

General Terms

# Clearing Rules

Commodity Derivatives

Issued by Nasdaq Clearing AB

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## **1 INTRODUCTION**

- 1.1 The Clearinghouse provides Clearing of Exchange Transactions, Third Party Exchange Transactions and Non Exchange Transactions in Exchange Listed Products and Clearing Listed Products, and is authorised to conduct Clearing activities as set out herein.
- 1.2 Clearing implies that the Clearinghouse enters into a Transaction as central counterparty by registering the Transaction on the Clearing Accounts of the involved Account Holders, as further described in Section 4.1 of these General Terms. Account Holders are allocated Clearing Accounts with the Clearinghouse in their own names for recording of Clearing Transactions.
- 1.3 The Clearing Rules are a set of private law agreements applying to the Clearinghouse and Account Holders in respect of Clearing and related activities, and apply to Clearing of the Exchange Listed Products and Clearing Listed Products as specified in the Contract Specifications (and directly related activities), but not to any other products or services of the Clearinghouse. The Clearing Rules are, in respect of each Account Holder, supplemented by the relevant Clearing Agreements entered into by that Account Holder.
- 1.4 These General Terms are supplemented by the relevant Clearing Appendixes and the Clearing Agreements. The Contract Specifications shall prevail in case of conflict.
- 1.5 These Clearing Rules and all Clearing Transactions entered into pursuant to these Clearing Rules form part of a Security Settlement System under Norwegian Law pursuant to the Norwegian Payment Systems Act of 17 December 1999 no 95 (implementing EU Directive 98/26/EC on Settlement Finality in Payment and Securities Systems), as may be amended from time to time. A business day under the Security Settlement System is defined as 00:00 CET – 24:00 CET on a Bank Day.
- 1.6 Where a Transaction is subject to clearing at the Clearinghouse pursuant to both the Clearing Rules and the FIN Clearing Rules (e.g. it originated from one order placed with the Exchange, and one order placed with the Co-Operating Exchange), Registration of such Transaction under these Clearing Rules shall be subject to successful registration under the FIN Clearing Rules, in addition to any other requirements set out in these Clearing Rules.

### **Certain restrictions in respect of U.S. persons**

- 1.7 Non Exchange Transactions, Third-Party Exchange Transactions and Restricted Swaps (collectively, the, "Subject Products") may not be submitted for clearing at the Clearinghouse by or for the account of a U.S. Person or a person located in the United States, nor may any transactions be solicited, negotiated, executed or booked within the United States. Each time an Account Holder submits a Subject Product to the Clearinghouse, the Account Holder is deemed to represent to the Clearinghouse, based on its reasonable belief, that: (1) the Subject Product was solicited, negotiated, executed and booked outside the United States; (2) the Account Holder itself and, if different, the person in whose name the Account Holder carries the account for which the Subject Product has been submitted ("beneficiary"), is not a U.S. Person nor a person located in the United States; and (3) the Clearinghouse is a permissible clearing venue to which the Subject Product may be submitted under all relevant laws applicable to the Account Holder or the beneficiary.

For the purposes of this Section 1.7, (1) "United States" shall mean the United States of America, its states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and any other territory or possession of the United States government or any enclave of the United States government or its agencies or instrumentalities; (2) "U.S. Person" has the meaning for such term provided in the United States Commodity Futures Trading Commission's ("CFTC") Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations (78 CFR 45292 (July 26, 2013)); and (3) "Restricted Swap" means any agreement, contract or transaction defined in Section 1a(47) of the Commodity Exchange Act ("CEA") and/or in CFTC Rule 1.3(xxx).

## **2 INTERPRETATION, DEFINITIONS AND ABBREVIATIONS**

- 2.1 Capitalized terms in the Clearing Rules shall have the meanings assigned to them in the Definitions (Clearing Appendix 1) or as otherwise defined in the individual Clearing

Appendixes or in the text body of the Clearing Rules. Terms combining several defined terms shall, unless otherwise defined herein, be understood as a combined reference to such terms and the meaning of the combination term shall be construed accordingly.

- 2.2 References to a person or entity include a body corporate, an unincorporated association of persons or any other legal entity or natural person. References to a party include references to the rightful successors or assignees (immediate or otherwise) or nominees of that party.
- 2.3 References to any law or statute include amendments, consolidations, re-enactments and replacements of it. Unless otherwise specified, references to any law or statute are to the laws and statutes of Norway, save that references to “applicable law” shall mean the laws and regulations applicable under any relevant jurisdiction, including any order or judgment or other decisions of any competent court or Regulatory Body in accordance with such laws or regulations at the relevant place and time.
- 2.4 References to points in time refer to Central European Time unless otherwise specified and all time references apply summer savings time when applicable. Time is specified in the 24-hour format and dates are in the little-endian date format (i.e. day-month-year). References to days, weeks and months are, unless otherwise specified, references to calendar days, weeks and months. A calendar week starts on Monday and ends on Sunday. A quarter spans three consecutive calendar months, and the first quarter starts on the first day of the calendar year.
- 2.5 Any words importing the singular shall admit the plural where the context admits and vice versa. Any words importing the neutral gender shall include the feminine gender and the masculine gender (in respect of a natural person).
- 2.6 The term “including” shall mean “including without limitation”, and variations of the word shall have the same effect.
- 2.7 Any reference to the Clearinghouse having a right to make a decision or termination or to form any opinion or judgment shall unless as otherwise stated mean that the Clearinghouse has the right to exercise its sole and unfettered discretion in doing so.
- 2.8 References to communications in writing shall unless otherwise specified include fax, e-mail and communications through the Clearing System.

### **3 GENERAL MATTERS**

#### **3.1 Membership**

- 3.1.1 The Clearinghouse recognizes the following membership and Counterparty categories:
  - a. *General Clearing Members*, who may register Clearing Transactions in their own name and account as Counterparty to the Clearinghouse, either for itself or on behalf of its Clients, including Non-Clearing Members.
  - b. *Clearing Members*, who may register Clearing Transactions in their own name and account as Counterparty to the Clearinghouse, either for itself or, subject to the license requirement set out below, on behalf of its Clients, however not including Non-Clearing Members.
  - c. *Clearing Clients*, who may register Clearing Transactions in their own name and account as Counterparty to the Clearinghouse, but only through a General Clearing Member or a Clearing Member also being a Client Representative.
- 3.1.2 The Clearinghouse shall only admit as Account Holders applicants that the Clearinghouse in its sole discretion considers fit and proper for its applicable membership category, pursuant to the membership requirements set out by the Clearinghouse in accordance with the Clearing Rules and Applicable Law. Account Holders must at all times have adequate financial resources, a suitable organisation, adequate level of competence, necessary risk management routines, appropriate technical systems, and such other financial, legal, organisational and technical means as in the Clearinghouse's reasonable opinion are appropriate for its applicable membership category. The Clearinghouse may set additional objective and non-discriminatory requirements for each membership category, and the specific requirements for each membership category are available upon request to the Clearinghouse.

- 3.1.3 Notwithstanding other membership criteria, a General Clearing Member must document that it is:
- a. a credit institution licensed in accordance with legislation implementing the Directive 2006/48/EC (Consolidated Banking Directive); or
  - b. an investment firm licensed in accordance with legislation implementing the Directive 2004/39/EC (Markets in Financial Instruments Directive), or
  - c. an entity holding a similar license from another jurisdiction approved by the Clearinghouse.

The requirement in this Section shall also apply in relation to a Clearing Member that registers Clearing Transactions on behalf of its Clients unless the Clearing Member can document to the satisfaction of the Clearinghouse, that its activity do not require such licence.

- 3.1.4 Notwithstanding other membership criteria, an Account Holder must have financial resources which from time to time correspond to the operations intended to be conducted at the Clearinghouse. However the Account Holder's financial resources may not be less than:
- a. in respect of a General Clearing Member, an amount corresponding to a restricted equity of EUR 20 million;
  - b. in respect of a Clearing Member, an amount corresponding to a total equity of EUR 1 million;
  - c. in respect of a Clearing Client, an amount corresponding to a total equity of EUR 300,000.

The Clearinghouse may, during a transition period, grant an exemption from the above requirement for Clearing Members, however provided that a Clearing Member's total equity under no circumstance falls below EUR 800,000. The Clearinghouse may furthermore grant an exemption from the above requirement for Clearing Clients, provided that the Clearing Client must at all times be deemed suitable to participate in Clearing at the Clearinghouse.

- 3.1.5 General Clearing Members and Clearing Members may be approved to act as Client Representative on behalf of Clearing Clients, subject to individual approval from the Clearinghouse in relation to each applicable Clearing Client. Client Representatives must be Exchange Members.
- 3.1.6 Any entity desiring to become an Account Holder of the Clearinghouse shall submit an application in such form as shall be prescribed by the Clearinghouse. Further procedures and requirements on applicants are set out in the Membership Requirements.

## **3.2 Counterparty Eligibility**

- 3.2.1 Only Account Holders are eligible as Counterparty to the Clearinghouse in Clearing Transactions.
- 3.2.2 To be eligible for registration of new Clearing Transactions as a Counterparty, the Account Holder must at the time that each Clearing Transaction is registered, and until all Settlements pursuant to that Clearing Transaction have been successfully completed:
- a. have established Clearing Accounts with the Clearinghouse in accordance with Section 3.3;
  - b. have established cash settlement arrangements in accordance with Section 3.4;
  - c. have established any necessary delivery arrangements in accordance with Section 3.5 (if applicable);
  - d. have established arrangements for the provision of Collateral in accordance with Section 3.6;
  - e. have appointed a Contact Person in accordance with Section 3.9;

- f. have met its Margin Requirements in accordance with Section 5;
  - g. establish a Default Fund Custody Account and contribute to the Default Fund in accordance with the Default Fund Rules (as applicable); and
  - h. not have its access to Clearing or the Clearing System suspended or terminated in accordance with these Clearing Rules; and
  - i. fulfil the membership criteria for its applicable membership category and any other conditions for membership.
- 3.2.3 An Account Holder must at all times, and promptly upon request from the Clearinghouse, be able to document that it (or, where applicable, any of its nominees) fulfil the criteria of Section 3.2.2.

### **3.3 Clearing Accounts**

- 3.3.1 When approving a General Clearing Member, the Clearinghouse shall establish the following Clearing Accounts with the General Clearing Member as Account Holder:
- a. A House Account; and
  - b. An Client Clearing Account; and
  - c. An Intraday Account.
- 3.3.2 When approving a Clearing Member, the Clearinghouse shall establish the following Clearing Accounts with the Clearing Member as Account Holder:
- a. A House Account; and
  - b. An Intraday Account.
- 3.3.3 When approving a Clearing Client, the Clearinghouse shall establish a Clearing Account with the Clearing Client as Account Holder. Each such Clearing Account must be fully collateralised by reference to the Open Positions on such account as further set out in Section 5. The Collateral provided in respect of one Clearing Client's Clearing Account shall not be used to collateralize or meet the losses attributable to another such Clearing Account (or any other account) or to meet the losses attributable to a Client, any other Account Holder, or the Clearinghouse. For the purposes of EMIR, a Clearing Account with a Clearing Client as Account Holder is an EMIR Individual Segregated Account.
- 3.3.4 Additional Clearing Accounts may be ordered by the Account Holder, subject to the approval of the Clearinghouse. A Clearing Member may only order Client Clearing Accounts, provided that it meets the license requirement set out in Section 3.1.3. Additional Clearing Accounts may be subject to a fee as set out in the Fee List.
- 3.3.5 A General Clearing Member (and where applicable a Clearing Member) may operate more than one Omnibus Accounts. Each Omnibus Account must be fully collateralised by reference to the Open Positions on such account on a net basis across all Clearing Transactions credited to such account, as further set out in Section 5. The Collateral provided in respect of one Omnibus Account shall not be used to collateralize or meet the losses attributable to another such Omnibus Account (or any other account) or to meet the losses attributable to any Client (except Clients in the same Omnibus Account), any Account Holder, or the Clearinghouse. For the purposes of EMIR, an Omnibus Account is an EMIR Omnibus Account.
- 3.3.6 A General Clearing Member (and where applicable a Clearing Member) must operate one Individual Client Segregated Account for each Client that has opted for such account. Each Individual Client Segregated Account must be fully collateralised by reference to the Open Positions on such account as further set out in Section 5. In the event that a Client has more than one Individual Client Segregated Account with the same or different General Clearing Member or Clearing Member, the Clearinghouse shall not be entitled to combine or consolidate the balances on such Individual Client Segregated Accounts (or on any other account). Moreover, the specific Collateral provided in respect of one Individual Client Segregated Account shall not be used to collateralize or meet the losses attributable to another such Individual Client Segregated Account (or any other account) or to meet the losses attributable to another Client, any Account Holder, or the Clearinghouse and the

Clearinghouse shall keep separate records and accounts enabling each Clearing Member to distinguish the Collateral held for one Individual Client Segregated Account from the Collateral held for any other Client's Individual Client Segregated Account. For the purposes of EMIR, an Individual Client Segregated Account is an EMIR Individual Segregated Account.

- 3.3.7 Intraday Accounts are opened and used as part of the House Account or, if agreed in each case between the General Clearing Member or Clearing Member and the Clearinghouse, a specific Client Clearing Account. The set-up of one or several Intraday Accounts is without prejudice to the segregation requirements under these Clearing Rules and EMIR.
- 3.3.8 Each Clearing Account will have at least one Clearing Portfolio associated to it. Additional Clearing Portfolios may be ordered by the Account Holder. Additional Clearing Portfolios may be subject to a fee as set out in the Fee List. In relation to General Clearing Members, separate Clearing Portfolios shall be established for the allocation of Transactions for each Non-Clearing Member. Clearing Accounts have Clearing Portfolios connected to them for administrative purposes only. A Clearing Account and all such connected Clearing Portfolios shall therefore be regarded as one Clearing Account, and this is without prejudice to the rest of this Section 3 and the segregation requirements of such accounts under these Clearing Rules and EMIR.
- 3.3.9 Clearing Accounts will be open for registration of Clearing Transactions as soon as the Base Collateral Requirement has been met.
- 3.3.10 Client Clearing Accounts may only be used for registration of Client Transactions. Proprietary Transactions of the Account Holder must not be registered to a Client Clearing Account. Furthermore, a General Clearing Member or a Clearing Member shall not procure the registration of Transactions in its House Account other than those entered into by such General Clearing Member or Clearing Member, as applicable, on its own behalf. A General Clearing Member or a Clearing Member may not use the House Account for clearing of Transactions in respect of entities within the same group of companies as such General Clearing Member or Clearing Member, as applicable. Such entities shall be regarded as Clearing Clients or Clients, as applicable.
- 3.3.11 The Clearing Transactions registered to the Clearing Account of an Account Holder represent the complete and exhaustive contractual relationship between the Clearinghouse and the Account Holder in respect of Clearing Transactions registered to that Clearing Account.
- 3.3.12 All Clearing Transactions registered in a Clearing Account shall be held to constitute one single agreement between the Clearinghouse and the Account Holder in respect of the Clearing Transactions registered to that Clearing Account.
- 3.3.13 The Clearinghouse may require (under special circumstances) and/or approve (upon request from the Account Holder) of individual account structures deviating from what is described above. However, this shall be without prejudice to the segregation requirements under these Clearing Rules and EMIR.
- 3.3.14 The Clearinghouse will open a Margin Requirement Account for margin calculation with respect to each of the Account Holder's Clearing Accounts.

#### **3.4 Cash Settlement Arrangements**

- 3.4.1 Each Account Holder must at its own cost and in accordance with the below, establish and maintain arrangements as required for Cash Settlement under these Clearing Rules.
- 3.4.2 The Account Holder must designate a Cash Collateral Bank Account in each relevant Permitted Currency with an Approved Settlement Bank for the provision of Cash Collateral and in which it has Cash Settlement obligations under these Clearing Rules. The Account Holder shall comply with the Clearinghouse's instructions regarding, among other things, type of account.

With respect to the Cash Collateral Bank Account(s) opened in accordance with this Section 3.4.2, each Account Holder:

- a. authorises (or, if it is not the account owner, provides for such authorisation to be granted by the relevant account owner) the Clearinghouse to issue direct debit and/or credit (as applicable) instructions for any amounts due in accordance with



the Clearing Rules to the Approved Settlement Bank, in respect of the Cash Collateral Bank Account(s);

- b. shall execute a Power of Attorney (or, if it is not the account owner, provide for a Power of Attorney to be executed by the relevant account owner) to enable the Clearinghouse to issue direct debit and/or credit instructions for any amounts due in accordance with the Clearing Rules to the relevant Approved Settlement Bank with respect to the respective Cash Collateral Bank Account(s).

Each Account Holder shall immediately notify the Clearinghouse to the extent it (or the relevant account owner) wishes to revoke such authority provided at Section 3.4.2(a) or the Power of Attorney executed pursuant to Section 3.4.2(b) above in respect of one or more Cash Collateral Bank Accounts.

- 3.4.3 The Clearinghouse may, in its sole discretion, approve (upon the request of the Account Holder) arrangements for Cash Settlement which deviate from the above. In such case, the Account Holder shall meet the Clearinghouse's requirements as applicable from time to time.
- 3.4.4 Cash Settlement shall be performed in the Approved Settlement Banks listed in the List of Approved Settlement Banks.

3.4.5 Notwithstanding anything to the contrary in the Power of Attorney or in a similar instrument, each Approved Settlement Bank is authorized to act in accordance with any communication or manual instruction (including, without limitation, by using email, fax or other authenticated electronic means) from the Clearing House, which may from time to time be used due to a SWIFT disruption or similar event (including, for the avoidance of doubt, an event related to the Clearing House's systems).

### **3.5 Delivery Arrangements**

- 3.5.1 An Account Holder must at its own cost establish, appoint and maintain such Delivery Points and appurtenant arrangements as may be required by it to perform its Delivery obligations under the Clearing Rules, prior to entering into any Clearing Transactions in Products where such Delivery may be required. The Clearinghouse may issue a list of eligible Delivery Points.
- 3.5.2 The Delivery Point(s) nominated by each Account Holder must be approved by the Clearinghouse, such consent not to be unreasonably withheld. Account Holders shall promptly provide the Clearinghouse with such information as the Clearinghouse requests and deems required in relation to each Delivery Point it nominates.
- 3.5.3 The Clearinghouse may, if it has reasonable cause for doing so in relation to any obligation to be performed by it or the Account Holder under the Clearing Rules, require an Account Holder to appoint an alternative Delivery Point whereby the Account Holder shall promptly comply with such instructions.
- 3.5.4 The Clearinghouse may suspend Deliveries to a specific Delivery Point if necessary for the Clearinghouse to comply with applicable laws.

### **3.6 Collateral Arrangements**

- 3.6.1 Each Account Holder must at its own cost and in accordance with the below establish and maintain arrangements for the provision of Collateral as required by these Clearing Rules.
- 3.6.2 The Collateral approved by the Clearinghouse is set forth in the Collateral List in force from time to time. The Clearinghouse may prescribe limits with respect to certain Collateral to mitigate concentration risk. The value of any Collateral provided to the Clearinghouse shall be determined by the Clearinghouse in accordance with the parameters and haircuts as set out in the Collateral List. The Clearinghouse's normal procedures for changes to the Collateral List provide that changes enter into force not earlier than one week after the Clearinghouse has notified a decision with respect to such change. However, the Clearinghouse reserves the right to make changes to the Collateral List at any time (including with immediate effect) upon giving notice, if the Clearinghouse deems that such change is necessary.

- 3.6.3 An Account Holder must open at least one Collateral Custody Account for provision of Collateral in respect of each Margin Requirement Account opened for it in accordance with Section 3.3.
- 3.6.4 Unless otherwise specified in these Clearing Rules and without prejudice to the segregation requirements under these Clearing Rules and EMIR, all Collateral posted by each Account Holder will apply jointly and severally to all its Clearing Accounts and any and all payment and settlement obligations towards the Clearinghouse.
- 3.6.5 An Account Holder may post more Collateral to the Clearinghouse (to be held on the Collateral Custody Account) than is required pursuant to the determinations of the Clearinghouse in respect of the relevant Margin Requirement Account. Such excess Collateral shall be treated in accordance with the Clearing Rules on the same basis as all Collateral provided in respect of such Margin Requirement Account.

Collateral provided to the Clearinghouse by an Account Holder in respect of its Clearing Accounts, as applicable, shall be recorded by asset in the Collateral Custody Account, meaning that the Clearinghouse will record the particular asset transferred in respect of each such account. Collateral provided to the Clearinghouse by a General Clearing Member or Clearing Member in respect of its Omnibus Account, shall not be further recorded by the Clearinghouse as belonging, whether by asset or by value, to any particular Client.

- 3.6.6 Rating requirements for issuers of Collateral are set forth in the Collateral List in force from time to time.
- 3.6.7 The Clearinghouse may at any time reject and/or depreciate the recognized value of any Collateral (or parts thereof) from individual issuers if
- a) the Clearinghouse has reasonable cause to believe that the relevant issuer is subject to an Insolvency Event or that an Insolvency Event involving the issuer is clearly imminent;
  - b) it deems that the credit rating of the relevant issuer is not (or no longer) acceptable to it; or
  - c) it becomes aware of any other circumstances that may have adverse effects on its security interest in the applicable Collateral.

Affected Account Holders will be notified immediately of any decision pursuant to the above, and the Clearinghouse may at its discretion (i) issue an Intraday Margin Requirement to cover for any deficit Collateral against the applicable Margin Requirement, and/or (ii) suspend the Account Holder from Clearing until the Clearinghouse is satisfied that replacement Collateral has been provided or that the situation has otherwise been remedied. Any replacement Collateral must be accepted by the Clearinghouse as such.

- 3.6.8 The Clearinghouse may reject any additional Collateral, and/or require any existing Collateral to be replaced by Collateral acceptable to the Clearinghouse if the relevant Collateral Provider, or any Affiliate of it, has provided or holds such volume of Collateral that the provision of additional Collateral from that Collateral Provider would entail a concentration risk to the Clearinghouse.
- 3.6.9 Other than in respect of the provision of Collateral pursuant to the Cash Optimization Service, when providing Collateral to the Clearinghouse, the Account Holder shall also provide the Clearinghouse with the Collateral Custody Account number to which such Collateral relates. If an Account Holder does not provide a Collateral Custody Account number to the Clearinghouse, the Collateral will not be taken into account for the purpose of calculating the Collateral Sum in respect of any Margin Requirement Account of that Account Holder.
- 3.6.10 The Clearinghouse is entitled to require each Account Holder to comply with a Locked Currency Limit(s) for each relevant Permitted Currency with respect to each of its relevant Collateral Custody Account(s). Such Locked Currency Limit(s) shall specify the minimum amount, in the relevant Permitted Currency, that each Account Holder must hold in its Collateral Custody Account(s) at all times. Each Account Holder must, at all times, hold in its Collateral Custody Account(s) Cash Collateral in each relevant Permitted Currency in an amount at least equal to its Locked Currency Limit for each such Permitted Currency.

3.6.11 The Counterparties (including their Collateral Providers) intend that any collateral arrangements created under, pursuant to or in furtherance of the Clearing Rules shall, to the extent possible, constitute a "financial collateral arrangement" for the purposes of EU Directive 2002/47/EC on Financial Collateral Arrangements (as implemented in the national laws of applicable jurisdictions).

### **3.7 Release and substitution of Collateral**

3.7.1 Subject to the Sections 3.6.10, 3.7.2-3.7.7 and 5.4.4, where there is a Collateral Surplus with respect to a particular Margin Requirement Account, an Account Holder may request to the Clearinghouse for the Collateral provided to be released. The return of any Collateral shall be processed in accordance with the Procedures.

3.7.2 The Account Holder may request any form of Collateral to be returned.

3.7.3 Subject to the application of Sections 3.7.1, 3.7.2, 3.7.4-3.7.8 and Section 5.4.4, the Clearinghouse shall automatically return Cash Collateral in the event that there is a Collateral Surplus for any End of Day Margin Determination. The Clearinghouse will only return Cash Collateral up to the value of the Collateral Surplus, after taking into account the return or pending return of any Collateral, in the manner and at the time set out in the Procedures. The Clearinghouse shall not be required to return Cash Collateral in any currency if there does not exist any Surplus Cash Collateral in that particular currency on the Collateral Custody Account.

3.7.4 An Account Holder may, in respect of any Margin Requirement Account, establish with the Clearinghouse a Cash Excess Amount that shall apply to such Margin Requirement Account in respect of one or more Permitted Currencies. In calculating the Surplus Cash Collateral for any Permitted Currency, the Clearinghouse shall take into account any Cash Excess Amount for such Permitted Currency.

3.7.5 Prior to the return of any Collateral Surplus, an Account Holder shall have met all requirements to provide Collateral and comply with all its obligations in respect of Settlement as may be required by the Clearinghouse.

3.7.6 The Clearinghouse shall only return Cash Collateral in a Permitted Currency to the extent that there is sufficient Cash Collateral in that Permitted Currency to meet the Locked Currency Limit (if any).

3.7.7 The Clearinghouse shall return any Collateral Surplus in accordance with the Procedures.

3.7.8 Any release of Collateral or any particular Collateral under sections 3.7.1-3.7.7 shall always be at the discretion and subject to the prior consent of the Clearinghouse.

### **3.8 Pre-delivered Assets as Collateral**

3.8.1 The Clearinghouse may in its discretion accept pre-delivery of eligible assets and may acknowledge such pre-delivered assets as an alternative to regular Collateral under the Clearing Rules, applying such recognized value to such assets as the Clearinghouse deems appropriate or as otherwise specified by the Clearing Rules. Notwithstanding the foregoing, an Account Holder who has pre-delivered assets to the Clearinghouse will normally not be credited more than its aggregated net short position in respect of its corresponding Delivery obligations of the relevant asset towards the Clearinghouse at any time.

3.8.2 Pre-delivered assets shall be transferred to the Clearinghouse with full and valid title, free and clear of all liens, security interests, claims and encumbrances or any interest in or to them by any person (except where in favour of the Clearinghouse). The rules relating to Deliveries of the relevant assets and Collateral enforcement apply *mutatis mutandis* to any pre-delivered assets.

3.8.3 Whilst pre-delivered assets are in the possession of the Clearinghouse, the Account Holder shall be excluded from exercising any rights in such assets, or instructing the Clearinghouse in any way in relation to such assets, except as may be set out in the Clearing Rules or otherwise agreed in writing with the Clearinghouse. Pre-delivered assets are transferred outright to the Clearinghouse which means that the Clearinghouse becomes the owner of such assets. The Clearinghouse shall not have any obligation to pay interest or other fees to the Account Holder for pre-delivered assets. Pre-delivered assets may be pooled and comingled with other funds (including those of the Clearinghouse), and will be transferred to the Clearinghouse's own accounts. The Account Holder acknowledges that in case of the insolvency of the Clearinghouse, any claims relating to pre-delivered assets will

rank *pari passu* with the Clearinghouse's other unsecured creditors. This means that any shortfall may have to be shared pro rata with other unsecured creditors of the Clearinghouse and that the Account Holder may not receive its full entitlement. Since the Clearinghouse is the owner of any pre-delivered assets, it is entitled to reuse or sell the assets for its own purposes or to pledge the assets as security under a financing arrangement. As a result, there is a risk that the pre-delivered assets or the value thereof will not be returned to the Account Holder should the Clearinghouse default.

3.8.4 Sections 3.7 and 6.3.4 apply *mutatis mutandis* to the release and return of pre-delivered assets.

### **3.9 Authorisation of Individuals**

3.9.1 An Account Holder shall upon request from the Clearinghouse appoint one or more individual(s) as its Contact Person(s). In the case of Clearing Clients, the Contact Person will always be the Contact Person(s) appointed with its Client Representative at any given time. By agreeing to become a Contact Person, an individual agrees to be bound by the duties and responsibilities of a Contact Person and to be subject to, and comply with, all applicable provisions of the Clearing Rules.

3.9.2 The appointment of each Contact Person is subject to the approval of the Clearinghouse, not to be unreasonably withheld. The Clearinghouse may suspend or withdraw its approval if a Contact Person is deemed unfit by the Clearinghouse.

3.9.3 A Contact Person shall be authorised in the name of the Account Holder to sign all instruments, to give instructions, to correct errors and to perform such other duties as may be required under the Clearing Rules and to generally transact all requisite business in connection with the operations of the Clearinghouse under the Clearing Rules.

3.9.4 A Contact Person may appoint other individuals to access the Account Holder's Clearing Accounts and/or to register Clearing Transactions on behalf of the Account Holder. The Contact Person may also revoke or amend any such appointments by written notice. The Clearinghouse may suspend or withdraw such individual's rights if the individual is deemed unfit by the Clearinghouse.

3.9.5 All rights and authorisations granted under this Section 3.9 are non-exclusive and persons sharing the same rights are authorised to exercise such rights individually and independently of each other in all matters.

3.9.6 Unless otherwise agreed in writing with the Clearinghouse, all appointments, amendments and withdrawals under this Section 3.9 must be in writing and on such format as the Clearinghouse may prescribe from time to time.

### **3.10 Account Information**

3.10.1 The Clearinghouse shall on each Clearinghouse Business Day make available to Account Holders:

- a. a Cash Settlement Report(s), a Margin Requirement Report(s) and a Payments Report (as available); and
- b. information on Net Positions and Delivery obligations and any other information regarding each Clearing Account which the Clearinghouse chooses to make available.

3.10.2 Information pursuant to this Section 3.10 shall be made available for all Clearing Account(s) at the time specified in the Trading and Clearing Schedule. A Client Representative shall be granted direct access to account information for Clearing Account(s) where it is identified as Client Representative. Clients will not have access to account information without the specific approval of the Clearinghouse.

### **3.11 Continuous Information Obligations on Account Holders**

3.11.1 The Clearinghouse may at all times monitor an Account Holder's financial standing and soundness, level of competence and other matters relevant (in the opinion of the Clearinghouse) to the financial and legal status of the Account Holder.

3.11.2 Each Account Holder shall ensure that the Clearinghouse promptly upon request receives copies of audited versions of any annual reports issued by the Account Holder, any interim reports as well as any consolidated accounts when so requested. All such information shall

be provided free of charge to the Clearinghouse. If, for special reasons, the Account Holder is unable to provide the above information, the Clearinghouse may in its own discretion approve that the Account Holder instead discloses a selection of audited key figures, as required by the Clearinghouse from time to time. Such key figures must be accompanied by a parent company guarantee and financial information regarding such parent company, as required by the Clearinghouse from time to time.

- 3.11.3 The Clearinghouse may require any further information on the Account Holder's legal status, financial soundness, organisation, level of competence and other matters as the Clearinghouse deems relevant and appropriate to consider its continued fitness for membership at any time, to monitor and ensure its compliance with the Clearing Rules and in order to fulfil the Clearinghouse's obligations pursuant to applicable securities and clearing operation legislation and regulations given pursuant thereto, including further evidence for the Clearinghouse to verify the authenticity or correctness of any information submitted. Section 3.11.2 applies accordingly to such issues. All such information shall be provided by the Account Holder promptly upon request and free of charge to the Clearinghouse to enable the Clearinghouse to fulfil any legal or regulatory obligations.
- 3.11.4 An Account Holder shall immediately notify the Clearinghouse in writing if it becomes aware of or finds it likely that any of the following events will occur:

- a. any Default Event or Insolvency Event by it under the Clearing Rules, including any breach of the representation and warranties from the Account Holder;
- b. any Non-Compliance Event by it under the Trading Rules or disciplinary, criminal, or regulatory proceedings related to trading and clearing activities involving the Account Holder or its board of directors or employees responsible for its Clearing operations;
- c. any merger, de-merger, or other business re-organisation affecting one-third or more of the Account Holder's net capital value (as assessed by reference to the latest annual or interim accounts of the Account Holder);
- d. any material changes to its business;
- e. in the case of an undertaking with share capital or equivalent tied-up capital, any reduction in such capital; or
- f. any other matter relating to it of which an Account Holder acting in good faith would reasonably expect to be of interest to the Clearinghouse in relation to Clearing and its position as an Account Holder, including issues related to any Approved Settlement Bank or Collateral Provider of the Account Holder.

### **3.12 Termination and Suspension of Membership**

- 3.12.1 Clearing memberships may be terminated pursuant to the membership agreement between the Clearinghouse and the Account Holder (which may contain further references to these Clearing Rules). Termination of the membership is without prejudice to the Account Holder's obligations under the Default Fund Rules, which shall remain binding until the Account Holder is eligible for a Default Fund Exit (as specified in the Default Fund Rules).
- 3.12.2 If the Clearinghouse makes a decision to suspend an Account Holder from Clearing in accordance with these Clearing Rules, or to terminate the Account Holder's membership agreement, the Clearinghouse shall immediately notify the Account Holder and the Exchange and any relevant Third Party Exchange of such decision. In case a suspension is lifted, the Clearinghouse will give notice to the Exchange and any relevant Third Party Exchange as soon as practicable during Opening Hours.
- 3.12.3 Upon valid and undisputed termination of a membership agreement with an Account Holder for any reason, the Account Holder may require accelerated termination of its membership notwithstanding the termination period agreed in the membership agreement. The Account Holder's right to accelerated termination is conditional upon the Account Holder not having any Open Positions and not owing any amount to the Clearinghouse under these Clearing Rules other than, if applicable, fixed Pending Settlements that are secured by Collateral. Upon receipt of a written request for accelerated termination, and provided that the Account Holder is eligible for accelerated termination in accordance with the foregoing, the Clearinghouse shall suspend the Account Holder's right to register new Clearing

Transactions and effectuate termination of the Account Holder's membership as soon as practicable.

- 3.12.4 Termination of a membership agreement with an Account Holder will not affect the Counterparties' rights and obligations with respect to Clearing Transactions registered at the time of termination becoming effective and the Clearing Rules shall remain in force for as long as the Account Holder has Open Positions or owes any amount to the Clearinghouse. The Clearinghouse may require an Account Holder to close out its Open Positions upon termination of the Account Holder's membership, prior to effective termination, and may reasonably restrict an Account Holder's ability to enter into new Clearing Transactions except for Close-Out Transactions in the period from a valid termination notice is sent or received until termination becomes effective.
- 3.12.5 Following termination of a membership agreement with an Account Holder, and subject to the Clearinghouse's rights in the Collateral pursuant to Section 8.2 and except as may otherwise follow from relevant collateral arrangements, any remaining Collateral shall be released and/or returned as soon as practicable after the date of termination, provided that in each case all amounts owing to the Clearinghouse by the Account Holder are undisputed and have been fully, finally and unconditionally paid or discharged to the Clearinghouse and the Account Holder has no Open Positions. The Clearinghouse may furthermore withhold Collateral to the extent necessary to secure Pending Settlements.

### **3.13 Pledge of Clearing Transactions**

- 3.13.1 In addition to other collateral arrangements in accordance with these Clearing Rules, each Account Holder pledges as security to the Clearinghouse the Clearing Transactions and other rights and entitlements registered in any of such Account Holder's Clearing Accounts at any and all times. This general pledge shall not be utilised in such a manner so as to override the requirements of Article 39 of EMIR.

## **4 GENERAL REGISTRATION PROCEDURES**

### **4.1 Registration of Clearing Transactions**

- 4.1.1 For the purposes of clause 1.5 above, a Clearing Transaction including all related variable fees to the Exchange and the Clearinghouse, shall be deemed entered into the Security Settlement System and be deemed registered for the purposes of the Clearing Rules at the time when it has been created through a Registration of a Clearing Transaction. Other than as set forth in these Clearing Rules Section 4.7 below, Clearing Transactions may not be revoked.
- 4.1.2 All Clearing Transactions are entered into in reliance on the applicable Clearing Membership Agreement and the Clearing Rules forming a single agreement between the Counterparties, and that the Counterparties would not otherwise have entered into any Clearing Transactions.
- 4.1.3 Upon Registration of a Clearing Transaction in a Clearing Account in accordance with Section 4.1.1 the initial Transaction is replaced by corresponding Clearing Transactions between the Account Holders involved and the Clearinghouse, where the Clearinghouse enters into each Clearing Transaction as a central Counterparty entailing, subject to Section 4.7, that:
- a. the Clearinghouse becomes party to two equal and offsetting Clearing Transactions, each reflecting the original Transaction: One between the Clearinghouse (as seller) and the buying Account Holder (as buyer), and one between the Clearinghouse (as buyer) and the selling Account Holder (as seller);
  - b. the Account Holder's rights and obligations towards the other party under the initial Transaction shall be released and discharged upon registration of the Clearing Transactions and the Clearinghouse shall be deemed to have succeeded to and assumed all rights and obligations of the Account Holder in relation to the other party in its capacity as central Counterparty; and
  - c. a new Net Position is immediately calculated, registered and established between the Clearinghouse and the respective Account Holder.

- 4.1.4 Any obligation of the Clearinghouse to an Account Holder arising from a Clearing Transaction shall be subject to the terms of the Clearing Rules.

#### **4.2 Registration of Exchange Transactions**

- 4.2.1 Exchange Transactions are automatically subject to Clearing pursuant to the Trading Rules.
- 4.2.2 The Exchange will provide the Clearinghouse with information of all Exchange Transactions registered in the Trading System, including the terms of each Exchange Transaction and the Account Holders involved.
- 4.2.3 Exchange Transactions entered into through the ETS or MTS are Registered on the Clearing Account of the Account Holders involved immediately following the registration according to Section 4.2.2 above. The Transaction Confirmation in respect of such Exchange Transactions also serves as Clearing Confirmation from the Clearinghouse.
- 4.2.4 The Clearinghouse shall follow the procedure set out in the Block Trade, EFP and EFS Clearing Procedures in respect of Exchange Transactions that are entered into through the Block Trade Facility prior to Registering such Exchange Transactions on the Clearing Account of the Account Holders involved.
- 4.2.5 Upon Registration of an Exchange Transaction in a Clearing Account, the Clearinghouse enters into the Transaction as a Counterparty whereby the initial Exchange Transaction is replaced by corresponding Clearing Transactions in accordance with Section 4.1.

#### **4.3 Registration of Third Party Exchange Transactions**

- 4.3.1 Third Party Exchange Transactions are subject to Clearing pursuant to the Third Party Exchange Transaction Clearing Procedures.
- 4.3.2 Upon the registration of a Clearing Request in accordance with the Third Party Exchange Transaction Clearing Procedures, corresponding Clearing Transactions are created in accordance with Section 4.1.

#### **4.4 Registration of Non Exchange Transactions**

- 4.4.1 Account Holders may request Clearing of Non Exchange Transactions in accordance with the Non Exchange Clearing Procedures.
- 4.4.2 Upon the registration of a Clearing Request in accordance with the Non Exchange Clearing Procedures, corresponding Clearing Transactions are created in accordance with Section 4.1.

#### **4.5 Allocation of Clearing Transactions**

- 4.5.1 Clearing Transactions are initially allocated to an Intraday Account of the registering Account Holder(s) unless another account is designated by the Account Holder. The Account Holder (or its nominee) shall, within the Allocation Deadline and in accordance with the prevailing instructions of the Clearinghouse from time to time, designate the Clearing Account to which each Contract shall be registered. Any subsequent transfer of Contracts shall be deemed as a new Clearing Transaction.
- 4.5.2 The Contracts registered on an Intraday Account of an Account Holder at the Allocation Deadline are automatically transferred to the Clearing Account designated in accordance with Section 3.3.7. A subsequent transfer of Contracts must be registered within sixty (60) minutes prior to end of Clearinghouse Opening Hours on the second (2nd) Bank Day from the Bank Day on which the relevant Contract was first registered, however in no event later than thirty (30) minutes prior to the end of Clearinghouse Opening Hours on the Expiration Day for the applicable Series.

#### **4.6 Give Ups and Take Ups**

- 4.6.1 Account Holders may, through use of the Give Up / Take Up function of the Clearing System and in accordance with this Section 4.6, transfer Clearing Transactions from its own Clearing Account, and those of its associated Clients or Clearing Clients where applicable, to the Clearing Account of another Account Holder and vice versa.
- 4.6.2 In order for a Give Up to be effectuated, the receiving Account Holder must confirm the request for Give Up by registering a corresponding Take Up. Take Ups are considered automatically confirmed by the receiving Account Holder where such Account Holder has separately requested such automatic Take Up to apply in respect of one or several Clearing Accounts. Where relevant, matching Give Up and Take Up requests will constitute a

Clearing Request in respect of the relevant Contract and shall follow the relevant Clearing Procedure (e.g. a matching Give Up and Take Up request in respect of a Block Trade shall constitute a Clearing Request which shall follow the Block Trade, EFP and EFS Clearing Procedures) which shall apply *mutatis mutandis*. Matching Give Up and Take Up requests in respect of Contracts formed through ETS or MTS will be deemed to be a Clearing Request and shall follow Section 3 of the Block Trade, EFP and EFS Clearing Procedure which shall apply *mutatis mutandis*. Upon Registration of the Contracts with the receiving Account Holder, the receiving Account Holder assumes the position of Counterparty in the Contract and the originating Account Holder is released.

- 4.6.3 Both the Give Up and its corresponding Take Up must be registered within sixty (60) minutes prior to end of Clearinghouse Opening Hours on the second (2nd) Bank Day from the Bank Day on which the relevant Contract was first registered, however in no event later than thirty (30) minutes prior to the end of Clearinghouse Opening Hours on the Expiration Day for the applicable Series. Unless the Clearinghouse approves otherwise in its discretion, a Contract may only be subject to Give Up and Take Up once (i.e. no re-transfer), and subsequent transfer of Contracts shall take place in accordance with the rules relating to re-registration (and be deemed as a new Clearing Transaction).
- 4.6.4 If no Take Up is registered within the relevant deadline as set out in Section 4.6.3, the Give Up will be cancelled and the Contract(s) subject to Give Up shall remain unchanged. In such cases any transfer of Contracts must be done through registration of a new and opposite Clearing Transaction.
- 4.6.5 Where an Account Holder submits a request for Give Up later than on the day on which the relevant Contracts was first Registered, and subject to Section 4.6.3, the Account Holder will be required to perform any Cash Settlements as normal, but will receive a reimbursement of any Cash Settlement Amounts paid as part of the Daily Cash Settlement on the Bank Day following the day on which the Take Up is Registered.

#### **4.7 Registration Errors**

- 4.7.1 The Exchange will handle complaints concerning Exchange Transactions in accordance with the Trading Rules. Exchange Members must submit any claims for trading errors in ETS to the Exchange as soon as possible and no later than two (2) minutes from registration of the relevant Exchange Transaction in ETS. Exchange Member, on whose behalf the Exchange has registered the Order in ETS (MTS), or Exchange Members who have registered Block Trades, EFP or EFS in the Block Trade Facility, may as soon as possible and no later than ten (10) minutes after the relevant Exchange Transaction was registered in the ETS or Block Trade Facility, as relevant, submit a claim for trading error to the Exchange. Any changes or cancellation made in Exchange Transactions pursuant to the Trading Rules will trigger a corresponding change or cancellation of the registrations with the Clearinghouse.
- 4.7.2 In the event that an Account Holder claims that a Clearing Confirmation resulting from a Clearing Request is erroneous or has not been received, a complaint must be filed with the Clearinghouse immediately after the discrepancy is discovered, however not later than
  - a. thirty (30) minutes prior to close of Clearinghouse Opening Hours on the Bank Day after the Clearing Confirmation for the relevant Clearing Request was sent or should have been sent; or
  - b. the close of Clearinghouse Opening Hours on the Bank Day after the Clearing Confirmation for the relevant Clearing Request was sent or should have been sent, provided that all Account Holders involved consent to the error; and
  - c. notwithstanding (a) and (b) above, thirty (30) minutes prior to close of Clearinghouse Opening Hours on the Expiration Day.

Failure to make a claim within the aforementioned deadlines entails that the Account Holder will be bound by the Clearing Confirmation (or lack thereof). Exceptions to time limits in this Section 4.7.2 can only be made if operationally possible and in exceptional cases where the Account Holder (or their nominee) is not to blame for the delay, and following approval from the Clearinghouse in its discretion.

- 4.7.3 In case of a valid claim pursuant to Section 4.7.2 the Clearinghouse shall distribute duly filed complaints to the Account Holders involved (to the Client Representative in case of Clearing Clients), in order for them to evaluate the complaint. The Clearing Transaction will



be corrected if the Account Holders involved so approve. If the Account Holders involved do not approve the complaint, the Clearinghouse shall as soon as possible, based on the information available to it at that time and using its best efforts, decide whether to accept the complaint or not. The Clearinghouse will normally only make amendments to the registered Clearing Transaction in cases where the error is obvious.

- 4.7.4 If the Clearing Transaction was entered on the Intraday Account of the wrong Account Holder, the Clearinghouse may correct the error by transferring the Clearing Transaction to the correct Intraday Account provided that the receiving Account Holder so approves, and no later than fifteen (15) minutes after end of Clearinghouse Opening Hours on the Bank Day following the day on which the Clearing Transaction was first registered, or before 30 minutes prior to the end of Clearinghouse Opening Hours on the Expiration Day (whichever comes first).
- 4.7.5 When corrections of errors are made pursuant to this Section 4.7, the Clearinghouse shall register the correction and immediately send a new Clearing Confirmation to the Account Holders involved. Such modification shall be deemed effective from the time on which the relevant Clearing Transaction was first registered.
- 4.7.6 Notwithstanding the above, the Clearinghouse may on its own initiative correct substantial errors involving registered Clearing Transactions with effect for all Account Holders concerned, including errors caused by errors in reference prices, provided that the Clearinghouse shall give prior written notice of such corrections to affected Account Holders and that such corrections shall be notified within three (3) Bank Days from the time on which the Clearinghouse determines that such an error has occurred.

#### **4.8 Registration for Clients**

- 4.8.1 Clients will have Clearing Transactions registered on Clearing Accounts established in the name of their General Clearing Member (or where applicable their Clearing Member), with such member as Counterparty. All Clearing Transactions for Clients shall be registered to Client Clearing Accounts.
- 4.8.2 Clients will not become Counterparty to the Clearinghouse under any Clearing Transactions with the General Clearing Member (or where applicable the Clearing Member), and no contractual relationship shall arise between the Clearinghouse and the Client. When a General Clearing Member (or where applicable a Clearing Member) registers a Clearing Transaction for a Client, such member becomes liable to the Clearinghouse and the Clearinghouse liable to such member for such Clearing Transaction as if the Clearing Transaction were for the account of such member. A General Clearing Member (or where applicable a Clearing Member) is, without any limitations, entitled and responsible as Counterparty to the Clearinghouse in respect of any and all Clearing Transactions registered to Clearing Accounts where such member is Account Holder.
- 4.8.3 The General Clearing Member shall unsolicited and before registering any Clearing Transactions on behalf of a Client that is a Non-Clearing Member disclose to the Clearinghouse the identity of such Client. The identity of Clients shall furthermore always be disclosed to the Clearinghouse upon request by the Clearinghouse. The Clearinghouse may require that a Non-Clearing Member with an actual or expected significant volume of Transactions is allocated an Individual Client Segregated Account with its General Clearing Member.

#### **4.9 Registration for Clearing Clients**

- 4.9.1 The following provisions will apply in respect of Transactions and Clearing where a Clearing Member is acting as Client Representative for a Clearing Client:
  - a. Clearing Members may represent Clearing Clients when approved as Client Representatives.
  - b. The Clearing Account opened in the name of a Clearing Client will also identify the relevant Client Representative. Transactions may only be registered in this Clearing Account when allocated or approved by this Client Representative.
  - c. A Clearing Client is, without any limitations, entitled under and responsible as Counterparty to the Clearinghouse in respect of all Transactions registered in Clearing Accounts where the Clearing Client is Account Holder.

- d. All communication between the Clearinghouse and the Clearing Client shall take place exclusively through its Client Representative, unless as otherwise set out in the Clearing Rules or if the Clearinghouse chooses to involve the Clearing Client.
- e. Unless the Clearing Client requests otherwise (in writing), the Client Representative shall have unlimited access to all Collateral Custody Accounts and Default Fund Custody Accounts (together, the “**Custody Accounts**”) of the Clearing Client intended for the provision of Collateral and default fund contributions including, without limitation, to initiate instructions and communications against such accounts and receive balance and transaction information in relation to such accounts. In such a case, the Clearinghouse will treat instructions given by the Client Representative as instructions or communications given on behalf of the Clearing Client under the relevant Collateral Custody Account Agreement or Default Fund Custody Account Agreement (as defined in the Default Fund Rules). Release of Collateral from Custody Accounts will only be effected according to pre-defined settlement instructions as approved by the Clearing Client from time to time. In addition, the Client Representative will be granted access to information on default fund requirements and/or Margin Requirements as well as Collateral information for all Clearing Accounts connected to the Custody Accounts.

Notwithstanding the authorisation in item (e) above, the Clearing Client shall remain responsible for its obligations under the relevant Custody Account Agreements and the Clearing Rules.

- 4.9.2 The Client Representative is responsible for the following with respect to Client Transactions:
- a. The Client Representative shall ensure that its Clearing Clients post Collateral for the Base Collateral Requirement before allocating any Transactions to the Clearing Client's Clearing Account.
  - b. The Client Representative shall also ensure that its Clearing Clients meet the applicable Margin Requirement and that they pay any Cash Settlement Amount that is due to the Clearinghouse. The Clearinghouse shall inform the Client Representative if the Clearing Client fails to do so, upon which the Client Representative shall immediately post the missing Collateral in the Collateral Custody Account of the Clearing Client and/or pay the outstanding Cash Settlement Amount.

## **5 DETERMINATION OF MARGIN REQUIREMENTS, COLLATERAL SUM AND PROVISION OF COLLATERAL**

### **5.1 General**

- 5.1.1 The Clearinghouse shall determine the Margin Requirement(s) for each Account Holder regularly during each Clearinghouse Business Day as further set out herein. Each Margin Requirement shall be calculated in accordance with the model applied by the Clearinghouse from time to time. Upon request, the Clearinghouse shall provide free of charge a description of the relevant model and the calculation method.
- 5.1.2 The amount of the Margin Requirement is based on the parameter values determined for the respective Products, as published by the Clearinghouse on its website. The Clearinghouse will normally give one (1) week written notice for all parameter value changes, however, the Clearinghouse reserves the right to enter changes in parameter values at any time (including immediate effect from notice) upon giving written notice to affected Account Holders if the Clearinghouse deems that such change is necessary to ensure sound clearing operations and to comply with the Clearinghouse's risk policies and/or applicable law at all times. The Clearinghouse may set specific margining rules for individual Products or groups of Products.
- 5.1.3 All Margin Requirements will be calculated in the applicable Risk Currency. The Clearinghouse may in its discretion convert any amounts relating to Margin Requirements to the applicable Risk Currency and vice versa at such reasonable currency exchange rate(s) as the Clearinghouse may determine in its discretion.
- 5.1.4 If the Margin Requirement is positive, there shall *prima facie* arise an obligation on the Clearinghouse to pay an amount to the Account Holder equal to the positive Margin

Requirement. Notwithstanding the foregoing, the Clearinghouse shall not be required to make any such payment to the Account Holder unless Sections 8.8.7-8.8.8 of the Clearing Rules apply.

## **5.2 Base Collateral Requirement**

- 5.2.1 The Clearinghouse will when each Clearing Account is initially established set the Base Collateral Requirement for the Clearing Account taking into consideration, the Account Holder's financial soundness, expected volume of Clearing Transactions for that Clearing Account, the Default Fund requirement and other factors which the Clearinghouse deems relevant.

## **5.3 End of Day Margin Determination**

- 5.3.1 The Clearinghouse shall on each Clearinghouse Business Day calculate the Margin Requirement for each Margin Requirement Account in respect of the End of Day Margin Determination and otherwise regularly during each Clearinghouse Business Day. In each case, the Margin Requirement is calculated with reference to all Clearing Transactions recorded on the relevant Clearing Accounts associated with the Margin Requirement Account. The Clearinghouse may calculate the Margin Requirement on the aggregated net of several House Accounts or Clearing Clients' Clearing Accounts where such are held by the Account Holder.

- 5.3.2 In respect of each Margin Requirement Account, the Clearinghouse shall calculate the Collateral Sum of the Collateral Custody Account linked to such Margin Requirement Account in respect of the End of Day Margin Determination and otherwise regularly during each Clearinghouse Business Day.

- 5.3.3 The Clearinghouse shall, further to each determination of a Margin Requirement and the Collateral Sum in respect of any Margin Requirement Account, determine whether there is a Collateral Surplus or a Collateral Deficiency in respect of such Margin Requirement Account. Where there is a Collateral Surplus, Collateral may be returned to the relevant Account Holder in accordance with Section 3.7.1; where there is a Collateral Deficiency, the relevant Account Holder shall provide Collateral to the Clearinghouse in accordance with Section 5.4.2.

- 5.3.4 Notwithstanding anything to the contrary in this Section 5.3, to determine the aggregate total Collateral Surplus or Collateral Deficiency in respect of a Margin Requirement Account, the Margin Requirement and the Collateral Sum shall each be calculated per relevant Permitted Currency and the Clearinghouse shall convert each such Margin Requirement less each such Collateral Sum into the Base Currency at the FX rate determined by the Clearinghouse in its discretion, applying the relevant haircuts as specified in the Collateral List.

The Base Currency shall be elected by each Account Holder in the CMS System. Each Account Holder may make a request at any time, via the CMS System, to change the Base Currency.

- 5.3.5 In making any determination as to the Collateral Sum, the Clearinghouse shall use the market price of the relevant instrument as at the time set out in the Collateral List on the Clearinghouse Business Day in respect of any End of Day Margin Determination and as at the time set out in the Collateral List on the Clearinghouse Business Day prior to the day on which any such other determinations are made, unless in each case the Clearinghouse in its absolute discretion determines otherwise. Unless otherwise stated in the Collateral List, the Clearinghouse shall take the market price of each such instrument from such publicly available sources as the Clearinghouse determines in its discretion is appropriate.

- 5.3.6 The Clearinghouse shall, in respect of any End of Day Margin Determination, on each Clearinghouse Business Day provide the Account Holder with a Margin Requirement Report. If there is a Collateral Deficiency in relation to such Margin Requirement Report, the Account Holder shall provide Collateral to the value of such Collateral Deficiency by the End of Day Margin Delivery Time. Unless otherwise agreed, the Margin Requirement Report shall be provided by the Clearinghouse to the Account Holder not later than 8.00 a.m. A failure to provide any such Margin Requirement Report at the requisite time shall not invalidate the requirement of the Account Holder to provide Collateral in accordance with such determination.

#### **5.4 Collection of Collateral through the Cash Optimization Service**

5.4.1 An Account Holder may provide Collateral to the Clearinghouse in the form and manner as set out in the Procedures.

5.4.2 Each Account Holder shall provide the requisite value of Collateral by the Collateral Receipt Cut-Off Time to meet any Collateral Deficiency in respect of the End of Day Margin Determination. Each Account Holder shall be entitled to deliver Collateral as set out in the Collateral List to meet its obligations pursuant to the End of Day Margin Determination, subject that any Collateral received after the Collateral Receipt Cut-Off Time shall not be taken into account by the Clearinghouse in its determination as to whether the Account Holder has met its obligations pursuant to the End of Day Margin Determination.

To the extent the Clearinghouse has not received all of such Collateral by the Collateral Receipt Cut-Off Time, the Clearinghouse shall take steps to collect any remaining required Collateral through the Cash Optimization Service. The use of the Cash Optimization Service is without prejudice to the continuation obligation of the Account Holder to provide Collateral in accordance with the Clearing Rules and a failure to provide the requisite value of Collateral through the Cash Optimization Service shall be deemed to be a failure by the relevant Account Holder to provide Collateral in accordance with its obligations herein.

5.4.3 To the extent there is a Collateral Deficiency on any Clearinghouse Business Day in respect of a Margin Requirement Account, any cash in aggregate due to the Account Holder arising out of the Cash Settlement of Clearing Transactions recorded on that Margin Requirement Account may be used to reduce such Collateral Deficiency up to the amount of the Collateral Deficiency, in accordance with the provision of the Cash Optimization Service as set out in Section 6.4. In taking such action, the Clearinghouse will record the relevant amount of cash due to the Account Holder arising out of such Cash Settlement to have been paid to the Account Holder, as the case may be, and an equivalent amount of Cash Collateral to have been received in the Collateral Custody Account.

5.4.4 To the extent there is a Collateral Surplus on any Clearinghouse Business Day in respect of a Margin Requirement Account and an amount is in aggregate due to be paid by the Account Holder arising out of the Cash Settlement of the Clearing Transactions recorded on that Margin Requirement Account, the Collateral Surplus may be used to reduce the amount due in Cash Settlement up to the amount due, in accordance with the provision of the Cash Optimization Service as set out in Section 6.4. In taking such action, the Clearinghouse will record the relevant amount of cash due in Cash Settlement to have been paid and an equivalent amount of Cash Collateral to have been paid from the Collateral Custody Account.

5.4.5 If, after the application of Section 5.4.3, there remains a Collateral Deficiency outstanding, the Account Holder shall provide the requisite value of Collateral to cover the remaining Collateral Deficiency, in accordance with the provisions herein.

If, after the application of Section 5.4.4, there remains a Collateral Surplus, the Clearinghouse shall, subject to the provisions herein, provide such Collateral Surplus to the Account Holder in accordance with the provisions herein.

#### **5.5 Intraday Margin Requirements and Extraordinary Margin Requirements**

5.5.1 The Clearinghouse will carry out calculations of the Margin Requirement(s) regularly intraday. The Clearinghouse may issue an Intraday Margin Requirement at its own discretion. Where so determined, the Account Holder shall provide Collateral corresponding to the value of the Collateral Deficiency not later than ninety (90) minutes after the Clearinghouse issued such Intraday Margin Requirement. A failure to provide a notice in respect of such Intraday Margin Requirement at the requisite time, shall not invalidate the ability of the Clearinghouse to request such Collateral nor the requirement of the Account Holder to provide Collateral. Following a request by the Account Holder, the Clearinghouse will provide the basis for the new calculation. Intraday Margin Requirements may be calculated following the procedures in Section 5.1 and 5.3.

5.5.2 If the relevant risk exposure is significantly reduced within ninety (90) minutes of the determination of an Intraday Margin Requirement, the Account Holder may request that the Clearinghouse recalculate the Intraday Margin Requirement, which request the Clearinghouse may accept or not in its absolute discretion. Following any such recalculation, the Clearinghouse shall notify the Account Holder of the revised Intraday Margin Requirement. The Account Holder shall provide Collateral corresponding to the value

of the Collateral Deficiency pursuant to such revised Intraday Margin Requirement to the Clearinghouse not later than within ninety (90) minutes of the issue of the original Intraday Margin Requirement.

- 5.5.3 The Clearinghouse may issue an Extraordinary Margin Requirement to an Account Holder if the Clearinghouse decides that special circumstances so requires, including increase in market share and matters that indicate a higher credit risk in respect of the Account Holder.
- 5.5.4 Extraordinary Margin Requirements may be calculated in accordance with the procedures in Section 5.1 and 5.3. The Clearinghouse may also apply any other risk calculation procedure the Clearinghouse considers prudent.
- 5.5.5 Without any prejudice to its rights under any other provisions in the Clearing Rules, the Clearinghouse may monitor all Transactions and Open Positions in Exchange Listed Products and Clearing Listed Products. If the Clearinghouse finds that an Account Holder holds more than fifteen per cent (15%) of all positions in one Series, the Clearinghouse may calculate an Extraordinary Margin Requirement based on such increased risk interval as the Clearinghouse finds appropriate. The Clearinghouse may require that the relevant Account Holder also discloses Transactions that are not subject to Clearing.
- 5.5.6 The Account Holder shall provide Collateral corresponding to the value of any Collateral Deficiency not later than ninety (90) minutes after the Clearinghouse has determined the need for an Extraordinary Margin Requirement. A failure to provide a notice at the requisite time shall not invalidate the ability of the Clearinghouse to request such Collateral nor the requirement of the Account Holder to provide such Collateral.

## **5.6 Miscellaneous**

- 5.6.1 Any determination as to a requirement to provide Collateral pursuant to an Intraday Margin Requirement and/or Extraordinary Margin Requirement is without prejudice to any other determination to provide Collateral that remains outstanding, whether pursuant to an End of Day Margin Determination, another Intraday Margin Requirement or another Extraordinary Margin Requirement. Where an Account Holder is subject to more than one requirement to provide Collateral at the same time, the obligation of the Account Holder is to provide the amount of Collateral to meet the Collateral Deficiency then existing for each Margin Requirement as they fall due, taking into account the value of any Collateral provided pursuant to an earlier margin requirement.
- 5.6.2 A Clearing Client may elect to appoint a third party to manage the provision of Collateral on its behalf. If such appointment is approved by the Clearinghouse in its sole discretion, the Margin Requirement Report and any other notices to be provided by the Clearinghouse to the Clearing Client shall also be made available to such third party.

## **6 SETTLEMENT PROCEDURES**

### **6.1 General**

- 6.1.1 Settlements shall be carried out in accordance with the Clearing Rules. The Contract Specifications may set out individual requirements in relation to the Settlement of individual Products, which shall prevail in case of conflict with these General Terms.
- 6.1.2 The Counterparties shall co-operate with each other in relation to Settlements (including Cash Settlements and Deliveries) and do such things as are necessary and reasonably requested by the Clearinghouse in order to carry out any Settlements pursuant to the Clearing Rules.
- 6.1.3 Notwithstanding anything to the contrary herein, the Clearinghouse may issue and each Account Holder agrees to accept invoices from the Clearinghouse in respect of Clearing Transactions, and each Account Holder further agrees not to raise any other invoice in respect of any Clearing Transaction.
- 6.1.4 Binding set-off (payment netting) has taken place once the Clearinghouse has calculated the relevant Cash Settlement Amount and made the other relevant calculations in connection with Cash Settlement and the Cash Optimization Service. Cash Settlement in accordance with Section 6.2 is final and binding to all parties involved except as explicitly set out herein.

- 6.1.5 An Account Holder may not set off any Cash Settlement obligation to or from the Account Holder against any Cash Settlement obligation to or from the Clearinghouse, regardless of whether or not such obligations are due or/and mature.
- 6.1.6 Without prejudice to its other rights and remedies, the Clearinghouse may set off any matured obligation due to or from an Account Holder against a matured obligation due to or from the Clearinghouse under these Clearing Rules, regardless of the place of payment or currency of either obligation, provided that obligations due to an Account Holder's Client Clearing Accounts may not be off-set against obligations due from such Account Holder's other Clearing Accounts. If the obligations are in different currencies, the Clearinghouse may convert either obligation at the currency exchange rate offered to the Clearinghouse in its usual course of business at the time of the set-off to effect the set-off.

## **6.2 Cash Settlement Procedures**

- 6.2.1 On each Clearinghouse Business Day, the Clearinghouse shall determine the Cash Settlement Amount for each Clearing Transaction in accordance with the relevant Contract Specification, by aggregating and off-setting all relevant amounts, including all fees due to the Clearinghouse, the Exchange and any Third Party Exchange.
- 6.2.2 In respect of each Settlement Day and in respect of each Margin Requirement Account, the Clearinghouse shall calculate the Cash Settlement Amount for each Clearing Transaction to which Cash Settlement applies that is recorded in respect of such Margin Requirement Account. The Cash Settlement Amount for each Clearing Transaction shall be calculated in the currency applicable to the respective Series as stated in the Contract Specifications. Following completion of its calculations, the Clearinghouse shall produce a Cash Settlement Report with respect to the payments to be made or received in respect of each Margin Requirement Account held or administered by an Account Holder. The Cash Settlement Report shall aggregate, for each Clearing Transaction to which Cash Settlement applies in the Margin Requirement Account, the amount to be paid or received by the Account Holder.
- 6.2.3 The Cash Settlement Report shall be made available to the Account Holder by 8.00 a.m. on the Settlement Day. A failure to provide any such Cash Settlement Report at the requisite time shall not invalidate the requirement of the Account Holder to provide any amount due.
- 6.2.4 Where the Cash Settlement Report details an aggregate amount is due to the Account Holder and there is a Collateral Deficiency on the relevant Margin Requirement Account, such amount shall be used to set-off the Collateral Deficiency in respect of that Margin Requirement Account in accordance with Section 5.4.3.

Where the Cash Settlement Report details an aggregate amount is due to be made by the Account Holder and there is a Collateral Surplus on that Margin Requirement Account, such amount shall be used to set-off any applicable cash Collateral Surplus in respect of that Margin Requirement Account in accordance with Section 5.4.4.

- 6.2.5 On the Settlement Day, where an amount remains outstanding further to the application of Section 6.2.4 relating to Cash Settlement in any of the Permitted Currencies, each Account Holder must, not later than 9.30 a.m. on the Settlement Day have at its disposal the necessary balance or credit facilities for debit on each relevant Cash Collateral Bank Account.

The Clearinghouse thereafter issues payment instructions for debiting of the relevant Cash Collateral Bank Account and receives electronic confirmation from the Approved Settlement Bank. The payments shall be processed in accordance with the provision of the Cash Optimization Service as set out in Section 6.4.

- 6.2.6 The Clearinghouse issues payment instructions for exchange of payments in the respective concentration bank between the Approved Settlement Banks. Thereafter, the Clearinghouse issues payment instructions not later than 2.00 p.m. (or 4.00 p.m. in respect of USD) for crediting of net settlements on the Account Holder's designated Cash Collateral Bank Account, in accordance with the provision of the Cash Optimization Service as set out in Section 6.4.

## **6.3 Delivery Procedures**

- 6.3.1 Assets (other than cash) that are deliverable under the Clearing Rules shall be Delivered in accordance with the terms of each applicable Clearing Transaction and these Clearing Rules.

- 6.3.2 All deliverables under any Clearing Transaction shall be compliant with the applicable Contract Specifications and shall be Delivered to the receiving Counterparty with full and valid title, free and clear of all liens, security interests, claims and encumbrances or any interest in or to them by any person (except where in favour of the receiving Counterparty).
- 6.3.3 The risk of loss related to the applicable deliverables or any portion of them transfers to the receiving Counterparty upon completed Delivery. A Delivery shall be deemed completed for the purposes of these Clearing Rules when the relevant deliverables are visible at the applicable Delivery Point of the receiving Counterparty without any possibility of revocation by the delivering Counterparty, and any and all other requirements pursuant to these Clearing Rules in relation to the Delivery are satisfied, including all regulatory or other approvals that may be required from the delivering Counterparty.
- 6.3.4 Deliverables owing from the Clearinghouse within a Series are, unless as otherwise set out in the individual Contract Specifications and subject to the Clearinghouse's Delivery obligations vis-a-vis the Account Holder, distributed as fungible instruments on a randomized basis. Account Holders shall have no right to receive any specific deliverables under any Clearing Transaction, and any correlation between the deliverables received from the selling Account Holder in a Clearing Transaction and the deliverables distributed by the Clearinghouse to the buying Account Holder in the corresponding Clearing Transaction shall be deemed purely coincidental.

#### **6.4 Cash Optimization**

- 6.4.1 The Clearinghouse provides a Cash Optimization Service with respect to the provision of Collateral and the payment and/or receipt of Cash Settlement Amounts. Pursuant to the Cash Optimization Service, for each Account Holder, the Clearinghouse will create one or several Cash Optimization Account(s).
- 6.4.2 In respect of each Account Holder, the Clearinghouse shall determine, for each Permitted Currency, the aggregate amount to be paid or received by the Account Holder in respect of each of such Account Holder's Margin Requirement Accounts in relation to the payments arising from each Margin Requirement Report and each Cash Settlement Report of such Account Holder. Having made such determination, the Clearinghouse shall provide a Payments Report to the Account Holder. A failure to provide a Payments Report at the requisite time shall not invalidate the ability of the Clearinghouse to request such Collateral nor the requirement of the Account Holder to provide Collateral.
- 6.4.3 In making such determinations as to amounts to be paid in each Permitted Currency, the Clearinghouse shall act in accordance with the Procedures.
- 6.4.4 The Cash Optimization Account is an account utilised solely to facilitate the payment of the aggregate amounts due to or from the Account Holder. Any payments made to or from such Cash Optimization Account shall be deemed provided to or from each of the Collateral Custody Accounts at the point the amount set out in the Payments Report is paid by or to the Clearinghouse. The Cash Optimization Service does not affect the segregation of each of the relevant accounts as otherwise set out in these Clearing Rules.
- 6.4.5 The Clearinghouse shall ensure that all payments set out in the Payments Report are made through the direct debit or credit facility as provided by each Account Holder pursuant to Section 3.4.2. Each Account Holder must ensure that there are sufficient funds in the relevant Cash Collateral Bank Account(s) in order for such payments to be made.
- 6.4.6 The Cash Optimization Service shall be operated in accordance with the Procedures. In the event of a conflict between the Procedures and these Clearing Rules, the Clearing Rules shall prevail.

#### **6.5 Tax and VAT matters**

- 6.5.1 Each Counterparty is responsible for any and all VAT payable by that Counterparty in connection with a Clearing Transaction, without any reimbursement or indemnification from the other Counterparty unless as set out below.
- 6.5.2 All Cash Settlement Amounts shall be exclusive of VAT, with the exemption that the Clearinghouse will charge VAT if this is required under applicable law.
- 6.5.3 Each Counterparty shall cause to pay any and all taxes legally payable by that Counterparty arising in connection with a Clearing Transaction, with no further charge,

reimbursement or indemnification irrespectively if the Counterparty is required by law to pay any tax which is properly for the account of the other Counterparty.

## **6.6 Settlement Errors**

- 6.6.1 The Account Holder shall, if it believes that a Settlement has been carried out incorrectly, notify the Clearinghouse as soon as possible and not later than sixty (60) minutes after the beginning of Clearinghouse Opening Hours on the Bank Day immediately following the Bank Day on which the relevant Settlement took place, failing which the Account Holder will be bound by the Settlement. In connection with such request, the Account Holder shall, in addition to stating the matter to which the request refers, provide information regarding the Series, number of Contracts affected, and the account numbers in question. Additional settlement error procedures may be set out in the Contract Specifications in relation to individual Products.
- 6.6.2 When an Account Holder has made a claim for a Settlement error the Clearinghouse shall as soon as possible forward the request to the Account Holders concerned.
- 6.6.3 The Clearinghouse shall as soon as possible deal with timely complaints. The Clearinghouse will perform a corrected Settlement on the next Bank Day if all Account Holders concerned consent to the correction claimed. If not all Account Holders concerned consent to the correction the Clearinghouse will determine whether there has been an erroneous Settlement and, if the Settlement was incorrect, carry out a corrected Settlement between the parties involved as part of the Daily Cash Settlement with two (2) Bank Days written notice.
- 6.6.4 Irrespective of the time limits above, the Clearinghouse may carry out a corrected Settlement in the event of substantial errors:
- a. with respect to corrections of errors in Exchange Transactions as determined in accordance with the Trading Rules;
  - b. in respect of errors in a Spot Reference Fix or Index, where the Clearinghouse has applied an erroneous Spot Reference Fix or Index, as relevant; or
  - c. as otherwise set out in the relevant Contract Specifications.

Corrective Settlements under this Section 6.6.4 may take place from (and including) the first Bank Day following written notice from the Clearinghouse.

- 6.6.5 Any correction in accordance with these Clearing Rules will be binding on all Counterparties concerned. The Clearinghouse shall not be liable to any Account Holder for any exercise or non-exercise of its powers under this Section 6.6, provided that it has acted in good faith.

## **6.7 Interest**

- 6.7.1 If a Counterparty fails to pay to the other Counterparty any amount due by the relevant due date (or otherwise determined by any dispute resolution process), interest shall be payable on that amount at an annual rate equal to (i) EURIBOR, in respect of claims in EUR; (ii) LIBOR, in respect of claims in GBP; (iii) the Danish Central Bank Policy Rate (Danmarks Nationalbank's lending rate) in respect of claims in DKK; (iv) the Norwegian Central Bank Policy Rate (Norges Bank's sight deposit rate) in respect of claims in NOK; and (v) the Swedish Central Bank Policy Rate (Repo rate) in respect of claims in SEK; and (vi) the Federal Funds Rate in respect of claims in USD, all as applicable from time to time plus three percent compounded monthly from and including the relevant due date to but excluding the date payment is made.
- 6.7.2 If a Counterparty, following the resolution of a dispute or otherwise to correct any mistaken overpayment or underpayment made in good faith, is to pay an amount to the other Counterparty, interest shall be payable on that amount. The interest rate shall be (i) EURIBOR in respect of claims in EUR; (ii) LIBOR in respect of claims in GBP; (iii) the Danish Central Bank Policy Rate (Danmarks Nationalbank's lending rate) in respect of claims in DKK; (iv) the Norwegian Central Bank Policy Rate (Norges Bank's sight deposit rate) in respect of claims in NOK; (v) the Swedish Central Bank Policy Rate (Repo rate) in respect of claims in SEK; and (vi) the Federal Funds Rate in respect of claims in USD, all as applicable from time to time with the addition of one percent (1%) interest compounded monthly from the date when the amount would have been paid or not paid (as applicable) if the dispute, overpayment or underpayment had not occurred, until but excluding the date payment is made.



- 6.7.3 If any of the interest rates above ceases temporarily or permanently to be published then the Counterparty entitled to payment may substitute a rate published by a European clearing bank that it in good faith considers to be equivalent to that rate and which is generally accepted as such.
- 6.7.4 The provisions of this Section 6.7 shall not apply to any payment to the extent a delay fee is payable under the Fee List in relation to such payment.

## 7 REPRESENTATIONS AND WARRANTIES

- 7.1 Each Account Holder represents and warrants to the Clearinghouse on each date on which a Transaction is registered for Clearing that:
- a. **Power.** It has the power to perform its obligations under the Clearing Rules and each Clearing Transaction;
  - b. **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation (and, if relevant under those laws, is of good standing) and, that it meets the conditions for membership stated in the Clearing Rules;
  - c. **Organisation.** It is properly staffed and organised to enable it to carry out, and its personnel have the necessary competence and knowledge for Clearing Transactions;
  - d. **Risk Assumption.** It is aware of and understands the characteristics of the Products and the risks related thereto, and it has entered into the Transactions to which it is a party after a full opportunity to review their terms and conditions, and has a sufficient understanding of those terms and conditions and of their risks, and is capable of assuming those risks;
  - e. **No Violation or Conflict.** The execution, delivery and performance of the relevant Clearing Agreements and of Clearing Transactions do not violate or conflict with any Applicable Law or any provision of its constitutional documents applicable to the Account Holder or any of its assets, or any contractual restriction binding on or affecting it or any of its assets;
  - f. **Required Authorisations.** All Required Authorisations under Applicable Law have been obtained and are in full force and effect, and all conditions of any Required Authorisations have been complied with, and there are no further licences or filings with or other acts by or in respect of any Regulatory Body or competent court that are required to be obtained, made or done by the Account Holder in connection with Trading or Clearing, nor is it necessary in order to ensure the validity or enforceability of the Transaction that the Transaction, the Clearing Rules or any Clearing Agreement are filed, registered or recorded by the Account Holder in any public office;
  - g. **Obligations Binding.** Its obligations under each Clearing Transaction and the Clearing Rules constitute legal, valid and binding obligations of the Account Holder, enforceable in accordance with their respective terms subject to Applicable Law affecting creditors' rights generally and to equitable principles of general application;
  - h. **No Default Event.** No Default Event, or event that with notice or lapse of time or both would constitute a Default Event, has occurred with respect to it and no such event would occur as a result of its entering into or performing its obligations under the Clearing Rules;
  - i. **No Litigation.** No litigation, arbitration or administrative suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency, official or arbitrator is pending or, so far as it is aware, threatened against it that would, if adversely determined, result in a material adverse change in its financial condition or its ability to perform its obligations under the Clearing Rules, or that is likely to affect the legality, validity or enforceability against it of the Clearing Rules or its ability to perform its obligations there under;
  - j. **Principal.** Unless when acting as a General Clearing Member or Client Representative pursuant to the Clearing Rules, it has negotiated, entered into and

executed the Transactions as principal (and not as agent or in any other capacity, fiduciary or otherwise);

- k. **Accurate Information.** All applicable information that is furnished in writing by or on behalf of the Account Holder which is identified as being subject to or connected to the Clearing Rules (including any information submitted in the membership application process) is, as of the date it is furnished to the Clearinghouse, true, accurate and complete in every material respect; and
- l. **No Encumbrances.** The Account Holder shall deliver to the Clearinghouse the relevant deliverables under the Clearing Rules free and clear of all liens, security interests, claims and encumbrances or any interest in or to them by any person, except where in favour of the Clearinghouse.

7.2 An Account Holder is deemed to repeat the representations and warranties specified above when entering into each Clearing Transaction as well as any further representations and warranties specified as such in the Clearing Rules.

## 8 DEFAULT AND INSOLVENCY

### 8.1 Definition of Default Event

8.1.1 A “**Default Event**” means the occurrence at any time of any of the following events:

- a. The Account Holder no longer meets the membership criteria for its applicable membership category.
- b. The Account Holder fails to meet a Margin Requirement within the applicable time limit as set out in the Clearing Rules.
- c. The Account Holder fails to meet any of its Settlement obligations under the Clearing Rules.
- d. The Account Holder, its Collateral Provider, its Approved Settlement Bank or its parent company is subject to an Insolvency Event.
- e. The Account Holder is in breach of, or omits to observe, any other obligations towards the Clearinghouse or the Exchange or any relevant Third Party Exchange under the Clearing Rules, the Exchange Rules, the rules of any Third Party Exchange or applicable law, or in the Clearinghouse’s reasonable opinion, there is a substantial risk that the Account Holder will breach any such obligations.
- f. Where an Account Holder is a trading or clearing participant under the Trading Rules or the FIN Clearing Rules, the Account Holder is in breach of, or omits to observe, any obligations towards the Clearinghouse under such rules.
- g. The Account Holder is suspended from any exchange, clearinghouse or similar organisation, provided that such suspension, in the opinion of the Clearinghouse, materially affects such Account Holder’s suitability to act as an Account Holder pursuant to the Clearing Rules or applicable law or regulation.
- h. The Account Holder causes or is subject to any event with respect to it which in the reasonable opinion of the Clearinghouse has an analogous effect to any of the events specified in letters (a) to (g) (inclusive) above.
- i. The Account Holder takes any action in furtherance of, or indicating its consent to approval of, or acquiescence in, any of the events referred to in letters (a) to (h) (inclusive) above.
- j. The Account Holder is in breach of any of its representations or warranties.

8.1.2 The following constitute a “**Material Default Event**”:

- a. Any Default Event under Section 8.1.1 letters (a) and (b).
- b. Any Default Event under Section 8.1.1 letters (c) through (i) (inclusive), provided that the Default Event, in the reasonable opinion of the Clearinghouse, seriously affects the Account Holder’s ability to fulfil its current or future obligations under the Clearing Rules, or clearly indicates that the Account Holder is unfit for further Clearing.

- c. Any Default Event under Section 8.1.1 letter (j), provided that the breach of the representation or warranty is material in the reasonable opinion of the Clearinghouse and has not been remedied within fifteen (15) calendar days following written notice from the Clearinghouse, or the breach clearly indicates that the Account Holder is unfit for further Clearing.

## **8.2 General Provisions Regarding Default Events**

- 8.2.1 If a Default Event occurs with respect to an Account Holder, the Clearinghouse may suspend the Account Holder from Clearing until the Default Event has been remedied or otherwise ceased to the reasonable satisfaction of the Clearinghouse. During suspension, Clearing of new Transactions with the Clearinghouse will only be accepted when preapproved by the Clearinghouse.
- 8.2.2 If a Material Default Event has occurred with respect to an Account Holder, and subject to Section 8.3.2 but without prejudice to any other remedies available to the Clearinghouse under applicable laws, other provisions of the Clearing Rules, or additional agreements with the Account Holder or relevant third parties, the Clearinghouse may take any one or more of the following steps, provided that (i) if a Material Default Event occurs with respect to an Account Holder that is party to one or more Clearing Transactions registered on a Client Clearing Account, the Clearinghouse shall take the steps set out in the Supplemental default rules for Clearing Transactions recorded on Client Clearing Accounts, and (ii) if a Material Default Event occurs with respect to an Account Holder that is a Client Representative in respect of one or more Clearing Clients, the Clearinghouse shall take the steps set out in the Supplemental default rules for Clearing Transactions recorded on Clearing Client Clearing Accounts:
  - a. declare any or all claims of or against the defaulting Account Holder due on that date;
  - b. enter into Hedge Transactions in other Series in order to reduce the market risk in Open Positions registered on the Clearing Accounts of the Account Holder;
  - c. take such action as it considers necessary or expedient to close-out Open Interest by entering into Close-Out Transactions for the Account Holder's account and risk or otherwise discharge and/or net the rights, obligations and positions of the Account Holder;
  - d. withhold any Cash Settlement Amount owed to the Account Holder;
  - e. enforce, appropriate, realise and otherwise apply its rights in relation to any Collateral posted by or on behalf of the Account Holder, provided that the Clearinghouse shall only exercise its rights in relation to Collateral for the relevant Client Clearing Account in respect of which such Collateral has been provided;
  - f. retain and sell any assets held on behalf of the Account Holder and take possession of any assets delivered to or deposited with the Clearinghouse in relation to the Account Holder;
  - g. set off or otherwise apply any Open Positions related to a Clearing Account against any other claims from the Clearinghouse related to the other Clearing Accounts of the Account Holder;
  - h. set off or otherwise apply all profits, Pending Settlements and other claims owed by the Account Holder to the Clearinghouse and by the Clearinghouse to the Account Holder so as to produce a single net sum payable by or to the Account Holder, irrespective of whether such claims are in different currencies and regardless of their origin or character;
  - i. terminate the membership agreement and exclude the Account Holder from Clearing with fifteen (15) days written notice, provided that non-repeated Material Default Events that does not clearly indicate that the Account Holder is unfit for membership shall normally not be grounds for termination; and/or
  - j. terminate any Clearing Client Agreement to which such Account Holder is a party.
- 8.2.3 The Clearinghouse may carry out any or all of the actions set out in Section 8.2.2 above for some or all of the Open Positions registered on a Clearing Account, and/or refrain from such actions with respect to one or several Clearing Accounts established in the name of the Account Holder.

- 8.2.4 No court order or filing or any other legal act shall be required for any of the actions stated in Section 8.2.2 above.
- 8.2.5 Any Close-Out Transactions or other Transactions by the Clearinghouse on the account and risk of the Account Holder may take place through Exchange Trading, Third Party Exchange Trading, Non Exchange Transactions or such other means as the Clearinghouse deems appropriate under the circumstances, provided that the Clearinghouse shall use reasonable endeavours to obtain the best price possible at the relevant time.

### **8.3 Specific Provisions for Default Events Involving Client Clearing Accounts**

- 8.3.1 The provisions of this Section 8.3 apply only in relation to Client Clearing Accounts, and is in addition to the provisions of Section 8.2. This Section 8.3 shall prevail in case of conflict with Section 8.2.
- 8.3.2 If a Material Default Event occurs with respect to a General Clearing Member or Clearing Member holding Client Clearing Accounts:
- a. a Client Clearing Account may not be off-set, hedged or otherwise applied against any other Clearing Account or claim against the General Clearing Member or Clearing Member without the consent of the Client(s) concerned;
  - b. any Collateral posted specifically for a Client Clearing Account may only be applied to cover any claims arising out of the Trading Rules or the Clearing Rules in respect of that Client Clearing Account; and/or
  - c. the Clearinghouse may require reasonable fees and reimbursement of any expenses or costs it incurs in performing any actions on the request of Clients.
  - ~~e-d.~~ For the avoidance of doubt, if a Material Default Event occurs with respect to a General Clearing Member or Clearing Member holding Client Clearing Accounts, the Clearinghouse may enter into Close-Out Transactions between a Client Clearing Account and any other Clearing Account of the defaulting General Clearing Member or Clearing Member, provided that the Clearinghouse shall use reasonable endeavours to obtain the best price possible at the relevant time.

### **8.4 Specific Provisions for Default Events Involving a Client Representative**

- 8.4.1 The provisions of this Section 8.4 apply only in relation to Client Representatives, and are in addition to the provisions of Section 8.2. This Section 8.4 shall prevail in case of conflict with Section 8.2.
- 8.4.2 A Clearing Client may not enter into any new Clearing Transactions while its Client Representative is suspended.
- 8.4.3 Following suspension by the Clearinghouse of a Client Representative, the following shall apply:
- a. The Clearinghouse may designate another Client Representative for affected Clearing Clients on a temporary basis, on such terms as the Clearinghouse may reasonably determine.
  - b. The Clearinghouse shall notify affected Clearing Clients of the suspension of its Client Representative. Each Clearing Client shall immediately endeavour to enter into a Clearing Client Agreement with another Client Representative (to be approved by the Clearinghouse).
  - c. If a Clearing Client Agreement is not entered into within two (2) Clearing Days following notice from the Clearinghouse, the Clearing Client may be transferred to a Client Representative appointed by the Clearinghouse. A corresponding Clearing Client Agreement shall be deemed to have been entered into, and a bilateral agreement between the Clearing Client and the new Client Representative shall be entered into on behalf of the Clearing Client on such terms as the Clearinghouse may reasonably determine.
  - d. When a Clearing Client enters into a Clearing Client Agreement in accordance with subsections (b) or (c) above, the new Client Representative will assume the responsibility for Margin Requirements of the Clearing Client from the time of the Margin Requirement on the second (2<sup>nd</sup>) Bank Day following the notification above,

and the previous Client Representative shall be released in respect of circumstances occurring after such time.

- e. If a Clearing Client does not enter into a Clearing Client Agreement in accordance with subsections (b) or (c) above, the Clearing Client may either (i) ask the Clearinghouse to close out any Open Positions registered to it or (ii) retain any Open Positions subject to the approval of the Clearinghouse, not to be unreasonably withheld.

## **8.5 Specific Provisions for Default Events Involving a Clearing Client**

- 8.5.1 The provisions of this Section 8.5 apply only in relation to Clearing Clients, and are in addition to the provisions of Section 8.2. This Section 8.5 shall prevail in case of conflict with Section 8.2.
- 8.5.2 If at any time a Clearing Client fails to meet a Margin Requirement, the Client Representative may enter into Close-Out Transactions or Hedge Transactions for the Clearing Client's account and risk to the extent required to meet Margin Requirements. The Client Representative shall conduct such Transactions applying best execution principles.
- 8.5.3 If at any time a Material Default Event occurs with respect to a Clearing Client its Client Representative may terminate the Clearing Client Agreement by giving fifteen (15) calendar days' written notice to the Clearing Client and the Clearinghouse, and the Clearinghouse shall immediately suspend the Clearing Client from Clearing Transactions from the reception of such notice.
- 8.5.4 Following a termination of the Clearing Client Agreement, the Client Representative shall, subject to reasonable instructions from the Clearing Client, or with the approval from the Clearinghouse if such instructions cannot be obtained, enter into Close-Out Transactions or Hedge Transactions relating to the Open Position in the applicable Clearing Account of the Clearing Client. Unless as otherwise agreed between the Client Representative and the Clearing Client or as may follow from applicable law, the Client Representative shall use reasonable endeavours to obtain the best price possible.
- 8.5.5 Notwithstanding Sections 8.5.2, 8.5.3 and 8.5.4, the Clearing Client's responsibilities under the Clearing Rules will remain in force for as long as the Clearing Client has Open Positions with the Clearinghouse or owes any amount to the Clearinghouse, as will the Client Representative's responsibilities to the Clearinghouse in respect of the Clearing Client.
- 8.5.6 The Client Representative has the right to obtain coverage for amounts owed by the Clearing Client to the Client Representative in Collateral posted by the Clearing Client in favour of the Clearinghouse, provided that any such claim shall be subordinated to those of the Clearinghouse and that such coverage is allowed by the applicable collateral arrangements.
- 8.5.7 Following termination of a Clearing Client Agreement any excess cash balance or Collateral shall be released to the Clearing Client after coverage of the Clearinghouse's and the Client Representative's final, undisputed and due claims.

## **8.6 Definition of Insolvency Event**

- 8.6.1 An "**Insolvency Event**" means the occurrence at any time with respect to an entity of any of the following events:
  - a. The entity is dissolved (other than pursuant to a consolidation, amalgamation or merger);
  - b. The entity becomes insolvent, suspends its payments, or is unable to pay its debts, or fails or admits in writing its inability generally to pay its debts as they become due;
  - c. The entity makes a general assignment, arrangement or composition with or for the benefit of its creditors;
  - d. An application is made to a court of competent jurisdiction, or an order is made by such a court, for the purposes of (i) adjudging the entity to be bankrupt or insolvent or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; (ii) approving or granting a petition for a moratorium, reorganisation, arrangement (including pursuant to a scheme of arrangement), liquidation, dissolution, adjustment or composition of or in respect of

the entity under any insolvency law; (iii) appointing an administrator, assignee, custodian, examiner, liquidator, provisional liquidator, receiver, sequestrator, supervisor, nominee or trustee or other similar official in respect of the entity or any substantial part of its property, assets or undertaking; (iv) ordering the winding up, official management, liquidation or bankruptcy of the entity (other than pursuant to a consolidation, amalgamation or merger while solvent on terms approved by the Clearinghouse); or (v) consenting to the institution by the entity or any person of proceedings for it to be adjudicated, bankrupt or insolvent or for it to be wound up or liquidated;

- e. The entity seeks, consents or becomes subject to the appointment of an administrator, provisional liquidator, liquidator, conservator, receiver, sequestrator, supervisor, trustee, custodian or other similar official for it or for all or substantially all its assets;
- f. The entity has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged or restrained, in each case within fifteen (15) calendar days thereafter; and
- g. The entity causes or is subject to any event with respect to which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in letters (a) to (f) above.

## **8.7 General Provisions for Insolvency Events involving an Account Holder**

- 8.7.1 If an Account Holder is subject to an Insolvency Event, the Clearinghouse may terminate all Open Positions in the Account Holder's Clearing Account(s) with immediate effect.
- 8.7.2 The value of the positions terminated under Section 8.7.1 shall be determined by reference to any price that would have been obtainable by the Clearinghouse if carrying out a Close-Out Transaction for the positions at any time within three (3) Bank Days after it became aware of the Insolvency Event. To the extent such valuation is in conflict with mandatory law which is applicable to the Account Holder and has extra-territorial application to the Clearinghouse, the value shall be determined mutatis mutandis in accordance with such applicable law.
- 8.7.3 Subject to Sections 8.2.2 and 8.3.2, the amounts resulting from the valuation pursuant to Section 8.7.2 shall be netted and aggregated with any Losses by the Clearinghouse. The resulting net amount shall be paid by the Account Holder or the Clearinghouse (as applicable) in the next Daily Cash Settlement.
- 8.7.4 This Section 8.7 shall prevail in case of conflict with Sections 8.1 through 8.6 (inclusive).

## **8.8 Default or Insolvency of the Clearinghouse**

- 8.8.1 In the event that the Clearinghouse is in default of its obligations under the Clearing Rules, Account Holders may terminate their Clearing Agreement with effect from the moment no Open Positions are registered in the Clearing Accounts which the Account Holder is responsible for and all Cash Settlements and Deliveries have been finalised, including the associated Clearing Accounts of Clearing Clients in case of Client Representatives.
- 8.8.2 A "Material Default" by the Clearinghouse exists if the Clearinghouse breaches a Settlement or Delivery obligation (other than to a defaulting Account Holder) and such breach is not remedied within twenty (20) Bank Days after the relevant Settlement or Delivery is due.
- 8.8.3 An Account Holder may, in the event that the Clearinghouse is in Material Default as defined above, terminate any or all Open Positions registered in its Clearing Accounts by designating an early termination date by giving the Clearinghouse not less than twenty (20) Bank Days' written notice.
- 8.8.4 In the event that the Clearinghouse files for bankruptcy proceedings or is declared bankrupt, all Open Positions with the Clearinghouse are automatically terminated.
- 8.8.5 Upon a termination under Sections 8.8.3 or 8.8.4 the Account Holder shall calculate a positive or negative value of the terminated Open Positions on the basis of the latest listed price for the relevant Series or, where no such price is available, the market value of such Clearing Transaction, in either case at the time of termination, these values to be

aggregated and netted to a single close-out amount for all relevant Clearing Transactions (in each case expressed in EUR or such other currency as approved in writing by the Clearinghouse). Such calculation shall be made on an account by account basis, provided that it shall be permitted to consolidate two or more accounts if the Account Holder and, where relevant, the underlying Client(s) are identical in respect of all such accounts.

- 8.8.6 The Account Holder is not required to enter into replacement Transactions in order to determine the close-out amount. The Account Holder may, if appropriate and to the extent this does not represent double coverage, calculate its Loss (in each case expressed in EUR or such other currency as approved in writing by the Clearinghouse), in connection with the termination of Open Positions on each such account in respect of the default by the Clearinghouse and set off the Loss against any payment obligation towards the Clearinghouse in respect of the same account(s). To the extent not taken into account when determining the close-out amount or any Loss, the Account Holder may furthermore set off an amount owing by the Clearinghouse to the Account Holder in respect of Collateral that the Clearinghouse is due to return to the Account Holder in respect of each account and that the Account Holder has provided to the Clearinghouse on a title transfer basis against any remaining payment obligation toward the Clearinghouse in respect of the same account(s). A net amount remaining is for the purposes of this Section 8.8 referred to as a "**Termination Amount**".
- 8.8.7 The Account Holder shall notify the Clearinghouse in writing of the Termination Amount(s) calculated, including detailed support for the calculation. If a Termination Amount is positive, the Clearinghouse shall pay such Termination Amount to the Account Holder in EUR within fifteen (15) Bank Days of invoice or notification, which amount shall bear interest in accordance with Section 6.7. If a Termination Amount is negative, the Account Holder shall pay an amount in EUR equal to the absolute value of such Termination Amount to the Clearinghouse within thirty (30) Bank Days of the termination under Section 8.8.3 or 8.8.4, and any such amount shall bear interest in accordance with Section 6.7.
- 8.8.8 The Account Holder may however, at its option, set off the obligation to pay a Termination Amount under Section 8.8.7 against any other amounts owing (whether or not matured, contingent or invoiced) of the Clearinghouse in favour of the Account Holder, save that Termination Amounts owing of the Clearinghouse in respect of Client Clearing Accounts or Clearing Clients' Clearing Accounts may not be used for such set-off. However, the Account Holder shall not be allowed to set off such payment obligation against the value of any Default Fund contributions owing by the Clearinghouse to the Account Holder. The Account Holder shall provide the Clearinghouse with detailed support of any amounts used for set-off. This right of set-off is without prejudice and in addition to any other right of set-off, combination of accounts, lien, charge or other right to which the Account Holder is at any time otherwise entitled (whether by operation of law, by contract or otherwise).
- 8.8.9 If an amount is unascertained, the Account Holder may reasonably estimate the amount to be set off. The parties shall make any adjustment payment required within three (3) Bank Days of the amount becoming ascertained.
- 8.8.10 If the Clearinghouse disputes any Termination Amount under this Section 8.8, it shall notify the Account Holder as soon as practically possible and pay the lesser amount as calculated by the Clearinghouse by the due date in accordance with Section 8.8.7, subject to payment of any further amount together with interest calculated in accordance with Section 6.7 once the dispute has been settled or determined.

## **8.9 The Clearinghouse's Duty of Notification**

- 8.9.1 The Clearinghouse shall as soon as practicable inform the Account Holder in writing of any measures that have been taken under Sections 8.1-8.7 in accordance with the Default Notification Procedures.
- 8.9.2 The Clearinghouse shall provide the Account Holder with a written account stating the measures taken and the Account Holder's remaining Open Position and other obligations (if any) between the Account Holder and the Clearinghouse following the Clearinghouse's finalisation or exhaustion of such measures.
- 8.9.3 Prior to calling a Default Event, the Clearinghouse shall immediately contact the competent authority or other exchange or clearing organisation or governmental authority or regulatory body as required by applicable law and regulation.

## **9 LIABILITIES AND FORCE MAJEURE**

### **9.1 Force Majeure**

- 9.1.1 If a Force Majeure Event prevents a Counterparty from performing any obligation under these Clearing Rules at the prescribed time in whole or in part, the time for performance of such obligation shall be suspended for as long as the Force Majeure Event persists subject to Sections 9.1.2 and 9.1.4. The other Counterparty shall be entitled to suspend its obligations towards the affected Counterparty accordingly.
- 9.1.2 If it is clear that a Force Majeure Event persists or will persist for more than three (3) Bank Days (excluding the day on which the Force Majeure Event occurs) in relation to an Account Holder, and provided that the Account Holder fails to meet its Margin Requirement or its Settlement obligations within the applicable time limits, the Clearinghouse shall be entitled to invoke its rights pursuant to Section 8 notwithstanding Section 9.1.1, provided that the Clearinghouse shall (to the extent possible) give prior notice to the Account Holder and take reasonable account of the Force Majeure Event (including its anticipated perseverance) and the Account Holder's reasonable requests (if any) when invoking such rights.
- 9.1.3 If a significant portion of the Account Holders and/or the Settlement Banks, and/or the Clearinghouse, is subject to a Force Majeure Event, the Clearinghouse may declare a state of general force majeure in relation to all affected Counterparties. In such case, the Clearinghouse may temporarily suspend the affected Counterparties' obligations and/or invoke alternative arrangements, or implement such other similar measures as it deems necessary and appropriate in order to mitigate the effects of such circumstances and to ensure the fair and orderly settlement, price formation or integrity of any Contract, taking into account the reasonably anticipated interests of all affected Counterparties.
- 9.1.4 A Counterparty shall only be entitled to claim relief due to a Force Majeure Event under this Section 9.1 if the Counterparty:
- a. complies with Sections 9.1.5 or 9.1.6 (as applicable); and
  - b. continues to seek to perform its obligations under the Clearing Rules to the best of its abilities.
- 9.1.5 An Account Holder seeking relief under Section 9.1.1 shall:
- a. notify the Clearinghouse as soon as practically possible after it becomes aware (or should reasonably have become aware) of the Force Majeure Event, reasonably evidencing that a Force Majeure Event has occurred; and
  - b. as soon as practically possible provide to the Clearinghouse a non-binding estimate of the likely effect on the performance of its obligations and the extent and expected duration of its inability to perform its obligations under the Clearing Rules, and shall provide reasonable updates, when and if available, of the extent and expected duration of the Force Majeure Event; and
  - c. on request promptly provide all further information required by the Clearinghouse to determine whether a Force Majeure Event has occurred and/or information in relation to affected Clearing Transactions; and
  - d. promptly take such actions in respect of Clearing Transactions as the Clearinghouse deems reasonably necessary or desirable to manage the continued operation of the relevant market and/or Clearing of Transactions in light of the Force Majeure Event.
- 9.1.6 The Clearinghouse shall, as soon as practically possible after it becomes aware of a Force Majeure Event affecting the Clearinghouse, notify all affected Account Holders of the Force Majeure Event and, to the extent then available, provide a non-binding estimate of the likely effect on the performance of its obligations and the extent and expected duration of its inability to perform its obligations under these Clearing Rules. The Clearinghouse shall use all commercially reasonable efforts to mitigate the effects of the Force Majeure Event and shall, during the continuation of the Force Majeure Event provide all affected Account Holders with reasonable updates, when and if available, of the extent and expected duration of the Force Majeure Event.
- 9.1.7 A Counterparty that is subject to a Force Majeure Event shall not, subject to its compliance with this Section 9.1, be liable for any loss or damage caused by such Counterparty's non-performance of its other obligations under these Clearing Rules, and a Counterparty may



not use any claim relating to such loss or damages as grounds for set-off or withholding of its obligations towards another Counterparty. Notwithstanding the foregoing, interest in accordance with Section 6.7 will accrue even in case of a Force Majeure Event.

## **9.2 Exclusion of Liability**

9.2.1 The Counterparties shall not be liable for any loss or damage that may arise as a result of any act governed by the Clearing Rules, provided that the Counterparty has not acted negligent or intentional. For the avoidance of doubt this clause shall not limit the Counterparties' obligations in relation to Settlement or Margin Requirements.

9.2.2 Save as explicitly set out in these Clearing Rules, the Clearinghouse shall have no liability to any Account Holder or Non Exchange Trading Broker in connection with performance or non-performance of its obligations under these Clearing Rules to the extent such performance or non-performance is a result of:

- a. the occurrence of any Default Event in relation to the Account Holder or its Collateral Provider;
- b. any delay or failure by the Account Holder in the performance of its obligations to the Clearinghouse;
- c. the Clearinghouse acting or relying in good faith on any communication in accordance with Section 10.4;
- d. the performance or non-performance of any Counterparty or entity other than the Clearinghouse (or its nominee) under the Clearing Rules;
- e. any suspension, interruption, temporary unavailability or fault occurring in the provision of the Clearing System except where such circumstances have been caused by the wilful or reckless conduct of the Clearinghouse;
- f. any loss or damage whatsoever and howsoever caused arising in connection with the use of information or services acquired or accessed by Account Holders or Non Exchange Trading Brokers through use of the Clearing System howsoever;
- g. any loss or damage in connection with the availability, functionality or accessibility of any system employed by the Account Holder or Non Exchange Trading Broker to access the Clearing System, including the availability of telecommunication lines leased by the Account Holder or Non Exchange Trading Broker; or
- h. the Clearinghouse complying with applicable law.

## **9.3 Indemnity**

9.3.1 Without prejudice to all other rights and remedies available to the Clearinghouse, but provided that the Clearinghouse shall not be permitted to recover twice for the same loss, each Account Holder (the "indemnifying Account Holder") shall, on demand by the Clearinghouse, indemnify the Clearinghouse against any cost, loss or liability incurred by the Clearinghouse as a result of the following:

- a. the occurrence of any Default Event in relation to the indemnifying Account Holder or any of its Collateral Providers (in their capacity as Collateral Provider for the Account Holder);
- b. a delay or failure by the indemnifying Account Holder in the performance of its obligations to the Clearinghouse, except where such performance has been delayed or prevented as a result of a Force Majeure Event and subject to Section 9.1;
- c. investigating, defending and/or paying any claim brought against the Clearinghouse by any person for whom the indemnifying Account Holder has agreed to submit a Transaction for Clearing; and
- d. investigating, defending and/or paying any claim brought against the Clearinghouse by any other Account Holder or third party, directly or indirectly as a result of (i) any breach by the indemnifying Account Holder of the Clearing Rules; (ii) the Clearinghouse complying with any court order or other legal or regulatory process in any action brought by or with respect to the indemnifying Account Holder; (iii) the Clearinghouse's proper provision of its services to the indemnifying Account Holder.

9.3.2 The indemnity contained in clause 9.3.1 above shall not require any Account Holder to indemnify the Clearinghouse for any cost or loss to the extent such indemnity would breach the requirements of Article 39 of EMIR or any other applicable law or regulation.

#### **9.4 Sole Remedy and Exclusion of Consequential Loss**

9.4.1 Save as provided in the next sentence or as provided separately in the Clearing Appendices, the rights under Sections 8 and 9 are in full and final satisfaction of the rights of the non-defaulting Counterparty if a Default Event occurs. For the avoidance of doubt, nothing in these Clearing Rules shall limit any claim or remedy the Clearinghouse has against an Account Holder for failure by the Account Holder to meet its Settlement obligations under the Clearing Rules, including any Excess Emissions Penalty, unless and to the extent such loss or damage was caused by a Force Majeure Event and subject to Section 9.1.

9.4.2 Save as expressly provided in the Clearing Rules, no Counterparty shall be liable to any other Counterparty for any indirect or consequential loss (including, but not limited to, loss of business, loss of profits, trading losses, loss of opportunity and loss of use) howsoever suffered or incurred or for any special, punitive or exemplary damages save in the case of deliberate and intentional misconduct by a Counterparty.

#### **9.5 Right of access**

9.5.1 In order to ensure compliance by the Account Holders with the Clearing Rules, the Clearinghouse shall, subject to relevant statutory and regulatory limitations, such as bank secrecy obligations, have the right to access the offices of an Account Holder (including any facilities or temporary offices wherein data is stored by the Account Holder) at the request of the Clearinghouse in order to conduct audits and in order to obtain any information which the Clearinghouse reasonably deems necessary in order to monitor and ensure compliance with the Clearing Rules and in order to fulfill its obligations pursuant to applicable securities and clearing operation legislation and regulations given pursuant thereto.

### **10 COMMUNICATION**

10.1 Communications between the Clearinghouse and Account Holders shall be in English, unless as otherwise agreed between the individuals communicating.

10.2 Any notice to be given under the Clearing Rules shall be in writing and shall be delivered or sent by fax or email. If addressed to the Clearinghouse the notice shall be sent to the relevant address(es) and number(s) specified on the Clearinghouse's website at any time. If addressed to the Account Holder the notice shall be sent to the relevant address or telephone number or e-mail address specified by that Account Holder in writing as may be changed by confirmed notice to and from the Clearinghouse (and to the Client Representative in case of Clearing Clients). The Clearinghouse and Account Holders may communicate via the Clearing System in respect of issues that are covered by the functionality of the Clearing System application. The Clearinghouse may also communicate via its standard website for matters pertaining to the Clearing Rules.

10.3 Notices shall be deemed to have been given (in the case of fax or email communication) on the date on which they are sent or (in the case of other communications) on the date of delivery to the appropriate address.

10.4 The Clearinghouse shall be entitled to act and otherwise rely upon any communication (whether or not in writing) which purports and which the Clearinghouse believes in good faith:

- a. to have been issued by or on behalf of an Account Holder; or
- b. to have been approved by an individual who is authorised by that Account Holder, and which (in the case of an electronic communication) satisfies the requirements of any applicable requirements of the Clearinghouse in relation to the security and integrity of information which is transmitted electronically.

### **11 TRADE INFORMATION**

11.1 Whenever an Account Holder provides data relating to Transactions to the Clearinghouse;

- a. such data, as provided by the Account Holder in its original format, shall belong to the Account Holder; and
  - b. the Account Holder irrevocably grants to the Clearinghouse a perpetual, non-exclusive, royalty-free licence (which shall survive the termination of any Clearing Agreement) to include such data in the Trade Information and to use such data for whatever purpose in accordance with these Clearing Rules. The Clearinghouse shall treat the identity of the Account Holder as confidential in accordance with Section 12.
- 11.2 Account Holders shall, except as permitted pursuant to these Clearing Rules or as may be permitted by mandatory provisions of applicable law or other written agreement with or written authorisation from the Clearinghouse:
  - a. use any Trade Information received only in the ordinary course of business as it relates to its Clearing activities, and not cause any unauthorized third party to access or use the Trade Information except where such third party is assisting the Account Holder in relation to its Clearing activities and is subject to restrictions that are no less strict than those applying to the Account Holder in respect of Trade Information;
  - b. ensure that its relevant employees, agents, independent contractors and other recipients of Trade Information do not act in violation of the Clearinghouse or its licensors rights to the Trade Information; and
  - c. take all such reasonable steps which shall from time to time be necessary, in the reasonable opinion of the Clearinghouse, to protect the rights of the Clearinghouse or its licensors in the Trade Information.
- 11.3 All copyright and other intellectual property rights or proprietary rights of whatever nature contained in the Trade Information (including, for the avoidance of doubt, all database rights and similar rights whether or not protected by law) are and shall at all times remain, as between the Clearinghouse and the Account Holders, the property of the Clearinghouse. The Clearinghouse shall be entitled to use, copy, adapt, sub-license, supply, sell, distribute, assign, transfer, rent, lease, charge or otherwise deal with Trade Information as it deems fit at all times.

## **12 CONFIDENTIALITY AND INFORMATION SHARING**

- 12.1 Except as otherwise set forth herein all information and data received by the Clearinghouse from Account Holders, including information relating to Transactions and information pertaining to the legal or financial status of the Account Holder or its membership eligibility or business in general, will be treated as confidential by the Clearinghouse.
- 12.2 Notwithstanding Section 12.1, but subject to applicable and mandatory law:
  - a. the duty of confidentiality shall not extend to information which is or becomes public through no breach of the Clearinghouse's confidentiality obligations hereunder, which the Clearinghouse already possessed at the time of reception without any obligation of confidentiality, or which the Clearinghouse receives from a third party through no breach of the third party's confidentiality obligations towards the Account Holder;
  - b. the Clearinghouse may share information with the Exchange and any Third Party Exchange relating to Account Holders that are also Exchange Members or Third Party Exchange Members, as appropriate, provided that the relevant Account Holder has an obligation under the Trading Rules (as Exchange Member) or under the rules of the relevant Third Party Exchange to disclose such information to the Exchange or the Third Party Exchange or the provision of such information is required in connection with market surveillance of Exchange Listed Products or any products listed on a Third Party Exchange;
  - c. the Clearinghouse may share information related to a Client Transaction, or any Default Event affecting the General Clearing Member or Clearing Member, with the relevant Client;

- d. the Clearinghouse may share information related to the Clearing Accounts and Clearing Transactions of a Clearing Client, or any Default Event affecting the Clearing Client, with its Client Representative;
  - e. the Clearinghouse may share information with any other person or entity advising or assisting the Clearinghouse in its operations, provided that such persons and entities are subject to a corresponding duty of confidentiality and shall only use the information for such purposes;
  - f. the Clearinghouse may share any information as the Clearinghouse deems to be required by applicable law, provided that the Account Holder should be notified thereof to the extent allowed and practicable; and
  - g. the Clearinghouse shall not be required to keep confidential the fact that an Account Holder is a member of the Clearinghouse or its applicable membership category.
- 12.3 The Clearinghouse may enter into information-sharing agreements or other arrangements or procedures with other market operators or clearing organizations for the purpose of market surveillance of the Products, or contracts or instruments related to the Products, provided that the receiving entity is subject to materially similar confidentiality obligations and other restrictions as those of the Clearinghouse in respect of the disclosed information. As part of any such arrangements or procedures the Clearinghouse may:
- a. provide market surveillance reports to other market operators or clearing organizations;
  - b. share information and documents concerning current and former Account Holders with other market operators or clearing organizations;
  - c. share information and documents concerning ongoing and completed investigations with other market operators or clearing organizations; and/or
  - d. require its Account Holders to provide information and documents to the Clearinghouse at the request of other market operators or clearing organizations with which the Clearinghouse has entered into such arrangements.
- 12.4 The Clearinghouse may enter into any arrangement with any entity or body (including any Regulatory Bodies, any market operator or clearing organization) if the Clearinghouse (i) believes that such entity or body exercises a legal or regulatory function under any law or regulation, or a function comprising or associated with the enforcement of a legal or regulatory function, or (ii) considers such arrangement to be in furtherance of the Clearinghouse's purpose or duties under applicable law. The Clearinghouse may disclose to any entity information concerning or associated with an Account Holder or other entities that the Clearinghouse believes is necessary and appropriate in exercising a legal or regulatory function (including, without limitation, information concerning any aspect of any clearing activity or business concerning the Clearinghouse), whether or not a formal arrangement governing the disclosure exists or a request for information was made.
- 12.5 The Clearinghouse shall publicly disclose any breaches by Account Holders of the criteria referred to in Articles 37(1) and 38(1) of EMIR (breach of admission criteria and breach of requirement to publicly disclose prices and fees) except where the competent authority, after consulting the European Securities and Markets Authority, considers that such disclosure would constitute a threat to financial stability or to market confidence or would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.
- 12.6 Subject to applicable and mandatory law, the Clearinghouse may use any information in relation to any Account Holder or Client where necessary to enable the proper performance of its activities.
- 13 RECORD KEEPING**
- 13.1 The Clearinghouse shall maintain, for a period of at least ten years, all the records on the services and activity provided so as to enable the competent authority to monitor the Clearinghouse's compliance with EMIR.
- 13.2 The Clearinghouse shall maintain, for a period of at least ten years following the termination of a Clearing Transaction, all information on all Clearing Transactions it has

processed. That process shall at least enable the identification of the original terms of a Transaction before clearing by the Clearinghouse.

- 13.3 The Clearinghouse shall make the records and information referred to in Sections 13.1 and 13.2 and all information on the positions of the cleared Clearing Transactions, irrespective of the venue where the Transactions were executed, available upon request to the competent authority, to the European Securities and Markets Authority and to the relevant members of the European System of Central Banks.

#### **14 COMPLAINTS PROCEDURE**

- 14.1 The Clearinghouse's complaints procedure is published by the Clearinghouse on its website.

#### **15 RECOVERY AND RESOLUTION PROCEDURE**

- 15.1 The Clearinghouse's recovery and resolution procedure is published by the Clearinghouse on its website.

#### **16 TRADE REPORTING**

- 16.1 Unless otherwise agreed in writing, the Clearinghouse shall not be responsible for reporting details of any Transaction or Clearing Transaction and of any modification or termination of such Transaction or Clearing Transaction to a Trade Repository in accordance with EMIR or any other applicable laws on behalf of any Account Holder.
- 16.2 Should the Clearinghouse in any way agree to report such details on behalf of an Account Holder, the Account Holder shall upon request by the Clearinghouse provide such information the Clearinghouse may require to submit such reports.

#### **17 MISCELLANEOUS**

##### **17.1 Transfer of Rights**

Save as explicitly set out herein, the rights of an Account Holder under the Clearing Rules are not assignable or otherwise transferable without the prior written consent of the Clearinghouse.

A clearing membership may be transferred to another entity in connection with a merger or other business combination where such transfer of membership is approved by the Clearinghouse, as well as any other transfer approved by the Clearinghouse.

##### **17.2 Third Party Rights**

Save as explicitly set out herein, no entity who is not a Counterparty (or its Non Exchange Trading Broker) shall confer any benefit on, or give any right to enforce any provisions of the Clearing Rules to any person.

##### **17.3 Severability**

If at any time any provision of the Clearing Rules becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of the Clearing Rules nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

##### **17.4 Binding Effect of Determinations**

Any good faith certification or determination by the Clearinghouse of a rate or amount under the Clearing Rules shall, in the absence of manifest error, be conclusive evidence of the matters to which it relates.

Any good faith estimate made by the Clearinghouse in accordance with the Clearing Rules shall, in the absence of manifest error, be binding on all Counterparties affected thereby.

In any proceedings arising out of or in connection with the Clearing Rules, the entries made in the accounts maintained by the Clearinghouse for an Account Holder will be prima facie evidence of the matters to which they relate.

**17.5 Non-waiver of Rights**

No failure of a Counterparty to exercise, nor any delay on its part in exercising, any of its rights (in whole or in part) under the Clearing Rules shall operate as a waiver of the Counterparty's rights or remedies upon that or any subsequent occasion.

**18 CHOICE OF LAW AND ARBITRATION**

- 18.1 The Clearing Rules and all disputes arising out of them are subject to Norwegian law without regard to its conflict of laws provisions. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.
- 18.2 Any dispute between the Parties concerning the understanding of the Clearing Rules or any dispute arising from any acts or omissions governed by them shall be decided by arbitration in Oslo pursuant to the Norwegian Arbitration Act.

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