



eurex clearing

circular 100/17

Date: 9 October 2017
Recipients: All Clearing Members, Basic Clearing Members, Non-Clearing-Members and Registered Customers of Eurex Clearing AG and Vendors
Authorized by: Matthias Graulich

 **Action required**

 **High priority**

Announcement of Eurex Clearing partnership program

Contact: partnership.program@eurexclearing.com

Content may be most important for:

 All departments

Attachments:

1. Amended sections of the Clearing Conditions of Eurex Clearing AG
2. Statutes for the FIC Board Advisory Committee

Summary:

The Executive Board of Eurex Clearing took the decision to introduce a partnership program designed to further accelerate the development of a liquid, EU based alternative for the clearing of interest rate swaps. This market-led program is open to all Clearing Members and Registered Clients of Eurex Clearing for registration as of 9 October 2017.

The ten most active program participants are offered a significant share in the economics of the multi-currency interest rate swap offering of Eurex Clearing on a permanent basis. In addition, these clients will be included in the governance and committee structure of Eurex Clearing AG.

This circular contains further information on the program and registration process.

Announcement of Eurex Clearing partnership program

Eurex Clearing has developed a partnership program designed to further accelerate the development of a liquid, EU-based alternative for the clearing of interest rate swaps. The performance based program has been designed in consultation with major participants in the interest rate swap market including dealers, end-clients and execution venues and aims to build a balanced ecosystem where responsibilities and benefits are fully aligned between all participants in terms of economics and governance.

The ten most active program participants will be eligible for a significant share in the economics of the multi-currency interest rate swap offering of Eurex Clearing on a permanent basis. In addition, these clients will be included in the governance and committee structure of Eurex Clearing AG. Participation is open to all Clearing Members and Registered Clients of Eurex Clearing for registration as of 9 October 2017. Clients who register for the program in the early registration phase until 20 November 2017 will benefit from an extra reward.

Sign-up process for the partnership program (Information Package)

Clients who are interested to receive the complete information package about the program are kindly asked to complete an enrollment form on www.eurexclearing.com/clearing-en/markets-services/partnership-program. After having received the enrollment form the client will receive the information package including a program registration form.

Amendments to the Clearing Conditions of Eurex Clearing AG

With the introduction of the partnership program, Eurex Clearing introduces the FIC Board Advisory Committee. This circular contains information on the introduction of the partnership program and corresponding amendments to the Clearing Conditions of Eurex Clearing AG (Clearing Conditions) and other related documents regarding the following topics:

1. Introduction of the FIC Board Advisory Committee
2. Statutes for the FIC Board Advisory Committee

The amended sections of the Clearing Conditions, as decided by the Executive Board of Eurex Clearing AG and the statutes of the FIC Board Advisory Committee are attached to this circular. Effective date for the amendments of the Clearing Conditions and the Statutes for the FIC Board Advisory Committee will be the commencement of the first Committee Term, scheduled to be 1 June 2018 or 1 January 2019 depending on certain performance criteria.

For any questions on the partnership program or registration procedure, please contact your personal Clearing Key Account Manager or send an e-mail to partnership.program@eurexclearing.com.

9 October 2017

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED

DELETIONS ARE CROSSED OUT

	Eurex04e
Clearing Conditions of Eurex Clearing AG	
	Page 1
Chapter I Part 1	

Chapter I of the Clearing Conditions of Eurex Clearing AG General Clearing Provisions

1 General Rules

[...]

1.10 FIC Board Advisory Committee

1.10.1 Eurex Clearing AG will establish a FIC board advisory committee (the "**FIC Board Advisory Committee**") for the purpose of consulting with and making recommendations to the executive boards of Eurex Clearing AG, Eurex Frankfurt AG and Eurex Repo GmbH (together the "**Eurex Group**") with respect to the FIC Matters (as defined in Number 1.10.2), provided that this would not constitute a breach of law, a breach of an order of a court of a competent jurisdiction or of an applicable governmental, quasi-governmental or regulatory body.

1.10.2 "**FIC Matters**" with respect to the FIC Board Advisory Committee shall be exclusively the following:

- (1) the general Fixed Income and Currencies strategy; and
- (2) product and service expansions in Fixed Income and Currencies with particular focus on certain growth products (as determined by Eurex Clearing AG).

"**Fixed Income and Currencies**" means the offering by Eurex Group in relation to fixed income and currencies products.

1.10.3 The FIC Board Advisory Committee consists of up to 10 (ten) committee members ("**FIC Committee Members**"). The FIC Committee Members shall be appointed in accordance with the procedure set out in the statutes for the FIC Board Advisory Committee.

The statutes for the FIC Board Advisory Committee as published on the website of Eurex Clearing AG (www.eurexclearing.com) shall form an integral part of these Clearing Conditions.

[...]

	Eurex04e
Clearing Conditions of Eurex Clearing AG	As of
	Page 2
Chapter VIII Part 2	

Chapter VIII of the Clearing Conditions of Eurex Clearing AG General Clearing Provisions

Part 2 Clearing of OTC Interest Rate Derivative Transactions

2.1 General Provisions

2.1.1 Applicable General Provisions

[...]

2.1.2 Consultation of Clearing Members and Basic Clearing Members/Committees

~~2.1.2.1 Determination of Transactions to be included in the Clearing~~

- (1) On the basis of the relevant Transaction Type specific novation criteria set out in Number 2.1.4.1 below, Eurex Clearing AG determines the product types of OTC Interest Rate Derivative Transactions to be included in the Clearing of Eurex Clearing AG ~~in consultation with the IRS Product Committee~~ and publishes the relevant product types on its website (www.eurexclearing.com).

[...]

- (3) Eurex Clearing AG will determine those product types of OTC Interest Rate Derivative Transactions that may be cleared by FCM Clearing Members (acting for the account of FCM Clients) pursuant the U.S. Clearing Model Provisions ("**FCM OTC Interest Rate Derivatives Transactions**") ~~in consultation with the IRS Product Committee~~ and publish the relevant product types on its website (www.eurexclearing.com).

[...]

FCM Clearing Members may not clear any OTC Interest Rate Derivative Transactions which are not determined to be FCM OTC Interest Rate Derivatives Transactions pursuant to this Number 2.1.2.4 Paragraph (3).

IRS Product Committee

~~If at least 3 (three) Clearing Members (including Basic Clearing Members) are holders of an Interest Rate Derivatives Clearing License, Eurex Clearing AG shall establish a committee consisting of Clearing Members and/or Basic Clearing Members which are holders of an Interest Rate Derivatives Clearing License (as defined in Number 2.1.3) with respect to the following matters in connection with the Clearing of OTC Interest Rate Derivative Transactions (hereinafter the "**IRS Product Committee**"):~~

- ~~1. Determination of the product types of OTC Interest Rate Derivative Transactions, and~~

	Eurex04e
Clearing Conditions of Eurex Clearing AG	As of
	Page 3
Chapter VIII Part 2	

~~2. material amendments to the Clearing Conditions in connection with the Clearing of OTC Interest Rate Derivative Transactions.~~

~~Eurex Clearing AG will consult with the IRS Product Committee before it takes a decision on any material changes of its procedures or methods or any amendments to the Clearing Conditions in connection with the matters set out in Numbers 1. and 2. above and in cases where the Clearing Conditions expressly provide for a consultation with the IRS Product Committee before any measures are taken.~~

~~The statutes for the IRS Product Committee as published on the website of Eurex Clearing AG (www.eurexclearing.com) in the English language shall form an integral part of these Clearing Conditions.~~

2.1.3 License for the Clearing of OTC Interest Rate Derivative Transactions

The OTC Clearing License granted for the Clearing of OTC Interest Rate Derivative Transactions (the "**Interest Rate Derivatives Clearing License**") entitles

[...]

- (iii) the relevant Basic Clearing Member to clear OTC Interest Rate Derivative Transactions that are Own Transactions under the Basic Clearing Model Provisions Without prejudice to Number 2.1.2.4 Paragraph (3), the relevant Clearing Member or Basic Clearing Member may elect that the Interest Rate Derivatives Clearing License shall be restricted to the Clearing of OTC Interest Rate Derivative Transactions in only some or one of these nine currencies.

[...]

Statutes for the FIC Board Advisory Committee

Contents

§ 1	Scope of Application and Definitions.....	2
§ 2	FIC Matters	3
§ 3	Committee Members	3
§ 4	Termination of Membership	5
§ 5	Chairman and Committee Secretary	7
§ 6	Convening the Committee	7
§ 7	Committee Quorum	8
§ 8	Committee Procedure; Voting.....	8
§ 9	Participation of Employees in the Committee; Outside Counsel.....	9
§ 10	Minutes of Meetings and Voting	9
§ 11	Decision of the Executive Boards of Eurex Group	9
§ 12	Fees; Compensation	10
§ 13	Confidentiality.....	10
§ 14	Fiduciary Duties; Limitation of Liability.....	11
§ 15	Governing Law; Place of Jurisdiction.....	12
§ 16	Amendments.....	12
§ 17	Publication	12

Statutes for the FIC Board Advisory Committee

STATUTES FOR THE FIC BOARD ADVISORY COMMITTEE

§ 1 Scope of Application and Definitions

- (1) The following statutes (the "**Statutes**") shall apply to the procedures of the FIC Board Advisory Committee (the "**Committee**").
- (2) The Committee shall be established pursuant to Chapter I Part 1 Number 1.10 of the clearing conditions of Eurex Clearing AG (the "**Clearing Conditions**") for the purpose of consulting with and making recommendations to the executive boards of Eurex Clearing AG, Eurex Frankfurt AG and Eurex Repo GmbH ("**Eurex Group**") with respect to the FIC Matters (as defined in § 2 below), provided that this would not constitute a breach of law, a breach of an order of a court of a competent jurisdiction or of an applicable governmental, quasi-governmental or regulatory body.
- (3) The members of the Committee (the "**Committee Members**") shall be appointed in accordance with the procedure set out in § 3 below.
- (4) Notwithstanding anything to the contrary in these Statutes, Eurex Group 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 Group with respect to any such proposal shall be made at the sole discretion of Eurex Group, 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 or in the Partnership Programme Terms (as defined in Paragraph (6) below).
- (6) For the purpose of these Statutes,
 - (a) any reference to "**Business Days**" shall refer to the business days of Eurex Clearing AG as determined by Eurex Clearing AG in accordance with Chapter I Part 1 Number 1.2.4 (1) (h) of the Clearing Conditions;
 - (b) any reference to a "**Clearing Member**" shall refer to a General Clearing Member, Direct Clearing Member and Basic Clearing Member;
 - (c) any reference to the "**Executive Board**" shall refer to the Executive Board of Eurex Clearing AG;
 - (d) any reference to "**Fixed Income and Currencies**" shall refer to the offering by Eurex Group in relation to fixed income and currencies products;

Statutes for the FIC Board Advisory Committee

- (e) any reference to the "**Partnership Programme**" shall refer to the partnership programme of Eurex Group providing long term rewards to Participants for their support in successfully introducing new products and services;
- (f) any reference to a "**Participant**" shall refer to a Participant as defined in Preamble (A) of the partnership programme terms setting out the terms and conditions of the Partnership Programme ("**Partnership Programme Terms**"); and
- (g) any reference to a "**Participants Group**" shall refer to a Participants Group as defined in Part I Clause 1.2.1 of the Partnership Programme Terms.

§ 2 FIC Matters

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

- the general Fixed Income and Currencies strategy; and
- product and service expansions in Fixed Income and Currencies with particular focus on certain growth products (as determined by Eurex Clearing AG).

§ 3 Committee Members

- (1) As soon as reasonably practicable after the end of the relevant Measuring Period (as defined in Paragraph (4) below), in general within 10 Business Days, the Executive Board will invite the Participants Groups that belong to the 10 (ten) Participants Groups with the highest Overall Participation Ranking (as defined in Schedule 5 Clause 1.4 of the Partnership Programme Terms) within the relevant Measuring Period (as defined in Paragraph (4) below) (each a "**Selected Participants Group**") to each nominate for the relevant Committee Term (as defined in Paragraph (4) below) a representative to be appointed to the Committee (a "**Nominee**") and a deputy for such Nominee (a "**Deputy Nominee**"). The nomination of a Nominee and its Deputy Nominee shall be made in accordance with Paragraph (3) and shall be submitted to the Executive Board within 10 (ten) Business Days of receipt of the invitation.
- (2) The Committee consists of up to 10 (ten) Committee Members appointed by the Executive Board, where each Committee Member represents 1 (one) Selected Participants Group. The Executive Board also appoints a "**Deputy Committee Member**", who shall represent the respective Selected Participants Group in case the Committee Member is unable to attend a meeting.
- (3) A nomination pursuant to Paragraph (1) shall in any case include a curriculum vitae of the Nominee and its Deputy Nominee and the information required to verify that a Nominee or a Deputy Nominee meets the following mandatory criteria:

Statutes for the FIC Board Advisory Committee

- (a) have appropriate expertise and experience in relation to the FIC Matters;
- (b) meet all mandatory law requirements and comply with internal policies or guidelines of Eurex Group (whether mandatory or not); and
- (c) hold at least the function of a managing director (or any equivalent position) within the respective Participants Group and shall have as such a leading position in relation to the business of the respective Participants Group regarding at least one Growth Product.

The Executive Board shall have the right to reject any Nominee and/or its Deputy Nominee if, in the Executive Board's reasonable determination, the nominated person does not satisfy the criteria set forth above or if other material reasons exist which from the Executive Board's point of view would hinder an appointment as Committee Member.

If the Executive Board rejects the Nominee and/or its Deputy Nominee, it shall notify the Selected Participants Group, giving the Selected Participants Group sufficient details to enable it to reasonably evaluate the reasons for the rejection and providing a copy of all relevant applicable laws or internal policies or guidelines of Eurex Group upon which the Executive Board has relied in making its decision to reject the Nominee or Deputy Nominee. If the Selected Participants Group does not agree with the rejection of its Nominee and/or Deputy Nominee, the matter will be referred to an independent expert to be agreed between the Selected Participants Group and the Executive Board. If the Selected Participants Group and the Executive Board have not reached agreement on the identity of such independent expert within 5 (five) Business Days of the date on which the notice of the rejection was given to the Selected Participants Group, the selection of the independent expert shall be referred to the President of the Higher Regional Court of Frankfurt. The independent expert shall be an expert on German corporate law. The independent expert shall act as expert and not as arbitrator, shall provide its decision within 20 (twenty) Business Days following his or her appointment, and its decision shall, in the absence of manifest error, be final and binding on the Selected Participants Group and the Executive Board.

- (4) Each Committee Member shall be appointed to serve for one of the following terms (each a "**Committee Term**"):
 - (a) Regarding the first period:
 - (i) from 1 June 2018 until 31 May 2020 ("**First Committee Term**"), if the Participants Group reaches the required ranking in the Overall Participation Ranking (as defined in Schedule 5 Clause 1.4 of the Participation Programme Terms) from 1 January 2018 until 31 March 2018 ("**First Term Measuring Period**") and provided that during the First Term Measuring Period a minimum average daily volume of EUR 35 billion cleared at Eurex Clearing AG with respect to OTC IRD is achieved; or

Statutes for the FIC Board Advisory Committee

- (ii) from 1 January 2019 until 31 May 2020 (“**First 1.5 year Committee Term**”), if during the First Term Measuring Period a minimum average daily volume of EUR 35 billion cleared at Eurex Clearing with respect to OTC IRD is not achieved, and if the Participants Group reaches the required ranking in the Overall Participation Ranking (as defined in Schedule 5 Clause 1.4 of the Participation Programme Terms) from 1 January 2018 until 30 September 2018 (“**Prolonged First Term Measuring Period**”);
 - (b) from 1 June 2020 until 31 May 2022 (“**Second Committee Term**”), if the Participants Group reaches the required ranking in the Overall Participation Ranking (as defined in Schedule 5 Clause 1.4 of the Participation Programme Terms) from 1 January 2018 until 31 March 2020 (“**Second Term Measuring Period**”); and
 - (c) from 1 June 2023 on for consecutive terms of two years (each such term a “**Permanent Committee Term**”), if the Participants Group reaches the required ranking in the Overall Participation Ranking (as defined in Schedule 5 Clause 1.4 of the Participation Programme Terms) from 1 January 2018 until 31 December 2021 (“**Permanent Term Measuring Period**”; the First, Prolonged First, Second and Permanent Term Measuring Period together the “**Measuring Periods**” and each a “**Measuring Period**”).
- (5) The Committee Secretary (as defined in § 5 Paragraph (4) below) shall maintain a list of all Committee Members and Deputy Committee Members including their relevant contact details (address, phone number, fax number, email address).

§ 4 Termination of Membership

- (1) At the time all Participants belonging to the same Selected Participants Group cease to
- (a) be a Participant of the Partnership Programme according to the Partnership Programme Terms; or
 - (b) participate in the governance rights set out in Part III of the Partnership Programme Terms (e.g. according to Part IV Clause 2.3.3 or 2.4.2 of the Partnership Programme Terms),

the membership of the Committee Member and its Deputy Committee Member representing such Participants Group ceases simultaneously. The Executive Board shall inform the respective Selected Participants Group and the Chairman about the respective termination of the membership of the Committee Member and Deputy Committee Member .

- (2) If a Committee Member or its Deputy Committee Member
- (a) retires or resigns;

Statutes for the FIC Board Advisory Committee

(b) does no longer fulfil the qualifications to be fulfilled by a Committee Member (as set out in § 3 above); or

(c) is otherwise incapable of fulfilling its role on the Committee,

during a Committee Term, the Selected Participants Group shall be entitled to nominate a successor in accordance with § 3 above. The Selected Participants Group may thereby also decide if – in case only the membership of the Committee Member ends according to the above – the Deputy Committee Member shall be nominated as Committee Member (with a new Deputy Nominee being nominated at the same time) or if a new Committee Member shall be nominated according to § 3 above. The Deputy Committee Member shall in any case fulfil the role of the Committee Member until a new Committee Member is nominated in accordance with § 3.

(3) The Executive Board shall decide if the membership of a Committee Member and/or its Deputy Committee Member ends according to Paragraph (2) (b) or (c) above and shall notify to the Selected Participants Group accordingly, giving the Selected Participants Group sufficient details to enable it to reasonably evaluate the reasons for its decision and providing a copy of all relevant applicable laws or internal policies or guidelines of Eurex Group upon which it has relied in making his decision to terminate the membership of the Committee Member or Deputy Committee Member. If the Selected Participants Group does not agree with the termination, the matter will be referred to an independent expert to be agreed between the Selected Participants Group and the Executive Board. If the Selected Participants Group and Executive Board have not reached agreement on the identity of such independent expert within 5 (five) Business Days of the date on which the notice of the decision on the termination was given to the Selected Participants Group, the selection of the independent expert shall be referred to the President of the Higher Regional Court of Frankfurt. The independent expert shall be an expert on German corporate law. The independent expert shall act as expert and not as arbitrator, shall provide its decision within 20 (twenty) Business Days following his or her appointment, and its decision shall, in the absence of manifest error, be final and binding on the Selected Participants Group and the Executive Board.

(4) If any of the following events occur:

(a) the absence of a nomination by one or more Selected Participants Groups according to § 3;

(b) the early cessation of the membership of a Committee Member in accordance with Paragraph (1) above; or

(c) any other case of early termination of Participation Rights according to the Partnership Programme Terms other than those mentioned in Paragraph (2) above,

Statutes for the FIC Board Advisory Committee

Eurex Group shall have the right, but shall not be obliged, to appoint any other person as a Committee Member at its own discretion and regardless of a participation in the Partnership Programme for the (remainder of the) relevant Committee Term.

§ 5 Chairman and Committee Secretary

- (1) At the first meeting of the Committee in a Committee Term (each meeting of the Committee a "**Meeting**"), the Committee shall appoint a Committee Member by majority vote of the Participating Committee Members to serve as chairman of the Committee (the "**Chairman**") and another Committee Member to serve as deputy chairman of the Committee (the "**Deputy Chairman**"). Such appointment shall be for a period ending on the last day of the relevant Committee Term.
- (2) If the Chairman ceases to be a Committee Member or resigns as Chairman, the Deputy Chairman shall succeed as Chairman. The Committee shall then appoint a new Deputy Chairman by majority vote of the Participating Committee Members.
- (3) The Deputy Chairman shall perform the functions of the Chairman at any Meeting (as defined in § 5 Paragraph (1)) at which the Chairman is not present (in person or by video conference). The Deputy Chairman may delegate his or her duties to any Committee Member from time to time.
- (4) Eurex Clearing AG shall serve as the secretary of the Committee (the "**Committee Secretary**") and shall perform administrative duties.

§ 6 Convening the Committee

- (1) The Committee Secretary shall convene 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 § 6. The Committee Secretary shall ensure that at least 3 (three) Meetings are convened in each calendar year. Meetings shall be held at a location as determined by the Committee Secretary. Any Committee Members who do not attend in person may participate by video conference.
- (2) A Notice of a Meeting shall:
 - (a) be delivered to each Committee Member by email and/or facsimile no later than 5 (five) Business Days prior to the date of such Meeting;

Statutes for the FIC Board Advisory Committee

- (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 a Business Day;
 - (c) set out the arrangements for Committee Members to attend by 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 § 6 Paragraph (2) above, the Committee Secretary may convene a Meeting upon such notice and in such manner as it determines, in order to discuss any urgent FIC Matter. The Committee Secretary shall consult with the Chairman and/or the Deputy Chairman prior to the convening of such a Meeting. Such consultation is not 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 video conference) shall be hereinafter referred to as the "**Participating Committee Members**" and each a "**Participating Committee Member**". A Deputy Committee Member attending a respective Meeting as a representative of its Committee Member shall be a Participating Committee Member.

§ 7 Committee Quorum

- (1) The quorum for a valid Meeting shall be at least half of the number of appointed Committee Members but not less than three 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 rescheduled by the Chairman. A Quorum at such rescheduled Meeting shall consist of the Participating Committee Members provided that notice of the Meeting has been given to all Committee Members in accordance with § 6 above (provided that such notice has included a statement to the effect that the Participating Committee Members at such rescheduled Meeting would constitute a Quorum).

§ 8 Committee Procedure; Voting

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

Statutes for the FIC Board Advisory Committee

- (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.

§ 9 Participation of Employees in the Committee; Outside Counsel

- (1) A Committee Member may invite one employee of the Selected Participants Group it is representing to participate in a Meeting relating to any FIC Matter in respect of which such employee has expertise.
- (2) The Committee may consult an outside counsel or other outside experts (together with any employee invited in accordance with the foregoing Paragraph the "Invitees", and each an "Invitee") to be approved by the Committee Secretary (such approval not to be unreasonably withheld) 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 unless Eurex Group agrees to bear the costs for such advice. For the avoidance of doubt, Invitees shall not be entitled to vote.

§ 10 Minutes of Meetings and Voting

- (1) Minutes shall be taken of each Meeting and signed by the Committee Secretary and the Chairman (the "**Minutes**"). The Minutes shall include the 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 the Participating Committee 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 FIC 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 the concerned entity of Eurex Group, whereupon such Statement shall be incorporated into the Minutes and shall be taken to set out the view of the Committee.

§ 11 Decision of the Executive Boards of Eurex Group

In the event that the Committee has been consulted on any FIC Matter of reference and disagrees with the proposed measure in any material respect, the respective executive boards of the entities belonging to Eurex Group will take or implement such

Statutes for the FIC Board Advisory Committee

measure only after a decision has been made by the executive board of the respective entity of Eurex Group.

§ 12 Fees; Compensation

Each Selected Participants Group shall be responsible for the costs associated with its Committee Member's participation in the Committee and shall not be entitled to demand or receive any fee or compensation from Eurex Group for such participation.

§ 13 Confidentiality

- (1) Except as expressly contemplated otherwise in these Statutes or as required by applicable law or regulation or court order or as required or requested by a regulatory, self-regulatory or supervisory authority having appropriate jurisdiction, each Selected Participants Group (and their respective Committee Members, Deputy Committee Members or proxies) attending a Meeting agree during the relevant Committee Term and for two years thereafter (i) not to disclose any Confidential Information (as defined below) to third persons and (ii) not to use any Confidential Information for its own benefit, the benefit of any of its affiliates or a third person. Nothing in this § 13 shall prevent a Committee Member nominated by a Selected Participants Group or such Selected Participants Group from sharing Confidential Information with personnel of such Selected Participants Group, its affiliates as well as its professional advisors (together with the Committee Members, the "**Authorised Persons**") solely for the purpose of preparing for the FIC Matters which are to be discussed in the Committee or for evaluating the business relationship of such Selected Participants Group with Eurex Group. The Selected Participants Group shall procure that such Authorised Persons are bound by confidentiality obligations to the Selected Participants Group comparable to the confidentiality obligation assumed by the Selected Participants Group to Eurex Group. Upon reasonable request by Eurex Group (in particular, for legal or regulatory purposes), the identities of the Authorised Persons shall be disclosed to Eurex Group. Confidential Information shall, in particular, not be used (a) to facilitate the implementation or development of services competing with those of Eurex Group or (b) in connection with any breach of law. In case of any breach of this confidentiality obligation by the Selected Participants Group or an Authorised Person (to whom, in the case of an Authorised Person other than a Committee Member, a Selected Participants Group has disclosed Confidential Information as permitted by these Statutes) (other than in case of a breach of a professional duty of confidentiality to which an Authorised Person is subject to, e. g. as a legal adviser), such Selected Participants Group shall be liable for any foreseeable damages of Eurex Group caused by that breach.

"Confidential Information" means (i) all information relating to the Committee, including, but not limited to, any discussions, deliberations, proceedings or results

Statutes for the FIC Board Advisory Committee

of any vote, and (ii) any and all secrets of entities of Deutsche Börse Group, obtained from the Committee or in connection therewith, except for information which

- (a) is or becomes public information other than as a direct or indirect result of a breach (of which the Selected Participants Group or the Committee Member is aware) of this confidentiality obligation; or
 - (b) is identified in writing at the time of delivery as non-confidential by Eurex Group or any of its advisers; or
 - (c) is known by the Selected Participants Group or the Committee Member before the date the information is disclosed to it in accordance with Paragraphs (a) or (b) above or is lawfully obtained by the Selected Participants Group or the Committee Member after that date, from a source which is, as far as that Selected Participants Group or the Committee Member is aware, unconnected with Eurex Group and which, in either case, as far as that Selected Participants Group or the Committee Member is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.
- (2) To the extent that Invitees are invited or consulted in accordance with § 9 these shall enter into a confidentiality agreement with Eurex Group. This shall not apply where the Invitee is bound by law or by professional duties of confidentiality comparable to the obligations as set out in Paragraph (1).

§ 14 Fiduciary Duties; Limitation of Liability

- (1) No Committee Member or Deputy Committee Member (each, a "**Protected Person**") shall, to the extent legally possible, owe any fiduciary duties (*Treuepflichten*) or other duties to protect (*Schutzpflichten*) Eurex Group, the shareholders of the entities belonging to Eurex Group, any directors, managers or officers of the entities belonging to Eurex Group or its shareholders, the Clearing Members, Non-Clearing Members, Registered Customers, other customers of the Clearing Members or any other person by reason of such service on the Committee or the appointment of a Committee-Member.
- (2) In exercising its rights or performing its duties under these Statutes, Eurex Group shall only be liable vis-à-vis any Selected Participants Groups or any Protected Person in case of willful misconduct (*Vorsatz*) or gross negligence (*grobe Fahrlässigkeit*) and where the damage results from a negligent violation by Eurex Group of its essential obligations (*Kardinalspflichten*). In case of simple negligence (*einfache Fahrlässigkeit*), however, the liability of Eurex Group is restricted to damages typically foreseeable.

Statutes for the FIC Board Advisory Committee

- (3) Nothing in this § 14, however, shall exclude or restrict any statutory liability for damages incurred as a result of injury to life, body or health or the liability pursuant to the German Product Liability Act.

§ 15 Governing Law; Place of Jurisdiction

- (1) Unless provided otherwise, the rights and obligations arising out of, and in connection with, these Statutes shall be governed by the substantive laws (*Sachrecht*), excluding German private international law, of the Federal Republic of Germany. Only the German version of these Statutes is legally binding.
- (2) Any non-contractual rights and obligations arising out of, and in connection with, these Statutes shall be governed by the substantive laws (*Sachrecht*), excluding German private international law, of the Federal Republic of Germany.
- (3) Exclusive place of jurisdiction for all disputes arising out of, or in connection with, these Statutes is Frankfurt am Main.

§ 16 Amendments

Eurex Group reserves the right to amend these Statutes in accordance with Chapter I Part 1 Number 17.2 of the Clearing Conditions. Any amendments to these Statutes shall be published in accordance with Chapter I Part 1 Number 16.1 of the Clearing Conditions.

§ 17 Publication

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

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