clear to trade

eurex clearing *circular 058/12*

Date: July 6, 2012
Recipients: All Clearing Members of Eurex Clearing AG and Vendors
Authorized by: Thomas Book

⚠ **Action required** ⚠ **High priority**

Changes to Admission Criteria for Clearing Members of Eurex Clearing AG

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Content may be most important for:

- Front Office/Trading
- Middle + Backoffice
- Auditing/Security Coordination

Attachment:
Updated sections of the Clearing Conditions of Eurex Clearing AG

Summary:

The Executive Board of Eurex Clearing AG (Eurex Clearing) approved the following changes with regard to admission criteria for Clearing Members:

- Expansion of eligible jurisdictions;
- Harmonization of admission criteria and exemptions for governmental and supranational entities;
- Exemption from the requirement of a Pledged Securities Account and/or Securities Margin Account for Clearing Members who provide Margin only in the form of cash; and
- Removal of bank guarantees as a substitute for insufficient liable equity capital.

This circular includes the changes to the Clearing Conditions which were decided by the Executive Board of Eurex Clearing and will become effective on **July 23, 2012**.

Changes to Admission Criteria for Clearing Members of Eurex Clearing AG

The Executive Board of Eurex Clearing AG (Eurex Clearing) approved the following changes with regard to admission criteria for Clearing Members effective on July 23, 2012:

- Expansion of eligible jurisdictions;
- Harmonization of admission criteria and exemptions for governmental and/or supranational entities;
- Exemption from the requirement of a Pledged Securities Account and/or Securities Margin Account for Clearing Members who provide Margin only in the form of cash; and
- Removal of bank guarantees as a substitute for an insufficient liable equity capital.

Eurex Clearing is expanding its geographical reach to open clearing memberships to market participants located outside the European Union (EU) and Switzerland. The granting of a Clearing License to applicants located outside the EU or Switzerland requires that:

- the applicant is supervised in its country of domicile according to standards equivalent to the applicable regulatory standards of the EU as determined by Eurex Clearing;
- the applicant is permitted in its country of domicile to provide credit to customers in relation to products cleared and to receive collateral in the form of cash or securities;
- the competent supervisory authority is a signatory to Appendix A of the IOSCO Multilateral Memorandum of Understanding or has signed a bilateral memorandum of understanding with the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht);
- Eurex Clearing has obtained all licenses and approvals that are required for the provision of clearing services towards the applicant in the relevant jurisdiction; and that
- Eurex Clearing has received a legal opinion from leading counsel approved by Eurex Clearing that verifies the legal validity and enforceability of the Clearing Conditions in the respective jurisdiction according to standards provided by Eurex Clearing from time to time.

In addition, Eurex Clearing is harmonizing the admission criteria and exemptions for governmental and supranational entities as Clearing Members in relation to all markets. Depending on their status, these applicants must have a minimum rating of A or AAA from Standard and Poor's, Moody's or Fitch. Based on the risk assessment by Eurex Clearing, these applicants may be exempted in whole or in part from the general and special prerequisites for the granting of a Clearing License, in particular from the requirements relating to liable equity capital, margin and clearing fund contributions.

Clearing Members may also be exempted from the requirement to open a Pledged Securities Account and/or a Securities Margin Account if they confirm to Eurex Clearing in writing that only cash will be provided as Margin or Segregated Margin.

Eurex Clearing has decided to no longer accept bank guarantees as a substitute for insufficient liable equity capital of a Clearing Member. Cash collateral will be rendered by title transfer, securities collateral will be made available by transfer of ownership or assignment for securities purposes.

The changes to the Clearing Conditions are provided as an attachment. The complete documents will be available as of the effective date on the Eurex Clearing website www.eurexclearing.com under the following link:

Documents > Rules & Regulations > Clearing Conditions

July 6, 2012

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CHAPTERS I TO IX ARE BEING ADJUSTED.

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED.

DELETIONS ARE CROSSED OUT.

****

Preamble

[…]

Chapter I
General Provisions

Part 1
General Clearing Provisions

1 General Rules

[…]

2 Clearing Members

2.1 Clearing License

2.1.1 Granting of Clearing License

(1) […]

(2) Upon written application, Eurex Clearing AG may grant a Clearing License for a Transaction Type if the relevant applicant meets the general prerequisites pursuant to ~~Number~~Numbers 2.1.2 or 2.1.3 and the special prerequisites for the relevant Transaction Type set forth in the Special Clearing Provisions.

[…]

2.1.2 General Prerequisites for Clearing Licenses

(1) A Clearing License for a Transaction Type may only be granted to an applicant if such applicant meets the general prerequisites pursuant to Paragraphs (2) ~~(4)~~ to (6) below and the special prerequisites set forth in Chapters II-IX for the relevant Transaction Type.

(2) Personal prerequisites

(a) Subject to ~~Paragraph~~Paragraph (2)(b) and ~~Paragraph (2)(d)~~Number **Error! Reference source not found.** below, a Clearing License may only be granted to:

(aa) an institution domiciled in a member state of the European Union ("**EU**") or in Switzerland which is (i) ~~has been licensed by the competent supervisory authorities of~~permitted in its country of domicile to ~~conduct safe custody business, lending operations~~provide credit to customers in relation to Transactions and ~~the receipt of~~receive collateral in the form of cash or securities and (ii) ~~is being~~ supervised by the competent authorities according to the applicable regulatory standards of the ~~European Union~~EU or, if domiciled in Switzerland, by the Swiss Financial Market Supervisory Authority (*Eidgenössische Finanzmarktaufsicht – FINMA*); ~~or~~

(bb) a branch or branch office of an institution within the meaning of §§ 53, 53b or 53c of the German Banking Act (*Gesetz über das Kreditwesen*, the "**KWG**") provided that ~~the respective~~such branch~~,~~ or branch office ~~or~~and the institution ~~complies~~comply with the conditions set forth in Paragraph (2)(a)(aa) above and Paragraph (2)(c) below;

(cc) a branch within the meaning of Art. 2 Paragraph 1 of the Swiss Federal Banking and Savings-Bank Act in connection with Section 1 et seq. of the Regulation of the Swiss Financial Market Supervisory Authority (*Eidgenössische Finanzmarktaufsicht - FINMA*) concerning Foreign Banks in Switzerland, provided that such branch complies with the conditions set forth in Paragraph (2)(c) below;

(dd) a branch of a financial institution or securities trading enterprise domiciled in a ~~country~~member state of the ~~European Union~~EU ("**host member state**") provided that (i) the main office of such financial institution or securities trading enterprise is domiciled in ~~a~~another member state of the ~~European Union~~EU ("**home member state**~~") and has been licensed by, and is under the corresponding supervision of, its national supervisory authority for custodian services, lending operations and receipt of collateral in the form of securities and cash; that there are no legal restrictions in the home member state for institutions domiciled in a country of the European Union to establish subsidiaries abroad; that~~"), (ii) a notification procedure has been completed in the host

member state~~;~~, and that (iii) the ~~subsidiary or~~branch and the institution comply with the conditions set forth in Paragraph (2)(a)(aa) above and Paragraph (2)(c) below;

(ee) an institution domiciled outside the EU or Switzerland which is (i) permitted in its country of domicile to provide credit to customers in relation to Transactions and receive collateral in the form of cash or securities and (ii) supervised in its country of domicile according to standards equivalent to the applicable regulatory standards of the EU as determined by Eurex Clearing AG, provided that (iii) the competent supervisory authority is a signatory to Appendix A of the IOSCO Multilateral Memorandum of Understanding or has signed an applicable bilateral memorandum of understanding with the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* – "**BaFin**"); or

(ff) a branch of an institution not falling within one of the categories pursuant to Paragraph 2(a)(bb) to (dd) above, provided that (i) if either the branch or the main office of the institution is domiciled outside the EU or Switzerland, such branch or main office complies with the ~~requirements of Paragraph (2)(c)~~conditions set forth in Paragraph 2(a)(ee) above, (ii) if either the branch or the main office of the institution is domiciled in a member state of the EU or Switzerland, such branch or main office complies with the conditions set forth in Paragraph 2(a)(aa) above, and that (iii) the branch and the institution comply with the conditions set forth in Paragraph (2)(c) below.

(b) In limited cases, Eurex Clearing AG may, upon written application, grant a Clearing License to an institution even if such institution's license by the competent supervisory authorities does not cover the ~~conduct of safe custody business, lending operations~~provision of credit to customers in relation to products cleared and/or the receipt of collateral in the form of cash or securities.

(c) Applicants pursuant to Paragraphs (2)(a)(bb), (cc)~~ and~~, (dd) and (ff) above must provide a written guarantee on first demand issued vis-à-vis Eurex Clearing AG by the institution to which the applicant belongs, to the effect that such institution will guarantee all obligations of its branches, offices or branch offices arising out of, and in connection with, the Clearing of Transactions by these branches, offices and branch offices. In order to verify the legal validity and enforceability of this guarantee, Eurex Clearing AG may demand from the relevant institution, at the institution's expense, all necessary information and evidence, including the opinion of a legal expert designated by Eurex Clearing AG.

~~(c)~~(d) Eurex Clearing AG may require the applicant to provide, at its own expense, a legal opinion from leading counsel approved by Eurex Clearing AG that verifies the legal validity and enforceability of the Clearing Conditions in the respective

jurisdiction according to standards provided by Eurex Clearing AG from time to time.

~~(d)~~(e) The granting of a Clearing License requires that Eurex Clearing AG has obtained all licenses and approvals that are required for the provision of Clearing towards the applicant in the relevant jurisdiction.~~An institution domiciled in the United States of America (a "**U.S. Institution**") may only apply for a Clearing License for OTC Credit Derivatives Transactions. Such Clearing License may only be granted to a U.S. Institution, if it (i) complies with the additional conditions specified in the Clearing Conditions as being applicable to U.S. Institutions and (ii) fulfils the requirements pursuant to Paragraph (2)(a)(aa) above, applied *mutatis mutandis*.~~

~~(e) An institution not domiciled in the European Union, Switzerland or the United States of America may only apply for a Clearing License for OTC Credit Derivatives Transactions. Such Clearing License may only be granted to such institution, if it (i) demonstrates that it is subject to comprehensive regulatory, supervisory and insolvency rules and regulations comparable to those in the European Union, Switzerland and the United States of America, and (ii) fulfils the requirements pursuant to Paragraph 2.2(2)(a)(aa) above, applied *mutatis mutandis*.~~

(3) The applicant for a Clearing License must have available a liable equity capital (*haftendes Eigenkapital*) in an amount determined by Eurex Clearing AG from time to time. Applicants not subject to the KWG must have available comparable capital equivalent to the liable equity capital.

(a) […]

(b) […]

(c) Should an applicant have insufficient liable equity capital or equivalent own funds for a Clearing License, Eurex Clearing AG may allow that the shortfall may be made up by ~~a Qualifying Bank Guarantee (as defined below) and/or~~ collateral in cash or securities accepted by Eurex Clearing AG. The~~ Qualifying Bank Guarantee as well as the~~ cash and securities collateral shall safeguard compliance with the contractual obligations of the respective Clearing Member and with all other claims of Eurex Clearing AG vis-à-vis the respective Clearing Member in connection with the Clearing of its contracts (provision of ~~margin~~collateral).

~~"**Qualifying Bank Guarantee**" means an unconditional, irrevocable guarantee upon first demand (*Garantie auf erstes Anfordern*) for payment of the guaranteed amount into an account indicated by Eurex Clearing AG furnished by a bank domiciled in the European Union or Switzerland recognised by Eurex Clearing AG, which bank must be a legal entity different from the applicant. The form and extent of an admissible group relation between the applicant and the bank which furnishes the guarantee shall be determined by Eurex Clearing AG. The type, contents and form of the Qualifying Bank Guarantee shall be determined by Eurex Clearing AG.~~

Securities collateral shall be posted by transfer of ownership ~~by way of~~for security purposes (*Eigentumsübertragung zu Sicherungszwecken*) or assignment for security purposes (*Sicherungsabtretung*) into a custody account with Clearstream Banking AG or SIX SIS Ltd.

(4) The applicant shall have available the following accounts:

(a) Securities Accounts:

(aa) […]

(bb) […]

(cc) […]

Upon written request of a Clearing Member, Eurex Clearing AG may grant an exemption with respect to the requirement for any relevant Pledged Securities Account pursuant to Paragraph (4)(a)(aa) above or Securities Margin Account Pursuant to Paragraph (4)(a)(bb) above, provided that the Clearing Member confirms that only cash will be provided with respect to Margin and Segregated Margin, and/or for any relevant settlement securities account pursuant to Paragraph (4)(a)(cc) above and a corresponding cash account, provided that the Clearing Member confirms that no business activities are taken up with regard to Transactions the settlement of which is not ensured by the missing accounts.

[…]

2.1.3 Prerequisites for Governmental Entities and Supranational Organisations

(1) Upon request and upon the sole risk assessment of Eurex Clearing AG, certain governmental entities and supranational organisations may be admitted as Clearing Members under modified conditions. These are:

(a) the member countries of the EU and Switzerland as well as other non-EU countries that meet the minimum rating requirement pursuant to Paragraph (4), their central governments, regional governments and ministries, as well as their legally dependent special funds;

(b) the central banks of the countries named under (a);

(c) the European Central Bank, the European Financial Stability Facility and the Bank for International Settlement;

(d) multilateral development banks within the meaning of § 1 Paragraph 27 of the KWG, including the Reconstruction Loan Corporation (*Kreditanstalt für Wiederaufbau*);

(e) international organisations within the meaning of § 1 Paragraph 28 of the KWG; and

(f) legally independent institutions and companies which are commissioned with or responsible for the management of assets or liabilities of one of the countries named under (a).

(2) Applicants within the meaning of Paragraph (1) are required to fulfill the general prerequisites set out in Number 2.1.2 Paragraphs (3) to (6) and the special prerequisites for the relevant Transaction Type, unless they have been exempted in whole or in part from the fulfilment of these prerequisites by Eurex Clearing AG. In particular, applicants within the meaning of Paragraph (1) may be exempted from the requirement to:

(a) have available liable equity capital pursuant to Number 2.1.2 Paragraph (3);

(b) have available Securities Accounts pursuant to Number 2.1.2 Paragraph (4)(a)(aa) and (bb);

(c) pay Contributions to the Clearing Fund pursuant to Number 2.1.2 Paragraph (5)(d); and/or to

(d) meet Margin Requirements pursuant to Number 3 in connection with Part 2 Number 6 or Part 3 Number 5 for specific Transaction Types.

(3) Any exemption pursuant to Paragraph (2) will be granted only upon request and upon the sole risk assessment of Eurex Clearing with the option of revoking such exemption at any time.

(4) Applicants within the meaning of Paragraph (1) shall fulfil and provide evidence for the following additional prerequisites:

(a) Applicants within the meaning of Paragraph (1)(a) or (b) may be admitted if either they or their relevant home country has a minimum rating of A by Standard&Poor's ("S&P"), a branch of McGraw-Hill Companies, Inc.

(b) Applicants within the meaning of Paragraph (1)(d) or (e) may be admitted if they have a rating of AAA by S&P.

(c) Applicants within the meaning of Paragraph (1)(f) may be admitted if they have an unlimited guarantee or declaration of liability of their relevant home country and if this country has a minimum rating of A by S&P.

Ratings by S&P are comparable to ratings by Moody's Investor Service Inc. or Fitch Ratings Ltd. In case of several available ratings for one applicant, the lowest rating shall be decisive.

(5) Clearing Members admitted as General Clearing Members pursuant to Paragraph (1) are entitled to conclude a Clearing Agreement with a Non-Clearing Member or a Registered Customer only if such Non-Clearing Member or Registered Customer falls itself within one of the categories pursuant to Paragraph (1).

~~2.1.3~~2.1.4 **Termination of Clearing Licenses**

[…]

2.2 Certain continuing obligations of Clearing Members

2.2.1 […]

2.2.2 […]

2.2.3 Clearing Members are obliged, at the request of Eurex Clearing AG, to provide Eurex Clearing AG with evidence of compliance with the prerequisites for a Clearing License. Eurex Clearing AG may in particular, at the expense of the relevant Clearing Member, require an update of the legal opinion that has been provided pursuant to Number 2.1.2 Paragraph (2)(d) or retain an auditor within the meaning of the KWG or of equivalent regulations for purposes of further investigation of compliance.

[…]

3 General Provisions regarding Margin

[…]

4 Internal Accounts

[…]

5 Fees

[…]

6 Clearing Funds

[…]

7 Termination Rules with respect to the Clearing Member

[…]

7.1 Construction and Interpretation

[…]

7.2 Termination Events

7.2.1 […]

(1) **Failure to Pay; Failure to Deliver Margin**

[…]

(2) **Failure to comply with Clearing Conditions**

[…]

(3) **Failure to comply with Clearing License prerequisites**

The Clearing Member is no longer in compliance with the prerequisites for the granting of any of its Clearing License(s) set forth in Number 2.1.2 Paragraphs (2) to ~~(4)~~

~~and~~**Error! Reference source not found.**, Number 2.1.3 or in the relevant Special Clearing Provisions.

[…]

8 Replacement of Clearing Member

[…]

9 Termination Rules with respect to Eurex Clearing AG

[…]

10 Default Rules applicable to a Non-Clearing Member

[…]

11 Other Agreements between Clearing Members and Non-Clearing Members with regard to the Clearing of Eurex Transactions, FWB Transactions and EEX Transactions

[…]

12 Termination of Clearing Agreement involving a Non-Clearing Member

[…]

13 Liabilities, Emergency Actions, Contractual Penalties (*Vertragsstrafen*), Delegation

[…]

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

[…]

15 Publications and Notices

[…]

16 Miscellaneous

16.1 Governing law; Place of jurisdiction

[…]

16.2 Amendments and Additions to the Clearing Conditions

16.2.1 […]

16.2.2 Each Clearing Member or Non-Clearing Member accepts each amendment and addition to the Clearing Conditions, unless it objects by written notice to Eurex Clearing AG before the end of the Business Day prior to the actual effective date of such amendment or addition to the Clearing Conditions. Eurex Clearing AG will inform the Clearing Members or Non-Clearing Members of the effects of such deemed approval in the relevant publication of the amendments and additions to these Clearing Conditions. The right to terminate the Clearing Agreement and the Clearing License according to Number 2.1.4~~2.1.3~~ Paragraph (1) shall remain unaffected.

[…]

Chapter II
Transactions Concluded at Eurex Deutschland and Eurex Zürich (Eurex Exchanges)

Part 1
General Provisions

[…]

1.1 Clearing Licenses

1.1.1 Granting of Clearing Licenses

~~(1)~~ A Clearing License is required in order to participate in the Clearing of derivatives transactions at the Eurex Exchanges; Eurex Clearing AG shall grant such Clearing License upon written application.

~~(2) Central banks or development banks of the Federal Government named by Eurex Clearing AG - such banks being subject to the supervision of a Federal Ministry – may upon application be exempt in whole or in part from the fulfilment of the prerequisites pursuant to Paragraph (1) and Number 1.1.2.~~

1.1.2 Prerequisites for Clearing Licenses

(1) With regard to the prerequisites to be fulfilled within the scope of the granting of the Clearing License, Chapter I Part 1 ~~Number~~Numbers 2.1.1 ~~and 2.1.2~~to 2.1.3 apply.

[…]

Chapter III
Transactions at Eurex Bonds GmbH (Eurex Bonds)

Part 1
General Provisions

[…]

1.1 Clearing Licenses

1.1.1 Granting of Clearing Licenses

~~(1)~~ A Clearing License is required in order to participate in the Clearing of the transactions in debt securities carried out at Eurex Bonds GmbH ("**Eurex Bonds Transactions**"); Eurex Clearing AG shall grant such Clearing License upon written application.

~~(2) Upon request and upon the sole risk assessment of Eurex Clearing AG, specific organisations and institutions may be admitted as Clearing Members for Eurex Bonds Transactions under modified conditions. These are:~~

~~a) member countries of the European Union ("**EU**") or another contractual country of the Treaty on the European Economic Area and Switzerland; their central governments and ministries, as well as their legally dependent special funds,~~

~~b) the central banks of the countries named under a),~~

~~c) the European Central Bank, the European Financial Stability Facility ("**EFSF**") and the Bank for International Settlement,~~

~~d) multilateral development banks within the meaning of § 1 Paragraph 27 German Banking Act including the Reconstruction Loan Corporation (Kreditanstalt für Wiederaufbau),~~

~~e) international organisations within the meaning of § 1 Paragraph 28 German Banking Act,~~

~~f) legally independent institutions and companies which are commissioned with or responsible for the management of assets or liabilities of one of the countries named under a).~~

~~(3) Clearing Members admitted as General Clearing Members according to Number 1.1.1 Paragraph (2) are entitled to conclude an agreement according to Appendix 2 (NCM-CM Clearing Agreement) only with such a trading participant which:~~

~~a) itself is included in one of the categories according to Number 1.1.1 Paragraph (2) a) to f)~~

~~or~~

~~b) is a country or a comparable territorial authority of a state according to Number 1.1.1 Paragraph (2) a).~~

1.1.2 Prerequisites for Clearing Licenses

(1) With regard to the prerequisites to be fulfilled within the scope of the granting of the Clearing License, Chapter I Part 1 Numbers 2.1.1 ~~and 2.1.2 applies. Applicants which are admitted according to Number 1.1.1 Paragraph (2) shall be exempt from the admission prerequisites of Chapter I Part 1 Number 2.1.2 Paragraph (3), Paragraph (4)(a)(aa) and (bb) and Paragraph (5)(d) until revoked; however, they shall fulfil and provide evidence for the following deviating prerequisites:~~to 2.1.3 apply.

~~- Applicants within the meaning of Number 1.1.1 Paragraph (2) a) and b) may be admitted if either this or their relevant home country has a minimum rating of A by Standard&Poor's ("**S&P**"), a branch of McGraw-Hill Companies, Inc.~~

~~- Applicants within the meaning of Number 1.1.1 Paragraph (2) d) and e) may be admitted if they have a minimum standard rating of AAA by S&P.~~

~~- Applicants within the meaning of Number 1.1.1 Paragraph (2) f) may be admitted if they have an unlimited guarantee or declaration of liability of their relevant home country and if this country has a minimum rating of A by S&P,~~

~~Ratings by S&P are comparable to ratings by Moody's Investor Service Inc. or Fitch Ratings Ltd. In case of several available ratings for one applicant, the lowest rating shall be decisive.~~

[…]

1.2 Margin Requirements

(1) The basic provisions for the margin requirements are set forth in Chapter I Part 1 Number 3 together with Part 2 Number 6 or Part 3 Number 5. ~~With regard to Clearing Members according to Number 1.1.1 Paragraph (2), Eurex Clearing AG may decide – upon application and with the option of revoking such decision at any time – that the provisions of Chapter I Part 1 Number 3 together with Part 2 Number 6 or Part 3 Number 5, as applicable, shall not apply.~~

[…]

Chapter IV
Clearing of Transactions at Eurex Repo GmbH (Eurex Repo)

Part 1
General Provisions

[…]

1.1 Clearing Licenses

1.1.1 Granting of Clearing Licenses

~~(1)~~ A Clearing License is required in order to participate in the Clearing of Eurex Repo Transactions concluded through the System of Eurex Repo AG; Eurex Clearing AG shall grant such Clearing License upon written application.

~~(2) Upon request and upon the sole risk assessment of Eurex Clearing AG, specific organisations and institutions may be admitted as Clearing Members for repo transactions under modified conditions. These are:~~

~~a) member countries of the European Union ("**EU**") or another contractual country of the Treaty on the European Economic Area and Switzerland; their central governments and ministries, as well as their legally dependent special funds,~~

~~b) the central banks of the countries named under a),~~

~~c) the European Central Bank, the European Financial Stability Facility ("**EFSF**") and the Bank for International Settlement,~~

~~d) multilateral development banks within the meaning of § 1 Paragraph 27 German Banking Act, including the Reconstruction Loan Corporation (Kreditanstalt für Wiederaufbau),~~

~~e) international organizations within the meaning of § 1 Paragraph 28 German Banking Act,~~

~~f) legally independent institutions and companies which are commissioned with or responsible for the management of assets or liabilities of one of the countries named under a).~~

~~(3) Clearing Members admitted as General Clearing Members according to Number 1.1.1 Paragraph (2) are entitled to conclude an agreement according to Appendix 2 (NCM CM Clearing Agreement) only with such a trading participant which:~~

~~a) itself is included in one of the categories according to Number 1.1.1 Paragraph (2) a) to f) or~~

~~b) is a country or a comparable territorial authority of a state according to Number 1.1.1 Paragraph (2) a).~~

1.1.2 Prerequisites for Clearing Licenses

(1) With regard to the prerequisites to be fulfilled within the scope of granting of the Clearing License, Chapter I Part 1 Numbers 2.1.1 ~~and 2.1.2 applies. Applicants which are admitted according to Number 1.1.1 Paragraph (2), shall be exempt from the admission prerequisites of Chapter I Part 1 Number 2.1.2 Paragraph (3), Paragraph (4)(a)(aa) and (bb) and Paragraph (5)(d) until revoked; however, they shall fulfil and provide evidence for the following deviating prerequisites:~~to 2.1.3 apply.

- ~~Applicants within the meaning of Number 1.1.1 Paragraph (2) a) and b) may be admitted if either this or their relevant home country has a minimum rating of A by Standard&Poor's ("**S&P**"), a branch of McGraw-Hill Companies, Inc.~~
- ~~Applicants within the meaning of Number 1.1.1 Paragraph (2) d) and e) may be admitted if they have a minimum standard rating of AAA by S&P.~~
- ~~Applicants within the meaning of Number 1.1.1 Paragraph (2) f) may be admitted if they have an unlimited guarantee or declaration of liability of their relevant home country and if this country has a minimum rating of A by S&P,~~

~~Ratings by S&P are comparable to ratings by Moody's Investor Service Inc. or Fitch Ratings Ltd. In case of several available ratings for one applicant, the lowest rating shall be decisive.~~

[…]

1.2 Provision of Margin

(1) […]

(2) […]

(3) In addition to the provisions of Paragraph 1 and 2, the provisions of Chapter I Part 1 Number 3 together with Part 2 Number 6 or Part 3 Number 5 shall apply with regard to the basic principles of the margin requirement and – unless aforementioned paragraphs state otherwise – the obligation to provide margin. The provisions of Paragraph (1) Clause 4 - 10 apply to Special and GC Repo accordingly. In the case securities collateral are qualified as own issues after the settlement of the Front-Leg, Eurex Clearing may apply an adequat haircut to cover a higher liquidation risk for Eurex Clearing AG. No automatic substitution is processed. ~~With regard to Clearing Members according to Chapter IV Number 1.1.1 Paragraph (2), Eurex Clearing AG may decide – upon application and with the option of revoking such decision at any time – that the provisions of Chapter I Part 1 Number 3 together with Part 2 Number 6 or Part 3 Number 5, as applicable, shall not apply.~~

[…]

Chapter V
Transactions Concluded at the Frankfurter Wertpapierbörse

Part 1
General Provisions

[…]

1.1 Clearing Licenses

1.1.1 Granting of Clearing Licenses

~~(1)~~ A Clearing License is required in order to participate in the Clearing of FWB Transactions, and Eurex Clearing AG shall grant such Clearing License upon written application. In order to participate in the Clearing of FWB Transactions within the meaning of Part 3 ("**XIM Transactions**"), a separate Clearing License according to Paragraph (3) which is not comprised by the Clearing License according to Clause 1 is necessary.

~~(2) Upon request, central banks indicated by Eurex Clearing AG may be released wholly or partially from the obligation to meet the requirements pursuant to Paragraph (1) and Number 1.1.2.~~

1.1.2 Prerequisites for Clearing Licenses

(1) With regard to the prerequisites to be fulfilled within the granting of the Clearing License, Chapter I Part 1 Number<u>s</u> 2.1.1 ~~and 2.1.2~~<u>to</u> 2.1.3 ~~applies~~<u>apply</u>.

[...]

Chapter VI
Transactions Concluded at the Irish Stock Exchange (ISE Dublin)

Part 1
General Provisions

[…]

1.1 Clearing Licenses

1.1.1 Granting of Clearing Licenses

A Clearing License is required in order to participate in the Clearing of ISE Transactions, and Eurex Clearing AG shall grant such Clearing License upon written application~~; in all other respects, Chapter I Part 1 Number 2.1.1 Paragraph (4) and Number 2.1.2 Paragraph (2)(a) shall apply *mutatis mutandis*~~.

1.1.2 Prerequisites for Clearing Licenses

(1) With regard to the prerequisites to be fulfilled within the scope of granting the Clearing License, Chapter I Part 1 Numbers 2.1.1 ~~and 2.1.2~~to 2.1.3 apply~~applies~~.

[…]

1.1.3 Termination of the Clearing License

(1) For termination or order of suspension of a Clearing License, the provisions pursuant to Chapter I Part 1 Number ~~2.1.3~~2.1.4 and Part 2 Number 8.1 or Part 3 Number 8.2 apply.

(2) Eurex Clearing AG shall notify ISE in writing about the termination or order of suspension of the Clearing License of a Clearing Member which is entitled to clearing of ISE Transactions. Eurex Clearing AG may inform ISE before taking any measures which would, pursuant to Chapter I Part 1 Number ~~2.1.3~~2.1.4 and Part 2 Number 8 or Part 3 Number 8, lead to the termination or order of suspension pursuant to Clause 1, in writing or via telephone.

[…]

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

Part 1
General Provisions

[…]

1.1 Clearing Licenses

1.1.1 Granting of Clearing Licenses

~~(1)~~ A Clearing License is required in order to participate in the Clearing of EEX Transactions; Eurex Clearing AG shall grant such Clearing License upon written application.

~~(2) Central banks or development banks of the Federal Government named by Eurex Clearing AG - such banks being subject to the supervision of a Federal Ministry – may upon application be exempt in whole or in part from the fulfilment of the prerequisites pursuant to Paragraph (1) and Number 1.1.2.~~

1.1.2 Prerequisites for Clearing Licenses

(1) With regard to the prerequisites to be fulfilled within the scope of the granting of an EEX Clearing License, Chapter I Part 1 Numbers 2.1.1 ~~and 2.1.2applies.~~to 2.1.3 apply. The prerequisites pursuant to Chapter I Part 1 Number 2.1.2 Paragraph (4)(a)(aa), Paragraph (5)(c), (e) and (f) whose fulfilment cannot be proven, shall be exempted.

[…]

Chapter VIII
Clearing of OTC Derivatives Transactions

Part 1
General Provisions

[…]

Part 2
Clearing of OTC Credit Derivatives Transactions

[…]

2.1 Subpart:
General Provisions

2.1.1 Applicable Sections

[…]

2.1.2 Consultation of Clearing Members/ Committees

[…]

2.1.3 References to ISDA Documentation / Representations

[…]

2.1.4 Granting of the Clearing License

[…]

2.1.4.1 Prerequisites of the Clearing License

(1) With regard to the prerequisites to be fulfilled within the scope of the granting of the CD Clearing License, Chapter I Part 1 Number 2.1.2 Paragraphs (2)(a), 2(~~and~~ (c), ~~as well as Part 1 Number 2.1.2 Paragraph~~ (3) through (8) (except for Paragraph (4)(a)(bb) and (cc), 5(d) and (e)) as well as Number 2.1.3 of the Clearing Conditions apply~~ies~~.

(2) In addition to ~~p~~Paragraph 1 the institution applying for a clearing license shall meet the following requirements: […]

2.1.5 Novation Criteria regarding OTC Credit Derivatives Transactions

[…]

2.1.6 Netting Agreement

[…]

2.1.7 Clearing Fund regarding OTC Credit Derivatives Transactions

2.1.7.1 Calculation of the Contribution to the Credit Clearing Fund

[…]

2.1.7.2 Provision of the Contribution to the Credit Clearing Fund

[…]

2.1.7.3 Contributions of Eurex Clearing AG to the Credit Clearing Fund

[…]

2.1.7.4 Realisation of the Credit Clearing Fund

(1) The contribution to the Credit Clearing Fund provided by a Clearing Member may be used to cover the financial consequences of the occurrence of a Termination Date in the event of non-fulfilment of the obligations from clearing CCP Transactions by itself or by any other Clearing Member, also for purposes of curing financial consequences from occurrence of an event resulting in termination of the clearing license of this or another Clearing Member pursuant to Chapter I Part 1 Number 7.2 Paragraph 2 of the Clearing Conditions. Clause 1 shall also apply with regard to the compensation of claims of Eurex Clearing AG vis-à-vis Clearing Members which have occurred in connection with the termination of a clearing license pursuant to Chapter I Part 1 Number ~~2.1.3~~ 2.1.4 Paragraph (2) of the Clearing Conditions.

(2) […]

(3) […]

(4) […]

(5) The contribution provided by a Clearing Member to the Credit Clearing Fund pursuant to Chapter VIII Number 2.1.7 of the Clearing Conditions may also be used to cover the financial consequences of a circumstance which leads to a termination of the clearing license of this or of another Clearing Member pursuant to Chapter I Part 1 Number 2.1.4~~2.1.3~~ Paragraph (2) of the Clearing Conditions.

[…]

Chapter IX
Clearing of Securities Lending Transactions

Part 1
General Provisions

[…]

1.1 Clearing License

1.1.1 Granting of the Clearing License

[…]

1.1.2 Prerequisites of Clearing Licenses

(1) Unless otherwise provided for and subject to further exemptions set out in this Number 1.1.2 Paragraph (2), the prerequisites to be fulfilled for the granting of the Clearing License are set out in Chapter I Part 1 Numbers 2.1.1 ~~and 2.1.2~~to 2.1.3.

[…]

****

APPENDICES I AND III ARE BEING ADJUSTED.

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED.

DELETIONS ARE CROSSED OUT.

****

Appendices to the Clearing Conditions

Appendix 1 to the Clearing Conditions: Clearing Agreement (Eurex Clearing AG/Clearing Member)

Clearing Agreement

between

_____

as Clearing Member

and

Eurex Clearing AG, Frankfurt/Main.

[…]

1 Scope of the Agreement, Applicable Legal Provisions, Legal Relationships

[…]

2 Provision of Margin in the Form of Securities

[…]

3 Cash Clearing, Clearing Currency

[…]

4 Authorisation to Give Delivery Instructions

[…]

5 Fees arising from Connection Agreement

[…]

6 Revocation of Powers of Attorney and Debit Instructions

[…]

7 Data and Services Supplement

[…]

8 Data Protection

[…]

~~9 Special Requirements that apply to Clearing of OTC Credit Derivatives Transactions involving Institution domiciled in the United States of America which are Clearing Members ("U.S. Clearing Members"), U. S Registered Customers or U. S. Customers~~

~~**9.1** Compliance with requirements~~

~~U.S. Clearing Members, and U.S. Registered Customers and Clearing Members and Registered Customers with U.S. customers shall be in material compliance with this Chapter VIII Part 2 and applicable laws and regulations, relating to capital, liquidity, and~~

~~segregation of customers' funds and securities (and related books and records provisions) with respect to cleared OTC Credit Derivatives transactions ("**CCP Transactions**").~~

~~**9.2** Additional requirements with respect to transactions.~~

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

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

~~(2) The member shall segregate such funds and securities of such U.S. persons from the member's own assets (the member may not permit such U.S. persons to "opt out" of applicable segregation requirements for such funds and securities even if regulations or laws would permit the person to "opt out"); and~~

~~(3) The Clearing Member or Registered Customer shall disclose to such U.S. persons that the Clearing Member or Registered Customer is not regulated by the U.S. Securities and Exchange Commission, that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities held by the member, and that the insolvency law of the jurisdiction in which the member or a registered customer has its center of interest applies to the member or registered customer and may affect the U.S. person's ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding.~~

~~(4) U.S. Clearing Members and Clearing Members with U.S. customers must meet the additional conditions specified in a separate document to be executed by such parties, which reflect the conditions specified in an Order of the U.S. Securities and Exchange.~~

~~**9.3** Additional requirements with respect to Credit Derivatives Transactions that can be cleared~~

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

~~(1) an entity reporting under the Exchange Act, providing Securities Act Rule 144Ad)(4) information, or about which financial information is otherwise publicly available;~~

~~(2) a foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States;~~

~~(3) a foreign sovereign debt security;~~

~~(4) an asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or~~

~~(5) an asset-backed security issued or guaranteed by U.S. Fannie Mae, Freddie Mac or U.S. Ginnie Mae; or~~

~~(6) an index of reference entities in which 80 percent or more of the index's weighting is comprised of the entities or securities described in (1)-(5) above.~~

~~10~~9 Term

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

~~11~~10 Amendments

Eurex Clearing AG shall be entitled to make amendments to this agreement and/or to individual parts thereof at any time under due consideration of the interests of the Clearing Member. For according amendments, Chapter I Part 1 Number 16.2 of the Clearing Conditions shall apply.

~~12~~11 Governing Law; Jurisdiction; Place of Performance

~~12.1~~**11.1** This Agreement shall be governed by the laws of the Federal Republic of Germany.

~~12.2~~**11.2** Any non-contractual rights and obligations arising out of or in connection with this Agreement shall also be governed by the laws of the Federal Republic of Germany.

~~12.3~~**11.3** The courts in Frankfurt am Main shall have exclusive jurisdiction (*ausschließlicher Gerichtsstand*) over any action or other legal proceedings arising out of or in connection with this Agreement.

~~12.4~~**11.4** The place of performance shall also be Frankfurt/Main.

~~13~~12 Severability Clause

If any provision contained in this Agreement is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected. Such invalid, illegal or unenforceable provision shall be replaced by means of supplementary interpretation (*ergänzende Vertragsauslegung*) by a valid, legal and enforceable provision, which most closely approximates the parties' commercial intention. This shall also apply mutatis mutandis to any gaps (*Vertragslücken*) in this Agreement.

[…]

Appendix to the CM Clearing Agreement

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

dated [Date]

[…]

☐ **Clearing of OTC Credit Derivatives Transactions pursuant to Chapter VIII of the Clearing Conditions ("OTC Clearing License")**

In this respect, the following rules shall apply:

Part 1: General Provisions

a) Applicable Legal Provisions

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

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

☐ **Credit Derivatives Clearing License ("CD Clearing License")**

a) […]

b) […]

c) […]

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

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

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

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

~~(ii) The Clearing Member shall segregate such funds and securities of such U.S. persons from the Clearing Member's own assets respectively (i.e., the member may not permit such U.S. persons to "opt out" of applicable segregation~~

~~requirements for such funds and securities even if regulations or laws would permit the person to "opt out"); and~~

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

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

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

[…]

Appendix 3 to the Clearing Conditions: Clearing Agreement (Eurex Clearing AG/Clearing Member/Registered Customer)

Clearing Agreement

between

_____

as Clearing Member

_____

as Registered Customer

and

Eurex Clearing AG, Frankfurt/Main.

[…]

1 Scope of the Agreement, Applicable Legal Provisions, Legal Relationships

[…]

2 Legal Relationships; Liability, Representations

[…]

3 Setoff- and Netting Procedure between Clearing Member and Registered Customer

[…]

4 Termination of CCP Transactions between Clearing Member and Registered Customer

[…]

5 Fees

[…]

6 Data Protection

[…]

7 Term

[…]

8 Data and Services Supplement

[…]

~~9 U.S. Clearing Members and U.S Registered Customers of Credit Derivatives Transactions and Clearing Members with U.S. customers of Credit Derivatives Transactions~~

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

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

~~(ii) The Clearing Member shall segregate such funds and securities of such persons from the Clearing Member's own assets respectively (i.e., the member may not permit such persons to "opt out" of applicable segregation requirements for such funds and securities even if regulations or laws would permit the person to "opt out"); and~~

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

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

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

~~10~~9 Amendments

Eurex Clearing AG shall be entitled to make amendments to this agreement and/or to individual parts thereof – with the exception of Chapter III – at any time under due consideration of the interests of the Clearing Member and Registered Customer. For according amendments, Chapter I Number Part 1 Number 15.2 of the Clearing Conditions shall apply.

~~11~~10 Governing Law; Jurisdiction; Place of Performance

~~11.1~~10.1 This Agreement shall be governed by the laws of Federal Republic of Germany.

~~11.2~~10.2 Any non-contractual rights and obligations arising out of or in connection with this Agreement shall also be governed by the laws of the Federal Republic of Germany.

~~11.3~~10.3 The courts in Frankfurt am Main shall have exclusive jurisdiction (*ausschließlicher Gerichtsstand*) over any action or other legal proceedings arising out of or in connection with this Agreement.

~~11.4~~10.4 The place of performance shall also be Frankfurt/Main.

~~12~~11 Severability Clause

If any provision contained in this Agreement is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected. Such

invalid, illegal or unenforceable provision shall be replaced by means of supplementary interpretation *(ergänzende Vertragsauslegung)* by a valid, legal and enforceable provision, which most closely approximates the parties' commercial intention. This shall also apply mutatis mutandis to any gaps *(Vertragslücken)* in this Agreement.

[…]

Appendix to the RC-CM Clearing Agreement

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

[…]

☐ **Clearing of "OTC Credit Derivatives Transactions" pursuant to Chapter VIII Part 2 of the Clearing Conditions**

a) […]

b) […]

c) […]

~~d) Provisions which relate to U.S. customers. U.S. Clearing Members, customers of U.S. Clearing Members, U.S. customers and Clearing Members with U.S. customers must be Eligible Contract Participants within the meaning of Section 1a(12) of the U.S. Commodity Exchange Act. Clearing Member and Registered Customer ;may receive or hold funds or securities of such U.S. persons for the purpose of purchasing, selling, clearing, settling or holding cleared OTC Credit Derivatives Transactions ("**CCP Transactions**"):~~

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

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

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

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

[…]