Clearing Member shall immediately notify its Non-Clearing Members of the termination of its clearing licenses and of aforementioned legal consequences so that the respective preparations can be made.

- (8) The termination or suspension of a Clearing License does not affect any rights and obligations of the respective Clearing Member proceeding from any existing transactions or positions for which it has clearing responsibility.
- (9) In respect of the termination of Special Clearing Licenses by Eurex Clearing AG or the respective Link Clearing House, the provisions of the Clearing Link Agreements – which are to be concluded between both Clearing Houses – apply.

In case any measures against a Link Clearing House as Special Clearing Member have been

ordered pursuant to §§ 45 et seq. KWG or insolvency proceedings have been opened or respective measures and proceedings according to the laws of the state of the Link Clearing House's registered offices have been taken or filed, the respective legal consequences as well as actual and legal actions are subject to the regulations of the Clearing Link Agreement to be concluded between the Link Clearing House and Eurex Clearing AG.

[...]

## **Part 6 Clearing Fund**

### **6.1 Contribution to the Clearing Fund**

#### **6.1.1 Calculation of the Contribution to the Clearing Fund**

- (1) Irrespective of the provision of other margin, each Clearing Member shall be obligated to pay a contribution to the Clearing Fund. The amount of the contribution to be provided shall be determined by Eurex Clearing AG according to the announced method of calculation for each Clearing Member respectively. Basis for the calculation of the contribution to the clearing fund are all transactions of the respective Clearing Member and its respective Non Clearing Member concluded on the markets listed in the following Chapters on behalf of which Eurex Clearing AG conducts the clearing.
- (2) The contribution to the clearing fund calculated pursuant to Paragraph 1 shall be paid by each ~~Direct~~ Clearing Member respectively with the granting of the Clearing License. It will be verified every quarter and adapted if necessary.

#### **6.1.2 Provision of the Contribution to the Clearing Fund**

- (1) This contribution to the clearing fund shall be provided by bank guarantees and / or cash or securities collateral. Number 2.2 Paragraph 3, Clause 2 to 4 and Clause 6 to 8 shall apply accordingly. In addition, the bank guarantee must include the absolute obligation of the bank to provide the guaranteed amount upon Eurex Clearing AG's first request on an account named by such company.
- (2) In the case that the relevant Clearing Member should not have replaced a bank guarantee five trading days valid for the respective market before the expiration of its effectiveness by another bank guarantee and / or cash or securities collateral pursuant to Paragraph 1, Eurex Clearing AG shall collect the contribution to the Clearing Fund determined according to Paragraph 1 from the relevant Clearing Member respectively within the scope of the daily cash clearing procedure. If it is not possible for Eurex Clearing AG to collect from the relevant Clearing Member the contribution determined pursuant to Number 6.1.1 or if such collection fails, the relevant Clearing Member automatically defaults according to Number 7.1 of the Clearing Conditions.



### 6.1.3 Contributions of Eurex Clearing AG and of Link Clearing Houses to the Clearing Fund

(1) Eurex Clearing AG may use funds from its annual surplus to set aside reserves for the Clearing Fund in order to contribute to the fulfilment of the obligations of any Clearing Member that may default on its obligations. In case such reserves are to be used Eurex Clearing AG will allocate these reserves as follows:

(a) determination of the total margin requirements of all Clearing Members holding a clearing license pursuant to Chapter VIII and which are not in default due to Chapter I Number 7.1 as well as determination of the total margin requirements of all Clearing Members holding a clearing license pursuant to Chapter II to Chapter VII and which are not in default due to Chapter I Number 7.1;

(b) sum up of each of the total margin requirements determined pursuant to Sub-paragraph (a) ("Overall Margin Requirement") and calculate the ratio of each total margin requirement under Sub-Paragraph (a) in relation to the Overall Margin Requirement;

(c) usage of reserves by allocating them to the Clearing Fund and the Credit Clearing Fund, in each case in the amount derived from the ratio of the the relevant total margin requirement under Sub-Paragraph (a) in relation to the Overall Margin Requirement calculated pursuant to Sub-Paragraph (b).

(2) Link Clearing Houses as Special Clearing Members are not obliged to contribute to the Clearing Fund except as may otherwise provided in the Clearing Link Agreement which is to be concluded with Eurex Clearing AG.

## 6.2 Realisation of the Clearing Fund

(1) The contribution to the Clearing Fund provided by a Clearing Member may be used to cover the financial consequences of a default (Number 1.7.1) in the event of non-fulfillment of the obligations from clearing transactions by itself or by any other Clearing Member, i.e. also the Link Clearing House as a Special Clearing Member, also for purposes of curing financial consequences from occurrence of an event resulting in termination of the clearing license of this or another Clearing Member pursuant to Number 2.4 Paragraph 2. Clause 1 shall also apply with regard to the compensation of claims of Eurex Clearing AG vis-à-vis Clearing Members which have occurred in connection with the termination of a clearing license pursuant to Number 2.4 Paragraph 2 item c and item d in connection with Number 8.2.5 and 8.2.6 Paragraph 2.

(2) In case any compensation must be provided for any damage within the meaning of Paragraph 1, Eurex Clearing AG shall – for purposes of compensation of its claims vis-à-vis Clearing Members - realise securities in accordance with the following order of priority:

1. Collateral of the obligated General or Direct Clearing Member other than that indicated in Number 6.1.1 and Number 6.1.2,
2. the contribution to the Clearing Fund of the obligated Clearing Member pursuant to

Number 6.1.1 and 6.1.2- and any surplus pursuant to Chapter VIII Number 2.1.6.4 Paragraph 2 No. 1 and No. 2,

3. the reserves of Eurex Clearing AG pursuant to Number 6.1.3
  4. the contributions of all other General or Direct Clearing Members to the Clearing Fund which shall be realised on a pro rata basis.
- (3) If a defaulting Clearing Member (Number 7.1) provides the owed payment after Eurex Clearing AG has realised the contributions of other General or Direct Clearing Members to the Clearing Fund (Number 2, no. 4), Eurex Clearing AG shall replenish the contributions of the other General or Direct Clearing Members with this payment on a pro rata basis, up to the amount of effected realisation at the most.
- (4) Furthermore, the contribution to the Clearing Fund provided by a Clearing Member may also be used to cover the financial consequences of a default by itself or by any other Clearing Member with respect to their obligations arising out of the clearing of transactions and also with respect to their obligations arising out of the clearing of transactions in cooperation with the Link Clearing House; the default is based upon the rules of the Markets named in the following Chapters, except Chapter VIII Part 2 "Clearing of OTC Credit Derivatives Transactions". The contribution provided by a Clearing Member to the clearing fund may also be used to cover the financial consequences of a circumstance which leads to a termination of the clearing license of this or of another Clearing Member pursuant to Number 2.4.
- (5) In the cases pursuant to Paragraph 4, Paragraphs 1 to 3 and Numbers 6.3 and 6.4 shall apply mutatis mutandis.

(6) Unless otherwise provided in the following chapters of the Clearing Conditions, Paragraphs 1 to 5 shall apply mutatis mutandis regarding separate Clearing Funds established for the clearing of certain transactions.

### 6.3 Replenishment of Contributions to the Clearing Fund

Any realised contribution to the Clearing Fund shall be raised by the Clearing Member to its original amount within ten **B**usiness days. This requirement shall not apply to any Clearing Member that has terminated its Clearing License by means of a written statement to Eurex Clearing AG no later than on the fifth **B**usiness day following such realisation.

### 6.4 Release of the Contributions to the Clearing Fund

- (1) If Eurex Clearing AG or a Clearing Member terminates the Clearing Membership, Eurex Clearing AG shall release the contribution of the respective General Clearing Member or Direct Clearing Member to the Clearing Fund one month after notice is given of such termination, but in any event not earlier than one month after the day upon which all transactions in the accounts for

which the respective Clearing Member handles the Clearing have been cleared. The same shall apply mutatis mutandis to collateral pursuant to Number 2.2 Paragraph 3.

- (2) If another Clearing Member is in default at the time of the termination of such Clearing Membership, or if another Clearing Member falls into default prior to the date on which a contribution to the Clearing Fund is to be released, the release, contrary to Paragraph 1, shall only be effected after all obligations of such defaulting Clearing Member to Eurex Clearing AG have been satisfied.

[...]

## 7.1 Default

- (1) A Clearing Member will – without notice – be considered to be in default if:
- a) the Clearing Member fails to provide the margin demanded by Eurex Clearing AG for any Business day or fails to pay when due a daily settlement payment, or any net premiums or other fees owed, in a timely manner (pursuant to Number 3.1 Paragraph 4 and Number 3.2, or fails to deliver the securities owed by it on the delivery day or fails to provide the payment owed for such securities; or
  - b) such Clearing Member has failed to fulfill any other obligation to Eurex Clearing AG arising under these Conditions.
- (2) Members must notify Eurex Clearing AG immediately and unrequested if they are unable to fulfill any obligation arising out of transactions concluded on the markets named in the following Chapters, including, in particular, the provision of margin or any daily settlement payment.
- (3) The Boards of Management of the markets named in the following Chapters may exclude any Clearing Member of Eurex Clearing AG from trading on these markets pursuant to the provisions valid for the respective markets in the event that the Clearing Member fails or is unable to provide the margin required of it or a daily settlement payment owed by it or any other payment set forth in Paragraph 1 in a timely manner. Number 9.2 Paragraph 5 shall remain unaffected.

*[para. 4 to 7 also unchanged]*

[...]

## **8.2 Emergence, Ascertainment respectively Calculation of an Unilateral Difference Claim in case of Termination of Non-Performed Transactions**

### **8.2.1 Emergence of an Unilateral Difference Claim**

- (1) In case of a termination of a clearing license pursuant to Number 2.4 Paragraph 2 item c, all mutual payment and delivery obligations between the Concerned Clearing Member and Eurex Clearing AG resulting from non-performed transactions (“Non-Performed Transactions”) expire at the same time; such obligations shall be substituted by an immediately due obligation to make an unilateral payment due to non-performance (“Unilateral Difference Claim”) (hereinafter “Termination of Non-Performed Transactions”). The parties to these transactions are not obligated to fulfill the original performances and may no longer claim such fulfilment.
- (2) Eurex Clearing AG shall calculate respectively determine the amount of the respectively existing Unilateral Difference Claim arising from the Termination of Non-Performed Transactions within the meaning of Paragraph 1 pursuant to the regulations of Number 8.2.2 et sqq. The determined difference claims and other payment obligations within the meaning of Paragraph 3 shall be settled with each other so that one single payment claim (“Final Unilateral Difference Claim”) in favour of the Concerned Clearing Member or Eurex Clearing AG results.
- (3) The payment obligations within the meaning of Paragraph 2 are
  - a) the payments which have not yet been made by the Concerned Clearing Member or Eurex Clearing AG (hereinafter “Parties or each “Party”) due to Non-Performed Transactions whose fulfilment is carried out through cash settlement,
  - b) the claims which result from the market or Exchange prices to be determined by Eurex Clearing AG for the securities respectively rights (hereinafter “Securities”) to be delivered to the other Party due to Non-Performed Transactions,
  - c) other due payment claims existing between the Parties due to the participation in the clearing, and
  - d) interest due to payment obligations not having been fulfilled in time pursuant to Paragraph 2 item a to item c, per calendar day in the amount of the customary money market rate.

### 8.2.2 Ascertainment of the Unilateral Difference Claim

- (1) The ascertainment of the Final Unilateral Difference Claim within the meaning of Number 8.2.1 Paragraph 2 Clause 2 shall be carried out on basis of the due mutual payment obligations existing between Eurex Clearing AG and the respective Clearing Member within the meaning of Paragraph 2. The determination of the amount of the respective payment obligations shall be referred to the day of termination of the clearing license and expiry of the mutual payment and delivery obligations resulting from the Non-Performed Transactions within the meaning of Number 2.4 Paragraph 2 item c in connection with Paragraph 7 ("Reference Date").
- (2) The amount of the payment obligations existing due to the Non-Performed Transactions pursuant to Number 8.2.1 Paragraph 3 item a and item b shall be determined by Eurex Clearing AG by verifying if transactions have been concluded on the Reference Date at one of the markets named in the following Chapters; such transactions shall correspond to the Non-Performed Transactions with regard to type and amount ("Reference Transactions"). The price of these Reference Transactions shall be used as market- respectively Exchange price for Non-Performed Transactions.

In case several reference transactions have been concluded on the Reference Date with regard to a non-performed transaction, the average of the prices of these reference transactions shall be used as market- respectively Exchange price ("Reference Price") with regard to the respective Non-Performed Transaction.

- (3) In the event respective reference transactions have not been concluded on the reference date, the market- or Exchange price of Non-Performed Transactions and, as a result, the respective difference claim, shall be determined via a mathematic calculation method pursuant to Number 8.2.3.

(4) Paragraphs 1 to 3 shall apply to the clearing of OTC Derivatives Transactions mutatis mutandis provided that in the following Number 8.2.3 Paragraph 1 the price determined pursuant to Number 8.2.3 Paragraph 1 item a and b shall be replaced by the Daily Evaluation Price determined pursuant to Chapter VIII Number 2.1.9.

### 8.2.3 Calculation of the Unilateral Difference Claim

- (1) In case no reference transactions have been concluded on the Reference Date (Number 8.2.2 Paragraph 1) in the markets named in the following Chapters in which transactions not yet performed have been concluded, the respective market- or Exchange price and the amount of the respectively existing Mutual Difference Claim with regard to such transactions shall be calculated through the following method:
  - a) The basis for this calculation shall be the settlement price determined by Eurex Clearing AG for the respective Non-Performed Transaction on the business day before the reference date (Number 8.2.2 Paragraph 1).

- b) In case Eurex Clearing AG has not determined a settlement price for a Non-Performed Transaction in the markets named in the following Chapters on the business day before the Reference Date, Eurex Clearing AG shall choose from among the Clearing Members being admitted at one of the markets named in the following Chapters three Clearing Members who shall calculate a market price of the respective Non-Performed Transaction. The average of these three calculated prices shall be used instead of a settlement price for calculation of the market- respectively Exchange price of the respective non-performed transaction.
  - c) With regard to each non-performed transaction, the difference of bid and ask price ("Spread") pursuant to Paragraph 2 shall be considered in addition to the price respectively determined pursuant to item a or item b.
- (2) Difference of bid- and ask price ("Spread")

The Spread to be considered for each Non-Performed Transaction shall be added to or subtracted from the price determined pursuant to Number 8.2.3 Paragraph 1 item a or item b or the Daily Evaluation Price (Chapter VIII Number 2.1.9), respectively, depending on whether this is a buy- or sell transaction.

The relevant applicable Spread corresponds to:

- a) the interval ("Mistrade Range") which has been determined for transaction conclusions in derivatives, securities or other rights in the markets named in the following Chapters to determine so-called erroneous entries ("Mistrades"), or
- b) 25 % of the so-called additional margin ("Additional Margin") pursuant to Number 3.1 Paragraph 3, calculated on basis of the price determined pursuant to Number 8.2.3 Paragraph 1, provided that a Mistrade Range pursuant to item a has not been determined or could not be determined, or
- c) with respect to the clearing of OTC Derivatives Transactions pursuant to Chapter VIII, 25 % of the further margin pursuant to Chapter VIII Number 1.3.1 paragraph 3 ("Next Day Margin") calculated on the basis of the Daily Evaluation Price (Chapter VIII Number 2.1.9).-

The Spread determined pursuant to items a, or item b, or c (but not the Spread determined pursuant to item c) shall be multiplied with a so-called liquidity factor. The liquidity factor is calculated from the root of the ratio "position to be settled in cash", divided by the "running three-month average of the traded daily volume". As a result, the liquidity factor may only have a value within the interval of 1.5 and 6.

[...]

## 9.5 Close-Out Netting

(1) The following provisions apply to (i) all transactions in securities, rights (including with regard to emissions rights) and derivatives (including Futures and Options Contracts) on the Markets Eurex Deutschland, Eurex Zurich (together ("Eurex"), Eurex Bonds, Eurex Repo, Frankfurt Stock Exchange, Irish Stock Exchange and European Energy Exchange (the "Markets" and(ii) Eurex and Frankfurt Stock Exchange OTC Transaction within the meaning of Chapter II Part 4 respectively Chapter V Part 1 Number 1.3 of these Clearing Conditions- and (iii) all OTC-Derivate Transactions included in the clearing in accordance with Chapter VIII of these Clearing Conditions. All those transactions between a Clearing Member and Eurex Clearing AG and cleared under these Clearing Conditions are referred to in this Chapter I Number 9.5 and 9.6 as "Transactions". In the event of any conflict or inconsistency between provisions contained in this Chapter I Number 9.5 and 9.6 and other parts of these Clearing Conditions, the provisions contained in this Chapter I Number 9.5 and 9.6 and will govern.

[...]

## Part 10

### Transmission of information by Eurex Clearing AG; Outsourcing of Clearing Functions

#### 10.1 Transmission of information via Link Clearing Houses, Clearing Members, or Non-Clearing-Members of Eurex Clearing AG to a Third Party

- (1) Eurex Clearing AG treats all data and information which relate to its Clearing Members, Non-Clearing Members and Link Clearing Houses confidentially. Eurex Clearing AG shall be authorized – within the provisions it is subject to - to transfer data and information to responsible supervisory authorities or other authorized third parties domestic or abroad which are subject to non-disclosure regulations comparable to those of Eurex Clearing AG.

Customer-related informations may only be passed on by Eurex Clearing AG if they are already publicly available or if they are legally required or if the Clearing Member, Non-Clearing Member or the Link Clearing House has agreed to it.

- (2) Irrespective of the provisions in Paragraph 1 Eurex Clearing AG shall be entitled to pass on the following information to the Exchange and off-exchange trading platforms and Link Clearing Houses for which the Clearing Member has applied for:
- a) Granting of a Clearing License (Number 2.1)
  - b) Termination and Suspension of a Clearing License (Number 2.4)
  - c) Delay of the Clearing Member (Number 7.1)
  - d) Termination of the NCM-CM Clearing Agreement (Number 9.3)

- (3) Irrespective of the provisions in Paragraph 1, Eurex Clearing AG shall also be entitled to transmit or to request all data and information which refer to Clearing Members or Non-Clearing Members and which are necessary for the orderly conduct of clearing and for fulfillment of transactions, to the clearing-, settlement institutions or independent auditors which are subject to Secrecy Rules comparable to those of Eurex Clearing AG.
- (4) Paragraph 2 and 3 shall apply accordingly to any Link Clearing House affected by any of the transaction events stipulated therein. Besides, Eurex Clearing AG may transfer other clearing members' data and information to a Link Clearing House required for risk management purposes with regard to the clearing link existing between them.

[...]

## **Chapter II**

### **Transactions at Eurex Deutschland and Eurex Zürich (Eurex Exchanges)**

[...]

#### **1.5 Daily Setoff of Cash Claims**

Eurex Clearing AG shall set off all cash claims of the transactions under this Chapter and all cash claims under Chapter VIII vis-à-vis the Clearing Members on a daily basis; such claims not being fulfilled against security deliveries.

For the declaration of the setoff, Chapter I, Number 1.4.2 shall apply.

[...]

## **Chapter III**

### **Transactions at Eurex Bonds GmbH (Eurex Bonds)**

[...]

## **Chapter IV**

### **Clearing of Transactions at Eurex Repo GmbH (Eurex Repo)**

[...]



**Chapter V**  
**Transactions Concluded on the Frankfurt Stock Exchange**

[...]

**Chapter VI**  
**Transactions Concluded on the Irish Stock Exchange ([ISE Dublin](#))**

[...]

**Chapter VII**  
**Transactions Concluded on the European Energy Exchange (EEX)**

[...]

\*\*\*\*\*

CHAPTER VIII OF THE CLEARING CONDITIONS IS NEW AND NOT MARKED:

\*\*\*\*\*

## **Chapter VIII Clearing of OTC Derivatives Transactions**

### **Part 1 General Provisions**

- (1) Eurex Clearing AG offers the settlement respectively clearing of OTC Derivatives Transactions, provided that such OTC Derivatives Transactions are of a Product Type recognised by Eurex Clearing AG and provided that the prerequisites pursuant to Chapter I Part 1 and in particular pursuant to Chapter VIII are fulfilled.
- (2) If and to the extent that OTC Derivatives Transactions are accepted for clearing pursuant to paragraph 1, the provisions of Chapter I shall also apply to the clearing of OTC Derivatives Transactions, unless otherwise provided hereinafter. As far as provisions of Chapter I are referring to Non-Clearing Members (“NCM”), these provisions apply to customers of Clearing Members accepted by Eurex Clearing AG (each a “Registered Customer”) mutatis mutandis.
- (3) Chapter VIII does not apply to the clearing of Off-Exchange Futures and Options Transactions specified in Chapter II Part 4.

#### **1.1 Sub-Part Clearing License**

##### **1.1.1 Granting of the Clearing License**

- (1) In order to participate in the clearing of OTC Derivatives Transactions, a clearing license is necessary (“OTC Clearing License”), which entitles the holder thereof to clear its own transactions, transactions of its Registered Customers and customers’ transactions and which is equivalent to, and shall be deemed to be, a General Clearing License. Such license shall be granted by Eurex Clearing AG upon written application. Each such OTC Clearing License will be granted with the restriction to clear certain classes of OTC Derivatives Transactions covered within the following Parts of Chapter VIII.
- (2) An institution applying for a clearing license shall provide to Eurex Clearing AG evidence of a technical and functional connection to the gross delivery management (Chapter I Number 1.6 Clearing Conditions) pursuant to the specifications to set forth by Eurex Clearing AG.

- (3) The prerequisites to be fulfilled for the granting of the relevant OTC Clearing License are defined in each of the following Parts of Chapter VIII.

## **1.2 Sub-Part Novation / Cancellation of CCP Transactions**

For the purposes of including OTC Derivatives Transactions into the clearing and settlement by Eurex Clearing AG, the trade record of the relevant OTC Derivatives Transaction has to be transmitted to Eurex Clearing AG on behalf of Clearing Members and / or their Registered Customers by a provider authorised by Eurex Clearing AG to submit such transactions for clearing to Eurex Clearing AG ("Approved Trade Source System"). Following such submission, the relevant OTC Derivatives Transactions will be novated in accordance with, and subject to, Chapter VIII Sub-Part 1.2 and the following Parts of Chapter VIII; Chapter I applies mutatis mutandis.

### **1.2.1 Novation Principles**

- (1) Eurex Clearing AG will become the central counterparty for an OTC Derivatives Transaction entered via an Approved Trade Source System into the system of Eurex Clearing AG by way of novation, if Eurex Clearing AG accepts the relevant OTC Derivatives Transaction for inclusion into the clearing. Eurex Clearing AG will accept an OTC Derivatives Transaction if the novation criteria defined in Chapter VIII Number 1.2.2 as well as any novation criteria set out in the following Parts of Chapter VIII applicable to the relevant Product Type (together the "Novation Criteria") are met. In this case, Eurex Clearing AG shall, upon its acceptance of an OTC Derivatives Transaction ("Original OTC Transaction"), interpose itself, by means of a novation, as the counterparty to each party to such accepted Original OTC Transaction and the Original OTC Transaction shall be discharged and replaced by two new derivatives transactions ("CCP Transactions"). The Clearing Member that acted as buyer under the Original OTC Transaction shall be deemed to be the buyer under a CCP Transaction entered into by way of novation with Eurex Clearing AG and the Clearing Member that acted as seller under the Original OTC Transaction shall be deemed to act as seller under a CCP Transaction entered into by way of novation with Eurex Clearing AG.
- (2) Each CCP Transaction as set out in the relevant OTC Trade Event Report shall be subject to the Clearing Conditions, particularly to Chapter VIII and, unless expressly set out otherwise herein, the parties to the Original OTC Transaction shall be released from their obligations to each other under the Original OTC Transaction provided that any outstanding obligations relating to payments that have become due under the Original OTC Transaction, but have not have been paid yet, on or before the date of novation shall continue to exist under the contractual provisions of the Original OTC Transaction. The CCP Transactions resulting from the novation shall not be subject to the valid existence of the Original OTC Transaction (abstract novation).
- (3) "OTC Trade Event Report" means a report produced by Eurex Clearing AG that specifies the Original OTC Transactions (by reference to the trade record transmitted by the relevant Approved Trade Source System) as well as the respective CCP Transactions.

- (4) The acceptance of an Original OTC Transaction by Eurex Clearing AG referred to under Paragraph 1 shall be deemed to be effective at the Time of Novation (Chapter VIII Number 1.2.3.3 of the Clearing Conditions).

### 1.2.2 Novation Criteria

The Novation Criteria are:

1. Original OTC Transactions must be entered into the system of Eurex Clearing AG via an Approved Trade Source System.
2. Each party to an entered Original OTC Transaction must be either a Clearing Member of Eurex Clearing AG or a Registered Customer.
3. The Clearing License of the involved Clearing Members is not suspended.
4. Registered Customers must have concluded a standard Clearing Agreement (Appendix "RC-CM-Clearing Agreement" to the Clearing Conditions) with a Clearing Member and the Eurex Clearing AG, and more of such Registered Customers has not been excluded from the clearing of OTC Derivatives Transactions.
5. The Clearing Members and / or Registered Customers which are parties to the Original OTC Transactions must have specified regarding each Original OTC Transaction that it should be novated and cleared by Eurex Clearing AG by entering a respective defined attribute into the relevant trade record transmitted on their behalf by an Approved Trade Source System to Eurex Clearing AG.
6. Original OTC Transactions, as entered into the system of Eurex Clearing AG, must be of a product type which is recognised by Eurex Clearing AG, as published on its website ([www.eurexclearing.com](http://www.eurexclearing.com)), and which is provided for in the following Parts of Chapter VIII ("Product Type").
7. The Clearing Members dedicated to clear OTC Derivatives Transactions must have deposited sufficient collateral with Eurex Clearing AG to cover calculated risks resulting from CCP Transactions.
8. Any applicable additional Novation Criteria set forth in the following Parts of Chapter VIII.

### 1.2.3 Novation Process

The novation and clearing process (clearing) will be carried out for Original OTC Transactions on a weekly basis ("Weekly Clearing Cycle"). The Weekly Clearing Cycle takes place in accordance with the following provisions.

### 1.2.3.1 Preliminary Clearing Forecast

On each Wednesday, Eurex Clearing AG makes available a preliminary report in its system to Clearing Members that specifies the Original OTC Transactions which have been received for clearing and which, on an indicative basis, fulfill the Novation Criteria pursuant to Chapter VIII Number 1.2.2 Items 1 to 6 and 8, Number 2.1.5, Number 2.2.1.2 and Number 2.3.1.2, as applicable.

### 1.2.3.2 Final Clearing Forecast / Release by Clearing Members

- (1) On each Thursday, Eurex Clearing AG makes available an updated preliminary report in its system to the Clearing Members that specifies the Original OTC Transactions which have been received for clearing and which, on an indicative basis, fulfill the Novation Criteria pursuant to Chapter VIII Number 1.2.2 Items 1 to 6 and 8, Number 2.1.5, Number 2.2.1.2 and Number 2.3.1.2, as applicable.
- (2) On such Thursday, each Clearing Member shall release for the clearing the Original OTC Transaction listed in the updated preliminary report made available to it by sending an e-mail to Eurex Clearing AG ([msbackoffice@eurexclearing.com](mailto:msbackoffice@eurexclearing.com)) not later than 11.45 a.m. CET. If the e-mail is not received by Eurex Clearing AG in time, Eurex Clearing AG may reject the inclusion in the current Weekly Clearing Cycle. Such release must relate to all Original OTC Transactions listed in the updated preliminary report. In the e-mail sent to Eurex Clearing AG, each Clearing Member may specify individual or all Original OTC Transactions listed in the updated preliminary report which shall not be released and accordingly not novated nor cleared by Eurex Clearing AG within the current Weekly Clearing Cycle ("Excluded Transactions"). If the relevant e-mail does not specify any Excluded Transactions, all Original OTC Transactions listed in the updated preliminary report shall be deemed to be released. In case Eurex Clearing AG receives more than one e-mail from one Clearing Member, the latest e-mail received by Eurex Clearing AG shall prevail. After 11.45 a.m. CET the release of Original OTC Transactions can not be revoked or amended.
- (3) If a Clearing Member does not release one or more Original OTC Transactions for the clearing in the current Weekly Clearing Cycle pursuant to paragraph 2, this shall be binding on the respective counterparty or the relevant Clearing Member, respectively, of each Original OTC Transaction which has not been released and this Clearing Member shall not be entitled to request the inclusion of Excluded Transactions into the clearing.
- (4) After the updated preliminary report pursuant to paragraph 1 has been made available, on the same business day Eurex Clearing AG makes available a final report in its system to the Clearing Members that confirms which Original OTC Transactions as of that day fulfill the Novation Criteria pursuant to Chapter VIII Number 1.2.2 Items 1 to 6 and 8, Number 2.1.5, Number 2.2.1.2 and Number 2.3.1.2, as applicable. In addition, this final report shows the Original OTC Transactions which will not be novated nor be cleared by Eurex Clearing AG within the current Weekly Clearing Cycle pursuant to paragraphs 2 and 3 or which do not fulfill the Novation Criteria pursuant to Chapter VIII Number 1.2.2 Items 1 to 6 and 8, Number 2.1.5, Number 2.2.1.2 and Number 2.3.1.2, as applicable.

### **1.2.3.3 Time of Novation**

- (1) Novation occurs on each Friday at the time when all of the following conditions are fulfilled ("Time of Novation"):
  - the Novation Criteria pursuant to Chapter VIII Number 1.2.2 Items 1 to 6 and 8, Number 2.1.5, Number 2.2.1.2 and Number 2.3.1.2, as applicable,
  - deposit of sufficient collateral by the relevant Clearing Member with Eurex Clearing AG pursuant to Chapter VIII Number 1.2.2 Item 7, and
  - the OTC Trade Event Report being made available to the relevant Clearing Members by Eurex Clearing AG in its system.
  
- (2) If the OTC Trade Event Report has been made available to Clearing Members by Eurex Clearing AG and if for any reason such report shows Original OTC Transactions of a Clearing Member that has not deposited sufficient collateral with Eurex Clearing AG pursuant to Chapter VIII Number 1.2.2 Item 7, then novation pursuant to paragraph 1 will not occur with respect to the Original OTC Transactions affected by the non-fulfillment of the obligation to deposit sufficient collateral. In this case, novation pursuant to paragraph 1 will not occur regarding any Original OTC Transaction listed in OTC Trade Event Report of the respective counterparties with the Clearing Member which has not deposited sufficient collateral with Eurex Clearing AG pursuant to Chapter VIII Number 1.2.2 Item 7. Eurex Clearing AG will send a separate notice amending the OTC Trade Event Report to the relevant Clearing Members, as soon as practicable, informing them about the Original OTC Transactions listed in the OTC Trade Event Report for which novation has not occurred pursuant to paragraph 1.
  
- (3) Eurex Clearing AG may suspend a Weekly Clearing Cycle after notifying the Clearing Members at least 10 business days prior to the Friday (Chapter VIII Number 1.2.3.3 Paragraph 1) of such Weekly Clearing Cycle. On such Friday, novation pursuant to paragraph 1 will not occur.

### **1.2.3.4 Adjustments within the Weekly Clearing Cycle**

If an action pursuant to Chapter VIII Numbers 1.2.3.1 to 1.2.3.3 is to be taken on a day which is not a business day the following shall apply:

- if the action is to be taken on a Wednesday (Chapter VIII Numbers 1.2.3.1) such action shall be taken on the business day preceding such day,
- if the action is to be taken on a Thursday (Chapter VIII Numbers 1.2.3.2) such action shall be taken on the business day preceding such day; in this case the action which is to be taken on a Wednesday (Chapter VIII Numbers 1.2.3.1) shall be taken on the business day preceding such day, as well,
- if the action is to be taken on a Friday (Chapter VIII Numbers 1.2.3.3) such action shall be taken on the business day preceding such day; in this case each of the actions which are to be taken on a Thursday and on a Wednesday (Chapter VIII Numbers 1.2.3.2 and 1.2.3.1) shall

be taken on the business day preceding such day, as well.

#### **1.2.4 Transactions after Novation (CCP Transactions)**

- (1) A CCP Transaction shall only be concluded between Eurex Clearing AG and a Clearing Member. The CCP Transactions of the Clearing Member shall be booked on accounts for CCP Transactions kept by Eurex Clearing AG for the Clearing Member pursuant to Chapter I Number 4.1 of the Clearing Conditions which applies mutatis mutandis.
- (2) As a Registered Customer is not itself authorised to engage in clearing activities, its Original OTC Transactions may only be cleared and novated through the Clearing Member (Chapter VIII Number 1.1.1 of the Clearing Conditions) through which its respective CCP Transactions are settled.
- (3) Whenever an Original OTC Transaction is entered into the system of Eurex Clearing AG via an Approved Trading Source System on behalf of a Registered Customer and is novated by Eurex Clearing AG, a transaction takes place between such Registered Customer and the Clearing Member ("CCP Customer Transaction") that corresponds to the CCP Transaction between the relevant Clearing Member and Eurex Clearing AG. Subject to the relevant Clearing Agreement between the Registered Customer, its Clearing Member and Eurex Clearing AG ("RC-CM Clearing Agreement"), the CCP Customer Transaction shall have the same terms as the relevant CCP Transaction. For the avoidance of doubt, if any provision of a CCP Customer Transaction is not valid or not enforceable vis-à-vis the respective Registered Customer, this shall not affect the CCP Transaction between Eurex Clearing AG and the relevant Clearing Member.

#### **1.2.5 Cancellation of CCP Transactions**

- (1) Eurex Clearing AG shall cancel the CCP Transactions resulting from the novation of a OTC Derivatives Transaction, if the following conditions are fulfilled:
  - the Clearing Members which as buyer and seller are a party to equivalent CCP Transactions in respect of the same notional amount and, if in addition the novation resulted in CCP Customer Transactions, the respective Registered Customers that are parties to these CCP Customer Transactions, request vis-à-vis Eurex Clearing AG after the Time of Novation, but not later prior to the start of the next Offset Process (Chapter VIII Number 2.1.6 of the Clearing Conditions), to cancel the respective CCP Transactions and the CCP Customer Transactions respectively, if any,
  - the cancellation of each of the CCP Transactions requested does not result in insufficient margin coverage of one of the requesting Clearing Members, and
  - the novation criteria set out in Chapter VIII Number 2.1.5 (which shall apply mutatis mutandis) must be met by the CCP Transactions pursuant to Subpart 2 which are requested to be cancelled.
- (2) The request shall be submitted via telephone (phone: +49 (0) - 69 – 211 11250), via fax (fax no: +49 (0) – 69 – 211-14334) or electronically via e-mail to [msbackoffice@eurexclearing.com](mailto:msbackoffice@eurexclearing.com).

## **1.3 Sub-Part Margining**

### **1.3.1 Determination of Margin to be maintained**

- (1) Instead of Chapter I Number 3.1 Paragraph 1 to 3 and Paragraph 5 as well as Paragraph 6 the following applies:
  - a) On every business day (Chapter I Number 1.1 Paragraph 8), each Clearing Member is required to maintain margin in the amount to be determined by Eurex Clearing AG to cover all of its obligations resulting from the CCP Transactions and other transactions concluded with Eurex Clearing AG pursuant to the Clearing Conditions.
  - b) Such margin may be provided in cash or in securities or book-entry securities (Wertrechte) acceptable to Eurex Clearing AG. Eurex Clearing AG shall calculate the amount of margin from the total sum of the obligations of the Clearing Member. The total sum of the obligations shall result from the sum of the own- and customer account for CCP Transactions and of the obligations of the Clearing Member booked in the own- and customer account for Registered Customer transactions.
  - c) Each Clearing Member must collect margin from each of its customers in an amount which is not less than the amount determined on the basis of the formula applied by Eurex Clearing AG which formula Eurex Clearing AG may amend from time to time.
- (2) Eurex Clearing AG will calculate the difference between the market values taking the evaluation prices of the immediately preceding day and of the current day into account ("Mark to Market Margin").
- (3) In addition to the margin required under Paragraph 2, a further margin requirement ("Next Day Margin") shall be calculated in an amount sufficient to cover any change to the cost of closing all CCP Transactions not yet performed assuming the least favourable price developments, as determined by Eurex Clearing AG.
- (4) Eurex Clearing AG will determine a liquidation factor considering the estimated period of time to close-out CCP Transactions. The liquidation factors determined will be included into the calculation of the Next Day Margin pursuant to Paragraph 3 as well as in the calculation of Accrued Premium Margin pursuant to Chapter VIII Number 2.1.10 Paragraph 3.
- (5) The basis for the determination of margin to be maintained are the obligations to be performed per account in all CCP Transactions, whereby, per account the net position of the respective CCP Transactions will be considered.
- (6) The margin determined for the Principal Account for CCP Transactions shall be added to the margin determined for the Agent Account for CCP Transactions; credit balances shall not be taken into account. Sentence 1 shall apply accordingly to the calculation of the margin for the respective



accounts for CCP Transactions which Registered Customers clear through their Clearing Members. The total margin requirement applicable to a Clearing Member shall be determined by aggregating the margin requirements for CCP Transactions determined pursuant to sentence 1 and the margin requirements for CCP Transactions pursuant to sentence 2; credit balances shall not be taken into account.

- (7) In case CCP Transactions are to be settled via physical delivery of securities the provisions of Chapter I Number 3.1 Paragraph 2 and Paragraph 3 shall apply mutatis mutandis.
- (8) Regarding the determination of margin the provisions of Chapter I Numbers 3.2, 3.3, 3.4 and 3.5 shall apply mutatis mutandis.

## **1.4 Sub-Part Accounts**

### **1.4.1 Accounts of Clearing Members**

Eurex Clearing AG undertakes to keep a Principal Account and an Agent Account for each Clearing Member, on which the CCP Transactions of the Clearing Member are booked. Insofar Chapter I Part 4 applies mutatis mutandis. Whereas, with regard to CCP Transactions which Registered Customers or other customers of Clearing Members clearing through their Clearing Members, such CCP Transactions have to be booked on the relevant Agent Account.

## **1.5 Sub-Part General Obligations**

### **1.5.1 Business and contractual obligations**

- (1) For the clearing of OTC Derivatives Transactions, Chapter I applies mutatis mutandis, unless otherwise provided in Chapter VIII.
- (2) A Clearing Member is, regardless of the regulations in Chapter VIII Sub-Part 1.2, obligated to fulfil all liabilities resulting from CCP Transactions to which it is a party.
- (3) Regarding deliveries and payments resulting from CCP Transactions, Chapter I Number 1.5 applies mutatis mutandis.
- (4) Eurex Clearing AG shall be a contracting party to all deliveries and payments arising out of the clearing and settlement of transactions after the novation of Original OTC Transactions, unless expressly stated herein otherwise.
- (5) Clearing Members must fulfil their delivery and payment obligations in accordance with the instructions of Eurex Clearing AG.
- (6) If a Clearing Member is or will be obliged to deduct or withhold a tax amount or other fiscal charge from a payment which it is to make, it shall pay to Eurex Clearing AG such additional

amounts as are necessary to ensure that Eurex Clearing AG receives the full amount to which it would have been entitled at the time of such payment if no deduction or withholding had been required. If a Clearing Member is or will be obliged to pay such additional amounts pursuant to sentence 1, the Clearing Member shall not be entitled due to such obligation to terminate a CCP Transaction. Sentences 1 and 2 apply to CCP Customer Transactions between Clearing Members and their Registered Customers mutatis mutandis.

### **1.5.2 Exclusion of a Registered Customer from the clearing of OTC Derivatives Transactions**

- (1) If a Registered Customer fails to provide the margin fixed by its Clearing Member or to effect any daily payment in a timely manner, the Registered Customer may – upon written request to Eurex clearing AG by the Clearing Member - be excluded from the clearing of OTC Derivatives Transactions) for the duration of such failure.

Upon receipt of such request Eurex Clearing AG will enter the exclusion into its system without undue delay and from that time the provisions of Chapter VIII Number 1.2.1 in conjunction with Number 1.2.4 do not apply.

- (2) If a Registered Customer has been excluded from clearing of OTC Derivatives Transactions, the Clearing Member may request that Eurex Clearing AG close the transactions or positions of such Registered Customer. The costs of such closing shall be borne by the Clearing Member.

## **1.6 Sub-Part Cash Claims**

### **1.6.1 Daily Setoff of Cash Claims**

Eurex Clearing AG shall set off all cash claims of the same currency under the CCP Transactions concluded pursuant to this Chapter vis-à-vis the Clearing Members on a daily basis; such claims not being fulfilled against security deliveries.

For the declaration of the setoff, Chapter I, Number 1.4.2 shall apply.

## **1.7 Sub-Part Emergencies**

- (1) The Eurex Clearing AG may adopt a resolution in response to an Emergency (“Emergency Resolution”) which shall supersede and supplant all contrary or inconsistent resolutions or provisions of Chapter VIII of the Clearing Conditions, except for this provision.
- (2) As used herein, the term “Emergency” shall include, without limitation,
  - a) the occurrence of an event or circumstance in which, as determined by Eurex Clearing AG, market condition is likely to have an effect on the ability of Eurex Clearing AG to arrange for a fair and orderly settlement, and that absent action, the functioning of the clearing system operated by Eurex Clearing AG pursuant to the provisions of Chapter VIII of the Clearing Conditions is likely to

be impaired,

- b) a banking moratorium shall have been declared in respect of a Clearing Member holding a CD Clearing License by the United States Federal or New York State authorities.
- (3) Except as otherwise stated in an Emergency Resolution adopted hereunder or a respective Emergency action, the powers exercised by Eurex Clearing AG under this provision shall be in addition to and not in derogation of authority granted elsewhere in these Clearing Conditions to Eurex Clearing AG.

## **Part 2**

### **Clearing of OTC Credit Derivatives Transactions**

**The following subparts shall rule the clearing of OTC Credit Derivatives transactions included in the clearing by Eurex Clearing AG.**

#### **2.1 Sub-Part: General Provisions**

##### **2.1.1 Applicable Sections**

The "General Provisions" of Chapter VIII Part 1 apply to all OTC credit derivatives transactions to be included in the clearing and settlement by Eurex Clearing AG ("OTC Credit Derivatives Transactions") unless specific rules set forth in this Part 2 of Chapter VIII, which deviate from the "General Provisions" set out in Chapter VIII Part 1, apply to the respective OTC Credit Derivatives Transactions.

##### **2.1.2 Determination of Transactions for Clearing**

In consultation with the shareholders of Credit Distribution and Service Company GmbH ("CDS Company"), an affiliate of Eurex Clearing AG, Eurex Clearing AG determines which Product Types of OTC Credit Derivatives Transactions may be included in the clearing. Eurex Clearing AG shall publish the Product Types of OTC Credit Derivatives Transactions, which are included in the clearing, electronically to the Clearing Members by making the relevant Product Types available on the website of Eurex Clearing AG ([www.eurexclearing.com](http://www.eurexclearing.com)).

##### **2.1.3 References to ISDA Documentation**

The following standard market documentation which has been developed for documenting credit derivatives and published by the International Swaps and Derivatives Association, Inc. ("ISDA") is referenced in these Clearing Conditions in accordance with paragraph (2) below:

- (1) The provisions and definitions of the 2003 ISDA Credit Derivatives Definitions (the "2003 Definitions") as supplemented by the May 2003 Supplement and the 2005 Matrix Supplement to the 2003 Definitions (the "May 2003 Supplement" and "2005 Matrix Supplement"), and by the 2009 ISDA Credit Derivatives Determinations Committees,

Auction Settlement and Restructuring Supplement to the 2003 Definitions and (the "2009 Supplement"; the 2003 Definitions as supplemented by the May 2003 Supplement, the 2005 Matrix Supplement and the 2009 Supplement are hereinafter referred to as the "Credit Derivatives Definitions").

- (2) The Credit Derivatives Definitions shall be incorporated by reference into this Chapter VIII of the Clearing Conditions to the extent that (i) explicit reference is made to such provisions or (ii) any terms defined in the Credit Derivatives Definitions are marked in these Clearing Conditions by adding the three letters "CDD" as superscript and (iii) any capitalised terms are used in the provisions or definitions of the Credit Derivatives Definitions incorporated in accordance with (i) and (ii) above. Any terms marked by adding the three letters "CDD" as superscript as well the capitalised terms referred to under (iii) above shall have the meaning assigned to such terms in the Credit Derivatives Definitions, to the extent such terms are not otherwise defined herein.
- (3) Any reference in the Credit Derivatives Definitions to:
  - a "Confirmation" shall be a reference to the provisions of this Chapter VIII, Part 2 of the Clearing Conditions as applicable to the relevant CCP Transaction and as supplemented by the relevant OTC Trade Event Report;
  - a "Credit Derivatives Transaction" shall be a reference to a CCP Transaction entered into pursuant to this Sub-Part 2.1 of Chapter VIII of the Clearing Conditions unless expressly stated otherwise in this Chapter VIII.
- (4) In case of any inconsistency between the Credit Derivatives Definitions and the Clearing Conditions of Eurex Clearing AG, these Clearing Conditions will govern.
- (5) Notwithstanding, and without prejudice to the fact, that the Clearing Conditions (including this Subpart 2.1 of Chapter VIII) shall be governed by the law of the Federal Republic of Germany, the definitions and provisions of the Credit Derivatives Definitions incorporated into these Clearing Conditions by reference pursuant to paragraph 2 shall be construed in accordance with English law.

#### **2.1.4 Granting of the Clearing License**

With respect to the clearing of OTC Credit Derivatives transactions, only one form of Clearing License will be issued (named "Credit Derivatives Clearing License" or "CD Clearing License") which forms a subgroup of an OTC Clearing License (Chapter VIII Number 1.1.1 of the Clearing Conditions) and which entitles the holder thereof to clear its own transactions, transactions of its Registered Customers and customers' transactions.

##### **2.1.4.1 Prerequisites of the Clearing License**

- (1) With regard to the prerequisites to be fulfilled within the scope of the granting of the CD Clearing License, Chapter I Number 2.1 Paragraph 3 and Paragraph 4 as well as Number 2.2 except for Number 2.2. Paragraph 4 g) of the Clearing Conditions applies.

- (2) In addition to paragraph 1 the institution applying for a clearing license shall meet the following requirements:
- a) Payment of the contribution to a separate Clearing Fund regarding OTC Credit Derivatives transactions according to Chapter VIII Number 2.1.7.1 ("Credit Clearing Fund") of the Clearing Conditions.
  - b) Evidence shall be provided regarding the participation within the central settlement service for over-the-counter (OTC) credit derivatives transactions, including the participation within the Central Payment Service or equivalent services of the relevant Approved Trade Source System and granting of the appropriate authorization to Eurex Clearing AG for purposes of capturing and maintaining records by Eurex Clearing AG vis-à-vis an Approved Trade Source System, provided this is necessary for the clearing of transactions named in the following Sub-Parts.

In case Eurex Clearing AG has, on written request of the CM, explicitly allowed the CM to use instead of its own accounts or of its own access to the Central Payment Service with an Approved Trade Source System the accounts and / or the access to the Central Payment Service of a Registered Customer with an Approved Trade Source System, the CM shall provide to Eurex Clearing AG an appropriate authorization of the Registered Customer.

- c) Evidence shall be provided for an account with CLS Bank International to perform cash payments resulting out of Fixed Payments (Chapter VIII Number 2.1.15 of the Clearing Conditions) and Credit Events (Chapter VIII Number 2.1.16 of the Clearing Conditions). Eurex Clearing AG may, upon written application, allow the use of accounts of a correspondent bank having a cash account with CLS Bank International and which is recognised by Eurex Clearing AG.
- d) Execution of a separate standard Daily Evaluation Price Document (Chapter VIII Number 2.1.9 b) of the Clearing Conditions).
- e) Execution of a separate standard Data and Services Supplement.

### **2.1.5 Novation Criteria regarding OTC Credit Derivatives Transactions**

- (1) With regard to the novation of OTC Credit Derivatives Transactions criteria set out in the following provision shall apply in addition to the novation criteria pursuant to Chapter VIII Number 1.2.2 of the Clearing Conditions.
- (2) The additional novation criteria regarding OTC Credit Derivatives Transactions are:
  - OTC Credit Derivatives Transactions must have a remaining term to the Scheduled Termination Date<sup>CDD</sup> that is greater or equal to one business day at the time when such transactions are entered by an Approved Trade Source System on behalf of Clearing Members and / or their Registered Customers into the system of Eurex Clearing AG;
  - The date of novation shall be not earlier than three business days after the Original Trade

Date (Chapter VIII Number 2.1.11 of the Clearing Conditions) and not earlier than two business days after the date on which the OTC Credit Derivatives Transaction was matched by the relevant Approved Trade Source System.

- The date of novation shall be at least two business days before the next Fixed Rate Payer Payment Date pursuant to Chapter VIII Number 2.1.15 para. 1 of the Clearing Conditions.
  - In case a Credit Event<sup>CDD</sup> (other than a Restructuring<sup>CDD</sup> Credit Event<sup>CDD</sup>) and an Auction<sup>CDD</sup> have been Resolved<sup>CDD</sup> by an ISDA Credit Derivatives Determinations Committee<sup>CDD</sup> and no Auction Cancellation Date<sup>CDD</sup> has occurred, the date of novation of an OTC Credit Derivatives Transaction that is affected by such Credit Event<sup>CDD</sup> (including an OTC Credit Derivatives Transaction that is linked to an index a component of which is affected by such Credit Event<sup>CDD</sup>) shall be at least one business day prior to each of the Auction Date<sup>CDD</sup> and the relevant Scheduled Termination Date.
  - In case a Credit Event<sup>CDD</sup> (other than a Restructuring<sup>CDD</sup> Credit Event<sup>CDD</sup>) has been Resolved<sup>CDD</sup> which is not followed by an Auction<sup>CDD</sup>, (a) the Original Trade Date of an OTC Credit Derivatives Transaction has occurred on or prior to the Auction Cancellation Date<sup>CDD</sup> or on or prior to the date that is 21 calendar days following the No Auction Announcement Date<sup>CDD</sup>, if any, as applicable, and (b) the date of novation occurs at least one business day prior to the date on which ISDA publishes the Final List<sup>CDD</sup> of Deliverable Obligations<sup>CDD</sup> on its Website<sup>CDD</sup> (Chapter VIII Number 2.1.16.2 Paragraph 2 of the Clearing Conditions) or, in case of Chapter VIII Number 2.1.16.2 Paragraph 4, Eurex Clearing AG delivers to the relevant Clearing Members the Notice of Deliverable Obligations (Chapter VIII Number 2.1.16.2 Paragraph 6 of the Clearing Conditions), as the case may be.
  - In case a Restructuring<sup>CDD</sup> Credit Event<sup>CDD</sup> was Resolved<sup>CDD</sup>, the date of novation shall be at least one business day prior to the Exercise Cut-off Date (Chapter VIII Number 2.1.16 Paragraph 3 Sub-Paragraph b of the Clearing Conditions)
  - Any applicable product-specific novation criteria set out in the following Subparts of this Part 2 of Chapter VIII of the Clearing Conditions are met.
- (3) The relevant OTC Credit Derivatives Transaction will be replaced by two CCP Transactions and, if applicable, by one or two CCP Customer Transactions (Chapter VIII Number 1.2.1 to Number 1.2.4 of the Clearing Conditions).

### 2.1.6 Netting Agreement

Eurex Clearing AG may agree with a Clearing Member upon netting of claims under CCP Transactions pursuant to Chapter VIII. In this case, the netting shall be carried out on basis of the following provisions agreed upon by Eurex Clearing AG and the Clearing Member (Offset Process).

Such agreement may be terminated by the Clearing Member with the effect on the business day

following the receipt of termination notice by Eurex Clearing AG.

#### **2.1.6.1 CCP Transactions included in the Offset Process**

All CCP Transactions occurred on or before the Netting Date (Chapter VIII Number 2.1.6.4 of the Clearing Conditions) are eligible for netting. The claims under the CCP Transactions are required to be able to be netted.

Claims under CCP Transaction can be netted if the CCP Transactions have been defined for netting by the respective Clearing Member. The definition of the CCP Transactions shall take place pursuant to Number 2.1.6.2 by the Clearing Members with determination of the netting units. The aforementioned declaration shall be submitted in a form and within a deadline determined by Eurex Clearing AG.

#### **2.1.6.2 Netting Units**

- (1) A netting unit shall be generated from the CCP Transactions of the same Product Type which are identical in all material aspects other than the notional amount.

A netting unit shall be defined by the following characteristics:

- the account assigned under Chapter VIII Number 1.4.1 or individual CCP Transactions marked by the respective Clearing Member or Registered Customer for netting, and
- the novation criteria set out in Number 2.1.5 (which shall apply mutatis mutandis) are fulfilled.

- (2) The claims resulting from the CCP Transactions supposed to be set off shall be summarized as netting units within which the netting takes place.

#### **2.1.6.3 Netting Procedure**

- (1) Within the chosen netting units, the claims under the CCP Transactions selected for netting shall, as far as possible, be set off with each other. Upon closing of the netting, all claims resulting from CCP Transactions in the relationship between Eurex Clearing AG and the Clearing Member that were set-off are fulfilled.
- (2) The remaining claims under CCP Transactions which cannot be netted pursuant to Chapter VIII Number 2.1.6.2 shall be novated to one single CCP Transaction of the same Product Type with the accumulated notional of the novated CCP Transactions. Due to the novation the remaining CCP Transaction shall be discharged and replaced by one CCP Transaction.
- (3) As soon as the netting and the novation of CCP Transactions has been concluded, Eurex Clearing AG shall inform the Clearing Member about the resulting CCP Transactions.

#### **2.1.6.4 Netting Date**

The netting shall generally take place in the system of Eurex Clearing AG on each date on which novation occurs pursuant to Chapter VIII Number 1.2.3.3 (each, a "Netting Date").

## **2.1.7 Clearing Fund regarding OTC Credit Derivatives Transactions**

### **2.1.7.1 Calculation of the Contribution to the Credit Clearing Fund**

- (1) Irrespective of the provision of other margin, each Clearing Member shall be obligated to pay a contribution to the Credit Clearing Fund. The amount of the contribution to be provided by each Clearing Member shall be determined by Eurex Clearing AG according to the method of calculation announced by it. Basis for the calculation of the contribution to the Credit Clearing Fund are all OTC Credit Derivatives Transactions of the respective Clearing Member and its respective Registered Customer novated and cleared by Eurex Clearing AG.
- (2) The contribution to the Credit Clearing Fund calculated pursuant to Paragraph 1 shall be paid by each Clearing Member respectively with the granting of the Clearing License. It will be verified every quarter and adapted if necessary.

### **2.1.7.2 Provision of the Contribution to the Credit Clearing Fund**

- (1) The contribution to the Credit Clearing Fund shall be provided by cash or securities collateral. Chapter I Number 2.2 Paragraph 3, Clause 7 to 9 of the Clearing Conditions shall apply accordingly.
- (2) Each Clearing Member shall explicitly give notice to Eurex Clearing AG regarding every collateral contribution that such contribution is dedicated to the Credit Clearing Fund pursuant to Chapter VIII Number 2.1.7.1 of the Clearing Conditions to enable Eurex Clearing AG to register such collateral accordingly.

### **2.1.7.3 Contributions of Eurex Clearing AG to the Credit Clearing Fund**

Eurex Clearing AG may use funds from its annual surplus to set aside reserves for the Credit Clearing Fund in order to contribute to the fulfilment of the obligations of any Clearing Member that may default on its obligations. In case such reserves are to be used Eurex Clearing AG will allocate these reserves as follows:

- (a) determination of the total margin requirements of all Clearing Members holding a clearing license pursuant to Chapter VIII and which are not in default due to Chapter I Number 7.1 of the Clearing Conditions as well as determination of the total margin requirements of all Clearing Members holding a clearing license pursuant to Chapter II to Chapter VII and which are not in default due to Chapter I Number 7.1 of the Clearing Conditions;
- (b) sum up of each of the total margin requirements determined pursuant to Sub-paragraph (a) ("Overall Margin Requirement") and calculate the ratio of each total margin requirement under Sub-paragraph (a) in relation to the Overall Margin Requirement;
- (c) usage of reserves by allocating them to the Clearing Fund and the Credit Clearing Fund, in each case in the amount derived from the ratio of the the relevant total margin requirement under Sub-paragraph (a) in relation to the Overall Margin Requirement calculated pursuant to Sub-paragraph (b).



#### 2.1.7.4 Realisation of the Credit Clearing Fund

- (1) The contribution to the Credit Clearing Fund provided by a Clearing Member may be used to cover the financial consequences of a default (Chapter VIII Number 2.1.8 of the Clearing Conditions) in the event of non-fulfilment of the obligations from clearing CCP Transactions by itself or by any other Clearing Member, also for purposes of curing financial consequences from occurrence of an event resulting in termination of the clearing license of this or another Clearing Member pursuant to Chapter I Number 2.4 Paragraph 2 of the Clearing Conditions. Clause 1 shall also apply with regard to the compensation of claims of Eurex Clearing AG vis-à-vis Clearing Members which have occurred in connection with the termination of a clearing license pursuant to Chapter I Number 2.4 Paragraph 2 item c and item d in connection with Chapter I Number 8.2.5 and 8.2.6 Paragraph 2 of the Clearing Conditions.
- (2) In case any compensation must be provided for any financial consequences within the meaning of Paragraph 1, Eurex Clearing AG shall – for purposes of compensation of its claims vis-à-vis Clearing Members – realise securities in accordance with the following order of priority:
  1. Collateral of the obligated Clearing Member other than that indicated in Chapter VIII Number 2.1.7.1 and Chapter VIII Number 2.1.7.2 of the Clearing Conditions,
  2. the contribution to the Credit Clearing Fund of the obligated Clearing Member pursuant to Chapter VIII Number 2.1.7.1 and Chapter VIII Number 2.1.7.2 of the Clearing Conditions and any surplus pursuant to Chapter I Section 6.2 Paragraph 2 No. 1 and No. 2 of the Clearing Conditions,
  3. The reserves of Eurex Clearing AG pursuant to Chapter VIII Number 2.1.7.3 of the Clearing Conditions.
  4. the contributions of all other Clearing Members to the Credit Clearing Fund pursuant to Chapter VIII Number 2.1.7 of the Clearing Conditions which shall be realised on a pro rata basis.
- (3) If a defaulting Clearing Member (Chapter I Number 7.1 of the Clearing Conditions) provides the payment owed after Eurex Clearing AG has realised the contributions of other Clearing Members to the Credit Clearing Fund (Chapter VIII Number 2.1.7.4 Paragraph 2 of the Clearing Conditions), Eurex Clearing AG shall replenish the contributions of the other Clearing Members with this payment on a pro rata basis, up to the amount of effected realisation at the most.
- (4) Furthermore, the contribution to the Credit Clearing Fund provided by a Clearing Member pursuant to Chapter VIII Number 2.1.7 of the Clearing Conditions may also be used to cover the financial consequences of a default by itself or by any other Clearing Member with respect to their obligations arising out of the clearing of OTC Credit Derivatives Transactions.
- (5) The contribution provided by a Clearing Member to the Credit Clearing Fund pursuant to Chapter VIII Number 2.1.7 of the Clearing Conditions may also be used to cover the financial consequences of a circumstance which leads to a termination of the clearing license of this or of another Clearing Member pursuant to Chapter I Number 2.4 of the Clearing Conditions.

- (6) In such cases, Paragraphs 1 to 3 above and Chapter VIII Numbers 2.1.7.6 and 2.1.7.7 of the Clearing Conditions shall apply mutatis mutandis.

#### **2.1.7.6 Replenishment of Contributions to the Credit Clearing Fund**

Any realised contribution to the Credit Clearing Fund shall be replenished by the Clearing Member to its original amount within ten business days. This obligation to replenish shall apply to a Clearing Member once only, if the Clearing Member terminates its Clearing License by means of a written statement to Eurex Clearing AG no later than on the fifth business day following such realisation.

#### **2.1.7.7 Release of the Contributions to the Credit Clearing Fund**

- (1) If Eurex Clearing AG or a Clearing Member terminates the Clearing Membership, Eurex Clearing AG shall release the contribution of the respective Clearing Member to the Credit Clearing Fund one month after notice is given of such termination, but in any event not earlier than one month after the day upon which all OTC Credit Derivatives Transactions in the accounts for which the respective Clearing Member handles the Clearing have been cleared. The same shall apply mutatis mutandis to collateral pursuant to Chapter I Number 2.2 Paragraph 3 of the Clearing Conditions.
- (2) If another Clearing Member holding a CD Clearing License is in default at the time of the termination of a CD Clearing License by a Clearing Member, or if another Clearing Member holding a CD Clearing License falls into default prior to the date on which a contribution to the Credit Clearing Fund is to be released, the release, contrary to Paragraph 1, shall only be effected after all obligations of such defaulting Clearing Member to Eurex Clearing AG have been satisfied.

#### **2.1.8 Default of Clearing Member**

##### **2.1.8.1 Event of Default**

Instead of Chapter I Number 7.1 Paragraph 5 of the Clearing Conditions the following applies:

- (1) If a Clearing Member is in default pursuant to Chapter I Section 7.1 of the Clearing Conditions, Eurex Clearing AG will not perform novation of Original OTC Transactions of the Clearing Member in default pursuant to Chapter VIII Number 1.2 of the Clearing Conditions. At the same time, Eurex Clearing AG will not perform novation of Original OTC Transactions of Registered Customers with the concerned Clearing Member. All existing CCP Transactions shall be closed by the respective Clearing Member in accordance with Eurex Clearing AG by concluding an inverse Original OTC Transaction (the "Closing") or be transferred to another Clearing Member. The Clearing Member in default shall immediately notify its Registered Customers thereof, so that they can make preparations for transfer of their CCP Transactions to another Clearing Member. Eurex Clearing AG shall monitor the closing respectively transfer of the open CCP Transactions.
- (2) If the Closing respectively transfer of CCP Transactions has not been concluded by the

respective Clearing Member within a certain adequate period of time set by Eurex Clearing AG in individual cases and in accordance with the instructions of Eurex Clearing AG, Eurex Clearing AG may carry out the Closing of these CCP Transactions on behalf of the Concerned Clearing Member. Insofar Chapter I Number 8.1 of the Clearing Conditions applies mutatis mutandis.

- (3) If the Closing of CCP Transactions pursuant to Paragraph 2 could not be concluded by Eurex Clearing AG within a reasonable period of time, the Closing of CCP Transactions may be effected in the course of an auction determined by Eurex Clearing AG. Such auction will take place amongst Clearing Members as well as Registered Customers. The execution of the auction and the fact, that an auction is used in order to close CCP Transactions, shall be announced in due time.
- (4) If the Closing of CCP Transactions pursuant to Paragraph 2 and Paragraph 3 above could not be performed successfully, Eurex Clearing AG may transfer the remaining CCP Transactions on a pro rata basis to Clearing Members. Basis for the pro rata transfer is the net outstanding nominal in the respective opposite CCP Transactions of the non-defaulting Clearing Member booked on their position accounts. Transfer will be based on the daily evaluation price (Chapter VIII Number 2.1.9 of the Clearing Conditions) of the previous business day determined by Eurex Clearing AG, to which a spread shall be added, or from which a spread shall be subtracted, depending on whether the remaining CCP Transactions are buy or sell transactions.

### **2.1.9 Daily Evaluation Price**

Eurex Clearing AG determines the daily evaluation price according to the true market conditions of the respective CCP Transaction and under consideration of its risk assessment. When determining the daily evaluation prices the procedure described below shall apply:

- a) The daily evaluation prices will be determined on the basis of the midpoint of bid-ask spreads determined according to the market conditions of the respective CCP Transaction and under consideration of the risk assessment of Eurex Clearing AG.
- b) Each Clearing Member holding a CD Clearing License is obliged to provide to Eurex Clearing AG on each business day not later than 5.p.m CET for each CCP Transaction in which it holds a position bid-ask spreads which will be taken into account, amongst other data sources, by Eurex Clearing AG to determine the daily evaluation price. With respect to the fulfillment of this obligation, incentives and penalties will apply in accordance with a separate standard document to be executed by each Clearing Member (the "Daily Evaluation Price Document").
- c) In case no daily evaluation price can be determined pursuant to Item a, the daily evaluation price shall be determined on basis of a theoretical price model.
- d) If it is not possible to determine a daily evaluation price pursuant to Item a and Item c or if the daily evaluation price so determined would not reflect the market conditions, Eurex Clearing AG shall determine the daily evaluation price at its equitable discretion.

### 2.1.10 Margin Requirements

- (1) With regard to the obligation to provide margin, Chapter VIII Number 1.3 applies in addition to the following provisions.
- (2) Eurex Clearing AG will calculate the Mark to Market Margin as the difference between the present values based on the price agreed between the buyer and the seller and the daily evaluation prices, whereby future cash flow of premiums (Fixed Amounts) will be discounted. For this purpose Eurex Clearing AG will use a formula in accordance with market standards.
- (3) Eurex Clearing AG will determine margin to cover the upcoming fixed premium payment (Fixed Payment) for every CCP Transaction daily ("Accrued Premium Margin"). Eurex Clearing AG will request the Accrued Premium Margin from the buyer of a CCP Transaction daily. The Accrued Premium Margin is set to zero as soon as the respective fixed premium payment (Fixed Payment) has been performed vis-à-vis Eurex Clearing AG.
- (4) Eurex Clearing AG will determine margin to cover risks resulting from a potential or actual Credit Event<sup>CDD</sup> ("Credit Event Margin"). The Credit Event Margin will be calculated on an account level and considers the credit events for the riskiest Reference Entities. Eurex Clearing AG will request the Credit Event Margin from the seller of a CCP Transaction daily.

### 2.1.11 General Definitions and Terms relating to CCP Transactions

- (1) The "Original Trade Date", the "Effective Date", and the "Scheduled Termination Date" shall be the dates shown as such for the relevant CCP Transaction in the OTC Trade Event Report unless otherwise defined in the following Subparts of Part 2 of these Clearing Conditions with respect to a specific Product Type of CCP Transactions. The Effective Date and the Scheduled Termination Date shall not be subject to adjustment in accordance with any Business Day Convention<sup>CDD</sup> unless specified otherwise in Part 2 of these Clearing Conditions. Any reference in the Credit Derivatives Definitions to the "Trade Date" shall be deemed to be a reference to the Original Trade Date and any reference in the Credit Derivatives Definitions to an "Extension Date" shall be deemed to be a reference to the "Scheduled Termination Date".

The actual "Termination Date" is the Scheduled Termination Date unless the Termination Date is determined:

- a) in the form of an Auction Settlement Date<sup>CDD</sup> following an Auction<sup>CDD</sup> (Chapter VIII Number 2.1.16.1 Paragraph 4);
- b) in the form of a Bond Physical Settlement Date (Chapter VIII Number 2.1.16.4 Paragraph 1 of the Clearing Conditions) or the day of financial regulation upon expiry of a Delivery Period for Deliverable Obligations other than Bonds (Chapter VIII Number 2.1.16.5 Paragraph 1d of the Clearing Conditions) if the Fallback Settlement Method applies);

- c) as provided for in Chapter VIII Number 2.1.16.2 Paragraph 5 of the Clearing Conditions;
  - d) as provided for in Chapter VIII Number 2.1.16.6 Paragraph 3 and 4 of the Clearing Conditions; or
  - e) as provided for in Chapter VIII Number 2.1.16.7 Paragraph 1 of the Clearing Conditions.
- (2) "CD Business Day" shall be each business day defined as such in this Part 2 of Chapter VIII of the Clearing Conditions for the relevant Product Types. Any reference in the Credit Derivatives Definitions to a "Business Day" shall be a reference to a CD Business Day.
- (3) "Relevant City Business Day" shall have the meaning given to it in the Rules<sup>CDD</sup>.
- (4) Section 2.11 of the Credit Derivatives Definitions (Business Day Convention) shall apply mutatis mutandis except for Section 2.11 (c) which shall read as follows: If the last day of any period calculated by reference to calendar days in Chapter VIII, Part 2 of the Clearing Conditions or in any provisions or definitions of the Credit Derivatives Definitions incorporated herein pursuant to Section 2.1.3. falls on a day that is not a CD Business Day, such last day shall be subject to adjustment in accordance with the applicable Business Day Convention<sup>CDD</sup>, provided that if the last day of any period is the Credit Event Backstop Date<sup>CDD</sup> or the Succession Event Backstop Date<sup>CDD</sup>, such last day shall not be subject to any adjustment in accordance with the any Business Day Convention.
- (5) When used in the Credit Derivatives Definitions, the term "Affiliate" means, in relation to any person, any entity controlled, directed or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.
- (6) Section 1.10 (*Requirements Regarding Notices*) of the Credit Derivatives Definitions shall apply mutatis mutandis unless provided for otherwise in this Part 2 of Chapter VIII.

### **2.1.12 Calculation Agent and Eurex Determinations Committee**

- (1) Eurex Clearing AG shall act as calculation agent (the "Calculation Agent") with respect to all CCP Transactions. The Calculation Agent shall be responsible for the calculations and determinations that are expressly assigned to it in these Clearing Conditions. The "Calculation Agent City<sup>CDD</sup>" shall be Frankfurt am Main. The Calculation Agent shall consult the Clearing Members holding a CD Clearing License before making any determinations if such consultation is expressly provided for in this Chapter VIII.
- (2) Where this Chapter VIII provides that a determination is made by a Eurex Determinations Committee, the relevant determination will be made by a committee established by Eurex Clearing AG (a "Eurex Determinations Committee") which consists of representatives of the Clearing Members holding a CD Clearing License and a representative of Eurex Clearing AG

and the decisions of which will be made in accordance with the respective statutes published by Eurex Clearing AG on its website [www.eurexclearing.com](http://www.eurexclearing.com) after consultation with the Clearing Members.

- (3) In the absence of a manifest error, any determinations made by the Calculation Agent or a Eurex Determinations Committee or an ISDA Credit Derivatives Determinations Committee<sup>CDD</sup> shall be binding on all parties.

### 2.1.13 Reference Entity and Succession Events; Substitute Reference Obligations

- (1) "Reference Entity" means the entity or entities defined as such in the following Subparts of this Part 2 with respect to a specific Product Type of CCP Transaction or, if not so defined, the entity or entities specified as such in the OTC Trade Event Report.
- (2) Any Successor<sup>CDD</sup> to a Reference Entity in respect of which ISDA publicly announces on or following the Original Trade Date that the relevant Credit Derivatives Determinations Committee<sup>CDD</sup> has Resolved<sup>CDD</sup>, in respect of a Succession Event Resolution Request Date<sup>CDD</sup>, a Successor<sup>CDD</sup> in accordance with the Rules<sup>CDD</sup> shall, in each case, be the Reference Entity for the relevant CCP Transaction. Where more than one Successor<sup>CDD</sup> has been identified, the following shall apply:
- a) in case of Single Name CDS, the relevant CCP Transaction will be divided into the same number of CCP Transactions as there are Successors<sup>CDD</sup> as determined pursuant to Section 2.2 of the Credit Derivatives Definitions and paragraph (3) below,
- b) in case of Index CDS the CCP Transaction will be adjusted in accordance with the provisions set out in Chapter VIII Sub-Part 2.2.
- (3) Only the Credit Derivatives Determinations Committee<sup>CDD</sup> may determine a Successor<sup>CDD</sup> and the Relevant Obligation<sup>CDD</sup> and the Calculation Agent shall not be responsible for determining whether the relevant thresholds set forth in Section 2.2.(a) of the Credit Derivatives Definitions have been met, or which entity qualifies as Successor<sup>CDD</sup> under Section 2.2(a)(vi) of the Credit Derivatives Definitions or which Sovereign and/or entity qualifies as Successor<sup>CDD</sup> under Section 2.2(h) of the Credit Derivatives Definitions, as applicable unless the responsible Credit Derivatives Determination Committee<sup>CDD</sup> decides not to deliberate a potential occurrence of a Succession Event<sup>CDD</sup>, in which case, upon request of a Clearing Member that is a Buyer or a Seller under a CCP Transaction affected by the potential Succession Event<sup>CDD</sup>, a Eurex Determinations Committee may determine the occurrence of a Succession Event<sup>CDD</sup> and a Successor<sup>CDD</sup> in accordance with Section 2.2 of the Credit Derivatives Definitions.
- (4) "Succession Event Backstop Date<sup>CDD</sup>" shall have the meaning given to it in Section 2.2(i) of the Credit Derivatives Definitions provided that (i) the Succession Event Backstop Date<sup>CDD</sup> determined pursuant to Section 2.2(i)(A) shall be determined by reference to Greenwich Mean Time, and provided that (ii) Section 2.2(i)(B)(I) shall not apply, and further provided that (iii) Section 2.2(i)(B)(II) shall apply mutatis mutandis whereas any references to a Succession Event Notice shall be replaced by a reference to "Eurex Succession Resolution Request", and provided that (iv) for purposes of any determination as to whether a Succession Event<sup>CDD</sup> has occurred in respect of a Reference Entity or an Obligation<sup>CDD</sup> thereof

at any time up to but excluding 20 June 2009 or if a Succession Event Resolution Request Date<sup>CDD</sup> occurs before 20 June 2009, the Succession Event Backstop Date<sup>CDD</sup> with respect to such Reference Entity shall be deemed to be the Effective Date. The Succession Event Backstop Date<sup>CDD</sup> shall not be subject to adjustment in accordance with any Business Day Convention<sup>CDD</sup> unless specified otherwise in Part 2 of Chapter VIII.

- (5) "Eurex Succession Event Resolution Request Date" means the first day, on which Eurex Clearing AG receives a Eurex Succession Resolution Request. To the extent that the Clearing Conditions or the Credit Derivatives Definitions contain references to the Succession Event Resolution Request Date<sup>CDD</sup> the relevant provision shall apply mutatis mutandis to a Eurex Succession Event Resolution Request Date. "Eurex Succession Resolution Request" means a request which, if a responsible Credit Derivatives Determinations Committee<sup>CDD</sup> decides not to deliberate whether a Succession Event<sup>CDD</sup> has occurred, is made by a Clearing Member acting as Buyer or Seller to a CCP Transaction affected by the potential Succession Event<sup>CDD</sup> (but not by a Registered Customer) by sending a letter, fax or e-mail to Eurex Clearing AG, Neue Börsenstraße 1, 60487 Frankfurt am Main, Germany (fax no. +49 (0) – 69 – 211-14334; e-mail: [msbackoffice@eurexclearing.com](mailto:msbackoffice@eurexclearing.com)) which includes a reasonably detailed description of all the issues that the respective Clearing Member believes the relevant Eurex Determinations Committee should deliberate.
- (6) Eurex Clearing AG in its capacity as Calculation Agent will make the determinations to be made by the Calculation Agent pursuant to Section 2.2(e)(iii) of the Credit Derivatives Definitions (required modification of the terms and conditions if an original CCP Transaction will be replicated in each CCP Transaction that is a New OTC Credit Derivatives Transaction) after consultation with the Clearing Members.
- (7) A Substitute Reference Obligation<sup>CDD</sup> will be determined by the Calculation Agent (in connection with a Succession Event<sup>CDD</sup> or otherwise pursuant to Section 2.30 of the Credit Derivatives Definitions) on the basis of a resolution made by the Credit Derivatives Determinations Committee<sup>CDD</sup> or, to the extent the relevant Credit Derivatives Determinations Committee<sup>CDD</sup> has not made such a determination and upon request by a Clearing Member, in its discretion after consultation with the Clearing Members holding a CD Clearing License.

#### **2.1.14 Initial Payment**

If an initial payment payer ("Initial Payment Payer") and an initial payment amount ("Initial Payment Amount") are specified with respect to an OTC Credit Derivatives Transaction submitted for clearing which provides for an obligation to make an up-front payment (an "Initial Payment"), the obligation to make such Initial Payment shall remain the direct obligation of the Initial Payment Payer of the original OTC Credit Derivatives Transaction to the other party of the OTC Credit Derivatives Transaction in accordance with the terms of the Original OTC Credit Derivatives Transaction and Eurex Clearing AG shall have no obligation to make or guarantee such Initial Payment. Regardless of the terms of the original OTC Credit Derivatives Transaction, the CCP Transaction shall have an Initial Payment Amount of zero.

#### **2.1.15 Fixed Payments**

- (1) On each Fixed Rate Payer Payment Date under a CCP Transaction, the Fixed Rate Payer shall pay to the Fixed Rate Receiver the Fixed Amount.

"Fixed Rate Payer Payment Date" means the date or dates specified as such in the Subparts of this Part 2 of Chapter VIII of these Clearing Conditions with respect to the relevant Product Type of CCP Transactions, or if no Fixed Rate Payment Dates are specified in such Subparts, the date or dates which can be derived from the information on the payment schedule and the payment frequency provided in the OTC Trade Event Report.

"Fixed Rate Payer" is, with respect to a CCP Transaction, the Clearing Member shown as such in the relevant OTC Trade Event Report. If the relevant Clearing Member is the Fixed Rate Receiver Eurex Clearing AG shall be the Fixed Rate Payer.

"Fixed Rate Receiver" is, with respect to a CCP Transaction, the Clearing Member shown as such in the relevant OTC Trade Event Report. If the relevant Clearing Member is the Fixed Rate Payer Eurex Clearing AG shall be the Fixed Rate Receiver.

- (2) The "Fixed Amount" payable pursuant to Paragraph (1) means the amount shown as such for a Fixed Rate Payer Date or for the related Fixed Payer Calculation Period in the OTC Trade Event Report or, if an amount is not so shown, an amount calculated on a formula basis for a Fixed Rate Payer Date or for a related Fixed Rate Payer Calculation Period as follows:

$$\text{Fixed Amount} = \text{Fixed Rate Payer Calculation Amount} \times \text{Fixed Rate} \times \text{Fixed Rate Day Count Fraction}$$

"Fixed Rate" means the rate shown as such in the relevant OTC Trade Event Report.

"Fixed Rate Day Count Fraction" means the fixed rate day count fraction specified as such in the following Subparts of this Part 2 of Chapter VIII of the Clearing Conditions with respect to the relevant Product Type of CCP Transactions.

"Fixed Rate Payer Calculation Amount" means the amounts shown as such in the OTC Trade Event Report or, if an amount is not so shown, the Floating Rate Payer Calculation Amount (Chapter VIII, Section 2.1.16.1).

"Fixed Rate Payer Calculation Period" means each period from, and including, one Fixed Rate Payer Period End Date to, but excluding, the next following Fixed Rate Payer Period End Date, except that (a) the initial Fixed Rate Payer Calculation Period will commence on, and include, the Effective Date, and (b) the final Fixed Rate Payer Calculation Period will end on, and include, the earlier to occur of the Scheduled Termination Date and the Event Determination Date (Chapter VIII Number 2.1.16 Paragraph 3 of the Clearing Conditions).

"Fixed Rate Payer Period End Date" means each date defined as such in the following Subparts of this Part 2 or, if not so defined, each date shown with respect to the relevant CCP Transaction in the OTC Trade Event Report or, if no such dates are defined or shown, each Fixed Rate Payer Payment Date.

- (3) For the payment of a Fixed Amount which is due on the next Fixed Rate Payer Payment Date



after the date when novation of the relevant OTC Credit Derivatives Transactions has taken place (Chapter VIII Number 1.2.3), the respective Clearing Member shall be a contracting party vis-à-vis Eurex Clearing AG and shall pay in its capacity as Fixed Rate Payer to Eurex Clearing AG as Fixed Rate Receiver an amount equal to the Fixed Amount which would have been due on such Fixed Rate Payer Payment Date (calculated for the entire Fixed Rate Payer Calculation Period) under the Original OTC Transaction. Eurex Clearing AG in its capacity as Fixed Rate Payer shall pay out this Fixed Amount to a Clearing Member under another CCP Transaction under which such Fixed Amount is due and payable.

If the payment of the Fixed Amount is due on or before the business day when novation of an OTC Credit Derivative Transaction takes place (Chapter VIII Number 1.2.3 of the Clearing Conditions), this payment shall be an obligation that is only governed by the contractual arrangements of the Original OTC Transaction and not subject to the provisions of these Clearing Conditions.

- (4) If an Auction Final Price<sup>CDD</sup> has been determined and provided that an Auction Cancellation Event<sup>CDD</sup> does not occur, with effect from the Auctional Final Price Determination Date<sup>CDD</sup>, paragraph (a) and (b), as applicable, of Schedule 2 to the Credit Derivatives Auction Settlement Terms<sup>CDD</sup> shall apply to the accrual of Fixed Rates and the payment of Fixed Amounts.

### 2.1.16 Credit Events (Floating Rate Payments)

- (1) Upon the occurrence of a Credit Event<sup>CDD</sup> applicable to a CCP Transaction and upon satisfaction of all of the Conditions of Settlement with respect to such CCP Transaction, the parties to the relevant CCP Transaction shall perform their respective obligations in accordance with the Auction Settlement Method (Chapter VIII Number 2.1.16.1) unless settlement occurs in accordance with the Fallback Settlement Method (Chapter VIII Number 2.1.16.2 of the Clearing Conditions), as applicable.

"Credit Event<sup>CDD</sup>" means, with respect to a CCP Transaction, a Credit Event<sup>CDD</sup> specified as such in the following Subparts of this Part 2 of Chapter VIII of the Clearing Conditions with respect to a Product Type of CCP Transactions, or, if not so specified, as shown in the OTC Trade Event Report with respect to the relevant CCP Transaction.

"Floating Rate Payer" is, with respect to a CCP Transaction, the Clearing Member shown as such in the relevant OTC Trade Event Report. If the relevant Clearing Member is the Fixed Rate Payer, Eurex Clearing AG shall be the Floating Rate Payer.

The Floating Rate Payer shall be the "Seller" and the Fixed Rate Payer shall be the "Buyer".

- (2) All of the "Conditions to Settlement" shall be deemed to be satisfied by the occurrence of an Event Determination Date to the extent that such Event Determination Date is not subsequently reversed prior to the Auction Final Price Determination Date<sup>CDD</sup>, the Physical Settlement Date (or if earlier a Delivery Date<sup>CDD</sup>), or the Termination Date, as applicable, unless the Fallback Settlement Method applies, in which case all of the Conditions of Settlement shall be deemed to be satisfied by the delivery of a Notice of Physical Settlement by the relevant Clearing Member acting as Buyer pursuant to Chapter VIII Number 2.1.16.3 Paragraph 1.

- (3) The “Event Determination Date” shall be the Credit Event Resolution Request Date<sup>CDD</sup> or the Eurex Credit Event Resolution Request Date, as applicable, and it shall occur if, with respect to a CCP Transaction, Eurex Clearing AG determines that:
- a) with respect to a Credit Event<sup>CDD</sup> other than Restructuring<sup>CDD</sup>,
    - the Credit Event Resolution Request Date<sup>CDD</sup> or Eurex Credit Event Resolution Request Date with respect to such Credit Event<sup>CDD</sup> occurred on or prior to the end of the Resolution Request Period End Date (paragraph 6 below), which occurrence may be prior to the Original Trade Date; and
    - a DC Credit Event Announcement<sup>CDD</sup> or a Eurex Credit Event Announcement, as applicable, has occurred with respect to a Reference Entity (or an Obligation<sup>CDD</sup> thereof) that applies to the relevant CCP Transaction; or
  - b) with respect to a Restructuring<sup>CDD</sup> Credit Event<sup>CDD</sup>,
    - the Credit Event Resolution Request Date<sup>CDD</sup> or a Eurex Credit Event Resolution Request Date, as applicable, with respect to such Credit Event<sup>CDD</sup> occurred on or prior to the end of the Resolution Request Period End Date (paragraph 6 below), which occurrence may be prior to the Original Trade Date; and
    - a DC Credit Event Announcement<sup>CDD</sup> or a Eurex Credit Event Announcement, as applicable, has occurred with respect to a Reference Entity (or an Obligation<sup>CDD</sup> thereof) that applies to the relevant CCP Transaction; and
    - after having been notified by Eurex Clearing AG of such DC Credit Event Announcement<sup>CDD</sup> or of the Eurex Credit Event Announcement, as applicable, (which notification will be made on the business day following the relevant DC Credit Event Announcement<sup>CDD</sup> or Eurex Credit Event Announcement, as applicable), one or more Clearing Members acting as Buyer or as Seller have marked in the report received from, and sent back to, Eurex Clearing AG (the “CD Exercise Notice”) the CCP Transactions affected by the relevant Restructuring<sup>CDD</sup> Credit Event<sup>CDD</sup> in relation to which they request settlement and which must be received by Eurex Clearing AG and be effective on or prior to the Exercise Cut-off Date<sup>CDD</sup> (the period from the day of notification by Eurex Clearing AG until, and including, the Exercise Cut-off Date<sup>CDD</sup>, as determined pursuant to Section 1.26(a)(ii)(A)(II) of the Credit Derivatives Definitions, is referred to in these Clearing Conditions as the “CD Exercise Period”).

Sections 1.8 (c) and (d) of the Credit Derivatives Definitions shall apply.

- (4) A CD Exercise Notice is effective on a business day if it has been received by Eurex Clearing AG until 3 p.m. CET on such business day. To the extent that, in case of CD Exercise Notices issued by Clearing Members following a Restructuring<sup>CDD</sup> Credit Event Resolution<sup>CDD</sup>, the Floating Rate Payer Calculation Amounts of CCP Transactions for which Clearing Members acting as Buyers and/or Sellers have issued a CD Exercise Notice exceed, Eurex Clearing AG will assign on any such business day the CD Exercise Notices relating to the exceeding Floating Rate Payer Calculation Amounts to Clearing Members acting as Buyer or Sellers, as applicable, whose CCP Transactions that are affected by the Restructuring<sup>CDD</sup> Credit Event<sup>CDD</sup>, on a pro rata basis

(calculated in accordance with the amount of open positions held by the relevant Clearing Member as Buyer in relation to the relevant CCP Transactions which have not been assigned yet). Eurex Clearing AG will notify the Clearing Members acting as Buyers or Sellers, as the case may be, by making available in its system a report until 5 p.m. CET.

- (5) Section 3.9 of the Credit Derivatives Definitions shall apply provided that (i) any reference to a “Notifying Party” shall be a reference to the relevant Clearing Member that delivers the CD Exercise Notice, and (ii) any reference to a “consultation with the parties” shall be replaced by “consultation with the Clearing Members”.
- (6) "Resolution Request Period End Date" means the date that is 14 calendar days after the Scheduled Termination Date.
- (7) “Eurex Credit Event Resolution Request Date” means the first date on which a Eurex Credit Event Resolution Request is received by Eurex Clearing AG. To the extent that the Clearing Conditions or the Credit Derivatives Definitions contain references to the Credit Event Resolution Request Date<sup>CDD</sup> the relevant provision shall apply mutatis mutandis to a Eurex Credit Event Resolution Request Date. “Eurex Credit Event Resolution Request” means a request which, if neither a DC Credit Event Announcement nor a DC No Credit Announcement has occurred, is made by a Clearing Member acting as Buyer or Seller to a CCP Transaction affected by the potential Credit Event<sup>CDD</sup> (but not by a Registered Customer) by sending a letter, fax or e-mail to Eurex Clearing AG, Neue Börsenstraße 1, 60487 Frankfurt am Main, Germany (fax no. +49 (0) – 69 – 211-14334; e-mail: [msbackoffice@eurexclearing.com](mailto:msbackoffice@eurexclearing.com)) which includes a reasonably detailed description of all the issues that the respective Clearing Member believes the relevant Eurex Determinations Committee should deliberate and information consistent with the definition of Publicly Available Information<sup>CDD</sup>.
- (8) Section 1.30 of the Credit Derivatives Definitions shall apply mutatis mutandis whereas “DC Credit Event Announcement” shall be replaced by the term “Eurex Credit Event Announcement”.
- (9) “Credit Event Backstop Date<sup>CDD</sup>” shall have the meaning given to it in Section 1.23 of the Credit Derivatives Definitions provided that (i) Section 1.23(b)(i) shall not apply, (ii) Section 1.23 (b)(ii) shall apply mutatis mutandis where any references to a Credit Event Notice and to a Notice of Publicly Information shall be replaced by a reference to “Eurex Credit Event Resolution Request”, and (iii) for purposes of any determination as to whether a Credit Event<sup>CDD</sup> has occurred in respect of a Reference Entity or an Obligation<sup>CDD</sup> thereof at any time up to but excluding 20 June 2009 or if a Credit Event Resolution Request Date<sup>CDD</sup> occurs before 20 June 2009, the Credit Event Backstop Date<sup>CDD</sup> with respect to such determination shall be deemed to be the Effective Date. The Credit Event Backstop Date<sup>CDD</sup> shall not be subject to adjustment in accordance with any Business Day Convention.
- (10) In connection with the definitions and provisions of the Credit Derivatives Definitions relating to a Restructuring<sup>CDD</sup> Credit Event<sup>CDD</sup>, as incorporated in the Clearing Conditions pursuant to Chapter VIII Number 2.1.3 Paragraph 2, the term “Credit Event Notice” shall be deemed to be a reference to a “CD Exercise Notice” unless otherwise set out in these Clearing Conditions or required by the relevant context and, with respect to the delivery of Credit Event Notices, the terms “Buyer” and “Seller” shall mean a Clearing Member acting as Buyer and a Clearing

Member acting as Seller, respectively.

- (11) If no Credit Event<sup>CDD</sup> has been Resolved<sup>CDD</sup> by a Credit Derivatives Determinations Committee<sup>CDD</sup>, Eurex Clearing AG will not determine a Credit Event<sup>CDD</sup> either nor shall any Clearing Member or Registered Customer be entitled to determine the occurrence of a Credit Event<sup>CDD</sup> or to issue a credit event notice (other than the CD Exercise Notice) unless the responsible Credit Derivatives Determination Committee<sup>CDD</sup> has decided not to deliberate a potential occurrence of a Credit Event<sup>CDD</sup>, in which case, if a Eurex Credit Event Resolution Request has been made, a Eurex Determinations Committee may determine the occurrence of a Credit Event<sup>CDD</sup> (a "Eurex Committee Resolution"). For the avoidance of doubt, any Credit Event Notice<sup>CDD</sup> that a party to the original OTC Credit Derivatives Transaction may have delivered to the other party prior to the novation date, shall be deemed to be not delivered.
- (12) Section 2.21 of the Credit Derivative Definitions (Interpretation of Provisions) shall apply to the extent that the relevant Obligation Category<sup>CDD</sup> or Obligation Characteristics<sup>CDD</sup> respectively, or the relevant Deliverable Obligation Category<sup>CDD</sup> or Deliverable Obligation Characteristics<sup>CDD</sup> are specified in the following Subparts of this Part 2 or in the relevant OTC Trade Event Report and/or, with respect to Section 2.21(d) of the Credit Derivative Definitions, if an Obligation<sup>CDD</sup> or a Deliverable Obligation<sup>CDD</sup> is a Qualifying Guarantee<sup>CDD</sup>.
- (13) In case of a Restructuring<sup>CDD</sup> Credit Event<sup>CDD</sup>, Eurex Clearing AG will match on each business day in the CD Exercise Period the Floating Rate Payer Calculation Amounts of CCP Transactions for which Clearing Members acting as Buyers have issued a CD Exercise Notice as far as this amount is equal to the amount of the CD Exercise Notices issued by Sellers and Eurex Clearing AG will assign pursuant to paragraph 4 the CD Exercise Notices relating to the exceeding Floating Rate Payer Calculation Amounts to Clearing Members acting as Buyer or Sellers, as applicable. Clearing Members acting as Buyers to whom CD Exercise Notices delivered by Clearing Members acting as Sellers were assigned and who were notified of such assignment pursuant the last sentence of paragraph 4 may deliver a CD Exercise Notice until the end of the CD Exercise Period. In this case, Eurex Clearing AG will re-assign the amounts of these CD Exercise Notices to the Clearing Members acting as Sellers who originally delivered the relevant CD Exercise Notices on a pro rata basis (calculated in accordance with the amount of open positions originally held by the relevant Clearing Member acting as Seller that were not matched) in relation to the relevant CCP Transactions Transactions that are affected by the Restructuring<sup>CDD</sup> Credit Event<sup>CDD</sup>.

#### **2.1.16.1 Standard Credit Event Settlement Terms (Auction Settlement Method)**

- (1) If Eurex Clearing AG determines that the Conditions to Settlement are satisfied and an Event Determination Date occurs, the Seller under a CCP Transaction, which may be either the relevant Clearing Member or Eurex Clearing AG, as applicable, shall pay to the Buyer under a corresponding CCP Transaction, which may be a Clearing Member (if Eurex Clearing AG is the Seller) or Eurex Clearing AG (if the relevant Clearing Member is the Seller), as applicable, the Auction Settlement Amount on the Auction Settlement Date ("Auction Settlement Method"), unless settlement occurs pursuant to Chapter VIII Number 2.1.16.2 of the Clearing Conditions.

Subject to any calculation methods set forth in the following Subparts of this Part 2 with respect to a relevant Product Type of CCP Transactions, the "Auction Settlement Amount" will be calculated in accordance with the following formula:

$$\text{Floating Rate Payer Calculation Amount} \times (\text{Reference Price} - \text{Auction Final Price})$$

provided that the Auction Settlement Amount shall not be less than zero.

whereas:

"Auction Final Price<sup>CDD</sup>" has the meaning set forth in the relevant Credit Derivatives Auction Settlement Terms<sup>CDD</sup> subject to paragraphs (2) and (3) below.

"Floating Rate Payer Calculation Amount" means the amount defined as such in any Subparts of this Part 2 of Chapter VIII of the Clearing Conditions with respect to a Product Type of CCP Transactions or, if not so defined, the amount shown as such in the relevant OTC Trade Event Report.

"Reference Price" means the percentage shown as such in the OTC Trade Event Report, or, if a percentage is not so specified, 100 per cent.

- (2) In case of a Restructuring<sup>CDD</sup> Credit Event<sup>CDD</sup> where "Modified Restructuring Maturity Limitation<sup>CDD</sup> and Conditionally Transferable Obligation<sup>CDD</sup>" applies pursuant to Part 2 of this Chapter VIII, there will be a separate Auction Final Price<sup>CDD</sup>, to the extent an Auction<sup>CDD</sup> is conducted, for each Maturity Bucket. A CCP Transaction qualifies for a relevant Maturity Bucket based on whether the Buyer (the "Buyer Maturity Bucket") or the Seller (the "Seller Maturity Bucket", the Buyer Maturity Bucket and the Seller Maturity Bucket together a "Maturity Bucket") has issued the relevant (prevailing) CD Exercise Notice, as described in the relevant Credit Derivatives Auction Settlement Terms<sup>CDD</sup> and subject to an exercise of the Movement Option. The applicable Buyer Maturity Bucket is determined on the basis of the Scheduled Termination Date of the relevant CCP Transaction, as described in the relevant Credit Derivatives Auction Settlement Terms<sup>CDD</sup>.
- (3) In the case of paragraph 2, the following procedures shall apply:
  - If with respect to the relevant CCP Transactions, Auction Final Prices<sup>CDD</sup> for both the relevant Buyer Maturity Bucket and the Seller Maturity Bucket are available, the Auction Final Price<sup>CDD</sup> for the Matched Exercise Notional shall be the Auction Final Price<sup>CDD</sup> for the Buyer Maturity Bucket and the Auction Final Price<sup>CDD</sup> for the Exceeding Buyer Notional and the Assigned Seller Notional shall be the Auction Final Price<sup>CDD</sup> for the Seller Maturity Bucket.
  - If an Auction Final Price<sup>CDD</sup> is available for the Seller Maturity Bucket only, then the Auction Final Price<sup>CDD</sup> for any Exceeding Seller Notional and Assigned Buyer Notional, if any, shall be the Auction Final Price<sup>CDD</sup> for the Seller Maturity Bucket while any Exceeding Buyer Notional and the relevant Assigned Seller Notional, if any, will be settled among the Clearing Member acting as Buyer, Eurex Clearing AG and the respective Clearing Member acting as Seller (as assigned under Chapter VIII Number 2.1.16 paragraph (4) of the Clearing Conditions) in accordance with the Fallback Settlement Method pursuant to Chapter VIII Numbers 2.1.16.2., 2.1.16.4 and

2.1.16.5 of the Clearing Conditions) unless the Clearing Member acting as Buyer or as Seller, as the case may be, exercises the Movement Option.

- If an Auction Final Price<sup>CDD</sup> is available for the Buyer Maturity Bucket only, then the Auction Final Price<sup>CDD</sup> for the Matched Exercise Notional and for any Exceeding Buyer Notional and the relevant Assigned Seller Notional, if any, shall be the Auction Final Price<sup>CDD</sup> for the Buyer Maturity Bucket while any Exceeding Seller Notional and Assigned Buyer Notional, if any, will be settled among the Clearing Member acting as Buyer, Eurex Clearing AG and the respective Clearing Member acting as Seller (as assigned under Chapter VIII Number 2.1.16 paragraph (4) of the Clearing Conditions) in accordance with the Fallback Settlement Method pursuant to Chapter VIII Numbers 2.1.16.2., 2.1.16.4 and 2.1.16.5 of the Clearing Conditions) unless the Clearing Member acting as Buyer exercises the Movement Option.

"Matched Exercise Notional" means the Floating Rate Payer Calculation Amounts of CCP Transactions for which Clearing Members acting as Buyers have issued a CD Exercise Notice and that, on a business day, is equal to the amount of CD Exercise Notices issued by Clearing Members acting as Sellers.

"Exceeding Buyer Notional" means the Floating Rate Payer Calculation Amounts of CCP Transactions for which Clearing Members acting as Buyers have issued a CD Exercise Notice and that, on a business day, exceed the equivalent amount of CD Exercise Notices issued by Clearing Member acting as Sellers.

"Exceeding Seller Notional" means the Floating Rate Payer Calculation Amounts of CCP Transactions for which Clearing Members acting as Sellers have issued a CD Exercise Notice and that, on a business day, exceed the equivalent amount of CD Exercise Notices issued by Clearing Member acting as Buyers.

"Assigned Buyer Notional" shall be equal to the Exceeding Seller Notional that has been assigned by Eurex Clearing AG to Sellers in accordance with Chapter VIII Number 2.1.16 paragraph (4) of the Clearing Conditions.

"Assigned Seller Notional" shall be equal to the Exceeding Buyer Notional that has been assigned by Eurex Clearing AG to Buyers in accordance with Chapter VIII Number 2.1.16 paragraph (4) of the Clearing Conditions.

- (4) The "Auction Settlement Date<sup>CDD</sup>" means the date that is the number of CD Business Days specified in the Transaction Auction Settlement Terms<sup>CDD</sup> (or, if a number of CD Business Days is not so specified, five CD Business Days) immediately following the Auction Final Price Determination Date<sup>CDD</sup>. The Auction Settlement Date shall be the Termination Date.
- (5) If, in case of a Restructuring<sup>CDD</sup> Credit Event<sup>CDD</sup> where "Modified Restructuring Maturity Limitation<sup>CDD</sup> and Conditionally Transferable Obligation<sup>CDD</sup>" applies Section 12.15 (Movement Option) shall apply provided that (i) the second and third sentence of Section 12.15 shall be replaced by the procedures set out in paragraphs 3, 6 and 7, and (ii) the Movement Option is to be exercised pursuant to paragraph 7 below on or prior to the Movement Option Cut-off Date<sup>CDD</sup>.
- (6) A Clearing Member acting as Seller may exercise the Movement Option only if there is a Matched Exercise Notional or an Exceeding Buyer Notional.

- (7) A Clearing Member may exercise the Movement Option by marking in the report made available by Eurex Clearing AG the relevant CCP Transactions affected by the Restructuring<sup>CDD</sup> Credit Event<sup>CDD</sup> for which it exercises the Movement Option, and by transmitting such report via e-mail to Eurex Clearing AG to the e-mail address [msbackoffice@eurexclearing.com](mailto:msbackoffice@eurexclearing.com).
- (8) The parties to CCP Transactions affected by a Credit Event<sup>CDD</sup> cannot request physical settlement or cash settlement in accordance with the Cash Settlement<sup>CDD</sup> method, with the exception that physical settlement may occur if the Fallback Settlement Method applies pursuant to Chapter VIII Number 2.1.16.2 of the Clearing Conditions.
- (9) If an Auction<sup>CDD</sup> takes place, each Clearing Member shall ensure that physical settlement requests of its customers (together with the Clearing Member's own physical settlement requests, as the case may be) will be submitted to a Participating Bidder<sup>CDD</sup> as "Customer Physical Settlement Request" and shall make any necessary arrangements with one or more appropriate Participating Bidders<sup>CDD</sup> that such Customer Physical Settlement Requests are accepted by the relevant Participating Bidder<sup>CDD</sup> in accordance with, and subject to, the applicable Credit Derivatives Auction Settlement Terms<sup>CDD</sup>.

#### **2.1.16.2 Fallback Settlement Method (no applicable Auction Final Price determined)**

- (1) Without prejudice to Section 2.1.16.1, but without duplication of settlement, if Eurex Clearing AG determines that the Conditions to Settlement are satisfied and that (a) an Auction Cancellation Date<sup>CDD</sup> has occurred, (b) a No Auction Announcement Date<sup>CDD</sup> has occurred (and, in circumstances where such No Auction Announcement Date occurs pursuant to Section 12.12(b)(i) of the Credit Derivatives Definitions, neither a Clearing Member acting as Buyer nor a Clearing Member acting as Seller has exercised the Movement Option), or (c) ISDA publicly announces that the relevant Credit Derivatives Determinations Committee has Resolved, following a Credit Event Resolution Request Date, not to determine the matters described in Section 1.24(a) and (b) (Credit Event Resolution Request Date) of the Credit Derivatives Definitions, then the parties shall perform their respective payment and delivery obligations in accordance with the physical settlement method described in this Number 2.1.16.2 and Chapter VIII Numbers 2.1.16.3 to 2.1.16.7 ("Fallback Settlement Method").
- (2) If, in case of a Restructuring<sup>CDD</sup> Credit Event<sup>CDD</sup>, "Modified Restructuring Maturity Limitation<sup>CDD</sup> and Conditionally Transferable Obligation<sup>CDD</sup>" applies pursuant to Chapter VIII Part 2 of these Clearing Conditions, Section 2.33 of the Credit Derivatives Definitions shall apply. The Limitation Dates<sup>CDD</sup> shall not be subject to adjustment in accordance with any Business Day Convention unless specified otherwise for a Product Type under Part 2 of this Chapter VIII.
- (3) If in preparation of an Auction<sup>CDD</sup> ISDA has published on its Website<sup>CDD</sup> a Final List<sup>CDD</sup> of Deliverable Obligations<sup>CDD</sup> that is applicable to the relevant CCP Transactions, such list shall be the list of Deliverable Obligations for purposes of the Fallback Settlement Method.
- (4) Upon occurrence of any of the events (a) to (c) set out in paragraph (1) above, as applicable, and if no Final List<sup>CDD</sup> of Deliverable Obligation(s)<sup>CDD</sup> has been published by ISDA on its Website<sup>CDD</sup>, Eurex Clearing AG will establish a committee ("Eurex Deliverable Obligations Committee") in which all Clearing Members with a CD Clearing License, holding as Buyer or Seller respective CCP Transactions cleared with Eurex Clearing AG may participate. The Eurex

Deliverable Obligations Committee is responsible for determining the Deliverable Obligation(s)<sup>CDD</sup> for the purposes of the Fallback Settlement Method pursuant to the statutes for an Eurex Deliverable Obligations Committee defined by Eurex Clearing AG and published on its website [www.eurexclearing.com](http://www.eurexclearing.com).

- (5) If within a period of 30 calendar days following any of the events (a) to (c) set out in paragraph (1), as applicable, no Deliverable Obligation(s)<sup>CDD</sup> have been determined by an Eurex Deliverable Obligations Committee, then the relevant Reference Obligation<sup>CDD</sup> shall be the Deliverable Obligation<sup>CDD</sup>. If the lack of determination of Deliverable Obligations<sup>CDD</sup> by a Eurex Deliverable Obligations Committee is due to the fact that neither a Reference Obligation<sup>CDD</sup> nor any other Deliverable Obligations<sup>CDD</sup> of the relevant Reference Entity<sup>CDD</sup> exist, then the CCP Transactions will terminate upon expiry of the period of 30 calendar days (such thirtieth day being a Termination Date<sup>CDD</sup>) and the Buyer is not entitled to deliver any Deliverable Obligations<sup>CDD</sup> against payment of a cash amount by the Seller.
- (6) Following a determination of Deliverable Obligation(s) pursuant to paragraph (3) above, Eurex Clearing AG will notify the Clearing Members acting as Buyers and Sellers of a CCP Transaction affected by the relevant Credit Event Resolution<sup>CDD</sup> of the list of Deliverable Obligation(s)<sup>CDD</sup> determined pursuant to paragraph (3) above ("Notice of Deliverable Obligations"). The Notice of Deliverable Obligations will contain a description (including in particular any securities identification number, if any) of the relevant Deliverable Obligation(s)<sup>CDD</sup> so determined ("Eurex Deliverable Obligations").

In case of a Restructuring<sup>CDD</sup> Credit Event<sup>CDD</sup>, Eurex Clearing AG will deliver the Notice of Deliverable Obligations to the Clearing Members acting as Buyers and Sellers under CCP Transactions if no Auction<sup>CDD</sup> is scheduled for a Maturity Bucket<sup>CDD</sup> which covers the respective CCP Transactions and if no Final List<sup>CDD</sup> was published. In addition, all CCP Transactions related to the affected Reference Entity will be reported to those Clearing Members.

- (7) Section 8.2 (Deliver) of the Credit Derivatives Definitions shall apply to deliveries pursuant to these Clearing Conditions mutatis mutandis.

### 2.1.16.3 Notification and Allocation Procedure for Physical Settlement

- (1) In case the Fallback Settlement Method is applicable pursuant to Chapter VIII Number 2.1.16.2 of the Clearing Conditions and Eurex Clearing AG has issued a Notice of Deliverable Obligations, Clearing Members acting as Buyers of CCP Transactions shall notify Eurex Clearing AG of the following ("Notice of Physical Settlement"): (a) one or more Deliverable Obligation(s)<sup>CDD</sup> out of the Final List<sup>CDD</sup> of Deliverable Obligations<sup>CDD</sup> published by ISDA on its Website<sup>CDD</sup> (Chapter VIII Number 2.1.16.2 paragraph 2 of the Clearing Conditions) or out of the Eurex Deliverable Obligations (Chapter VIII Number 2.1.16.2 paragraph 3 of the Clearing Conditions), as the case may be, which such Clearing Member will Deliver<sup>CDD</sup> to Eurex Clearing AG, as well as (b) the outstanding principal balance or, in case of Deliverable Obligations<sup>CDD</sup> that are not Borrowed Money<sup>CDD</sup>, the Due and Payable Amount<sup>CDD</sup> (in each case the "Outstanding Amount") of each such Deliverable Obligation<sup>CDD</sup>.



- (2) If a Notice of Physical Settlement is not given within a period of ten business days after the Notice of Deliverable Obligations (“Notification Period”) and if further, in case of a Restructuring<sup>CDD</sup> Credit Event<sup>CDD</sup>, neither a relevant Buyer nor a Seller has exercised the Movement Option, Eurex Clearing AG determines the Deliverable Obligation(s)<sup>CDD</sup> and the respective amounts to be Delivered<sup>CDD</sup> by the respective Clearing Member acting as Buyer and, in the event of a Restructuring<sup>CDD</sup> Credit Event<sup>CDD</sup>, Eurex Clearing AG will notify the Buyer and the respective assigned Clearing Member acting as Seller of the Deliverable Obligation and respective amounts determined.
- (3) In case Credit Events<sup>CDD</sup> other than Restructuring<sup>CDD</sup>, Eurex Clearing AG shall allocate to the Clearing Members acting as Sellers of CCP Transactions the specific Deliverable Obligation(s)<sup>CDD</sup> notified for delivery one business day after the end of the Notification Period, using a selection procedure that ensures the neutrality of the allocation process. If a Clearing Member acts as both Buyer and Seller in respect of the relevant settlement process, the assignment of such deliveries will be performed with the highest priority. The Clearing Members acting as Sellers of CCP Transactions will be informed about the specific Deliverable Obligation(s)<sup>CDD</sup>, which were allocated to them. The Clearing Member acting as Buyers of CCP Transactions will be informed about the date of allocation.
- (4) In case of a Restructuring<sup>CDD</sup> Credit Event<sup>CDD</sup>, any Deliverable Obligations<sup>CDD</sup> Delivered<sup>CDD</sup> by a Clearing Member acting as Buyer will be allocated by Eurex Clearing AG to a Clearing Member acting as Seller in accordance with the assignments of CD Exercise Notices carried out pursuant to Chapter VIII Number 2.1.16 Paragraph (3) of the Clearing Conditions.
- (5) Paragraphs 1 to 4 above shall apply to the legal relationship between Clearing Members and their Registered Customers mutatis mutandis.

#### **2.1.16.4 Deliverable Obligation Category - Bond**

- (1) If a Deliverable Obligation Category<sup>CDD</sup> that includes “Bond” is specified as Deliverable Obligation Category<sup>CDD</sup> in the following Subparts of this Part 2 or in the OTC Trade Event Report with respect to the relevant CCP Transaction and if the relevant Clearing Member acting as Buyer has specified in its Notice of Physical Settlement one or more Bonds<sup>CDD</sup> as Deliverable Obligation(s)<sup>CDD</sup>, such Buyer shall Deliver<sup>CDD</sup> the relevant Bonds<sup>CDD</sup> to Eurex Clearing AG (acting in its capacity as Seller) on the Bond Physical Settlement Date which shall be the Termination Date. The “Bond Physical Settlement Date” (together with the Loan Physical Settlement Date, the “Physical Settlement Date”) is the day that is three business days following (a) the date of allocation pursuant to Chapter VIII Number 2.1.16.3 Paragraph 3 of the Clearing Conditions, or (b) in case of a Restructuring Credit Event, the date of the Notice of Physical Settlement or, if a Buyer has not issued such notice, the determination notice delivered by Eurex Clearing AG pursuant to Chapter VIII Number 2.1.16.3 Paragraph 2 of the Clearing Conditions. In turn, Eurex Clearing AG (acting in its capacity as Seller) shall pay to such Buyer the Physical Settlement Amount<sup>CDD</sup> that corresponds to the Deliverable Obligations<sup>CDD</sup> that the relevant Buyer has Delivered<sup>CDD</sup>.

If the relevant Buyer Delivers<sup>CDD</sup> Deliverable Obligations<sup>CDD</sup> in an amount greater than the Deliverable Obligations<sup>CDD</sup> specified in the Notice of Physical Settlement, Eurex Clearing AG shall not be required to pay more than the Physical Settlement Amount<sup>CDD</sup> that corresponds to

the Deliverable Obligations<sup>CDD</sup> specified in the Notice of Physical Settlement. Any Delivery<sup>CDD</sup> by Buyer and payment by Eurex Clearing AG shall be made in accordance with market practice applicable to the Deliverable Obligation<sup>CDD</sup> on the Delivery Date<sup>CDD</sup> and the settlement procedures of Eurex Clearing AG.

- (2) The relevant Buyer shall Deliver<sup>CDD</sup> Bonds<sup>CDD</sup> with an outstanding principal balance (including accrued but unpaid interest, as determined by the Calculation Agent, if "Include Accrued Interest" is specified in the following Subparts of this Part 2 with respect to a relevant Product Type of CCP Transactions or in the relevant OTC Trade Event Report, but excluding accrued but unpaid interest if (a) "Exclude Accrued Interest" or (b) if neither "Include Accrued Interest" nor "Exclude Accrued Interest" is specified in the following Subparts of this Part 2 with respect to a relevant Product Type of CCP Transactions or in the relevant OTC Trade Event Report) or the equivalent Currency Amount<sup>CDD</sup> of such amount in the aggregate amount as of the Delivery Dates<sup>CDD</sup> that is equal to the Floating Rate Payer Calculation Amount. The Buyer may Deliver<sup>CDD</sup> Bonds<sup>CDD</sup> with an outstanding principal balance (including or excluding accrued but unpaid interest, as applicable) or the equivalent Currency Amount<sup>CDD</sup> in the aggregate amount as of the relevant Delivery Dates<sup>CDD</sup> that is either (i) greater than the Floating Rate Payer Calculation Amount, in which case the Seller shall not be required to pay more than the Physical Settlement Amount<sup>CDD</sup> to the Buyer, or (ii) less than the Floating Rate Payer Calculation Amount, in which case Seller shall not be required to pay more than the proportion of the Physical Settlement Amount<sup>CDD</sup> that corresponds to the Deliverable Obligations<sup>CDD</sup> Delivered<sup>CDD</sup>.
- (3) If an obligation by its terms represents or contemplates an obligation to pay an amount greater than the outstanding principal balance of such obligation as of the Delivery Date<sup>CDD</sup> as a result of the occurrence or non-occurrence of an event or circumstance, the outstanding principal balance of such obligation shall not include any additional amount that would be payable upon the occurrence or nonoccurrence of such event or circumstance.
- (4) Clearing Members acting as Buyers shall confirm vis-à-vis Eurex Clearing AG one business day prior to the respective Physical Settlement Date at the latest, whether the notified Bonds<sup>CDD</sup> will be Delivered<sup>CDD</sup> in due time.
- (5) The Buyer may deliver only the Deliverable Obligations<sup>CDD</sup> specified in the Notice of Physical Settlement or as determined by Eurex Clearing AG pursuant to Chapter VIII Number 2.1.16.3 Paragraph 2 and only in the amounts specified therein.
- (6) If Deliverable Obligations<sup>CDD</sup> comprise Convertible Obligations<sup>CDD</sup>, Exchangeable Obligations<sup>CDD</sup> or Accreting Obligations<sup>CDD</sup>, the "outstanding principal balance" of such obligations shall be determined by Eurex Clearing AG as Calculation Agent in its discretion on the basis of the principles and rules set forth in Section 8.7 of the Credit Derivatives Definitions.
- (7) If Eurex Clearing AG cannot process the Bonds<sup>CDD</sup> specified by a Clearing Member in a Notice of Physical Settlement through appropriate instruction to the respective bank for central depository of securities or to the custodian or central securities depository, respectively, then Chapter VIII Number 2.1.16.5 of the Clearing Conditions shall apply mutatis mutandis.

(8) The provision regarding Setoff (Chapter I Number 1.4.) and Gross Delivery Management (Chapter I Number 1.6. of the Clearing Conditions) shall apply to Deliver<sup>CDD</sup> Bonds<sup>CDD</sup>.

(9) Paragraphs (1) to (8) shall apply to the physical settlement obligations under a corresponding CCP Transaction between Eurex Clearing AG acting in its capacity as Buyer and a Clearing Member that acts as Seller and to the legal relationship between Clearing Member and Registered Customer mutatis mutandis.

#### 2.1.16.5 Deliverable Obligation Category - others than Bond

(1) In case a Deliverable Obligation Category that includes Deliverable Obligations other than Bonds<sup>CDD</sup> is specified as Deliverable Obligation Category<sup>CDD</sup> in the following Subparts of this Part 2 or in the OTC Trade Event Report with respect to the relevant CCP Transaction and if a Deliverable Obligation<sup>CDD</sup> other than a Bond<sup>CDD</sup> has been specified in a Notice of Physical Settlement, only Clearing Members and Registered Customers (and not Eurex Clearing AG) shall be obliged to fulfil the obligations to Deliver<sup>CDD</sup> the relevant Deliverable Obligation(s)<sup>CDD</sup>, and to pay the Physical Settlement Amount<sup>CDD</sup>, as Buyers and Sellers, as applicable, based on the allocation of Deliverable Obligations<sup>CDD</sup> to Clearing Members performed pursuant to Chapter VIII Number 2.1.16.3 paragraph (3) and to Registered Customers pursuant to Chapter VIII Number 2.1.16.3 paragraph (3) in conjunction with paragraph (5), of the Clearing Conditions.

The legal relationships regarding CCP Transactions and CCP Customer Transactions as described in Chapter VIII Number 1.2.4 of the Clearing Conditions shall change as follows as from the close of the business day when allocation pursuant to Chapter VIII Number 2.1.16.3 paragraph 3 of the Clearing Conditions has been performed:

- (a) Eurex Clearing AG assigns its claims arising from each relevant CCP Transaction against the respective Clearing Member acting as Seller to a Clearing Member acting as Buyer of a corresponding CCP Transaction. The respective Clearing Member acting as Buyer at the same time assumes the corresponding obligations of Eurex Clearing AG vis-à-vis the respective Clearing Member acting as Seller. At the same time, the claims and obligations between Eurex Clearing AG and the Clearing Member acting as Buyer of the corresponding CCP Transaction shall expire and, subject to paragraph (b) below, any claims and obligations relating to a corresponding OTC Credit Derivatives Transaction shall only exist between the Clearing Member acting as Buyer and the Clearing Member acting as Seller without Eurex Clearing AG being interposed.
- (b) To the extent that a Clearing Member (acting as Buyer or Seller) has concluded corresponding CCP Customer Transactions with a Registered Customer, each such Clearing Member – at the time of the modification of the legal relationships relating to the CCP Transactions (paragraph (a) above) – assigns any claims against the other Clearing Member under the contractual relationship established pursuant to paragraph (a) above to its Registered Customers. Each relevant Registered Customer at the same time assumes the corresponding obligations of its Clearing Member. At the same time, the claims and obligations among the Clearing Member(s) and the Registered Customer(s) under the relevant CCP Customer Transaction(s) shall expire. As a result,

the Registered Customer shall be obligated directly vis-à-vis the respective Clearing Member acting as Buyer or the Clearing Member acting as Seller - as the case may be - of the corresponding CCP Customer Transaction or, in case such Clearing Member has concluded a corresponding CCP Customer Transaction, vis-à-vis the relevant other Registered Customer to make the relevant payments or to Deliver<sup>CDD</sup> the relevant Deliverable Obligations<sup>CDD</sup>, as applicable.

- (c) After an assumption of existing obligations arising from CCP Transactions by Registered Customers and after the assignments of claims have been effected pursuant to paragraph (b) above, the Clearing Members shall be liable vis-à-vis Eurex Clearing AG as guarantor in cash, irrespective of the original provisions regarding any contractual obligations to make deliveries, i.e. Eurex Clearing AG may demand under such guarantee only the payment of cash from Clearing Members instead of the delivery of any deliverable obligations or the fulfilment of any other non-payment obligations, if any, in particular if delivery has failed.

After the assumption by a Clearing Member of existing obligations of Eurex Clearing AG arising from CCP Transactions pursuant to paragraph (a) above and the assignment of claims of Eurex Clearing AG against a Clearing Member to the other Clearing Member, Eurex Clearing AG shall be liable as guarantor vis-à-vis the relevant non-defaulting Clearing Member or, in case of paragraph (b) above, the non-defaulting Registered Customer, as applicable, only in cash and in respect of this liability in cash sentence 1 of this paragraph (c) shall apply mutatis mutandis.

- (d) In the case of a change of the legal relationship as set out above, first the relevant Deliverable Obligation(s)<sup>CDD</sup> shall be Delivered<sup>CDD</sup> amongst Clearing Member(s) and/or Registered Customer(s), as the case may be, on the last day of the longest Delivery Period (the " Loan Physical Settlement Date"). "Delivery Period" means the longest number of CD Business Days for settlement in accordance with the current market practice of such Deliverable Obligation<sup>CDD</sup> and it starts on (a) the date of allocation pursuant to Chapter VIII Number 2.1.16.3 Paragraph 3 of the Clearing Conditions, or (b) in case of a Restructuring<sup>CDD</sup> Credit Event<sup>CDD</sup>, the date of the Notice of Physical Settlement or, if a Buyer has not issued such notice, the determination notice delivered by Eurex Clearing AG pursuant to Chapter VIII Number 2.1.16.3 Paragraph 2 of the Clearing Conditions. The financial settlement shall be effected one business day after confirmation by the Clearing Member(s) and/or Registered Customer(s), as the case may be, that such Deliverable Obligation(s)<sup>CDD</sup> have been Delivered<sup>CDD</sup>. The financial settlement shall be performed via the Clearing Member (if payment is made by a Registered Customer) and Eurex Clearing AG as paying agent. The date of payment is a Termination Date for purposes of the transaction resulting from the change to the relevant CCP Transactions.
- (e) Any cash amounts for which Eurex Clearing AG or a Clearing Member are liable as guarantor pursuant to paragraph (c) above shall be calculated in accordance with Chapter VIII Number 2.1.16.7 of these Clearing Conditions.

- (2) Subject to paragraph (1) above, the provisions relating to the Delivery<sup>CDD</sup> of Bonds<sup>CDD</sup> set out in Chapter VIII Number 2.1.16.4 of the Clearing Conditions shall apply to the Delivery<sup>CDD</sup> of

Loans<sup>CDD</sup> from one Clearing Member to another Clearing Member or from or to a Registered Customer mutatis mutandis.

- (3) If a Clearing Member acting as Buyer has not Delivered<sup>CDD</sup> any Deliverable Obligation<sup>CDD</sup> specified in the Notice of Physical Settlement that are Loans, Sections 9.10 (a) and (b) of the Credit Derivatives Definitions (Alternative Procedures Relating to Loans Not Delivered) shall apply mutatis mutandis provided that any Bonds<sup>CDD</sup> delivered pursuant to Sections 9.10 (a) and (b) of the Credit Derivatives Definitions are specified in the Notice of Deliverable Obligations. The relevant parties must have completed the settlement procedure within 25 calendar days from the start of the Delivery Period (Paragraph 1(d) above). Otherwise, Chapter VIII Number 2.1.16.7 of these Clearing Conditions will apply.

#### **2.1.16.6 Non-Delivery regarding Deliverable Obligation Category - Bond**

- (1) In the event that, irrespective of whether this is due to an event beyond its control, a Clearing Member, which is obliged to Deliver<sup>CDD</sup> Bonds<sup>CDD</sup>, fails to Deliver<sup>CDD</sup> the Bonds<sup>CDD</sup> determined pursuant to Chapter VIII Number 2.1.16.3 of the Clearing Conditions on the Physical Settlement Date for Bonds and pursuant to the instructions of Eurex Clearing AG, Eurex Clearing AG shall be entitled or, on request of a Clearing Member which did not receive Delivery<sup>CDD</sup> of Bonds<sup>CDD</sup> on the Physical Settlement Date for Bonds, obligated to close out all or a portion of the relevant OTC Credit Derivative Transaction by making a replacement purchase with respect to the Bonds not Delivered<sup>CDD</sup> at any time after the date that is five business days after the Physical Settlement Date for Bonds until the date that is 25 calendar days following the Physical Settlement Date (the "Buy-in Period") and to Deliver<sup>CDD</sup> these Bonds<sup>CDD</sup> to the Clearing Member which did not receive Delivery<sup>CDD</sup> in a timely manner. At least two business days before the intended replacement purchase Eurex Clearing AG will inform the Clearing Member acting as Buyer about its intention to make such replacement purchase, the relevant Bonds ("Relevant Bonds") to be subject to the buy-in, and the outstanding principal balance thereof sought to be bought-in ("Buy-in Notice"). Eurex Clearing AG shall attempt to obtain from five or more Clearing Members holding a CD Clearing License firm quotations for the sale ("Buy-in Offers") of the outstanding principal balance of the Relevant Bonds specified in the Buy-in Notice. The lowest Buy-in Offer or, if Eurex Clearing AG obtains only one Buy-in Offer, such Buy-in Offer, for the outstanding principal balance of the Relevant Bonds shall be the "Buy-in Price".
- (2) Eurex Clearing AG is entitled to designate from the deliverable Bonds<sup>CDD</sup> (Chapter VIII Number 2.1.16.2 of the Clearing Conditions) Bonds<sup>CDD</sup> other than those notified as Bonds<sup>CDD</sup> to be Delivered<sup>CDD</sup> and to Deliver<sup>CDD</sup> such Bonds to the Clearing Member which did not receive Delivery<sup>CDD</sup> on the Physical Settlement Date. As long as the Clearing Member acting as Buyer has not received any Buy-in Notice, such Clearing Member may continue to attempt to Deliver<sup>CDD</sup> the whole of the Deliverable Obligations<sup>CDD</sup> specified in the Notice of Physical Settlement.
- (3) Eurex Clearing AG will inform the relevant Clearing Members about the Buy-in Price and the outstanding principal balance of the relevant Bonds<sup>CDD</sup> for which such price was obtained and Deliver<sup>CDD</sup> the Bonds<sup>CDD</sup> to the Clearing Member acting as Seller against payment by such Clearing Member of an amount equal to the Buy-in Cash Settlement Amount. Buy-in

Cash Settlement Amount means an amount equal to that portion of the Physical Settlement Amount<sup>CDD</sup> that corresponds to such portion of the Deliverable Obligations<sup>CDD</sup>, reduced (but not below zero) by the Buy-in Price multiplied by the corresponding outstanding principal balance of the relevant Bonds for which a Buy-in Price was determined. Following a notice pursuant to the first sentence of this paragraph, Delivery<sup>CDD</sup>, and payment, respectively, the Clearing Member acting as Buyer will be deemed to have Delivered<sup>CDD</sup> the outstanding principal balance of the Bonds<sup>CDD</sup> specified in the Notice of Physical Settlement for which a Buy-in Price was determined and the Eurex Clearing AG will pay to the Clearing Member acting as Buyer the Buy-in Cash Settlement Amount (subject to a deduction of costs incurred by Eurex Clearing AG pursuant to paragraph 7 below), the date of financial settlement being the Termination Date.

- (4) To the extent that no replacement purchase has taken place within the Buy-in Period, the Calculation Agent may determine a cash settlement amount for the outstanding settlement of the relevant CCP Transactions or of a portion thereof (the "Bond Cash Settlement Amount"). Upon notification of the relevant Clearing Members by Eurex Clearing AG of the Bond Cash Settlement Amount, the obligations of the Clearing Member and Eurex Clearing AG, respectively, acting as Buyer shall expire. Instead, the Clearing Member acting as Seller shall pay the Bond Cash Settlement Amount to Eurex Clearing AG and Eurex Clearing AG shall pay the Bond Cash Settlement Amount to the Clearing Member acting as Buyer on the second business day following the end of the Buy-in Period (such day being a Termination Date). The Bond Cash Settlement Amount will be calculated by the Calculation Agent on the basis of the outstanding principal balance or Currency Amount<sup>CDD</sup>, as applicable, of Bonds<sup>CDD</sup> (or portion of Bonds<sup>CDD</sup>) not Delivered<sup>CDD</sup> or not bought-in which is multiplied by the difference between the Reference Price, if any, minus the Final Price for the Bonds<sup>CDD</sup> or portions thereof not Delivered<sup>CDD</sup> subject to a minimum amount of zero.
- (5) For purposes of paragraph (4) above the "Final Price" will be determined by the Calculation Agent as follows: the Calculation Agent will attempt to obtain a price in the form of firm quotations from at least five Clearing Members holding a CD Clearing License for the Reference Obligation<sup>CDD</sup> in an amount equal to the outstanding principal balance of the Bonds<sup>CDD</sup> (or portion thereof) not Delivered<sup>CDD</sup> or bought-in ("Quotation Amount"). The quotations shall be obtained on a date that is one business day following the expiry of the Buy-in Period at 12 a.m. Frankfurt time ("Valuation Time"). The Final Price will be determined on the basis of the valuation method "Market<sup>CDD</sup>" as defined in Section 7.5 (i) of the Credit Derivatives Definitions provided that the word "Dealer" shall be replaced by the words "relevant Clearing Members" and further provided that, instead of applying paragraphs (e) and (f) of Section 7.6 (Market Value) of the Credit Derivatives Definitions, if the Calculation Agent is unable to obtain any firm quotation, the Final Price shall be determined by Eurex Clearing AG acting as Calculation Agent in its discretion.
- (6) Measures taken by Eurex Clearing AG set forth in paragraph 1 to 5 shall be binding on the relevant Clearing Members.
- (7) Any costs arising from the measures taken in accordance with paragraphs 1 to 5 must be paid by the Clearing Member obliged to deliver.

- (8) The right to claim further damages shall be excluded for Eurex Clearing AG as well as for the Clearing Member which did not receive Delivery<sup>CDD</sup> in a timely manner.
- (9) Furthermore, the legal consequences pursuant to Chapter I Number 7.1 of the Clearing Conditions shall not apply if the Clearing Member acting as Buyer fails to Deliver<sup>CDD</sup> a Deliverable Obligation<sup>CDD</sup> specified in the Notice of Physical Settlement.

#### **2.1.16.7 Non-delivery regarding Deliverable Obligation Category – others than Bond**

- (1) If Eurex Clearing AG has not received confirmation by the Clearing Member(s) and / or Registered Customer(s), as the case may be, within the Settlement Period pursuant to Chapter VIII Number 2.1.16.5 Paragraph 3 of the Clearing Conditions that the relevant Deliverable Obligation(s)<sup>CDD</sup> have been delivered by the relevant Clearing Member as Buyer or its Registered Customer (in case of Number 2.1.16.5 paragraph (b) above), as applicable, a cash amount shall be payable by the Clearing Member acting as Seller or its Registered Customer (in case of Number 2.1.16.5 paragraph (b) above), as applicable (the "Loan Cash Settlement Amount") on the second business day after expiry of the Settlement Period (such date being a Termination Date). For calculating the Loan Cash Amount, Chapter VIII Number 2.1.16.6 paragraph 4 (last sentence) and paragraph 6 of the Clearing Conditions shall apply to the Deliverable Obligation<sup>CDD</sup> other than Bond<sup>CDD</sup> which has not been Delivered<sup>CDD</sup> mutatis mutandis.
- (2) The Loan Cash Settlement Amount will be calculated by the Calculation Agent on the basis of the outstanding principal balance or Currency Amount<sup>CDD</sup>, as applicable, of Deliverable Obligations<sup>CDD</sup> (or portion thereof) not Delivered<sup>CDD</sup> which is multiplied by the difference between the Reference Price, if any, minus the Final Price for the Deliverable Obligations<sup>CDD</sup> or portions thereof not Delivered<sup>CDD</sup> subject to a minimum amount of zero.
- (3) For purposes of paragraph 2 above the "Final Price" will be determined by the Calculation Agent by applying the procedures set out in Chapter VIII Number 2.1.16.6 Paragraph 6 of the Clearing Conditions mutatis mutandis.
- (4) Chapter VIII Number 2.1.16.6 Paragraphs 7 to 9 of the Clearing Conditions shall apply to the non-delivery of Deliverable Obligations<sup>CDD</sup> other than Bonds<sup>CDD</sup> mutatis mutandis.
- (5) A Clearing Member or Registered Customer, as applicable, shall, provided that it resorts upon Eurex Clearing AG as guarantor due to a default of the relevant other Clearing Member or Registered Customer, as applicable in making the payment of the Loan Cash Settlement Amount when due, assign any payment claims against the defaulting Clearing Member or relevant Registered Customer, as applicable, to Eurex Clearing AG if Eurex Clearing AG has fulfilled the asserted payment claim.
- (6) To the extent a Clearing Member or Registered Customer resorts upon Eurex Clearing AG as guarantor pursuant to paragraph 5 above following a default by a Registered Customer, Eurex Clearing AG may resort upon the Clearing Member that is liable as guarantor for the

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obligations of the defaulting Registered Customer in making the payment of the Loan Cash Settlement Amount. In this case, Eurex Clearing will assign any payment claims against the defaulting Registered Customer to the relevant Clearing Member if such Clearing Member has fulfilled the asserted payment claim.



## **2.2 Sub-Part: Clearing of Index Credit Default Swap Transactions**

### **2.2.1 Special Provisions regarding Index Credit Default Swap Transactions**

The following Sub-Part contains the specifications for index Credit Default Swap Transactions based on credit default indices.

#### **2.2.1.1 General Terms**

- (1) An Index Credit Default Swap Transaction (“Index Credit Default Swap” or “Index CDS”) is a contract between two parties, a protection buyer or fixed rate payer who makes fixed periodic payments, and a protection seller or floating rate payer, who collects the fixed periodic payments in exchange for compensating the protection buyer in case of the occurrence of a Credit Event<sup>CDD</sup> with respect to Reference Entities<sup>CDD</sup> which are comprised in a specific credit default swap index which is published, composed, weighted and calculated by an index provider.
- (2) Each Index CDS is defined by, among others:
  - a) The reference entities comprised in the relevant index and related reference obligations;
  - b) The relevant term which differentiates it from an Index CDS on the same index which has a different term;
  - c) The notional amount;
  - d) The weighting of the reference entities comprised in the index; and
  - e) A coupon payable by the fixed rate payer or protection buyer.
  - f) Certain Credit Events<sup>CDD</sup> which will trigger the settlement of the Index CDS.

#### **2.2.1.2 Product Types and Product-specific Novation Criteria**

- (1) Eurex Clearing AG clears the following Index CDS Product Types: iTraxx® Europe Index, iTraxx® Europe HiVol Index, and iTraxx® Europe Crossover Index.
- (2) Index CDS on the iTraxx® Europe Index must meet the following product-specific novation criteria (Chapter VIII Number 2.1.5 of the Clearing Conditions) based on the data transmitted to Eurex Clearing AG by an Approved Trade Source System on behalf of the Clearing Member or Registered Customer:
  - iTraxx® Europe Index Series 7, 8, 9, 10, 11 and any new versions thereof or series launched after series 11 and published on the website of the Index Publisher ([www.markit.com](http://www.markit.com)) with terms of 3, 5, 7 and 10 years provided that such series have been accepted by Eurex Clearing AG for clearing pursuant to Chapter VIII.

- (3) Index CDS on the iTraxx® Europe HiVol Index must meet the following product-specific novation criteria (Chapter VIII Number 2.1.5 of the Clearing Conditions) based on the data transmitted to Eurex Clearing AG by an Approved Trade Source System on behalf of the Clearing Member or Registered Customer:
  - iTraxx® Europe HiVol Index Series 7, 8, 9, 10, 11 and any new versions or series thereof or series launched after series 11 and published on the website of the Index Publisher (currently [www.markit.com](http://www.markit.com)) with terms of 3, 5, 7 and 10 years provided that such series have been accepted by Eurex Clearing AG for clearing pursuant to Chapter VIII.
- (4) Index CDS on the iTraxx® Europe Crossover Index must meet the following product-specific novation criteria (Chapter VIII Number 2.1.5 of the Clearing Conditions) based on the data transmitted to Eurex Clearing AG by an Approved Trade Source System on behalf of the Clearing Member or Registered Customer:
  - iTraxx® Europe Crossover Index Series 7, 8, 9, 10, 11 and any new versions or series thereof or series launched after series 11 and published on the website of the Index Publisher ([www.markit.com](http://www.markit.com)) with terms of 3, 5, 7 and 10 years provided that such series have been accepted by Eurex Clearing AG for clearing pursuant to Chapter VIII.
- (5) In the trade record of the relevant Index CDS transmitted to Eurex Clearing AG by the Approved Trade Source System the data fields for the following attributes must be filled in Counterparty ID, Trade Date, Effective Date, Scheduled Term Date, Reference Entity Name, Fixed Rate Payer (Buyer), Float Rate Payer (Seller), Fixed Rate (per annum), Float Rate Amount, Float Rate Currency.
- (6) If an Index CDS meets the Product-specific novation criteria above on the basis of the data provided by the Approved Trade Source System, then such Index CDS will be novated pursuant to Chapter VIII Sub-Part 1.2 and included in the clearing (provided that all other applicable novation criteria are met) irrespective of whether the terms of such Index CDS as agreed among the parties otherwise differ from the terms set out in these Clearing Conditions.

## 2.2.2 Clearing of iTraxx® Index Credit Default Swap Transactions

- (1) The following sections shall rule the clearing of the types of Index CDS set out in Number 2.2.1.2 above.
- (2) "iTraxx® Europe Indices" means each of the series and versions of indices set out in Number 2.2.2.1 to Number 2.2.2.3 below. Information about these indices and their publication, composition, weighting and calculation is available on the website of the Index Publisher ([www.markit.com](http://www.markit.com)).
- (3) "iTraxx® Index Sponsor" means International Index Company Ltd., or any successor thereto, and "iTraxx® Index Publisher" means Mark-it Partners Ltd., or any replacement therefore appointed by the Index Sponsor for purposes of officially publishing the relevant iTraxx® Index.

- (4) Following the publication of a new series for any of the iTraxx® Europe Indices, all existing CCP Transactions that are linked to a previous series of the relevant index shall not be affected by the publication of such new index series. Any OTC Credit Derivatives Transactions that will be included in the clearing by way of novation after the publication of a new index series for any of the iTraxx® Europe Indices may either be linked to a previous series of the relevant index or to the relevant new series of the iTraxx® Europe Indices.
- (5) Following the occurrence of a Credit Event<sup>CDD</sup> and the satisfaction of the Conditions to Settlement, the affected Reference Entity will be an "Excluded Reference Entity" as from the relevant Event Determination Date. Any CCP Transactions linked to the same series of one of the Traxx® Europe Indices that is affected by such Credit Event<sup>CDD</sup> shall have the same terms (except for the Original Trade Date and the Effective Date) irrespective of whether the Credit Event<sup>CDD</sup> has occurred before or after the relevant Original Trade Date and irrespective of whether a new version of the relevant series has been published by the Index Publisher if the publication of such new version is exclusively due to the occurrence of the respective Credit Event<sup>CDD</sup>. This shall apply mutatis mutandis if a Reference Obligation<sup>CDD</sup> has been substituted or if a Succession Event<sup>CDD</sup> has occurred with respect to a Reference Entity comprised in one of the iTraxx® Europe Indices, i.e. the relevant Successor<sup>CDD</sup> shall in any event be the Reference Entity irrespective of whether a new version reflecting such Succession Event<sup>CDD</sup> has been published or not. If as a result of such events a new version has been published and if the index in its new version is the same as the previous version of the index after adjustment due to the relevant Credit Event<sup>CDD</sup> or Succession Event<sup>CDD</sup> or after substitution of Reference Obligation<sup>CDD</sup>, Eurex Clearing AG will adjust all affected CCP Transactions to reflect the new version of the Index.
- (6) In case of a Restructuring Credit Event<sup>CDD</sup>, the affected Reference Entity will be excluded from the relevant iTraxx® Europe Index and the portion of the CCP Transaction linked to the relevant iTraxx® Europe Index which relates to the affected Reference Entity will be split-off into a Single-Name CDS in accordance with paragraph Chapter VIII Number 2.2.2.1 Paragraph 19 below.
- (7) Each CCP Transaction that according to the relevant OTC Trade Event Report is an iTraxx® Europe OTC Credit Derivatives Transaction (the "iTraxx® Master Transaction") shall be deemed to consist of individual component transactions (each a "Component Transaction" in respect of each Reference Entity listed in the Relevant Annex (each a "Component Transaction") provided that, if, in respect of a Reference Entity, a Succession Event<sup>CDD</sup> occurs or has occurred on or following the earlier of the Effective Date and the Original Trade Date, the provisions of Section 2.2 of the Credit Derivatives Definitions and Chapter VIII Number 2.1.13 of these Clearing Conditions will apply in respect of such Reference Entity mutatis mutandis. Without prejudice to the fact that a Component Transaction is only a part of one single CCP Transaction, such CCP Transaction being the iTraxx® Master Transaction, each Component Transaction shall be deemed to be a Credit Derivatives Transaction for purposes of the definitions and provisions of the Credit Derivatives Definitions, having the terms applicable to iTraxx® Europe transactions as set out herein.
- (8) For purposes of CCP Transactions that are Index CDS linked to one of the iTraxx® Europe Indices, "CD Business Day" means a day on which commercial banks and foreign exchange markets are generally open to settle payments in London and a TARGET Settlement Day<sup>CDD</sup>.

### 2.2.2.1 iTraxx® Europe Index

- (1) CCP Transactions that are Index CDS on the iTraxx® Europe Index, in each case the series and version of the iTraxx® Europe Index as shown in the relevant OTC Trade Event Report, shall be governed by the product-specific terms applicable pursuant to paragraph (2) to (19) below which have to be read together with the provisions set out in Chapter VIII, Part 1 and Part 2, Sub-Part 2.1, the Numbers 2.2.1. and 2.2.2 above, and the general clearing provisions set out in Chapter I and II of these Clearing Conditions.
- (2) Original Trade Date: As shown in the relevant OTC Trade Event Report.
- (3) Effective Date: The Roll Date in respect of the relevant iTraxx® Europe Index as set out and defined in the Relevant Annex.
- (4) Scheduled Termination Date<sup>CDD</sup>: As shown in the relevant OTC Trade Event Report.
- (5) Floating Rate Payer: As shown in the relevant OTC Trade Event Report (the "Seller")
- (6) Fixed Rate Payer: As shown in the relevant OTC Trade Event Report (the "Buyer")
- (7) Reference Entity<sup>CDD</sup>: Subject to paragraph 18 below, the relevant Reference Entity<sup>CDD</sup> contained in the relevant iTraxx® Europe Index and listed in the Relevant Annex except for any Excluded Reference Entity specified in the OTC Trade Event Report.
- (8) Reference Obligations<sup>CDD</sup>: The Reference Obligation(s) (if any) set out opposite the relevant Reference Entity in the Relevant Annex, subject to Chapter VIII Number 2.1.13 Paragraph 5 of the Clearing Conditions.
- (9) Business Day Convention<sup>CDD</sup>: Following<sup>CDD</sup> (which, except for the Effective Date and the Original Trade Date, shall apply to any date referred to in this Number 2.2.2.1 or in the OTC Trade Event Report that falls on a day that is not a CD Business Day).
- (10) Relevant Annex: The "Relevant Annex" shall be the list for the relevant iTraxx® Europe Index with the relevant Annex Date specified in the OTC Trade Event Report, as published by the Index Publisher (which can be accessed currently at <http://www.markit.com>).
- (11) Initial Payment: Any initial payment will have to be made directly between the parties in accordance with the terms of the Original OTC Transaction and no initial payment is due under a CCP Transaction as set out in Chapter VIII Number 2.1.14 of these Clearing Conditions.
- (12) Fixed Payments: The Fixed Rate Payer will make Fixed Payments in accordance with Chapter VIII Number 2.1.15 of these Clearing Conditions provided that:

- a) The "Fixed Rate Payer Calculation Amount" shall be the Floating Rate Payer Calculation Amount.
- b) The "Fixed Rate Payer Payment Dates" shall be each 20<sup>th</sup> March, 20<sup>th</sup> June, 20<sup>th</sup> September and 20<sup>th</sup> December in each year.
- c) The "Fixed Rate Payer Calculation Period" shall be each period from, and including, one Fixed Rate Payer Payment Date to, but excluding, the next following Fixed Rate Payer Payment Date, except that (a) the initial Fixed Rate Payer Calculation Period will commence on, and include, the later of the Effective Date and the Fixed Rate Payer Payment Date falling on or immediately prior to the calendar day immediately following the Original Trade Date and (b) the final Fixed Rate Payer Calculation Period will end on, and include, the earlier to occur of the Scheduled Termination Date and the Event Determination Date (Chapter VIII Number 2.1.16 Paragraph 3 of these Clearing Conditions).
- (d) The "Fixed Rate" shall be the per annum rate in respect of the relevant iTraxx® Europe Index and the Term of the relevant iTraxx® Master Transaction as set out in the Relevant Annex.
- (e) The "Fixed Rate Day Count Fraction" shall be Actual/360<sup>CDD</sup>.

(13) Floating Payment:

The Floating Rate Payer and Seller shall make Floating Payments in accordance with Chapter VIII Number 2.1.16 of these Clearing Conditions provided that:

- a) With respect to each Component the "Floating Rate Payer Calculation Amount" shall be an amount equal to:

Reference Entity Weighting x Original Notional Amount.

- b) "Original Notional Amount" shall be the amount shown as such in the OTC Trade Event Report.
- c) "Reference Entity Weighting" means the percentage set out opposite the relevant Reference Entity in the Relevant Annex, provided that the Reference Entity Weighting in respect of an Excluded Reference Entity shall be deemed to be zero.
- d) "Excluded Reference Entity" means a Reference Entity shown as such in the OTC Trade Event Report.
- e) The "Credit Events<sup>CDD</sup>" shall be:

Bankruptcy<sup>CDD</sup>

Failure to Pay<sup>CDD</sup>

Restructuring<sup>CDD</sup>

Modified Restructuring Maturity Limitation<sup>CDD</sup> and Conditionally Transferable Obligation<sup>CDD</sup> shall apply to the Notice of Deliverable Obligations, provided that Modified Restructuring Maturity Limitation<sup>CDD</sup> and Conditionally Transferable Obligation<sup>CDD</sup> shall not apply if the Reference Entity is specified as a "Subordinated Insurer" in the Relevant Annex.

Notwithstanding Chapter VIII Number 2.1.16.1 Paragraph 2 and 3 of the Clearing Conditions, in case of such a Subordinated Insurer there will be no Auction<sup>CDD</sup> for different Maturity Buckets and there will be no such different Maturity Buckets available under the Fallback Settlement Method either. Rather, the provisions of the Auction Settlement Method or the Fallback Settlement Method, as applicable, which would apply upon occurrence of a Credit Event<sup>CDD</sup> in the form of a Bankruptcy<sup>CDD</sup> or a Failure to Pay<sup>CDD</sup>, apply mutatis mutandis.

For the avoidance of doubt, in case of a Restructuring<sup>CDD</sup> Credit Event<sup>CDD</sup> Section 4.9 (Limitation on Obligations in Connection with Section 4.7) of the Credit Derivatives Definitions shall apply.

- (14) All Guarantees<sup>CDD</sup>: "All Guarantee" shall be applicable for purposes of the definitions of Obligation and Deliverable Obligation<sup>CDD</sup>.
- (15) Obligation(s)<sup>CDD</sup>
- a) Obligation Category<sup>CDD</sup>: Borrowed Money<sup>CDD</sup>
  - b) Obligation Characteristics<sup>CDD</sup>: None.
- (16) Settlement Terms: Auction Settlement Method pursuant to Number 2.1.16.1 of these Clearing Conditions shall apply (subject to the Fallback Settlement Method) provided that in the case of the Fallback Settlement Method:
- a) "Exclude Accrued Interest" shall apply (Number 2.1.16.4 paragraph (3) of these Clearing Conditions)
  - b) The "Deliverable Obligation Category<sup>CDD</sup>" shall be Bond or Loan<sup>CDD</sup>.

c) The "Deliverable Obligation Characteristics<sup>CDD</sup>" shall be the following:

- Not Subordinated<sup>CDD</sup>
- Specified Currency<sup>CDD</sup> (Standard Specified Currencies<sup>CDD</sup>)
- Not Contingent<sup>CDD</sup>
- Assignable Loan<sup>CDD</sup>
- Consent Required Loan<sup>CDD</sup>
- Transferable<sup>CDD</sup>
- Maximum Maturity<sup>CDD</sup>: 30 years
- Not Bearer<sup>CDD</sup>

d) Escrow<sup>CDD</sup> (Section 8.11 of the Credit Derivatives Definitions) shall apply in case of the Fallback Settlement Method provided that any physical settlement by way of a Delivery<sup>CDD</sup> of a Bond<sup>CDD</sup> that can be processed by Eurex Clearing AG through appropriate instruction to the respective bank for central depository of securities or to the custodian or central securities depository, respectively, shall take place through Eurex Clearing AG, as Escrow Agent in accordance with the Clearing Conditions (in which case the last sentence of Section 8.11(a) shall be replaced by the clearing arrangements between the parties and Eurex Clearing AG).

(17) Merger of Reference Entity and Seller: For the avoidance of doubt, Section 2.31 of the Credit Derivative Definitions shall not apply.

(18) Inconsistency between Relevant Annex and Index: In the event of any inconsistency between the Relevant Annex and the relevant iTraxx® Europe Index published by the Index Sponsor, the Relevant Annex shall govern.

(19) Restructuring Credit Event: If a DC Credit Event Announcement<sup>CDD</sup> occurs in respect of a Restructuring<sup>CDD</sup> with respect to a Reference Entity (such Reference Entity, a "Restructured Entity"), from and including the calendar day immediately following the date of such DC Credit Event Announcement<sup>CDD</sup>:

- a) the Restructured Entity shall be deemed to have been removed from the iTraxx® Europe Index and the Relevant Annex; and
- b) the Component Transaction relating thereto shall continue in full force and effect

between the parties as an independent CCP Transaction in the form of Single Name CDS referencing the Restructured Entity with the same economic terms and conditions as the Component Transaction immediately before such DC Credit Event Announcement.

- (20) Amendment to Relevant Annex: The Relevant Annex will be deemed amended from time to time to reflect any modifications required under Section 2.2 of the Credit Derivatives Definitions and Number 2.1.13 of these Clearing Conditions and the "Reference Obligation(s)<sup>CDD</sup>" provisions in paragraph (8) above.
- (21) STMicroelectronics NV: Where (a) STMicroelectronics NV is the Reference Entity; (b) the Notice of Physical Settlement with respect to such Reference Entity specifies the USD 1,217,000,000 Zero Coupon Senior Convertible Bond due 2013 issued by STMicroelectronics NV as a Deliverable Obligation<sup>CDD</sup>, and (c) such Deliverable Obligation<sup>CDD</sup> is not immediately due and payable as of the Delivery Date<sup>CDD</sup>, the outstanding principal balance of such Deliverable Obligation<sup>CDD</sup> shall be deemed to be the amount payable on the scheduled maturity date of such Deliverable Obligation<sup>CDD</sup>.

#### **2.2.2.2 iTraxx® Europe HiVol Index**

- (1) Index CDS on the iTraxx® Europe HiVol Index, in each case the series and version of the iTraxx® Europe HiVol Index as shown in the relevant OTC Trade Event Report, shall be governed by the product-specific terms applicable pursuant to paragraph (2) below which have to be read together with the provisions set out in Chapter VIII, Part 1 and Part 2, Sub-Part 2.1, the Numbers 2.2.1 and 2.2.2 above, and the general clearing provisions set out in Chapter I and II of these Clearing Conditions.
- (2) The provisions set out in Chapter VIII Number 2.2.2.1 above relating to the iTraxx® Europe Index shall apply to the iTraxx® Europe HiVol Index Product Types mutatis mutandis provided that the term "iTraxx® Europe Index" shall be replaced by the term "iTraxx® Europe HiVol Index".

#### **2.2.2.3 iTraxx® Europe Crossover Index**

- (1) Index CDS on the iTraxx® Europe Crossover Index, in each case the series and version of the iTraxx® Europe Crossover Index as shown in the relevant OTC Trade Event Report, shall be governed by the product-specific terms applicable pursuant to paragraph (2) below which have to be read together with the provisions set out in Chapter VIII, Part 1 and Part 2, Sub-Part 2.1, the Numbers 2.2.1 and 2.2.2 above, and the general clearing provisions set out in Chapter I and II of these Clearing Conditions.
- (2) The provisions set out in Number 2.2.2.1 relating to the iTraxx® Europe Index shall apply to the iTraxx® Europe Crossover Index Product Types mutatis mutandis provided that the term "iTraxx® Europe Index" shall be replaced by the term "iTraxx® Europe Crossover Index".



## **2.3 Sub-Part: Clearing of Single Name Credit Default Swap Transactions**

### **2.3.1 Special Provisions regarding Single Name Credit Default Swap Transactions**

The following Sub-Part contains the specifications for Single Name Credit Default Swap Transactions ("Single Name CDS") based on a single Reference Entity.

#### **2.3.1.1 General Terms**

- (1) An Single Name CDS is a contract between two parties, a protection buyer or fixed rate payer who makes fixed periodic payments, and a protection seller or floating rate payer, who collects the fixed periodic payments in exchange for compensating the protection buyer in case of the occurrence of a Credit Event<sup>CDD</sup> with respect to the Reference Entity<sup>CDD</sup> on which the protection buyer has bought credit protection from the protection seller.
- (2) Each Single Name CDS is defined by, among others:
  - a) The reference entity to which such Single Name CDS is linked;
  - b) A reference obligation of the reference entity
  - c) The relevant term which differentiates it from Single Name CDS on the same reference entity which has a different term;
  - d) The notional amount which means the quantity of the underlying asset on which the protection buyer has bought credit protection;
  - e) A coupon payable by the fixed rate payer or protection buyer.
  - f) Certain Credit Events which will trigger the settlement of the Single Name CDS.
  - g) The Deliverable Obligation Category and Characteristics that define the Deliverable Obligations.

#### **2.3.1.2 Product Types and Product-specific Novation Criteria**

- (1) Eurex Clearing AG clears the following Single Name CDS Product Types: Single Name CDS on iTraxx Europe Constituents.
- (2) Single Name CDS on the iTraxx® Europe Constituents must meet the following product-specific novation criteria (Chapter VIII Number 2.1.5 of the Clearing Conditions) based on the data transmitted to Eurex Clearing AG by an Approved Trade Source System on behalf of the Clearing Member or Registered Customer:

-- The reference entities are constituents of the iTraxx® Europe Index, iTraxx® Europe HiVol Index or the iTraxx® Europe Crossover Index Series 7, 8, 9, 10, 11 and any version or series thereof launched after series 11 provided that such constituents have been accepted

by Eurex Clearing AG for clearing pursuant to Chapter VIII.

- The currency for fixed rate payments, floating rate payments and settlement is either EUR, GBP, CHF or USD.
  - The Single Name CDS matched by the Approved Trade Source System identify the reference entity and the reference obligation by using a RED (Reference Entity Database) code.
  - The original maturity of the Single Name CDS is not more than 10.25 years.
  - The scheduled maturity date is 20 March, 20 June, 20 September or 20 December, in each case unadjusted for non-business days
  - The Single Name CDS are quarterly rolling transactions as of 20 March, 20 June, 20 September or 20 December (CDS IMM roll date) with quarterly fixed rate payments.
  - The first fixed rate payment date is a quarterly CDS IMM roll date.
  - The first fixed rate accrual period starts from the effective date or from the adjusted CDS IMM roll date.
  - The single Name CDS is recorded as a standard using the ISDA 2003 Master Confirmation Agreement and falling within one of the four following ISDA Physical Settlement Matrix categories: European Corporate, Standard European Corporate, Subordinated European Insurance Corporate or Standard Subordinated European Insurance Corporate.
  - With respect to CCP Transactions to be booked on the Principal Account of the Seller, the Clearing Member or Registered Customer acting as Seller shall be different from the Reference Entity<sup>CDD</sup>.
  - In the trade record of the relevant Single Name CDS transmitted to Eurex Clearing AG by the Approved Trade Source System the data fields for the following attributes must be filled in Counterparty: ID, Trade Date, Effective Date, Scheduled Term Date, First Payment Date, Reference Obligation, Reference Entity Name, Master Document Transaction Type, Fixed Rate Payer (Buyer), Float Rate Payer (Seller), Fixed Rate (per annum), Float Rate Amount, Float Rate Currency, Payment Frequency (Months).
- (3) If an Single Name CDS meets the Product-specific novation criteria above on the basis of the data provided by the Approved Trade Source System, then such Single Name CDS will be novated pursuant to Chapter VIII Sub-Part 1.2 and included in the clearing (provided that all other applicable novation criteria are met) irrespective of whether the terms of such Single Name CDS as agreed among the parties otherwise differ from the terms set out in these Clearing Conditions.

### 2.3.1.3 Merger of Reference Entity and Seller

- (1) In the event that a Seller, which may be a Clearing Member or a Registered Customer, as applicable, or a Reference Entity consolidates or amalgamates with, or merges into, or transfer all its assets to, the Reference Entity or the Seller, as applicable, the Seller shall close all its existing CCP Transactions based on the respective Reference Entity by an inverse Single Name CDS (the "Closing") to be cleared by Eurex Clearing AG. Sentence 1 applies to CCP Transactions booked on the Principal Account of the Seller only.
- (2) If the Closing of CCP Transactions has not been concluded by the respective Seller, which might be a Clearing Member or a Registered Customer, as applicable, within a certain adequate period of time set by Eurex Clearing AG in individual cases, Eurex Clearing AG may carry out the Closing of these CCP transactions on behalf of the concerned Seller.

### 2.3.2 Clearing of Single Name CDS

The following sections shall rule the clearing of CCP Transactions that are Single Name CDS.

#### 2.3.2.1 Single Name CDS on iTRAXX Europe Constituents

- (1) CCP Transactions that are Single Name CDS on iTraxx Europe Constituents shall be governed by the product-specific terms below which shall be read together with the provisions set out in Chapter VIII, Part 1 and Part 2, Sub-Part 2.1 and Sub-Part 2.3 Number 2.31 and 2.3.2 and the terms set out in the paragraphs (2) to (17) below:
- (2) Original Trade Date: As shown in the relevant OTC Trade Event Report.
- (3) Effective Date: As shown in the relevant OTC Trade Event Report.
- (4) Scheduled Termination Date: As shown in the relevant OTC Trade Event Report.
- (5) Floating Rate Payer: As shown in the relevant OTC Trade Event Report (the "Seller")
- (6) Fixed Rate Payer: As shown in the relevant OTC Trade Event Report (the "Buyer")
- (7) Reference Entity: The Reference Entity specified as such in the OTC Trade Event Report.
- (8) Reference Obligations<sup>CDD</sup>: The Reference Obligation specified as such in the OTC Trade Event Report, subject to Chapter VIII Number 2.1.13 Paragraph 5 of the Clearing Conditions.
- (9) CD Business Day: any day on which commercial banks and foreign exchange markets are generally open to settle payments in:

- London and a TARGET Settlement Day<sup>CDD</sup> if the Settlement Currency is EUR
- London and New York if the Settlement Currency is USD
- London if the Settlement Currency is GBP
- London and Zurich if the Settlement Currency is CHF

(10) Business Day Convention<sup>CDD</sup>: Following (which, except for the Effective Date and the Trade Date, shall apply to any date referred to in this Number 2.3.2.1 or in the OTC Trade Event Report that falls on a day that is not a CD Business Day.

(11) Initial Payment: Any initial payment will have to be made directly between the parties in accordance with the terms of the Original OTC Credit Derivatives Transaction and no initial payment is due under a CCP Transaction as set out in Chapter VIII Number 2.1.14 of these Clearing Conditions.

(12) Fixed Payments: The Fixed Rate Payer will make Fixed Payments in accordance with Chapter VIII Number 2.1.15 of these Clearing Conditions provided that:

- a) The "Fixed Rate Payer Calculation Amount" shall be the Floating Rate Payer Calculation Amount.
- b) The "Fixed Rate Payer Payment Dates" shall be each 20<sup>th</sup> March, 20<sup>th</sup> June, 20<sup>th</sup> September and 20<sup>th</sup> December in each year.
- c) The "Fixed Rate Payer Calculation Period" shall be each period from, and including, one Fixed Rate Payer Payment Date to, but excluding, the next following Fixed Rate Payer Payment Date, except that (a) the initial Fixed Rate Payer Calculation Period will commence on, and include, the later of the Effective Date and the Fixed Rate Payer Payment Date falling on or immediately prior to the calendar day immediately following the Original Trade Date and (b) the final Fixed Rate Payer Calculation Period will end on, and include, the earlier to occur of the Scheduled Termination Date and the Event Determination Date (Chapter VIII Number 2.1.16 Paragraph 3 of these Clearing Conditions).
- (d) The "Fixed Rate" shall be the per annum rate set out in the OTC Trade Event Report.

(e) The "Fixed Rate Day Count Fraction" shall be Actual/360<sup>CDD</sup>.

(13) Floating Payment:

The Floating Rate Payer and Seller shall make Floating Payments in accordance with Number 2.1.16 of these Clearing Conditions provided that the Floating Rate Payer Calculation Amount shall be denominated in EUR, GBP, CHF or USD, as shown in the OTC Trade Event Report.

The "Credit Events<sup>CDD</sup>" shall be:

Bankruptcy<sup>CDD</sup>

Failure to Pay<sup>CDD</sup>

Restructuring<sup>CDD</sup>

Modified Restructuring Maturity Limitation<sup>CDD</sup> and Conditionally Transferable Obligation<sup>CDD</sup> shall apply to the Notice of Deliverable Obligations.

These limitations do not apply if the inclusion of the initial Single Name CDS in the clearing was based on one of the two following product-specific novation criteria (Number 2.3.1.2 paragraph 2): "Subordinated European Insurance Corporate" or "Standard Subordinated European Insurance Corporate".

In this case, notwithstanding Chapter VIII Number 2.1.16.1 paragraph 2 and 3 of the Clearing Conditions, there will be no Auctions<sup>CDD</sup> for different Maturity Buckets and there will be no such different Maturity Buckets available under the Fallback Settlement Method either. Rather, the provisions of the Auction Settlement Method or the Fallback Settlement Method, as applicable, which would apply upon occurrence of a Credit Event<sup>CDD</sup> in the form of a Bankruptcy<sup>CDD</sup> or a Failure to Pay<sup>CDD</sup>, apply mutatis mutandis.

For the avoidance of doubt, in case of a Restructuring<sup>CDD</sup> Credit Event<sup>CDD</sup> Section 4.9 (Limitation on Obligations in Connection with Section 4.7) of the Credit Derivatives Definitions shall apply.

(14) All Guarantees<sup>CDD</sup> shall apply for purposes of determining a Deliverable Obligation<sup>CDD</sup>.

(15) Obligation(s)<sup>CDD</sup>

(a) Obligation Category<sup>CDD</sup>: Borrowed Money<sup>CDD</sup>

(b) Obligation Characteristics<sup>CDD</sup>: None.

- (16) Settlement Terms: Auction Settlement Method pursuant to Number 2.1.16.1 of these Clearing Conditions shall apply (subject to the Fallback Settlement Method) provided that in the case of the Fallback Settlement Method:
- a) The Settlement Currency shall be the denomination of the Floating Rate Payer Calculation Amount.
  - b) "Exclude Accrued Interest" shall apply (Number 2.1.16.4 paragraph (3) of these Clearing Conditions)
  - c) The "Deliverable Obligation Category<sup>CDD</sup>" shall be Bond or Loan<sup>CDD</sup>.
  - d) The "Deliverable Obligation Characteristics<sup>CDD</sup>" shall be the following:
    - Not Subordinated<sup>CDD</sup>
    - Specified Currency<sup>CDD</sup> (Standard Specified Currencies<sup>CDD</sup>)
    - Not Contingent<sup>CDD</sup>
    - Assignable Loan<sup>CDD</sup>
    - Consent Required Loan<sup>CDD</sup>
    - Transferable<sup>CDD</sup>
    - Maximum Maturity<sup>CDD</sup>: 30 years
    - Not Bearer<sup>CDD</sup>
  - e) Escrow<sup>CDD</sup> (Section 8.11 of the Credit Derivatives Definitions) shall apply provided that the Delivery<sup>CDD</sup> of a Bond<sup>CDD</sup> that can be processed by Eurex Clearing AG through appropriate instruction to the respective bank for central depository of securities or to the custodian or central securities depository, respectively, shall take place through Eurex Clearing AG (in which case the last sentence of Section 8.11(a) shall be replaced by the clearing arrangements between the parties and Eurex Clearing AG).
- (17) If (a) STMicroelectronics NV is the Reference Entity and (b) the Notice of Physical Settlement with respect to such Reference Entity specifies the USD1,217,000,000 Zero Coupon Senior Convertible Bond due 2013 issued by STMicroelectronics NV as a Deliverable Obligation<sup>CDD</sup>, and (c) such Deliverable Obligation<sup>CDD</sup> is not immediately due and payable as of the Delivery

Date<sup>CDD</sup>, the outstanding principal balance of such Deliverable Obligation<sup>CDD</sup> shall be deemed to be the amount payable on the scheduled maturity date of such Deliverable Obligation<sup>CDD</sup>.

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MODIFICATIONS ARE MARKED AS FOLLOWS:

- AMENDMENTS ARE UNDERLINED
- DELETIONS ARE STRIKED THROUGH

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**Appendices:**  
**Form Agreements**

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

**1.1 CM Clearing Agreement**

Clearing Agreement

between

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

and

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

**1. Subject Matter of Agreement, Applicable Legal Provisions**

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

Parts of this Agreement are the Clearing Conditions and the Price List of Eurex Clearing AG in their current German version. Both contractual parts may be viewed and printed out via internet on the website [www.eurexclearing.com](http://www.eurexclearing.com).



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**2. Provision of Margin in the Form of Securities**

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

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

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

**3. Cash Clearing**

- (1) The CM hereby agrees to instruct the payment institution determined by the AG for clearing of its transactions to honour any debit instructions (Lastschriften) from its account. AG shall provide that any surplus cash balance that the CM may have in its internal cash clearing account with AG is credited to the account of the CM at the respective payment institution.
- (2) AG may allow the use of accounts of a correspondent bank recognised by AG for purposes of cash clearing with AG.

**4. Authorisation to Give Delivery Instructions**

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

- (2) If the CM holds a Credit Derivatives Clearing License of AG regarding the clearing of OTC Credit Derivatives transactions (Chapter VIII Number 2.1.4 Clearing Conditions), the CM hereby agrees to authorise AG, by providing the appropriate authorization, for purposes of capturing and maintaining records by Eurex Clearing AG vis-à-vis the respective provider authorised by Eurex Clearing AG to transfer the trade record of the relevant OTC Credit Derivatives transactions for clearing to Eurex Clearing AG ("Approved Trade Source System"). In case AG has, on written request of the CM, explicitly allowed the CM to use instead of its own accounts with an Approved Trade Source System the accounts of a Registered Customer with an Approved Trade Source System, the CM hereby agrees to provide to AG an appropriate authorization of the Registered Customer.

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**5. Fees arising from Connection Agreement**

- (1) The AG shall collect fees from the CM for Eurex Frankfurt AG; the CM is obligated to pay such fees to Eurex Frankfurt AG according to the Agreement on Technical Connection and Utilization of the Trading Systems of Eurex Deutschland and Eurex Zürich (Connection Agreement).
- (2) The CM undertakes to commission the payment institution determined for the clearing of its transactions under Chapter I Number 2.2 Paragraph 4 item c of the Clearing Conditions with paying the debit entries incoming from the AG regarding the fees under Paragraph 1, such payment taking place at the expense of the CM's account.

(3) In case the CM holds a Credit Derivatives Clearing License of AG regarding the clearing of OTC Credit Derivatives Transactions (Chapter VIII Number 2.1.4 Clearing Conditions), the AG shall collect fees from the CM according to the Clearing Conditions in conjunction with the Price List for Eurex Clearing AG valid at the time. Paragraph 2 applies mutatis mutandis.

**6. Revocation of Powers of Attorney, Authorization and Debit Instructions**

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

**7. Data and Services Supplement**

The CM undertakes to execute a separate standard Data and Services Supplement which deals with the transmission of information and data as well as with respective authorisations and licenses, as applicable.

**8. Special Requirements that apply to Clearing of OTC Credit Derivatives Transactions involving Institution domiciled in the United States of America which are Clearing Members ("U.S. Clearing Members"), U. S Registered Customers or U. S. Customers**

**8.1 Compliance with requirements**

U.S. Clearing Members, and U.S. Registered Customers and Clearing Members and Registered Customers with U.S. customers shall be in material compliance with this Chapter VIII Part 2 and applicable laws and regulations, relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to cleared OTC Credit Derivatives transactions ("CCP Transactions").

**8.2. Additional requirements with respect to transactions.**

U.S. Clearing members and U.S. Registered Customers and Clearing members and Registered Customers with U.S. customers may receive or hold funds or securities of such U.S. persons for the purpose of purchasing, selling, clearing, settling or holding cleared Credit Derivatives Transactions:

- (1) Only to the extent each such U.S. person is an Eligible Contract Participant as defined in section 1a(12) of the U.S. Commodity Exchange Act and is not a natural person;

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- (2) The member shall segregate such funds and securities of such U.S. persons from the member's own assets ( the member may not permit such U.S. persons to "opt out" of applicable segregation requirements for such funds and securities even if regulations or laws would permit the person to "opt out"); and
- (3) The Clearing Member or Registered Customer shall disclose to such U.S. persons that the Clearing Member or Registered Customer is not regulated by the U.S. Securities and Exchange Commission, that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities held by the member, and that the insolvency law of the jurisdiction in which the member or a registered customer has its center of interest applies to the member or registered customer and may affect the U.S. person's ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding.
- (4) U.S. CMs and CMs with U.S. customers must meet the additional conditions specified in a separate document to be executed by such parties, which reflect the conditions specified in an Order of the U.S. Securities and Exchange.

**8.3. Additional requirements with respect to Credit Derivatives Transactions that can be cleared**

U.S. Clearing members and U.S. Registered Customers and Clearing Members and Registered Customers with U.S. customers may only submit for clearing OTC Credit Derivatives Transactions on the following reference entities:

- (1) an entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available;
- (2) a foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States;
- (3) a foreign sovereign debt security;
- (4) an asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or
- (5) an asset-backed security issued or guaranteed by U.S. Fannie Mae, Freddie Mac or U.S. Ginnie Mae; or
- (6) an index of reference entities in which 80 percent or more of the index's weighting is comprised of the entities or securities described in (1)-(5) above.

**79. Term**

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

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**108. Amendments**

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

**119. Governing Law, Place of Performance**

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

**1210. Severability Clause**

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

\_\_\_\_\_  
Place and Date

\_\_\_\_\_  
On behalf of the CM

\_\_\_\_\_  
Place and Date

\_\_\_\_\_  
On behalf of AG

Appendix / Appendices

## 1.2 Appendix to the CM Clearing Agreement

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

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

### Chapter I: Type of the Clearing License

The CM shall be granted:

**General Clearing License.**

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

or

**Direct Clearing License.**

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

or

**OTC Clearing License**

An OTC Clearing License entitles the Clearing Member to participate in the clearing of OTC Derivatives Transactions pursuant to Chapter VIII Clearing Conditions with regard to its own transactions, transactions of its Registered Customers and customers' transactions. Such license shall be granted by Eurex Clearing AG upon written application. An OTC Clearing License will be granted with the restriction to clear certain classes of OTC Derivatives Transactions as stated in the following and covered within Chapter VIII of the Clearing Conditions.

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## Chapter II: Scope of the Clearing License

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

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

In this respect, the following rules shall apply:

a) Applicable Legal Provisions

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

b) Provision of Margin

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

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

c) Cash Clearing

The CM undertakes to instruct the central bank of the Euro system, which participates in TARGET2 with its TARGET2 component system, another central bank, which is no central bank of the Euro system and is connected to TARGET2 due to a special agreement, the Swiss National Bank or another payment institution defined by AG to

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honor all claims against the CM as calculated by AG via debit instruction from the account of the CM from aforementioned payment institution. AG shall provide that any surplus cash balance that CM may have on its internal money clearing account with AG shall be credited to the respective CM's account at the respective payment institution.

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

Applicable Legal Provisions

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

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

Applicable Legal Provisions

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

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

Applicable Legal Provisions

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

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

a) Applicable Legal Provisions

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

b) Authorisation to Grant Delivery Instructions

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

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

a) Applicable Legal Provisions

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

b) Modification of the legal relationships arising from EEX Transactions

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

**Clearing of OTC Derivatives Transactions pursuant to Chapter VIII Clearing Conditions (“OTC Clearing License”)**

In this respect, the following rules shall apply:

**Part 1: General Provisions**

a) Applicable Legal Provisions

The Clearing Conditions for Eurex Clearing AG shall apply in the respective German version valid at the time.

**Part 2: Subgroups of OTC Clearing License**

**Credit Derivatives Clearing License (“CD Clearing License”)**

a) With respect to the clearing of OTC Credit Derivatives Transactions pursuant to Chapter VIII Number 2.1.4 Clearing Conditions a CD Clearing License, which forms a subgroup of an OTC Clearing License (Chapter VIII Number 1.1.1), will be issued only. A CD Clearing License entitles the holder thereof to clear both, its own OTC Credit Derivatives transactions, customers’ OTC Credit Derivatives transactions as well as OTC Credit Derivatives transactions of its customers, which



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are accepted by AG ("Registered Customers").

b) Modification of the legal relationships arising from CCP Transactions.

The CM shall herewith declare vis-à-vis the AG its explicit approval regarding the modification of the legal relationships of all CCP Transactions concluded with its CM pursuant to Chapter VIII Number 2.1.16.5 Paragraph 1 "Deliverable Obligation Category - others than Bonds" of the Clearing Conditions.

c) References within Chapter VIII of the Clearing Conditions to ISDA Documentation

The CM shall herewith declare vis-à-vis the AG that CM has received from the AG a copy of the 2003 ISDA Credit Derivatives Definitions (the "2003 Definitions") as supplemented by the May 2003 Supplement and the 2005 Matrix Supplement to the 2003 Definitions (the "May 2003 Supplement and 2005 Matrix Supplement") and by the 2009 ISDA Credit Derivatives Determinations Committees and Auction Settlement Supplement to the 2003 Definitions and its annexes (the "2009 Supplement"; the 2003 Definitions as supplemented by the May 2003 Supplement and the 2009 Supplement together referred to as the "Credit Derivatives Definitions"), each as published by the International Swaps and Derivatives Association, Inc. ("ISDA")

d) Special rules applying to institutions domiciled in the United States of America which are Clearing Members ("U.S. CM") or CMs with U.S. Customers of cleared OTC Credit Derivatives Transactions ("CCP Transactions").

U.S. CMs must be an entity regulated by a U.S. financial regulatory agency, or if, a bank, by a U.S. financial regulatory agency or State banking authority.

U.S. CMs and CMs with U.S. customers must be Eligible Contract Participants within the meaning of Section 1a(12) of the U.S. Commodity Exchange Act. CMs may receive or hold funds or securities of such U.S. persons for the purpose of purchasing, selling, clearing, settling or holding OTC Derivatives Transactions cleared by Eurex Clearing AG ("CCP Transactions"):-

- (i) Only to the extent each such U.S. person is an Eligible Contract Participant as defined in section 1a(12) of the U.S. Commodity Exchange Act and is not a natural person;
- (ii) The CM shall segregate such funds and securities of such U.S. persons from the CM's own assets respectively (i.e., the member may not permit such U.S. persons to "opt out" of applicable segregation requirements for such funds and securities even if regulations or laws would permit the person to "opt out"); and

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The CM shall disclose to such U.S. persons that the CM is not regulated by the U.S. Securities and Exchange Commission and that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities held by the member, that the insolvency law of the jurisdiction in which the CM has its center of interest applies to the CM and may affect the U.S. person's ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding.

(iii) U.S. CMs and CMs with U.S. customers (and with respect to such customers) may only submit for clearing OTC CDS contracts that meet the requirements of the SEC Exemptive Order as listed on Eurex Clearing's website;

(iv) U.S. CMs and CMs with U.S. customers must meet the additional conditions specified in a separate document to be executed by such parties, which reflect the conditions specified in an Order of the U.S. Securities and Exchange.

Place and Date

On behalf of the CM

On behalf of AG

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

### **2.1 NCM CM Clearing Agreement**

NCM-CM Agreement

between

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

and

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

and

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

#### **1. Subject Matter of Agreement, Applicable Legal Provisions**

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

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

#### **2. Legal Relationships; Liability**

- (1) All entries made by the NCM into the trading system shall in accordance with Chapter II of the attachment to the NCM-CM-Clearing Agreement be directly binding for and against the CM. If an order or quote entered by the NCM is matched with another order or quote, a transaction shall be effected thereby between the NCM and the CM and a further, equivalent transaction shall be effected thereby between the CM and Eurex Clearing AG pursuant to the Clearing Conditions, unless provided otherwise.
- (2) The CM is required to notify the management of the respective Exchange or trading platform, as the case may be, promptly if a Non-Clearing Member represented by it

fails to meet its margin requirements in a timely manner pursuant to the respective provisions of the Clearing Conditions.

- (3) Neither AG nor the CM shall be liable for any losses incurred by the NCM due to interruption of its operations as a consequence of force majeure, riot, acts of war or natural disasters or other events for which either AG or the CM, as the case may be, is not responsible (e.g., strikes, lock-outs, disruption of communications, disruptions in the supplier chain) or that may result from the actions of domestic or foreign governmental authorities. For damages suffered by the NCM or the CM as a consequence of technical problems or of the full or partial unavailability of the EDP devices or EDP system of the Exchange(s) or of the operator of the trading platform used by such NCM or CM, AG or the CM shall be liable to the extent that intentional misconduct or gross negligence by AG or the CM or third parties assisting in their performance can be demonstrated, unless the damage has resulted from a culpable breach by AG or the CM of their principal duties. The liability of AG or the CM shall be limited, however, in such a case if only ordinary negligence occurred to the amount of damages typically foreseeable at the time of execution of the agreement.

### **3. Setoff- and Netting Procedure between CM and NCM**

The CM may set off its claims vis-à-vis the NCM and agree with the NCM upon the netting of claims.

The provisions on setoff and netting included in the Clearing Conditions shall respectively apply.

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

- (1) In case clearing licenses of the CM expire pursuant to the regulations in Chapter I Section 2 Number 2.4 Paragraph 2 item c in connection with Paragraph 7 of the Clearing Conditions because Eurex Clearing AG has gained notice of the fact that measures pursuant to §§ 45 et sqq. KWG have been taken against the Clearing Member or insolvency proceedings have been initiated and that, in addition, the Concerned Clearing Member has failed to fulfil in whole or in part its obligations arising from the clearing of its transactions or other obligations existing vis-à-vis Eurex Clearing AG pursuant to the Clearing Conditions, CM and NCM agree upon the following:

- a) All mutual payment and delivery obligations existing between the CM and NCM arising from Non-Performed Transactions between CM and NCM shall automatically expire without notice pursuant to Chapter I Number 2.4 Paragraph 7 in connection with Chapter I Number 8.2.1 of the Clearing Conditions; this expiry shall be at the same time as the termination of the clearing license of the CM at the point given in Chapter I Number 2.4 Paragraph 2 item c Clause 1. The expired payment and delivery obligations shall each immediately be substituted by an immediately due obligation to make a unilateral payment due to non-performance

("Unilateral Difference Claim"). The parties to these transactions shall not be obligated to perform the original obligations and may no longer claim the performance.

- b) The CM shall be obligated to determine the unilateral difference claims, each substituting the original payment and delivery obligations of the non-performed transactions between CM and NCM, in application of the provisions in Chapter I Number 8.2 of the current version of the Clearing Conditions. The difference claims so determined shall be netted against each other so that one single payment claim (Final Unilateral Difference Claim) results in favour of the NCM or CM. The CM shall immediately notify the NCM of the result and provide the NCM with the data forming the basis of the determination.

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

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

## **5. Fees arising from the Connection Agreement**

- (1) The AG shall collect fees from the CM for Eurex Frankfurt AG; the NCM is obligated to pay such fees to Eurex Frankfurt AG according to the Agreement on Technical Connection and Utilization of the Trading Systems of Eurex Deutschland and Eurex Zürich (Connection Agreement). The CM shall collect the same amount from the NCM.
- (2) The CM undertakes to commission the payment institution determined for the clearing of its transactions under Chapter I Number 2.2 Paragraph 4 item c of the Clearing Conditions with paying the debit entries incoming from the AG regarding the fees under Paragraph 1, such payment taking place at the expense of the CM's account.

## **6. Term**

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

**7. Amendments**

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

**8. Governing Law; Place of Performance**

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

**9. Saving Clause**

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

Place and Date

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On behalf of the CM

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On behalf of the NCM

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On behalf of AG

Appendix/Appendices

## 2.2 Appendix to the NCM-CM Clearing Agreement

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

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

### Chapter I: NCM-DCM Relationship

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

### Chapter II: Transactions Included in the NCM-CM Agreement

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

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

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

[Please tick what is applicable]

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

b) Applicable Legal Provisions

The Exchange Rules for Eurex Deutschland and Eurex Zürich, the Conditions for Trading at Eurex Deutschland and Eurex Zürich, all other regulations of

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Eurex Deutschland and Eurex Zürich and the Conditions for Utilization of the OTC Trade Entry Facilities (General Conditions of Participation) of Eurex Clearing AG shall apply in the respective German version valid at the time.

c) General Obligations

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

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

a) Applicable Legal Provisions

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

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

a) Applicable Legal Provisions

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

b) Legal Relationships

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

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

Applicable Legal Provisions

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



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

a) Applicable Legal Provisions

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

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

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

c) Model B Settlement

The NCM shall notify the AG and the CM in writing in advance if it intends to settle due to Model B pursuant to Number 8.1.8 and 8.1.18 of the ISE Rules and upon becoming aware of any matter, circumstance or event that an existing Model B settlement arrangement might be endangered or if it intends to terminate its Model B arrangement.

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

a) Applicable Legal Provisions

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

b) Modification of the legal relationships arising from EEX Transactions

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

**Chapter III: Close-Out Netting Regulation**

**With regard to Futures and Options transactions within the meaning of Chapter II Part 1 Paragraph 1 of the Clearing Conditions, the CM and NCM shall – upon approval of the AG – agree for all transactions respectively accomplished between the NCM and**

**CM pursuant to the Clearing Conditions (“NCM Futures and Options transactions”) with respect to insolvency of NCM or CM (as defined as follows) the following:**

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

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Place and Date

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On behalf of the CM

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On behalf of the NCM

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On behalf of AG

### **3. Clearing Agreement (Eurex Clearing AG / Registered Customer - "RC" - / Clearing Member with Credit Derivatives Clearing License - "CM" -)**

#### **3.1 RC-CM Clearing Agreement**

RC-CM Agreement

between

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

and

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as Registered Customer (hereinafter referred to as the "RC")

and

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

#### **1. Subject Matter of Agreement, Applicable Legal Provisions**

Eurex Clearing AG offers the settlement respectively clearing of OTC Derivatives Transactions, provided that such OTC Derivatives Transactions are of a Product Type recognised by Eurex Clearing AG and provided that the prerequisites pursuant to Chapter VIII of the Clearing Conditions for Eurex Clearing AG are fulfilled.

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

#### **2. Legal Relationships; Liability, Representations**

(1) For the purposes of including Original OTC Derivative Transactions into the clearing and settlement by Eurex Clearing AG, the trade record of the relevant OTC Derivatives Transactions has to be transmitted to Eurex Clearing AG on behalf of CM and/ or its RC by a provider authorised by Eurex Clearing AG to submit such transactions for clearing to Eurex Clearing AG ("Approved Trade Source System"). Following such submission, the relevant Original OTC Derivatives Transactions are subject to a novation in accordance with, and subject to, Chapter VIII Sub-Part 1.2 of the Clearing Conditions; Chapter I of the Clearing Conditions applies apply mutatis mutandis.

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All CCP Transactions resulting from the novation of Original OTC Derivative Transactions of the RC, which are accepted for clearing by AG pursuant to Chapter VIII of the Clearing Conditions be directly binding for and against the CM. If an Original OTC Derivative Transaction of the RC is novated, a CCP Customer Transaction shall be effected thereby between the RC and the CM and an equivalent CCP Transaction shall be effected thereby between the CM and Eurex Clearing AG pursuant to Chapter VIII of the Clearing Conditions, unless provided otherwise.

Regarding the Clearing of CCP Transactions the Clearing Conditions for Eurex Clearing AG shall apply in the respective German version valid at the time.

- (2) The RC hereby agrees to authorise AG, by providing the appropriate authorization, for purposes of capturing and maintaining records by Eurex Clearing AG vis-à-vis the respective provider authorised by Eurex Clearing AG to transfer the trade record of the relevant OTC Credit Derivatives transactions for clearing to Eurex Clearing AG ("Approved Trade Source System").
- (3) *Modification of the legal relationships arising from CCP Transactions.* The RC shall herewith declare vis-à-vis the CM its explicit approval regarding the modification of the legal relationships of all CCP Transactions concluded with its CM pursuant to Chapter VIII Number 2.1.16.5 Paragraph 1 "Deliverable Obligation Category - others than Bonds" of the Clearing Conditions.
- (4) The CM is required to notify the AG promptly if a RC represented by it fails to meet its margin requirements in a timely manner pursuant to the respective provisions of the Clearing Conditions.
- (5) Neither AG nor the CM shall be liable for any losses incurred by the RC due to interruption of its operations as a consequence of force majeure, riot, acts of war or natural disasters or other events for which either AG or the CM, as the case may be, is not responsible (e.g., strikes, lock-outs, disruption of communications, disruptions in the supplier chain) or that may result from the actions of domestic or foreign governmental authorities. For damages suffered by the RC or the CM as a consequence of technical problems or of the full or partial unavailability of the EDP devices or EDP system of the Exchange(s) or of the operator of the trading platform used by such RC or CM, AG or the CM shall be liable to the extent that intentional misconduct or gross negligence by AG or the CM or third parties assisting in their performance can be demonstrated, unless the damage has resulted from a culpable breach by AG or the CM of their principal duties. The liability of AG or the CM shall be limited, however, in such a case if only ordinary negligence occurred to the amount of damages typically foreseeable at the time of execution of the agreement.
- (6) *References within Chapter VIII of the Clearing Conditions to ISDA Documentation.* The RC shall herewith declare vis-à-vis the AG that RC has received from the AG a copy of the 2003 ISDA Credit Derivatives Definitions (the "2003 Definitions") as supplemented by the May 2003 Supplement and the 2005 Matrix Supplement to the 2003 Definitions (the "May 2003**

Supplement and 2005 Matrix Supplement”) and by the 2009 ISDA Credit Derivatives Determinations Committees and Auction Settlement Supplement to the 2003 Definitions and its annexes (the "2009 Supplement"; the 2003 Definitions as supplemented by the May 2003 Supplement and the 2009 Supplement together referred to as the "Credit Derivatives Definitions"), each as published by the International Swaps and Derivatives Association, Inc. ("ISDA") any other supplements issued thereto from time to time.

### **3. Setoff- and Netting Procedure between CM and RC**

The CM may set off its claims vis-à-vis the RC and agree with the RC upon the netting of claims.

The provisions on setoff and netting included in the Clearing Conditions shall respectively apply.

### **4. Termination of Non-Performed CCP Transactions between CM and RC**

(1) In case the Credit Derivatives Clearing License of the CM expires pursuant to the regulations in Chapter I Section 2 Number 2.4 Paragraph 2 item c in connection with Paragraph 7 of the Clearing Conditions because Eurex Clearing AG has gained notice of the fact that measures pursuant to §§ 45 et sqq. KWG have been taken against the Clearing Member or insolvency proceedings have been initiated and that, in addition, the Concerned CM has failed to fulfil in whole or in part its obligations arising from the clearing of its transactions or other obligations existing vis-à-vis Eurex Clearing AG pursuant to the Clearing Conditions, CM and RC agree upon the following:

- a) All mutual payment and delivery obligations existing between the CM and RC arising from non-performed CCP Transactions between CM and RC shall automatically expire without notice pursuant to Chapter I Number 2.4 Paragraph 7 in connection with Chapter I Number 8.2.1 of the Clearing Conditions; this expiry shall be at the same time as the termination of the clearing license of the CM at the point given in Chapter I Number 2.4 Paragraph 2 item c Clause 1. The expired payment and delivery obligations shall each immediately be substituted by an immediately due obligation to make a unilateral payment due to non-performance ("Unilateral Difference Claim"). The parties to these transactions shall not be obligated to perform the original obligations and may no longer claim the performance.
- b) The CM shall be obligated to determine the Unilateral Difference Claims, each substituting the original payment and delivery obligations of the non-performed CCP transactions between CM and RC, in application of the provisions in Chapter I Number 8.2 of the current version of the Clearing Conditions. The difference claims so determined shall be netted against each other so that one

single payment claim ("Final Unilateral Difference Claim") results in favour of the RC or CM. The CM shall immediately notify the RC of the result and provide the RC with the data forming the basis of the determination.

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

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

## **5. Fees**

- (1) The AG shall collect fees from the CM according to the Clearing Conditions in conjunction with the Price List for Eurex Clearing AG valid at the time. The CM shall collect the same amount from the RC.
- (2) The CM undertakes to commission the payment institution determined for the clearing of its CCP transactions under Chapter I Number 2.2 Paragraph 4 item c of the Clearing Conditions with paying the debit entries incoming from the AG regarding the fees under Paragraph 1, such payment taking place at the expense of the CM's account.

## **6. Term**

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

## **7. Data and Services Supplement**

The CM undertakes to execute a separate standard Data and Services Supplement which deals with the transmission of information and data as well as with respective authorisations and licenses, as applicable.

**8. U.S. CMs and U.S. RCs of Credit Derivatives Transactions and CMs with U.S. customers of Credit Derivatives Transactions**

U.S. CMs, customers of U.S. CMs, U.S. customers and CMs with U.S. customers must be Eligible contract Participants within the meaning of Section 1a(12) of the U.S. Commodity Exchange Act. CMs may receive or hold funds or securities of such persons for the purpose of purchasing, selling, clearing, settling or holding cleared OTC Credit Derivatives Transactions (“CCP Transactions”):

- (i) Only to the extent each such person is an Eligible Contract Participant as defined in section 1a(12) of the U.S. Commodity Exchange Act and is not a natural person;
- (ii) The CM shall segregate such funds and securities of such persons from the CM’s own assets respectively (i.e., the member may not permit such persons to “opt out” of applicable segregation requirements for such funds and securities even if regulations or laws would permit the person to “opt out”); and

The CM shall disclose to such persons that the CM is not regulated by the U.S. Securities and Exchange Commission and that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities held by the member, that the insolvency law of the jurisdiction in which the CM has its center of interest applies to the CM and may affect the person’s ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding.

- (iii) U.S. CMs, U.S. RCs and CMs with U.S. customers (and with respect to such customers) may only submit for clearing OTC Credit Derivatives Transactions that meet the requirements of the SEC Exemptive Order as listed on Eurex Clearing AG’s website;

- (iv) U.S. CMs, US RCs and CMs with U.S. customers must meet the additional conditions specified in a separate document to be executed by such parties, which reflect the conditions specified in an Order of the U.S. Securities and Exchange.

**9. Amendments**

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

**10. Governing Law; Place of Performance**

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



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**11. Saving Clause**

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

Place and Date

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On behalf of the CM

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On behalf of the RC

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On behalf of AG

Appendix/Appendices

## **2.2 Appendix to the RC-CM Clearing Agreement**

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

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

### **Chapter I: General Provisions**

#### a) Applicable Legal Provisions

The Clearing Conditions for Eurex Clearing AG shall apply in the respective German version valid at the time.

### **Chapter II: Transactions Included in the RC-CM Agreement**

#### **Clearing of "OTC Credit Derivatives Transactions" pursuant to Chapter VIII Part 2 of the Clearing Conditions for Eurex Clearing AG**

- a) CM shall be the holder of a Credit Derivatives Clearing License ("CD Clearing License") pursuant to Chapter VIII Number 2.1.4 in conjunction with Chapter VIII Number 1.1.1 of the Clearing Conditions, which entitles the CM to clear OTC Credit Derivatives transactions.
- b) Modification of the legal relationships arising from CCP Transactions. The RC shall herewith declare vis-à-vis the CM its explicit approval regarding the modification of the legal relationships of all CCP Customer Transactions concluded with its CM pursuant to Chapter VIII Number 2.1.152.1.16.5 Paragraph 1 "Deliverable Obligation Category - others than Bonds" of the Clearing Conditions.
- c) References within Chapter VIII of the Clearing Conditions to ISDA Documentation. The RC shall herewith declare vis-à-vis the AG that RC has received from the AG a copy of the 2003 ISDA Credit Derivatives Definitions (the "2003 Definitions") as supplemented by the May 2003 Supplement and 2005 Matrix Supplement to the 2003 Definitions (the "May 2003 Supplement" and "2005 Matrix Supplement") and by the 2009 ISDA Credit Derivatives Determinations Committees and Auction Settlement Supplement to the 2003 Definitions and its annexes (the "2009 Supplement"; the 2003 Definitions as supplemented by the May 2003 Supplement and the 2009 Supplement together referred to as the "Credit Derivatives Definitions"), each as published by the International Swaps and Derivatives Association, Inc. ("ISDA") any other supplements issued thereto from time to time.

d) Provisions which relate to U.S. customers. U.S. CMs, customers of U.S. CMs, U.S. customers and CMs with U.S. customers must be Eligible Contract Participants within the meaning of Section 1a(12) of the U.S. Commodity Exchange Act. CM and RC may receive or hold funds or securities of such U.S. persons for the purpose of purchasing, selling, clearing, settling or holding cleared OTC Credit Derivatives Transactions (“CCP Transactions”):

(i) Only to the extent each such person is an Eligible Contract Participant as defined in section 1a(12) of the U.S. Commodity Exchange Act and is not a natural person;

(ii) U.S. CMs, U.S. RCs and CMs with U.S. customers (and with respect to such customers) may only submit for clearing OTC Credit Derivatives Transactions that meet the requirements of the SEC Exemptive Order as listed on Eurex Clearing AG's website;

(iii) The U. S. RC must provide to Eurex Clearing AG any information that Eurex Clearing AG requests with respect to cleared OTC Credit Derivatives Transactions (“CCP Transactions”) or associated transactions with their customers; and

(iv) U.S. CMs, US RCs and CMs with U.S. customers must meet the additional conditions specified in a separate document to be executed by such parties, which reflect the conditions specified in an Order of the U.S. Securities and Exchange.

Place and Date

On behalf of the CM

On behalf of the RC

On behalf of AG