clear to trade

eurex clearing *circular 085/10*

Date: November 15, 2010
Recipients: All Clearing Members of Eurex Clearing AG, all Trading Members of Eurex Deutschland and Eurex Zürich and Vendors
Authorized by: Thomas Book

High priority

Clearing of OTC Credit Derivatives Transactions: Amendments of the Clearing Conditions

Contact: Risk Design, e-mail: riskdesign@eurexclearing.com

Content may be most important for:

➲ All departments

Attachments:

1. Updated sections of the Clearing Conditions for Eurex Clearing AG
2. Statutes for the CDS Default Management Committee
3. Statutes for the CDS Market Committee

Summary:

Due to a regulatory requirement, the Executive Board of Eurex Clearing AG has decided to amend the Clearing Conditions for clearing of OTC Credit Derivatives Transactions.

In the event of a default of a Clearing Member holding a CD Clearing License, Eurex Clearing AG will consult and request assistance from a "CDS Default Management Committee", composed of experts from Clearing Members, which will be established provided that there are at least three Clearing Members holding a CD Clearing License. In addition, Eurex Clearing AG adjusts the default and liquidation procedures, notably to reserve the right to hedge the positions of a defaulting Clearing Member.

These measures strengthen the Clearing House as they ensure that it has a broad spectrum of assistance and possible actions in case of a Clearing Member default.

The changes will become effective on **November 30, 2010**.

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Aktiengesellschaft mit Sitz in Frankfurt/Main
HRB Nr. 44828
Amtsgericht Frankfurt/Main

Clearing of OTC Credit Derivatives Transactions: Amendments of Clearing Conditions

Due to a regulatory requirement the executive Board of Eurex Clearing AG has decided to amend the Clearing Conditions for clearing of OTC Credit Derivatives Transactions.

In the event of a default of a Clearing Member holding a CD Clearing License, Eurex Clearing AG will consult and request assistance from a "CDS Default Management Committee", composed of experts from Members, which will be established provided that there are at least three Clearing Members holding a CD Clearing License. In addition Eurex Clearing AG adjusts the default and liquidation procedures, notably to reserve the right to hedge the positions of a defaulting Clearing Member.

These measures strengthen the Clearing House as they ensure that it has a broad spectrum of assistance and possible actions in case of a Clearing Member default.

Please also find attached the updated sections of the Clearing Conditions for Eurex Clearing AG and the respective updates on the Committee Statutes which will become effective on November 30, 2010.

If you have any questions or require further information, please contact the Risk Design team at e-mail: riskdesign@eurexclearing.com.

Frankfurt, November 15, 2010

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CHANGES ARE MARKED AS FOLLOWS:

ADDITIONS ARE UNDERLINED

DELETIONS ARE STRUCK THROUGH

****

Chapter VIII
Clearing of OTC Derivatives Transactions

Part 1
General Provisions

[...]

1.3 Subpart
Margining

1.3.1 Determination of Margin to be maintained

(1) Instead of Chapter I Number 3.1 Paragraph 1 to 3 and Paragraph 5 as well as Paragraph 6 the following applies:

a) On every business day (Chapter I Number 1.1 Paragraph 8), each Clearing Member is required to maintain margin in the amount to be determined by Eurex Clearing AG to cover all of its obligations resulting from the CCP Transactions and other transactions concluded with Eurex Clearing AG pursuant to the Clearing Conditions as well as resulting from any actions by Eurex Clearing AG with respect to the mitigation of damages in case of a default pursuant to Chapter VIII Part 2 Number 2.1.8.

[...]

Part 2
Clearing of OTC Credit Derivatives Transactions

2.1 Subpart:
General Provisions

[...]

2.1.2 Consultation of Clearing Members/ Committees

[...]

2.1.2.2 ~~Consultation of~~CDS Market Committees~~

Provided that there are at least 3 (three) Clearing Members holding a CD Clearing License, Eurex Clearing AG will establish a committees~~ consisting of Clearing Members holding a CD Clearing License for the following subjects related to the clearing of OTC Credit Derivatives Transactions (~~each a~~ the "CDS Market Committee"):

1. Risk matters~~ (CDS Market Committee "Risk")~~;
2. Amendments to the Clearing Conditions relating to the clearing of OTC Credit Derivatives Transactions~~ (CDS Market Committee "Clearing Conditions")~~; and
3. Operational matters~~ (CDS Market Committee "Operations")~~.

Eurex Clearing AG will consult the ~~relevant~~ CDS Market Committee before taking a decision on any material amendments to its processes or methods, or to the Clearing Conditions, relating to the matters 1. to 3. above as well as in the cases where the Clearing Conditions expressly provide for a consultation of a CDS Market Committee before any action is taken.

The statutes for the CDS Market Committee as published by Eurex Clearing AG in the English language on its website www.eurexclearing.com represent an integral part of the Clearing Conditions.

2.1.2.3 CDS Default Management Committee

Provided that there are at least 3 (three) Clearing Members holding a CD Clearing License, Eurex Clearing AG will establish a default management committee consisting of Clearing Members holding a CD Clearing License for the event of a default by a Clearing Member pursuant to Number 2.1.8 (a "CDS DMC").

Eurex Clearing AG will generally consult and request assistance from the CDS DMC before taking any action with respect to the default of any Clearing Member holding a CD Clearing License and liquidation handling concerning its OTC Credit Derivatives Transactions as well as in the cases where the Clearing Conditions expressly provide for a consultation of a CDS DMC.

The statutes for the CDS DMC as published by Eurex Clearing AG in the English language on its website www.eurexclearing.com represent an integral part of the Clearing Conditions.

[...]

2.1.8 Default of Clearing Member

2.1.8.1 Event of Default

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

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

(2) If the Closing respectively transfer of CCP Transactions has not been concluded by the respective Clearing Member within a certain adequate period of time set by Eurex Clearing AG in individual cases and in accordance with the instructions of Eurex Clearing AG, Eurex Clearing AG may carry out the Closing of these CCP Transactions on behalf of the ~~Concerned~~ defaulting Clearing Member with the advice of and in consultation with the CDS DMC as required (Chapter VIII Number 2.1.2.3)~~after consultation with the CDS Market Committee "Operations" (Chapter VIII Number 2.1.2.2~~, provided that, in case of urgent matters, Eurex Clearing AG may take such action without consultation. Insofar Chapter I Number 8.1 of the Clearing Conditions applies mutatis mutandis.

(3) Eurex Clearing AG may determine with the advice of and in consultation with the CDS DMC that the Closing pursuant to paragraph 2 is not suitable for an orderly closing of the positions with regard to potential damages to Eurex Clearing AG or the general market integrity. In such an event, Eurex Clearing AG may with the advice of and in consultation with the CDS DMC (Chapter VIII Number 2.1.2.3)

a) conduct risk reducing trades ("Hedging Transactions") on behalf of the defaulting Clearing Member with respect to its CCP Transactions with other Clearing Members, the cost of which shall be borne by the defaulting Clearing Member; and/or

~~(3) If the Closing of CCP Transactions pursuant to Paragraph 2 could not be concluded by Eurex Clearing AG within a reasonable period of time~~ b) will effect ~~,~~ the ~~Closing~~ Closing of such

defaulting Clearing Member's CCP Transactions, including any modified or new CCP Transactions as a result of Hedging Transactions, ~~may be effected~~ in the course of a ~~n~~mandatory auction.

~~determined by Eurex Clearing AG after consultation with the CDS Market Committee "Operations" (Chapter VIII Number 2.1.2.2) provided that, i~~In case of urgent matters, Eurex Clearing AG may ~~make such determination~~effect such auction without consultation. ~~Such auction will take place amongst Clearing Members as well as Registered Customers.~~ The execution of the auction and the fact, that an auction is used in order to close a defaulting Clearing Members's CCP Transactions, shall be announced to all Clearing Members holding a CD Clearing License in due time. All Clearing Members holding a CD Clearing License as well as their Registered Customers may participate in the auction, in the interest of the general market integrity. Eurex Clearing AG reserves the right, after consultation with the CDS DMC, to restrict the number of participants to the auction process.

(~~5~~4) If the Closing of CCP Transactions pursuant to Paragraph 2 and Paragraph ~~4~~ 3 Item b above could not be performed successfully, Eurex Clearing AG may transfer the remaining CCP Transactions on a pro rata basis to Clearing Members after consultation with the CDS Market Committee ~~"Operations" (Chapter VIII Number 2.1.2.2)~~ provided that, in case of urgent matters, Eurex Clearing AG may take such action without consultation. Basis for the pro rata transfer is the net outstanding nominal in the respective opposite CCP Transactions of the non-defaulting Clearing Member booked on their position accounts. Transfer will be based on the daily evaluation price (Chapter VIII Part 2 Number 2.1.9 of the Clearing Conditions) of the previous business day determined by Eurex Clearing AG, to which a spread shall be added, or from which a spread shall be substracted, depending on whether the remaining CCP Transactions are buy or sell transactions.

2.1.9 Daily Evaluation Price

[...]

~~-~~d) If it is not possible to determine a daily evaluation price pursuant to Item a and Item c or if the daily evaluation price so determined would not reflect the market conditions, Eurex Clearing AG shall determine the daily evaluation price at its equitable discretion after consultation with the CDS Market Committee ~~"Risk" (Chapter VIII Number 2.1.2.2)~~ provided that, in case of urgent matters, Eurex Clearing AG may make such determination without consultation.

[...]

EUREX CLEARING AG

STATUTES FOR THE CDS DEFAULT MANAGEMENT COMMITTEE

§ 1
Scope of Application and Definitions

(1) The following statutes (the "**Statutes**") shall apply to the procedure of the CDS Default Management Committee ("**CDS DMC**").

(2) The CDS DMC shall be established pursuant to Chapter VIII Part 2 Number 2.1.2.3 of the clearing conditions of Eurex Clearing AG (the "**Clearing Conditions**") for the purpose of advising, assisting and consulting, to the extent reasonably practicable and if this would not constitute a breach of law, a breach of an order of a court of competent jurisdiction or applicable governmental, quasi-governmental, or regulatory body, with and making recommendations to the management board of Eurex Clearing AG ("**the Board**") with respect to the Relevant Matters (as defined in § 2 below) in the event of a Clearing Member default as defined in Chapter VIII Part 2 Number 2.1.8 of the Clearing Conditions.

(4) The CDS DMC shall only be established if there are at least 3 (three) Clearing Members holding a CD Clearing License.

(5) Notwithstanding anything to the contrary in these Statutes, Eurex Clearing AG shall not have any obligation to accept any proposal made by, or take any action proposed by, the CDS DMC, and any deliberation and/or decision of Eurex Clearing AG with respect to any such proposal shall be made at the sole discretion of Eurex Clearing AG, with no obligation whatsoever to the CDS DMC in respect of such deliberation or decision or the reasoning thereof.

(6) Terms used and not otherwise defined in these Statutes shall have the meanings ascribed to them in the Clearing Conditions.

(7) Any reference to "**Business Days**" shall be a reference to the business days of Eurex Clearing AG as determined by Eurex Clearing AG in accordance with Chapter I Part 1 Number 1.1 paragraph 8(g) of the Clearing Conditions.

§ 2
Relevant Matters

The "**Relevant Matters**" with respect to the CDS DMC shall be exclusively the following:

(1) The carrying out of the Closing of the relevant CCP Transactions on behalf of the defaulting Clearing Member (in accordance with Chapter VIII Part 2 Number 2.1.8.1 para. 2 of the Clearing Conditions), in particular the evaluation of general risk characteristics with respect to, but not limited to, a change in market value of the defaulting Clearing Member's CCP Transactions and the suitability of such CCP Transactions for Closing through Closing Transactions;

(2) The identification and conduct of Hedging Transactions (in accordance with Chapter VIII Part 2 Number 2.1.8.1 para. 3(a) of the Clearing Conditions) in order to reduce the overall risk exposure of the CCP Transactions of the defaulting Clearing Member, in particular considering the following objectives;

(a) which other CCP Transactions would reduce the risk of the portfolio;

(b) what may be appropriate Hedging Transactions for the defaulting Clearing Member's CCP Transactions;

(c) what may be the expected price of such or any other Hedging Transactions, including their effect on the overall value and risk exposure of the defaulting Clearing Member's CCP Transactions;

(d) where or how to conclude such Hedging Transactions;

(3) The auction procedure (in accordance with Chapter VIII Part 2 Number 2.1.8.1 para. 3(b) of the Clearing Conditions), in particular the modification of Eurex Clearing's auction procedure if this is deemed to mitigate risk or potential damages to Eurex Clearing AG or the general market integrity, in terms of timing and participation; or

(4) Any other matters expressly assigned to the CDS DMC in the Clearing Conditions or in relation to which Eurex Clearing AG determines it requires the urgent consultation of the CDS DMC.

§ 3
Further Rights of the CDS DMC

The CDS DMC shall be informed by Eurex Clearing AG, to the extent reasonably practicable, of:

(a) any risk results such as a sensitivity analysis, back-testing and stress testing by Eurex Clearing AG with respect to the CCP Transactions of the defaulting Clearing Member, as required and deemed suitable; and

(b) any new appointment to the board of Eurex Clearing AG.

§ 4
Committee Members

(1) Eurex Clearing AG will establish a CDS DMC governed by the rules set forth in these Statutes, provided that there are at least 3 (three) Clearing Members holding a CD Clearing License.

(2) The CDS DMC will consist of between 2 (two) to 6 (six) representatives (each a "**Committee Member**).

(3) **Eligible Clearing Member** means:

(a) the ten (10) Clearing Members holding CD Clearing Licenses who, during the Term immediately preceding their appointment, accounted for the highest CDS Clearing Volume among such Clearing Members during such period; and

(b) the five (5) Registered Customers who, during the Term immediately preceding their appointment, accounted for the highest CDS Clearing Volume among Registered Customers during such period; and

provided that no Eligible Clearing Member shall be obliged to nominate a Committee Member. If such Eligible Clearing Member declines to nominate a Committee Member or does not do so within a reasonable period of time (as determined by Eurex Clearing AG), the Clearing Member holding a CD Clearing Licence or the Registered Customer (as the case may be) who accounted for the next highest proportion of CDS Clearing Volumes during the relevant Term shall instead be an Eligible Clearing Member.

(4) Each Committee Member shall be appointed to serve for a period commencing on the date of such appointment, and ending on the last day of the calendar year (the "**Term**") in which such appointment was made, provided that such appointment shall in each case be extended by such period (not exceeding 1 month) as Eurex Clearing AG requires to identify the Eligible Clearing Members with respect to the following Term and take such steps as it considers necessary in relation to the appointment of the successor Committee Members. Nothing shall prevent any person from serving consecutive Terms if duly appointed by an Eligible Clearing Member in accordance with this § 4 (4)) Eurex Clearing AG shall, following the expiry of each Term, determine the Eligible Clearing Members with respect to the following Term. Each Eligible Clearing Member shall notify Eurex Clearing AG of the identity of its Committee Member. Such notification shall include the primary representative as well as an alternative representative who may serve as Committee Member in the absence of the primary representative. Eurex Clearing AG shall be informed of any changes to the identity of its Committee Member by the Eligible Clearing Member without undue delay. Eurex Clearing AG may rely on

the identity of a Committee Member previously notified to it by an Eligible Clearing Member until Eurex Clearing AG receives notice of any changes.

(5) A person may not be nominated to be a Committee Member unless that person:

(a) has appropriate expertise and experience in relation to the Relevant Matters; and

(b) is acceptable to Eurex Clearing AG in its reasonable discretion.

(6) Eurex Clearing AG shall maintain a list of all Committee Members including the relevant contact details (address, phone number, fax number, email address) of each primary representative and alternative representative.

(7) If two or more Eligible Clearing Members are or become Affiliates, as determined by Eurex Clearing AG, such Eligible Clearing Members are entitled to appoint only one single Committee Member for the CDS DMC. If at any time affiliated Eligible Clearing Members have appointed more than one Committee Member, such affiliated Eligible Clearing Members will promptly notify Eurex Clearing AG of the single Committee Member representing them.

(8) At the first Meeting (and at any subsequent Meeting if no Deputy Chairman is then appointed or if the Deputy Chairman has ceased to be a Committee Member), the CDS DMC shall appoint a Committee Member by majority vote of the Participating Committee Members to serve as chairman of the CDS DMC (the "**Chairman**"). Such appointment shall be for a period ending on the last day of the relevant Term (subject to extension as set out in § 4 (3) above. Following the expiry of such six month period, or if the Chairman ceases to be a Committee Member or resigns, the Deputy Chairman shall succeed as Chairman and the provisions of this § 4 (8) shall apply *mutatis mutandis*.

(9) The CDS DMC shall appoint a respective Committee Member by majority vote of the Participating Committee Members to serve as deputy chairman of the CDS DMC (the "**Deputy Chairman**"). Upon the Deputy Chairman succeeding as Chairman, or if the Deputy Chairman ceases to be a Committee Member or resigns, the CDS DMC shall appoint a new Deputy Chairman by majority vote of the Participating Members.

(10) The Deputy Chairman shall perform the functions of the Chairman at any Meeting at which the Chairman is not present (in person or by telephone or video conference). The Deputy Chairman may delegate his or her duties to any Committee Member from time to time.

(11) Eurex Clearing AG shall serve as the secretary of the CDS DMC (the "**Committee Secretary**") and shall perform administrative duties.

§ 5
Convening the CDS DMC

(1) The Committee Secretary shall convene a meeting of the CDS DMC (a "**Meeting**"):

(a) in the event of a Clearing Member default as defined in Chapter VIII Part 2 Number 2.1.8 of the Clearing Conditions; and

(b) at its own discretion,

by delivering notice ("**Notice**") in accordance with this § 5. As the CDS DMC must provide its advice, assistance and consultation to Eurex Clearing AG, its Committee Members shall be ready to promptly attend or participate in a meeting at short notice. Any Committee Members who do not attend in person may participate by telephone or video conference.

(2) A Notice of a Meeting shall:

(a) be delivered to each Committee Member by email and/or facsimile or handover as soon as practical before the Meeting;

(b) set out the arrangements for Committee Members to attend by telephone and/or video conference; and

(c) set out an agenda specifying in reasonable detail the matters to be discussed at such meeting, together with materials providing reasonable background in relation to such matters (the "**Agenda**").

(3) Notwithstanding § 5 (2) above, the Committee Secretary may convene a Meeting upon such notice and in such manner as it determines, in order to consider any matter which it determines requires the urgent attention of the CDS DMC. The Committee Secretary shall consult with the Chairman and/or the Deputy Chairman (as it determines) prior to convening a Meeting in such circumstances, provided that no such consultation will be required if the Committee Secretary is not reasonably able to contact the Chairman or the Deputy Chairman.

(4) No vote may be taken at a Meeting with respect to any matter which was not set out in the relevant Agenda.

(5) The Committee Members attending a respective meeting (either in person or by telephone or video conference as set out herein) shall be hereinafter referred to as the "**Participating Committee Members**" and each a "**Participating Committee Member**".

§ 6
Procedure; Voting

(1) All decisions made by the CDS DMC shall be made at a Meeting by majority vote of Participating Committee Members.

(2) For the purpose of all voting procedures hereunder each Participating Committee Member shall have one single vote. In the event that any vote is tied, the Chairman shall have the casting vote.

§ 7
Participation of Employees in the CDS DMC; Outside Counsel

(1) A Committee Member may invite one employee of the Eligible Clearing Member it is representing (or of an Affiliate) to participate in a meeting relating to any Relevant Matter in respect of which such employee has expertise. The Committee Member may, by notice to the Chairman, delegate the authority to vote on its behalf on a particular issue to any such employee.

(2) The CDS DMC may consult outside counsel or other outside experts to the extent and as long as such attendance is considered appropriate by Eurex Clearing AG based on a majority vote of Participating Committee Members. The costs for such advice shall be borne on a pro rata basis by all Committee Members who voted for seeking such advice.

§ 8
Minutes of Meetings

(1) Minutes shall be taken of all meetings of the CDS DMC, which minutes shall be signed by the Committee Secretary. The minutes shall set forth place and date of the meeting, the Participating Committee Members, the matters on the agenda, the substance of the deliberations and the votes taken by the CDS DMC. The Committee Secretary shall record in the minutes the identity of each Participating Committee Member with respect to any matter raised at the Meeting.

(2) The CDS DMC may appoint one or more Committee Members to prepare, on behalf of the CDS DMC, any proposal, response, statement or other document setting out the views of the CDS DMC with respect to any Relevant Matter (a "**Statement**"). The Chairman may refer the Statement to a Meeting for approval or may, if the Chairman is satisfied that the Statement represents the views of the majority of Committee Members after circulating such Statement to the Committee Members, deliver such Statement to Eurex Clearing AG, whereupon such Statement shall be incorporated into the minutes and shall be taken to set out the view of the CDS DMC.

§ 9
Decision of the Executive Board

In the event that the CDS DMC has been consulted on any matter the subject of its terms of reference and disagrees with the proposed measure or action in any material respect, Eurex Clearing AG will, if reasonably practicable, take such action or implement such measure only after a decision has been made by the Executive Board of Eurex Clearing AG.

§ 10
Fees; Compensation

Each Committee Member shall be responsible for its own costs associated with its participation in the CDS DMC and shall not be entitled to demand or receive any fee or compensation from Eurex Clearing AG for such participation.

§ 11
Confidentiality

Except as expressly contemplated in these Statutes or as may be required by applicable law or court order or by a regulatory, self-regulatory or supervising authority having appropriate jurisdiction, each Committee Member agrees (i) to maintain confidentiality as to all aspects of these procedures, including any discussions, deliberations, proceedings or results of any vote, or any determinations produced by these proceedings (the "**Confidential Information**") and (ii) not to use any Confidential Information for its own benefit or the benefit of any of its Affiliates.

§ 12
Fiduciary Duties; Limitation of Liability

(1) No Committee Member, alternative representative appointed to act as a Committee Member, representative of the Eligible Clearing Member that appoints such a member to the CDS DMC or employee of an Eligible Clearing Member or Affiliate invited to participate in a Meeting (each, a "**Protected Person**") shall, to the extent legally possible, have any fiduciary duties (*treuhänderische Pflichten*) or other duties to protect third parties (*Schutzpflichten*) in relation to Eurex Clearing AG, the Eurex Clearing AG Major Shareholders, any directors, managers or officers of either, the Clearing Members or Eligible Clearing Members or any other person by reason of such service on the CDS DMC or the appointment of a Member to the CDS DMC.

(2) Notwithstanding anything to the contrary in the Clearing Conditions, to the extent that, for any reason, a Protected Person has any such duties and liabilities relating thereto to Eurex Clearing AG, the Eurex Clearing AG Major Shareholders, any

directors, managers or officers of either, the Clearing Members or any other Person, such Protected Person acting under the Statutes shall not be liable to Eurex Clearing AG, the Eurex Clearing AG Major Shareholders any directors, managers or officers of either, the Clearing Members or any other Person for breach of any such duty if they relied in good faith on the Statutes, the Clearing Conditions or other provisions of Eurex Clearing AG relating thereto.

(3) In exercising its rights or performing its duties under these Statutes, Eurex Clearing AG shall only be liable vis-à-vis any Eligible Clearing Member or any Protected Person in case of intention (*Vorsatz*) or gross negligence (*grobe Fahrlässigkeit*) and unless the damage results from a negligent violation by Eurex Clearing AG of essential obligations (*Kardinalspflichten*). In case of slight negligence (*leichte Fahrlässigkeit*), however, the liability of Eurex Clearing AG is restricted only to the extent of the typical and foreseeable damage.

(4) Nothing in this provision, however, shall exclude or restrict any non-contractual liability of any person for prohibited actions (*Unerlaubte Handlungen*) such as fraud, death or personal injury.

§ 13
Governing Law; Construction

These Statutes, and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the Federal Republic of Germany.

§ 14
Amendments

These Statutes may be amended in accordance with Chapter I Part 1 Number 1.10 of the Clearing Conditions, provided that:

(a) the Committee Secretary shall present details of any such amendment to a Meeting held no later than 30 days after such amendment comes into effect; and

(b) the Participating Committee Members may by majority vote passed at such Meeting disallow such amendments, whereupon such amendments shall be taken not to have become effective.

§ 15
Publication

These Statutes will be published on the website www.eurexclearing.com.

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EUREX CLEARING AG

STATUTES FOR THE CDS MARKET COMMITTEE

§ 1
Scope of Application and Definitions

(1) The following statutes (the "**Statutes**") shall apply to the procedure of the CDS Market Committee (the "**Committee**").

(2) The Committee shall be established pursuant to Chapter VIII Part 2 Number 2.1.2.2 of the clearing conditions of Eurex Clearing AG (the "**Clearing Conditions**") for the purpose of consulting, to the extent reasonably practicable and if this would not constitute a breach of law, a breach of an order of a court of competent jurisdiction or applicable governmental, quasi-governmental, or regulatory body, with and making recommendations to the management board of Eurex Clearing AG ("**the Board**") with respect to the Relevant Matters (as defined in § 2 below).

(3) The Committee shall only be established if there are at least 3 (three) Clearing Members holding a CD Clearing License.

(4) Notwithstanding anything to the contrary in these Statutes, Eurex Clearing AG shall not have any obligation to accept any proposal made by, or take any action proposed by, the Committee, and any deliberation and/or decision of Eurex Clearing AG with respect to any such proposal shall be made at the sole discretion of Eurex Clearing AG, with no obligation whatsoever to the Committee in respect of such deliberation or decision or the reasoning thereof.

(5) Terms used and not otherwise defined in these Statutes shall have the meanings ascribed to them in the Clearing Conditions.

(6) Any reference to "**Business Days**" shall be a reference to the business days of Eurex Clearing AG as determined by Eurex Clearing AG in accordance with Chapter I Part 1 Number 1.1 paragraph 8(g) of the Clearing Conditions.

§ 2
Relevant Matters

The "**Relevant Matters**" with respect to the Committee shall be exclusively the following:

(1) Material amendments to the Clearing Conditions in accordance with Chapter I Part 1 Number 1.10 which relate to the clearing of OTC Derivatives Transactions pursuant to Chapter VIII of the Clearing Conditions;

(2) Material amendments to provisions relating to margin for the clearing OTC Credit Derivatives Transactions set out in the document "Eurex Credit Clear - Margining Methodology" of Eurex Clearing AG, including:

(a) the methodology for calculating any margin requirement or the components thereof;

(b) the types of currency or assets that qualify as margin or the methodology and discounts for calculating the value thereof;

(c) the methodology for determining the interest rate charged or credited for cash margin;

(d) the provisions relating to collateral requirements in relation to the clearing OTC Credit Derivatives Transactions; or

(e) any other material obligations of Clearing Members holding a CD Clearing License relating to, or otherwise materially affecting, the manner in which Clearing Members interact with their customers and/or conduct their business outside of the Clearing Member's direct dealings with Eurex Clearing AG with respect to margin provided by customers;

(3) Material amendments to:

(a) the determination of the Daily Evaluation Price or

(b) the document "Eurex Credit Clear - Daily Evaluation Price".

(4) Material amendments to:

(a) the structure, size or application of the Credit Clearing Fund;

(b) the methodology for calculating a Clearing Member's required contribution to the Credit Clearing Fund or the components thereof;

(c) the types of currency or assets eligible for, or valuation methodology or discounts applied to, a Clearing Member's Credit Clearing Fund contribution;

(d) the parameters for calculating or otherwise determining contributions to the Credit Clearing Fund;

(e) the time period for, or means by which, surplus collateral is returned to a Clearing Member holding a CD Clearing License;

(f) the methodology and procedures for applying amounts on deposit in the Credit Clearing Fund and recoveries related thereto; or

(g) the size, form, timing, valuation or priority scheme with respect to any contribution of Eurex Clearing AG to the Credit Clearing Fund;

(5) Material amendments to:

(a) the admission criteria for Clearing Members holding a CD Clearing License;

(b) the processes as defined in the document “Eurex Credit Clear - Functional Release Notes - Production”;

(6) Assessment and prioritisation of process and functional enhancements with a material affect regarding Clearing Members holding CD Clearing License; or

(7) Implementation of changes triggered by amended referenced OTC credit derivatives documentation and changes in market practice as well as their impact on established processes and interfaces if such a change has a material economic effect for Clearing Members holding CD Clearing License;

(8) Material amendments to any cleared OTC Credit Derivatives Transactions and/or new OTC Credit Derivatives Transactions in order to:

(a) correct errors or otherwise give effect to the purpose of the 2009 ISDA Credit Derivatives Determination Committees, Auction Settlement and Restructuring Supplement to the Credit Derivatives Definitions (published on 14 July 2009);

(b) correct errors or otherwise give effect to the process for effecting allocation methodology relating thereto, or to the occurrence of a Restructuring Credit Event; and

(c) if such amendments have an economic impact regarding Clearing Members holding CD Clearing License.

(9) Any other matters expressly assigned to the Committee in the Clearing Conditions or in relation to which Eurex Clearing AG determines it requires the urgent consultation of the Committee.

§ 3
Further Rights of the Committee

The Committee shall be informed by Eurex Clearing AG, to the extent reasonably practicable, of:

(a) key risk results such as back-testing and stress testing (regular reporting); and

(b) any new appointment to the board of Eurex Clearing AG.

§ 4
Committee Members

(1) Eurex Clearing AG will establish the Committee governed by the rules set forth in these Statutes, provided that there are at least 3 (three) Clearing Members holding a CD Clearing License.

(2) The Committee will consist of one representative (each a "**Committee Member**") for each Eligible Clearing Member.

(3) **Eligible Clearing Member** means:

(a) the ten (10) Clearing Members holding CD Clearing Licenses who, during the Term immediately preceding their appointment, accounted for the highest CDS Clearing Volume among such Clearing Members during such period; and

(b) the five (5) Registered Customers who, during the Term immediately preceding their appointment, accounted for the highest CDS Clearing Volume among Registered Customers during such period; and

provided that no Eligible Clearing Member shall be obliged to nominate a Committee Member. If such Eligible Clearing Member declines to nominate a Committee Member or does not do so within a reasonable period of time (as determined by Eurex Clearing AG), the Clearing Member holding a CD Clearing Licence or the Registered Customer (as the case may be) who accounted for the next highest proportion of CDS Clearing Volumes during the relevant term shall instead be an Eligible Clearing Member.

(4) Each Committee Member shall be appointed to serve for a period commencing on the date of such appointment, and ending on the last day of the calendar year (the "**Term**") in which such appointment was made, provided that such appointment shall in each case be extended by such period (not exceeding 1 month) as Eurex Clearing AG requires to identify the Eligible Clearing Members with respect to the following Term and take such steps as it considers necessary in relation to the appointment of the successor Committee Members. Nothing shall prevent any person from serving consecutive Terms if duly appointed by an Eligible Clearing Member in accordance with this § 4 (4)) Eurex Clearing AG shall, following the expiry of each Term, determine the Eligible Clearing Members with respect to the following Term. Each Eligible Clearing Member shall notify Eurex Clearing AG of the identity of its Committee Member. Such notification shall include the primary representative as well as an alternative representative who may serve as Committee Member in the absence of the primary representative. Eurex Clearing

AG shall be informed of any changes to the identity of its Committee Member by the Eligible Clearing Member without undue delay. Eurex Clearing AG may rely on the identity of a Committee Member previously notified to it by an Eligible Clearing Member until Eurex Clearing AG receives notice of any changes.

(6) A person may not be nominated to be a Committee Member unless that person:

(a) has appropriate expertise and experience in relation to the Relevant Matters; and

(b) is acceptable to Eurex Clearing AG in its reasonable discretion.

(7) Eurex Clearing AG shall maintain a list of all Committee Members including the relevant contact details (address, phone number, fax number, email address) of each primary representative and alternative representative.

(8) If two or more Eligible Clearing Members are or become Affiliates, as determined by Eurex Clearing AG, such Eligible Clearing Members are entitled to appoint only one single Committee Member for the Committee. If at any time affiliated Eligible Clearing Members have appointed more than one Committee Member, such affiliated Eligible Clearing Members will promptly notify Eurex Clearing AG of the single Committee Member representing them.

(9) At the first Meeting (and at any subsequent Meeting if no Deputy Chairman is then appointed or if the Deputy Chairman has ceased to be a Committee Member), the Committee shall appoint a Committee Member by majority vote of the Participating Committee Members to serve as chairman of the Committee (the "**Chairman**"). Such appointment shall be for a period ending on the last day of the relevant Term (subject to extension as set out in § 4 (3) above. Following the expiry of such six month period, or if the Chairman ceases to be a Committee Member or resigns, the Deputy Chairman shall succeed as Chairman and the provisions of this § 4 (9) shall apply *mutatis mutandis*.

(10) The Committee shall appoint a respective Committee Member by majority vote of the Participating Committee Members to serve as deputy chairman of the Committee (the "**Deputy Chairman**"). Upon the Deputy Chairman succeeding as Chairman, or if the Deputy Chairman ceases to be a Committee Member or resigns, the Committee shall appoint a new Deputy Chairman by majority vote of the Participating Members.

(11) The Deputy Chairman shall perform the functions of the Chairman at any Meeting at which the Chairman is not present (in person or by telephone or video conference). The Deputy Chairman may delegate his or her duties to any Committee Member from time to time.

(12) Eurex Clearing AG shall serve as the secretary of the Committee (the "**Committee Secretary**") and shall perform administrative duties.

§ 5
Convening the Committee

(1) The Committee Secretary shall convene a meeting of the Committee (a "**Meeting**"):

(a) at the request of the Chairman, the Deputy Chairman or any two Committee Members (provided such request is accompanied by a draft Agenda (as defined below) for such Meeting); and

(b) at its own discretion,

by delivering notice ("**Notice**") in accordance with this § 5. The Committee Secretary shall ensure that at least four Meetings are convened each calendar year. Meetings shall be held at a location in or around Frankfurt am Main as determined by the Committee Secretary. Any Committee Members who do not attend in person may participate by telephone or video conference.

(2) A Notice of a Meeting shall:

(a) be delivered to each Committee Member by email and/or facsimile no later than five Business Days prior to the date of such meeting;

(b) specify the date and time of the Meeting, which shall be between 1:00 p.m. and 6:00 p.m. Central European time on any Business Day;

(c) set out the arrangements for Committee Members to attend by telephone and/or video conference; and

(d) set out an agenda specifying in reasonable detail the matters to be discussed at such meeting, together with materials providing reasonable background in relation to such matters (the "**Agenda**").

(3) Notwithstanding § 5 (2) above, the Committee Secretary may convene a Meeting upon such notice and in such manner as it determines, in order to consider any Relevant Matter which it determines requires the urgent attention of the Committee. The Committee Secretary shall consult with the Chairman and/or the Deputy Chairman (as it determines) prior to convening a Meeting in such circumstances, provided that no such consultation will be required if the Committee Secretary is not reasonably able to contact the Chairman or the Deputy Chairman.

(4) No vote may be taken at a Meeting with respect to any matter which was not set out in the relevant Agenda.

(5) The Committee Members attending a respective meeting (either in person or by telephone or video conference as set out herein) shall be hereinafter referred to as

the "**Participating Committee Members**" and each a "**Participating Committee Member**".

(6) The Committee Chairman may make such arrangements for the appointment of proxies (including setting out the terms on which such proxies may vote or constitute a quorum) as it in its discretion determines.

§ 6
Committee Quorum

(1) The quorum for a valid Meeting shall be one third of all Committee Members (the "**Quorum**").

(2) In the event that a Quorum is not so present at the start of and throughout a duly convened meeting, such meeting shall be adjourned by the Chairman to the next following Business Day. A quorum at such adjourned meeting shall consist of the Participating Committee Members provided that notice of the meeting has been given to all Committee Members in accordance with § 5 above (provided 5 (2)(a) shall not apply and that such notice has included a statement to the effect the Participating Committee Members at such adjourned meeting would constitute a quorum).

§ 7
Committee Procedure, Voting

(1) All decisions and recommendations made by the Committee shall be made at a Meeting by majority vote of members.

(2) For the purpose of all voting procedures hereunder each Participating Committee Member shall have one single vote. In the event that any vote is tied, the Chairman shall have the casting vote.

§ 8
Participation of employees in the Committee; outside counsel

(1) A Committee Member may invite one employee of the Eligible Clearing Member it is representing (or of an Affiliate) to participate in a meeting relating to any Relevant Matter in respect of which such employee has expertise. The Committee Member may, by notice to the Chairman, delegate the authority to vote on its behalf on a particular issue to any such employee.

(2) A Committee may consult outside counsel or other outside experts to the extent and as long as such attendance is considered appropriate by Eurex Clearing AG based on a majority vote of Participating Committee Members. The costs for such

advice shall be borne on a pro rata basis by all Committee Members who voted for seeking such advice.

§ 9
Minutes of Meetings and Voting

(1) Minutes shall be taken of all meetings of the Committee, which minutes shall be signed by the Committee Secretary. The minutes shall set forth place and date of the meeting, the Participating Committee Members, the matters on the agenda, the substance of the deliberations and the votes taken by the Committee. The Committee Secretary shall record in the minutes the identity of each Participating Committee Member and how such member voted with respect to any matter raised at the Meeting.

(2) The Committee may appoint one or more Committee Members to prepare, on behalf of the Committee, any proposal, response, statement or other document setting out the views of the Committee with respect to any Relevant Matter (a "**Statement**"). The Chairman may refer the Statement to a Meeting for approval or may, if the Chairman is satisfied that the Statement represents the views of the majority of Committee Members after circulating such Statement to the Committee Members, deliver such Statement to Eurex Clearing AG, whereupon such Statement shall be incorporated into the minutes and shall be taken to set out the view of the Committee.

§ 10
Decision of the Executive Board

In the event that the Committee has been consulted on any matter the subject of its terms of reference and disagrees with the proposed measure in any material respect, Eurex Clearing AG will, if reasonably practicable, take or implement such measure only after a decision has been made by the Executive Board of Eurex Clearing AG.

§11
Fees; Compensation

Each Committee Member shall be responsible for its own costs associated with its participation in the Committee and shall not be entitled to demand or receive any fee or compensation from Eurex Clearing AG for such participation.

§ 12
Confidentiality

Except as expressly contemplated in these Statutes or as may be required by applicable law or court order or by a regulatory, self-regulatory or supervising authority having

appropriate jurisdiction, each Committee Member agrees (i) to maintain confidentiality as to all aspects of these procedures, including any discussions, deliberations, proceedings or results of any vote, or any determinations produced by these proceedings (the "**Confidential Information**") and (ii) not to use any Confidential Information for its own benefit or the benefit of any of its Affiliates.

§ 13
Fiduciary Duties; Limitation of Liability

(1) No Committee Member, alternative representative appointed to act as a Committee Member, representative of the Eligible Clearing Member that appoints such a member to the Committee or employee of an Eligible Clearing Member or Affiliate invited to participate in a Meeting (each, a "**Protected Person**") shall, to the extent legally possible, have any fiduciary duties (*treuhänderische Pflichten*) or other duties to protect third parties (*Schutzpflichten*) in relation to Eurex Clearing AG, the Eurex Clearing AG Major Shareholders, any directors, managers or officers of either, the Clearing Members or Eligible Clearing Members or any other person by reason of such service on the Committee or the appointment of a Member to the Committee.

(2) Notwithstanding anything to the contrary in the Clearing Conditions, to the extent that, for any reason, a Protected Person has any such duties and liabilities relating thereto to Eurex Clearing AG, the Eurex Clearing AG Major Shareholders, any directors, managers or officers of either, the Clearing Members or any other Person, such Protected Person acting under the Statutes shall not be liable to Eurex Clearing AG, the Eurex Clearing AG Major Shareholders any directors, managers or officers of either, the Clearing Members or any other Person for breach of any such duty if they relied in good faith on the Statutes, the Clearing Conditions or other provisions of Eurex Clearing AG relating thereto.

(3) In exercising its rights or performing its duties under these Statutes, Eurex Clearing AG shall only be liable vis-à-vis any Eligible Clearing Member or any Protected Person in case of intention (*Vorsatz*) or gross negligence (*grobe Fahrlässigkeit*) and unless the damage results from a negligent violation by Eurex Clearing AG of essential obligations (*Kardinalspflichten*). In case of slight negligence (*leichte Fahrlässigkeit*), however, the liability of Eurex Clearing AG is restricted only to the extent of the typical and foreseeable damage.

(4) Nothing in this provision, however, shall exclude or restrict any non-contractual liability of any person for prohibited actions (*Unerlaubte Handlungen*) such as fraud, death or personal injury.

§ 14
Governing Law; Construction

These Statutes, and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the Federal Republic of Germany.

§ 15
Amendments

These Statutes may be amended in accordance with Chapter I Part 1 Number 1.10 of the Clearing Conditions, provided that:

(a) the Committee Secretary shall present details of any such amendment to a Meeting held no later than 30 days after such amendment comes into effect; and

(b) the Participating Committee Members may by majority vote passed at such Meeting disallow such amendments, whereupon such amendments shall be taken not to have become effective.

§ 16
Publication

These Statutes will be published on the website www.eurexclearing.com.

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