

Clearing Appendix 5

# Clearing System User Terms

Commodity Derivatives

Issued by NASDAQ OMX Stockholm AB

## CLEARING SYSTEM USER TERMS

### 1. INTRODUCTION

- 1.1 These Terms of Use apply to all use of the Clearing System, regardless of which Client Application is used to connect with the Clearing System, and supplement other parts of the Clearing Rules.

### 2. DEFINITIONS

- 2.1 Capitalized words in the Terms of Use shall have the same meaning as defined in the Definitions. Additionally, the following words shall have the meanings set out below:

<b>API</b>	means an application programming interface that enables interaction between two software systems without the involvement of a user through a set of standardized and callable functions.
<b>Clearing ID</b>	means a clearing identity assigned by the Clearinghouse to a Licensee to identify the Licensee in the Clearing System.
<b>Clearing System</b>	means the Clearinghouse's system for electronic Clearing including any computers, servers, storage media, software, APIs, communication lines or other infrastructure elements provided by the Clearinghouse in connection with Clearing, and excluding (i) any Client Applications and (ii) any hardware, software, telecommunication lines (including public telecommunication lines), network components and Client Applications held or operated by or on behalf of any party other than the Clearinghouse.
<b>Client Application</b>	means a software-based application and/or service other than the Clearing System itself (whether operated by human intervention, and whether installed as a local application, on the servers of Licensee, the Clearinghouse or a third party, or available through web etc) used by a Licensee to access and interface with the Clearing System for the purposes of Clearing and related activities.
<b>Licensee</b>	means an Account Holder, Broker or other entity being granted a right to access the Clearing System through written agreement with the Clearinghouse.
<b>Standard Applications</b>	means any of the Client Applications offered by and through the Clearinghouse to Licensees as a Standard Application at any time.
<b>Terms of Use</b>	means these ETS User Terms
<b>Third-Party Application</b>	means any Client Application that is not offered by and through the Clearinghouse as a Standard Application at any time.
<b>User</b>	means a natural person accessing the Clearing System through a User ID.
<b>User ID</b>	means a log-on identity to the Clearing System provided by the Clearinghouse to a Licensee, including any personal security cards, PIN codes, passwords, tokens or other access credentials or devices pertaining to such log-on identity.

### **3. ACCESS TO AND USE OF THE CLEARING SYSTEM**

- 3.1 Licensees are granted a non-exclusive and non-transferable right to access and use the Clearing System and any Standard Applications through its User ID(s) for the purpose of Clearing and related activities, provided that these Terms of Use are observed and complied with at all times.
- 3.2 All access to and use of the Clearing System and the Standard Applications shall be consistent with the instruction manuals or other similar written announcements provided by the Clearinghouse as applicable from time to time. Licensees shall ensure that all their Users are properly acquainted with the applicable Client Application(s), the Clearing System, the Terms of Use and the Clearing Rules prior to accessing the Clearing System.
- 3.3 Except as otherwise provided for herein or by separate written agreement between the Clearinghouse and Licensee, each Licensee is solely responsible for the functionality, availability and use of all facilities necessary to use and access the Clearing System, and must at its own cost and risk set up and provide, maintain, replace and/or update such facilities as necessary and/or appropriate to comply with these Terms of Use. This includes any Client Application, telecommunication lines, hardware equipment, operating platforms and other software.
- 3.4 Licensee shall not, and shall not attempt, except as pursuant to the Clearing Rules or as may be permitted by written agreement with the Clearinghouse or mandatory provisions of applicable law, to:
- a. use the Clearing System or the Standard Applications, or cause the same to be used, for any other purpose than in its ordinary course of business and directly related to Clearing;
  - b. delete, change, remove or in any way obscure any copyright or proprietary notices of the Clearinghouse or any third party on any copy of information originating from the Clearing System or the Standard Applications (or any part thereof);
  - c. sub-license, supply, sell, assign, transfer, rent, lease, charge or otherwise deal in or encumber the Clearing System or the Standard Applications or any software program comprised in the Clearing System or the Standard Applications and/or installed on any equipment operated by or on behalf of the Clearinghouse in connection with the operation of the Clearing System or the Standard Applications or any accompanying documentation for itself or on behalf of a third party or make the same available to any third party;
  - d. use, duplicate or display information on any Transaction (or any part thereof) from the Clearing System or permit any third party to view such information or present to it for viewing in any manner not expressly permitted by the Clearing Rules;
  - e. supply, sell, assign, transfer, rent, lease, or otherwise dispose of equipment on which any part of the Clearing System or the Standard Applications (or a copy of it or parts of it), is stored, kept or to be found without first ensuring that all such data have been previously deleted;
  - f. copy or imitate the data base structure, design elements or any other elements of Clearing System or the Standard Applications or any software program comprised in the Clearing System or the Standard Applications and/or installed on any equipment operated by or on behalf of the Clearinghouse in connection with the operation of the Clearing System or the Standard Applications;
  - g. copy, imitate, enhance, modify, adapt, alter, decompile, reverse assemble or reverse engineer the Clearing System or the Standard Applications or any software program comprised in the Clearing System or the Standard Applications and/or installed on any equipment operated by or on behalf of the Clearinghouse in connection with the operation of the Clearing System, the Standard Applications or the User IDs; or
  - h. copy, imitate, publish or otherwise redistribute the User IDs and/or user manuals without the prior written consent from the Clearinghouse.

#### **4. FEES**

- 4.1 The Licensee shall pay fees for its use or connection to the Clearing System an any Standard Application as set out in the Fee List.

#### **5. CLIENT APPLICATIONS**

- 5.1 The Clearinghouse shall have no responsibility for the actual installation, operation or maintenance of any Client Application, including Standard Applications.
- 5.2 The Clearinghouse shall have no responsibility for the compatibility, functionality, availability, reliability or fitness for purpose of any Third-Party Application at any time. The Clearinghouse may exclude or impose special terms and conditions relating to the use of a specific Third-Party Application if it has reasonable grounds for doing so. All responsibility and liability for Third-Party Applications are expressly excluded by the Clearinghouse.
- 5.3 The Licensee shall upon request from the Clearinghouse inform of what Client Application(s) it uses to connect to the Clearing System. The Clearinghouse may request information about any Third-Party Applications used, including all ancillary services etc, in order for the Clearinghouse to assess the Third-Party Application to its satisfaction. Failure by a Licensee to disclose all such information upon request and without undue delay will be deemed a breach of the Terms of Use. Until such information is disclosed and the relevant Third-Party Application is approved by the Clearinghouse, the Licensee may be excluded from connecting to the Clearing System through such Third-Party Application.

#### **6. CLEARING IDS AND USER IDS**

- 6.1 Access to and use of the Clearing System requires one or more Clearing IDs and User IDs.
- 6.2 Account Holders and Brokers may have one or more Clearing IDs for accessing the Clearing System. Each Clearing ID may be associated with one or more User IDs. Clearing IDs are established by request to the Clearinghouse.
- 6.3 User IDs are issued by the Clearinghouse pursuant to the procedures and arrangements in effect with the Clearinghouse from time to time. Each User ID shall be associated to one Clearing ID and to one natural person nominated by the Licensee.
- 6.4 The access privileges of each User ID shall be specified by the Licensee within the parameters allowed by the Clearinghouse using such form or application as may be made available by the Clearinghouse from time to time. The privileges of individual User IDs may be unilaterally amended by the Clearinghouse, provided that the Clearinghouse shall notify affected Licensees in writing prior to such amendment becoming effective.
- 6.5 Licensee shall ensure that each User ID is used only in accordance with these Terms of Use, and not for any other purpose, and that each User ID is treated confidentially and that adequate security measures are in place to effectively prevent unauthorized access or use of each User ID. Licensees are strictly liable for all use of the Clearing System through any User IDs issued to it, including any Transactions registered for Clearing through each of its User IDs.
- 6.6 A User ID will be disabled only when the Clearinghouse has confirmed in writing its reception of notification from the Licensee that the relevant User ID shall be disabled, or when the Clearinghouse otherwise deems that it has just grounds for disabling the User ID. If a Licensee or User at any time becomes suspicious or aware of unauthorized use of a User ID, it shall immediately notify the Clearinghouse in writing thereof.
- 6.7 If the Clearinghouse at any time becomes suspicious or aware of unauthorized use or attempted use of a User ID, the Clearinghouse will as soon as reasonably practicable notify the Licensee. The Clearinghouse shall not be obliged to block such User ID other than following instructions from the Licensee.

## **7. USER QUALIFICATIONS**

- 7.1 Each Licensee shall ensure that each of its Users is qualified as such under the Clearing Rules, and that each of its Users is properly acquainted with the general operations of the Clearinghouse and the Clearing System in relation to Clearing.
- 7.2 Each Licensee shall ensure that each of its Users is properly acquainted with, and complies with, the Clearing Rules at all times. Each Licensee shall make the necessary arrangements to ensure that the Clearinghouse has the possibility to enforce the Clearing Rules towards all of its Users at all times to the extent mandated by the Clearing Rules.
- 7.3 Licensee shall keep records of the individual Users accessing the Clearing System through each User ID, and shall keep the Clearinghouse currently and continuously updated on the aggregate number of Users accessing the Clearing System through each of the Licensee's User IDs.
- 7.4 In order to verify the correctness of the number of Users reported by the Licensee, the Clearinghouse shall, upon prior appointment between the parties and during normal business hours of the Licensee, have the right to examine and audit the Licensee's record of Users. The Licensee may request that such audit takes place without disclosing the identity of the individual Users (e.g. by using external auditors) provided that such anonymous review is possible and that the Licensee pays all costs associated therewith. The Licensee shall provide all assistance requested by the exchange in connection with such audits, including any necessary information regarding the technical systems and other circumstances related to the audit. In case the audit reveals that the Licensee has reported an incorrect number of Users the Clearinghouse may, in addition to any other remedies available to it, require the Licensee to reimburse all costs connected to the audit and for any unreported Users charge two (2) times the fee that would normally apply.
- 7.5 The Licensee shall upon the request of the Clearinghouse inform the Clearinghouse of the identity of the individual Users accessing the Clearing System through the Licensee's User IDs, if the Clearinghouse in its own discretion considers this information relevant for the investigation of any suspected breach of the Marked Conduct Rules or to comply with applicable law.

## **8. FUNCTIONALITY**

- 8.1 The functionality of the Clearing System and the Standard Applications is limited to such functionality and other operational parameters as the Clearinghouse decides to make available to the applicable Users and/or Standard Applications at any given time, provided that the Clearinghouse shall ensure that such functionality that is required, expressly or by implications by the provisions of the Clearing Rules, will be provided in the Clearing System. The Clearinghouse decides how all such functionality is implemented.
- 8.2 The Clearing System or the Standard Applications may from time to time be developed and updated with additional functionalities, or may be replaced by other software products with similar functionality, and the Licensee shall upon reasonable notice implement and make itself and its Users acquainted with any such changes, updates or replacements as to at all time operate the Clearing System properly. The Clearinghouse will inform affected Licensees of such changes, updates and replacements, including information on the need for changes to equipment or software commonly used to connect with the Clearing System when necessary.

## **9. CONNECTION**

- 9.1 The Clearing System may only be accessed through such communication methods as are supported by the Clearinghouse from time to time.
- 9.2 The Clearinghouse may assist in providing or setting up external connection facilities to the Clearing System, including telecommunication facilities, subject to separate fees as set out in the Fee List or as otherwise agreed with the Clearinghouse.

- 9.3 The Clearinghouse shall have no responsibility whatsoever for the functionality or availability of communication facilities or systems beyond those which are part of the Clearing System. Any errors or problems related to external communication facilities shall be the sole responsibility of the Licensee or its telecommunication service supplier.

## **10. SECURITY**

- 10.1 Licensee shall ensure that any parts of its software and equipment used to connect to the Clearing System, including any Client Application, complies with the minimum requirements as notified by the Clearinghouse from time to time with reasonable notice to the Licensee. The Clearinghouse may exclude access to the Clearing System in the event the Licensee, following a written warning from the Clearinghouse, fails to maintain and/or update their Client Application in accordance with the Clearinghouse's instructions (including related software and hardware installations).
- 10.2 If the Clearinghouse at any time has reason to believe that a Licensee's or User's access to the Clearing System is causing a security threat to the Clearing System or may be affecting other Licensees or Users in an adverse and unusual manner, the Clearinghouse may immediately disconnect the applicable Licensee and/or User(s) from the Clearing System. The Clearinghouse shall immediately inform the Licensee thereof, reasonably detailing its reasons for denying access.
- 10.3 Without prejudice to any other obligations pursuant to the Clearing Rules, the Licensee, the Users and the Clearinghouse shall use reasonable endeavours to ensure that their software and hardware is free from any computer viruses and that no computer viruses or similar are introduced on to the other party's software or hardware through the Clearing System or otherwise.

## **11. SUPPORT AND SERVICE LEVELS**

- 11.1 The Clearinghouse will take all reasonable and practicable steps to maintain the continuity of access to, and technical capacity, for Licensee and its representatives to access the Clearing System during Clearing Hours, and to provide Licensees with reasonable notice of system outages and other matters affecting use or access to the Clearing System, but will not be liable for
- a. any suspension, interruption, temporary unavailability or fault occurring in the provision of the Clearing System;
  - b. any loss or damage whatsoever and howsoever caused arising in connection with the use of information or services acquired or accessed by Licensee through use of the Clearing System howsoever; or
  - c. any loss or damage incurred as a result of systems, equipment or services delivered by third party suppliers or other circumstances for which the Clearinghouse is not responsible.
- 11.2 The Clearinghouse offers telephone support related to the Clearing System and Standard Applications' functionality to Licensees during Clearing Hours on any Clearing Day, free of charge. Support is provided on an "as available" and "reasonable effort" basis, and does not include on-site support.
- 11.3 Where the Licensee requests the assistance and/or advice of the Clearinghouse in overcoming any connection problems or any other failure of software or equipment not provided by the Clearinghouse/for which the Clearinghouse is not responsible:
- a. any such support shall be undertaken only if and when the Clearinghouse has the ability, capacity and availability for rendering such support;
  - b. the Clearinghouse shall not be responsible for actually resolving the problem, nor will any guarantee be given that the solution represents a final and/or full remedy of the problem;

- c. the Clearinghouse shall not be liable for any damage to software, equipment or loss of data for whatever reason; and
  - d. the Licensee shall reimburse all reasonable costs and expenses incurred by the Clearinghouse (including any internal costs) in supporting the Licensee in overcoming or attempting to overcome such problems.
- 11.4 The Licensee shall offer and maintain first line support to Users in order to address any questions or problems relating to any User's use of, or inability to use, the Clearing System and/or Standard Application(s). The Clearinghouse will only offer support to Users to the extent such support is offered under this Section 11. The Licensee undertakes to cooperate with the Clearinghouse in resolving problems related to its Users.

## **12. INTELLECTUAL PROPERTY RIGHTS**

- 12.1 The Clearing System and the Standard Applications are the sole property of the Clearinghouse and/or its licensors. Except for the right to use and access the Clearing System and the Standard Applications in accordance with the Clearing Rules and these Terms of Use, neither the Licensee nor any User acquires any intellectual property rights, property rights or other rights to the Clearing System or the Standard Applications, and nothing herein shall be deemed or construed as a transfer of or license to any such rights.
- 12.2 The Licensee is granted access to the object code only and shall not have access to the source code of the Clearing System or the Standard Applications.
- 12.3 All User IDs and other measures or devices which are distributed to the Licensee in relation to the Licensee's use of the Clearing System are and shall remain the property of the Clearinghouse or its licensors.
- 12.4 The Clearinghouse represents and warrants that the Licensee's use of the Clearing System or the Standard Applications will not infringe any statutory or common law copyright, trademark or patent or otherwise infringe any personal or proprietary right of any person or entity. This Section 12.4 does not apply where:
- a. the Licensee uses a version of the Clearing System or the Standard Applications other than the most recent version issued by the Clearinghouse from time to time;
  - b. a claim arises out of the combination of the Clearing System with any Third-Party Application, where the Clearing System would not alone have given rise to such infringement; or
  - c. a claim arises out of the combination of the Clearing System or a Standard Application or any part thereof with hardware and software not meeting the specifications or requirements notified in writing by the Clearinghouse, where the Clearing System or the Standard Application would not alone have given rise to such infringement.

## **13. LIABILITY**

- 13.1 The Clearinghouse shall defend, indemnify and hold the Licensee harmless from and against any claim, demand, liability or expenses arising directly out of any claim by a third party against the Licensee arising out of the Clearinghouse's breach of Section 11.4, provided that the Licensee shall
- a. promptly provide the Clearinghouse with written notice of any claim of which the Licensee is notified and believes falls within the scope of this Section 13.1;
  - b. not make any admittance or otherwise respond to the claim to the third party involved, except as and to the extent required by applicable law;
  - c. promptly provide the Clearinghouse with all such information as in the Clearinghouse's opinion is necessary for the Clearinghouse's defence, which in the possession of the Licensee and which the Clearinghouse cannot reasonably acquire from a third party;
  - d. allow the Clearinghouse to comply with Section 11.6 and do all such acts and execute any such documents as is required in connection therewith; and

- e. if the Clearinghouse so requests, and subject to reasonable compensation from the Clearinghouse, assist in such defence.
- 13.2 The Clearinghouse shall control any defence and all negotiations related to the settlement of any claim from a third party under Section 11.5, provided that such settlement
- a. does not without Licensee's prior written approval (i) involve the admission of any wrongdoing by Licensee, (ii) unreasonably restrict Licensee's future actions, or (iii) requires Licensee to take any action (including the payment of money); and
  - b. includes a full release of the Licensee.
- 13.3 The Licensee shall defend, indemnify and hold the Clearinghouse harmless from and against any claim, demand, liability or expenses arising directly out of any claim from Users against the Clearinghouse that are caused by the Users' use of (or inability to use) the Clearing System and/or Standard Application(s) regardless of cause.

#### **14. EXCLUSIVE REMEDIES**

- 14.1 The Licensee accepts that these Terms of Use set out the exclusive rights and remedies available to the Licensee for any use of and access to (or inability to use or access) the Clearing System and the Standard Applications.
- 14.2 The Licensee accepts that the Clearinghouse's licensors or suppliers shall not under any circumstances be liable towards the Licensee for any damage whatsoever incurred as a result of use of or access to (or inability to use or access) the Clearing System or the Standard Applications.

#### **15. BREACH OF TERMS OF USE**

- 15.1 Any failure to comply with these Terms of Use shall be considered a breach of the Terms of Use.
- 15.2 The Clearinghouse may request a written explanation from the Licensee in the event the Clearinghouse suspects a breach of any of the provisions of the Terms of Use. Failure to provide such written explanation within the deadline set by the Clearinghouse in each case shall be considered a material breach of the Terms of Use.

#### **16. TERMINATION**

- 16.1 Without prejudice to other provisions of these Terms of Use, the Clearinghouse may terminate or suspend the Licensee's or a specific User's right to access and use the Clearing System upon thirty (30) days written notice in the event of a breach of the Terms of Use, provided that such breach is not rectified within the expiry of the thirty (30) days notice period. For the avoidance of doubt, this clause is without prejudice to the Clearinghouse's right to suspend or terminate any Licensee or User in accordance with any other provisions of these Terms of Use or the Clearing Rules.
- 16.2 The Clearinghouse may terminate or suspend the Licensee's or a specific User's right to access and use the Clearing System with immediate effect in the event of material breach of these Terms of Use.
- 16.3 Following termination of the Licensee's right to access the Clearing System all rights and obligations set out herein shall immediately cease, except for the rights and obligations pursuant to Sections 11 and 12 of these Terms of Use.
- 16.4 Upon termination the Licensee and/or each affected User shall immediately return to the Clearinghouse all software and other material received in connection with use of the Clearing System, or if the Clearinghouse so agrees destroy or delete all such software and other material including any copies thereof.

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