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Statutes for the EMIR Risk Committee	As of 01.09.2023
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## **EUREX CLEARING AG STATUTES FOR THE EMIR RISK COMMITTEE**

### **§ 1 Scope of Application and Definitions**

- (1) The following statutes (the “**Statutes**”) shall apply to the EMIR Risk Committee (the “**EMIR Risk Committee**”).
- (2) The EMIR Risk Committee shall be established and maintained pursuant to Art. 28 Regulation (EU) 648/2012 (EMIR) and Chapter I Part 1 Number 1.5 of the clearing conditions of Eurex Clearing AG (the “**Clearing Conditions**”) as a comprehensive committee (*Gesamtausschuss*) in order to advise
  - (a) the supervisory board of Eurex Clearing AG (the “**Supervisory Board**”) with respect to the EMIR Matters (as defined in § 2 (1) below);
  - (b) the executive board of Eurex Clearing AG (the “**Executive Board**”) with respect to Relevant Matters (as defined in § 2 (2) below) and Additional Matters (as defined in § 2 (3) below);

to the extent 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.
- (3) The EMIR Risk Committee shall have the right to advise the Supervisory Board on any EMIR Matters. Without prejudice to § 2 (2) and § 2 (3), the EMIR Risk Committee will advise the Executive Board on Relevant Matters (as defined in § 2 (2)) and Additional Matters (as defined in § 2 (3)).

The EMIR Risk Committee shall have the right to address the Supervisory Board and the Executive Board with respect to any risk related to the Clearing.
- (4) The Supervisory Board shall be informed at any time about the activities (including those for the Executive Board) of the EMIR Risk Committee. The Supervisory Board shall, in particular, be informed about the EMIR Risk Committee’s answers to questions of the Executive Board.
- (5) Neither the Executive Board nor the Supervisory Board shall be obliged to accept any proposal made by, or take any action proposed by, the EMIR Risk Committee. Any deliberation and/or decision of the Executive Board or the Supervisory Board with respect to any such proposal shall be made at the sole discretion of the Executive Board or the Supervisory Board, respectively, without owing any obligation whatsoever to the EMIR Risk Committee in respect of such deliberation or decision or the reasoning thereof. For the avoidance of doubt, this does not affect any legal obligation of the Supervisory Board to discuss matters with respect to which it has been advised by the EMIR Risk Committee.

- (6) For the purpose of these Statutes,
- (a) 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 1.2.4 (1) (g) of the Clearing Conditions; and
  - (b) any reference to a “Clearing Member” shall refer to General Clearing Member, Direct Clearing Member, ISA Direct Clearing Member and FCM Clearing Member.

## § 2 Relevant Matters and Additional Matters

- (1) “**EMIR Matters**” shall be the following risk-related matters beyond daily operations if and to the extent they may have an impact on the risk management of Eurex Clearing AG:
- (a) significant changes of the risk model of Eurex Clearing AG;
  - (b) changes to the default procedures;
  - (c) changes to the categories of admissible clearing members (as defined in EMIR) and the admission criteria for clearing members (as defined in EMIR);
  - (d) the Clearing of new classes of instruments;
  - (e) outsourcing of functions by Eurex Clearing AG; and
  - (f) all other matters beyond daily-operations which may have an impact on the risk management of Eurex Clearing AG, including, but not limited to, material changes to the Clearing Conditions, such as (without limitation)
    - (i) the provisions regarding the Default Fund (as in particular defined in Chapter I Part 1 Number 6 of the Clearing Conditions); and
    - (ii) to the method to determine Eligible Margin Assets (as defined in Chapter I Part 1 Number 3.2.1 of the Clearing Conditions) or the methods to determine haircuts.

EMIR-Matters are also

- (g) the internal policy framework defining types of extreme but plausible market conditions Eurex Clearing AG could be exposed to;
- (h) the liquidity plan; and
- (i) a policy for the use of derivative contracts as highly liquid financial instruments for the purpose of Art. 47 (1) EMIR.

- (2) The Executive Board shall seek advice from the EMIR Risk Committee with respect to the following “**Consultation Matters**” to the extent they may have material impact on the risk management of Eurex Clearing AG (and together with the EMIR Matters the “**Relevant Matters**”):
- (a) review and material revisions and adjustments to the models, their methodologies and the liquidity risk management framework used to quantify, aggregate, and manage the risks of Eurex Clearing AG;  
  
for this purpose, the Executive Board will periodically report to the EMIR Risk Committee the stress testing results of Eurex Clearing AG and their analysis in accordance with § 3;
  - (b) material revisions and adjustments to Eurex Clearing AG’s policies used to test its margins, Default Fund and other financial resources methodologies and framework for calculating liquid financial resources;
  - (c) the systems and valuation models used for validating Eurex Clearing AG’s models where pricing data is not readily available;
  - (d) review of Eurex Clearing AG’s margin model;  
  
for this purpose, the Executive Board will periodically report to the EMIR Risk Committee the back testing and the sensitivity testing results of Eurex Clearing AG and their analysis in accordance with § 3;
  - (e) review of the reverse stress tests developed by Eurex Clearing AG;  
  
for this purpose, the Executive Board will periodically report to the EMIR Risk Committee the reverse stress testing results of Eurex Clearing AG and their analysis in accordance with § 3;
  - (f) the formation of new, and changes to existing, Liquidation Groups (as defined in Chapter I Part 1 Number 7.5.1 of the Clearing Conditions) (except when an existing Liquidation Group is separated into parts in accordance with Chapter 1 Part 1 Number 7.5.3 (1) (ii) and (3) of the Clearing Conditions); and
  - (g) the annual update of Eurex Clearing AG’s Recovery Plan.
- (3) The Executive Board may seek advice from the EMIR Risk Committee with respect to EMIR Matters and all other matters which, in the view of the Executive Board, may have an impact on the risk management of the Clearing Members and/or the Clients (as defined below) or their clients (“**Additional Matters**”).

### § 3 Information Obligation vis-à-vis the EMIR Risk Committee

The Executive Board or the Supervisory Board, as relevant, shall, subject to applicable law, provide the EMIR Risk Committee with all information and documents necessary to perform its functions pursuant to § 1 (2) including, but not limited to:

- (a) reports of stress testing results of Eurex Clearing AG pursuant to § 2 (2) (a);
- (b) reports of back testing results of Eurex Clearing AG pursuant to § 2 (2) (d);
- (c) reports of the composition of Eligible Margin Assets provided by Clearing Members; and
- (d) overviews and break-downs of Eurex Clearing AG's lines of defense.

### § 4 EMIR Risk Committee Members, Chairman and Deputy Chairman

- (1) The EMIR Risk Committee consists of at least 18 (eighteen) members to be appointed in accordance with this § 4 (each an “**EMIR Risk Committee Member**”) as follows:
  - (a) subject to an EMIR Risk Committee Increase 8 (eight) EMIR Risk Committee Members nominated by the Clearing Members which have been selected in accordance with § 4 (3);
  - (b) subject to an EMIR Risk Committee Increase 8 (eight) EMIR Risk Committee Members nominated by the Disclosed Direct Clients, FCM Clients and other customers (that have agreed to be bound by these Statutes) of Eurex Clearing AG (each a “**Client**” and together the “**Clients**”) which have been selected in accordance with § 4 (4); and
  - (c) at least 2 (two) independent members of the Supervisory Board nominated by the Supervisory Board in accordance with § 4 (7).
- (2) The Executive Board of Eurex Clearing AG may in its sole discretion decide at any time to increase the EMIR Risk Committee permanently or for a specific EMIR Risk Committee Term by additional EMIR Risk Committee Members. Any such increase (an “**EMIR Risk Committee Increase**”) must maintain the given proportion of EMIR Risk Committee Members nominated by Authorised Clearing Members and Authorised Clients. The other paragraphs of this § 4 shall apply accordingly; in particular, the CM Risk Ranking and Client Risk Ranking prepared for the relevant EMIR Risk Committee Term shall apply. The Executive Board will only invite such number of Clearing Members and Clients to nominate an EMIR Risk Committee Member and a deputy for such EMIR Risk Committee Member for the relevant EMIR Risk Committee Term as required for the relevant EMIR Risk Committee Increase.

- (3) Eurex Clearing AG in its free discretion prepares with respect to each EMIR Risk Committee Term a risk ranking of its Clearing Members (in the case of Clearing Members belonging to a group in the meaning of Section 290 of the German Commercial Act (*Handelsgesetzbuch*) on the basis of all Clearing Members belonging to the group), inter alia on the basis of the following parameters (the “**CM Risk Ranking**”):
- (a) Margin Requirements and number of intra-day Margin Calls;
  - (b) products which may be cleared by a Clearing Member;
  - (c) number of Clients for which the Clearing Member provides the Clearing;
  - (d) if the Clearing Member is a General Clearing Member: number of ISA Direct Clearing Members for which the General Clearing Member acts as Clearing Agent; and
  - (e) diversification of the collateral provided (whereby a more diversified collateral portfolio results in a higher risk ranking).

Prior to the expiry of each EMIR Risk Committee Term, the Executive Board invites Clearing Members with the highest CM Risk Ranking (together with any further Clearing Members which have been selected pursuant to § 4 (6) the “**Authorised Clearing Members**” and each an “**Authorised Clearing Member**”), to nominate for the relevant EMIR Risk Committee Term an EMIR Risk Committee Member and a deputy for such EMIR Risk Committee Member. The number of Clearing Members so invited by the Executive Board shall equal the number of EMIR Risk Committee Members to be nominated by Clearing Members for the relevant EMIR Risk Committee Term, plus at least 2 (two) additional Clearing Members. The nominations of the EMIR Risk Committee Member and its deputy shall be made in accordance with § 4 (10) and shall be submitted to the Executive Board within 10 (ten) Business Days of receipt of the invitation.

“**Affiliate**” means, in respect of an entity, that entity and any undertaking which is or becomes a subsidiary undertaking or parent undertaking of that entity or a subsidiary undertaking of a parent undertaking of that entity. A “subsidiary undertaking” or “parent undertaking” is to be construed in accordance with Section 1162 (and Schedule 7) of the UK Companies Act 2006.

The Executive Board assesses the nominations pursuant to § 4 (10) and forwards the nominations which comply with § 4 (10) to the Supervisory Board. If the nomination of the EMIR Risk Committee Member or of its deputy does not comply with the requirements set forth in § 4 (10), the Executive Board shall reject the entire nomination.

The Supervisory Board shall in its discretion, taking into account diversity and to ensure adequate representation of the Clearing Member Types, select for the relevant EMIR Risk Committee Term, the relevant number of EMIR Risk Committee Members and their respective deputies and shall notify such selection to the

Executive Board without undue delay; an EMIR Risk Committee Member and its deputy must have been nominated by the same Authorised Clearing Member.

- (4) Eurex Clearing AG in its free discretion prepares with respect to each EMIR Risk Committee Term a risk ranking of its Clients, inter alia on the basis of the following parameters (the “**Client Risk Ranking**”):
- (a) margin requirement applicable to a Client;
  - (b) products (OTC and listed) which may be processed by a Client;
  - (c) number of customers for which the Client provides the Clearing; and
  - (d) business model diversification (hedge funds, asset manager, etc.).

Prior to the expiry of each EMIR Risk Committee Term, the Executive Board invites Clients with the highest Client Risk Ranking (together with the further Clients which have been selected pursuant to § 4 (6) in connection with this § 4 (4), the “**Authorised Clients**” and each an “**Authorised Client**”, and together with the Authorised Clearing Members the “**Committee Authorised Persons**”) to nominate for the relevant EMIR Risk Committee Term an EMIR Risk Committee Member and a deputy for such EMIR Risk Committee Member. The number of Clients so invited by the Executive Board shall equal the number of EMIR Risk Committee Members to be nominated by Clients for the relevant EMIR Risk Committee Term plus at least 2 (two) additional Clients. The nominations of the EMIR Risk Committee Member and its deputy shall be made in accordance with § 4 (10) and shall be submitted to the Executive Board within 10 (ten) Business Days of receipt of the invitation.

The Executive Board assesses the nominations pursuant to § 4 (10) and forwards the nominations which comply with § 4 (10) to the Supervisory Board. If the nomination of the EMIR Risk Committee Member or of its deputy does not comply with the requirements set forth in § 4 (10), the Executive Board shall reject the entire nomination.

The Supervisory Board shall in its discretion taking into account diversity and to ensure adequate representation of the Clients select for the relevant EMIR Risk Committee Term the relevant number of EMIR Risk Committee Members and their respective deputies and shall notify such selection to the Executive Board without undue delay; an EMIR Risk Committee Member and its deputy must have been nominated by the same Authorised Client.

For the purposes of this § 4, Eurex Clearing AG will disregard such Clients that belong to a consolidated group where one member of such group holds a Clearing License.

- (5) Each deputy of an EMIR Risk Committee Member as referred to in § 4 (2)-(4) shall hereinafter be a “**Deputy EMIR Risk Committee Member**”. The term “**EMIR Risk Committee Member**” shall hereinafter also refer to Deputy EMIR Risk Committee Members unless the context requires otherwise.

- (6) If a Committee Authorised Person fails to nominate within 10 (ten) Business Days of receipt of the invitation an EMIR Risk Committee Member or a Deputy EMIR Risk Committee Member in accordance with this § 4 or if the Executive Board rejects a nomination of an EMIR Risk Committee Member or its Deputy EMIR Risk Committee Member, the Committee Authorised Person shall no longer be entitled to nominate an EMIR Risk Committee Member and its Deputy EMIR Risk Committee Member with respect to the relevant EMIR Risk Committee Term.

If the nominations forwarded by the Executive Board to the Supervisory Board are not sufficient for selecting the necessary number of EMIR Risk Committee Members and Deputy EMIR Risk Committee Members then the Executive Board will invite the next following Clearing Member in the CM Risk Ranking or the next following Client in the Client Risk Ranking, as the case may be, to nominate an EMIR Risk Committee Member and a Deputy EMIR Risk Committee Member. In addition, § 4 (3) and (4) shall apply mutatis mutandis to the selection of the EMIR Risk Committee Member and its Deputy EMIR Risk Committee Member.

- (7) The Supervisory Board will, in its free discretion, nominate at least 2 (two) of its independent members as EMIR Risk Committee Members (each a “**Nominated Supervisory Board Member**”) to serve for a period it determines in its free discretion. The Supervisory Board may nominate a deputy EMIR Risk Committee Member for each Nominated Supervisory Board Member. The Supervisory Board will, in its free discretion, nominate one of the Nominated Supervisory Board Members to serve as chairman of the EMIR Risk Committee (the “**Chairman**”) and a further Nominated Supervisory Board Member to serve as deputy chairman of the EMIR Risk Committee (the “**Deputy Chairman**”). The Executive Board will appoint the EMIR Risk Committee Members and their respective Deputy EMIR Risk Committee Members so nominated.
- (8) Subject to an EMIR Risk Committee Increase, half of the EMIR Risk Committee Members are to be appointed in each year. Each EMIR Risk Committee Member nominated by a Committee Authorised Person and selected by the Supervisory Board shall be appointed by the Executive Board to serve for a period commencing on the date of such appointment and ending on 31 December of the calendar year following the year in which such appointment was made (the “**EMIR Risk Committee Term**”). Any EMIR Risk Committee Members additionally selected due to an EMIR Risk Committee Increase pursuant to § 4 (2) shall be appointed by the Executive Board for a period ending either on 31 December of the calendar year of the appointment or on 31 December of the calendar year following the year of the appointment.

Each Committee Authorised Person shall inform Eurex Clearing AG of any changes to the personal details of its EMIR Risk Committee Member without undue delay. Eurex Clearing AG may rely on the personal details of an EMIR Risk Committee Member previously notified to it by a Committee Authorised Person until Eurex Clearing AG receives notice of any changes.



- (9) Prior to the expiry of each EMIR Risk Committee Term, the Executive Board shall in a timely manner invite the Committee Authorised Persons selected on the basis of the CM Risk Ranking and the Client Risk Ranking for the consecutive EMIR Risk Committee Term to nominate for the consecutive EMIR Risk Committee Term the succeeding EMIR Risk Committee Members pursuant to this § 4. The Executive Board shall appoint the EMIR Risk Committee Members selected by the Supervisory Board from the nominations pursuant to § 4 (3) and (4) in accordance with § 4 (8) as EMIR Risk Committee Members for the consecutive EMIR Risk Committee Term. EMIR Risk Committee Members may serve several consecutive EMIR Risk Committee Terms.
- (10) A nomination (excluding a nomination pursuant to § 4 (7) and (15)) shall in any case include a curriculum vitae of the respective individual and information required to verify the following criteria which a person nominated or proposed by a Committee Authorised Person as EMIR Risk Committee Member should fulfil:
- (a) have a senior position in the daily risk management of the relevant Committee Authorised Person;
  - (b) have expertise with respect to the internal risk management of the relevant Committee Authorised Person;
  - (c) be authorised to make decisions with respect to the description and determination of the intra-day risk management of the relevant Committee Authorised Person; and
  - (d) have knowledge of the risk profile of customers of the relevant Committee Authorised Person.

For the avoidance of doubt, where a person is nominated or proposed by a Committee Authorised Person as EMIR Risk Committee Member, such EMIR Risk Committee Member does not need to be an employee of a Committee Authorised Person.

The Executive Board shall reject the nomination of an EMIR Risk Committee Member and its Deputy EMIR Risk Committee Member only if one or both such nominated persons do not satisfy the criteria set forth above or other material reasons exist which from the Executive Board's point of view would hinder an appointment as EMIR Risk Committee Member.

- (11) Eurex Clearing AG shall maintain a list of all EMIR Risk Committee Members (including the relevant contact details (address, phone number, fax number, email address)).
- (12) If the membership of an EMIR Risk Committee Member during an EMIR Risk Committee Term ceases, which shall be the case if
- (a) a Nominated Supervisory Board Member ceases to be a member of the Supervisory Board or

- (b) an EMIR Risk Committee Member retires or
- (c) the EMIR Risk Committee Member ceases to have a senior position in the daily risk management of the Committee Authorised Person which nominated the EMIR Risk Committee Member (if the EMIR Risk Committee Member had such a position at the time of the nomination),

in case (a) the Supervisory Board and in case (b) or (c) the Authorised Clearing Member or the Authorised Client, as relevant, shall be entitled to nominate (for the remainder of the relevant EMIR Risk Committee Term) a successor in accordance with this § 4.

- (13) If a Committee Authorised Person during an EMIR Risk Committee Term ceases to be a Committee Authorised Person, e.g., because it ceases to be a Clearing Member or a Client, the membership of the EMIR Risk Committee Member and the Deputy EMIR Risk Committee Member nominated by it ceases.

If such EMIR Risk Committee Member and the Deputy EMIR Risk Committee Member was nominated by a Clearing Member or a Client, the Executive Board invites the Committee Authorised Persons which nominees pursuant to § 4 (3) and (4) were not appointed as EMIR Risk Committee Member respectively Deputy EMIR Risk Committee Member to nominate an EMIR Risk Committee Member and a Deputy EMIR Risk Committee Member for the remainder of the relevant EMIR Risk Committee Term. If according to this procedure the necessary number of EMIR Risk Committee Members and Deputy EMIR Risk Committee Members will not be reached, then the Executive Board will invite the next following Clearing Member in the CM Risk Ranking or the next following Client in the Client Risk Ranking, as the case may be, to nominate an EMIR Risk Committee Member and a Deputy EMIR Risk Committee Member for the remainder of the EMIR Risk Committee Term. In addition, § 4 (3) and (4) shall apply mutatis mutandis to the selection of the EMIR Risk Committee Member and its Deputy EMIR Risk Committee Member.

- (14) If two or more Committee Authorised Persons are or become Affiliates, such Committee Authorised Persons are forthwith only entitled to have one single Committee Member which, if one Committee Authorised Person is an Authorised Clearing Member and one Committee Authorised Person is an Authorised Client shall be the Authorised Clearing Member.
- (15) If the Chairman or a Deputy Chairman ceases to be an EMIR Risk Committee Member or resigns, the Supervisory Board shall nominate a successor pursuant to § 4 (7).
- (16) The Deputy Chairman shall perform the functions of the Chairman at any Meeting at which the Chairman is incapacitated.
- (17) Eurex Clearing AG or any other entity within the Deutsche Börse AG group shall serve as the secretary of the EMIR Risk Committee (the “**EMIR Risk Committee Secretary**”) and shall perform the administrative duties.

## § 5 Convening the EMIR Risk Committee

- (1) The EMIR Risk Committee Secretary shall in the name of the Chairman convene a meeting of the EMIR Risk Committee (a “**Meeting**”) by delivering a notice (“**Notice**”) in accordance with this § 5. Such Notice shall be accompanied by the agenda (“**Agenda**”) which shall specify the matters to be discussed at such Meeting and separating EMIR Matters and all other matters. The agenda shall be notified to the EMIR Risk Committee Members no later than 15 (fifteen) days prior to a Meeting. At least 4 (four) Meetings are convened in each calendar year.
- (2) A Notice of a Meeting shall:
  - (a) be delivered to each EMIR Risk Committee Member by email and/or facsimile or in person; and
  - (b) specify the location, date and time of the Meeting.
- (3) The EMIR Risk Committee Members shall receive no later than 10 (ten) days prior to a Meeting the materials for such Meeting providing reasonable background in relation to the matters to be dealt with.
- (4) Notwithstanding the foregoing Paragraphs, the Chairman may convene a Meeting upon such notice and in such manner as it determines appropriate, in order to consider any Relevant Matter or Additional Matter which it determines to require the urgent attention of the EMIR Risk Committee.
- (5) As a general rule, all decisions and recommendations of the EMIR Risk Committee shall be made in physical Meetings. In individual cases, the Chairman may determine that Meetings be held by telephone or video conference or may allow that individual EMIR Risk Committee Members participate in a physical meeting by telephone or video conference, with at least one physical meeting per year should be organized. The EMIR Risk Committee Members attending a respective Meeting shall be referred to as the “**Participating EMIR Risk Committee Members**” and each a “**Participating EMIR Risk Committee Member**”. A Deputy EMIR Risk Committee Member attending a respective Meeting as a representative of its EMIR Risk Committee Member shall be a Participating EMIR Risk Committee Member.
- (6) Eurex Clearing AG shall make reasonable efforts to consult the EMIR Risk Committee on developments impacting the risk management of Eurex Clearing AG in emergency situations. When, in such situations, the EMIR Risk Committee is not consulted, the EMIR Risk Committee shall conduct a review ex post facto of decisions that were taken by Eurex Clearing AG on such matters absent EMIR Risk Committee consultation. Where, following such ex post facto review, the EMIR Risk Committee makes a recommendation, Eurex Clearing AG shall consider to act upon it; § 8 (4) shall apply.

## **§ 6 EMIR Risk Committee Quorum**

The EMIR Risk Committee will have a quorum if all EMIR Risk Committee Members have been invited and at least (i) half of the EMIR Risk Committee Members cast their vote and (ii) half of the EMIR Risk Committee Members nominated by the Clearing Members as well as half of the EMIR Risk Committee Members nominated by the Clients cast their vote. When deciding whether there is a quorum, one may not count any members of the EMIR Risk Committee excluded from casting their vote.

## **§ 7 EMIR Risk Committee Procedure; Voting**

- (1) All decisions and recommendations made by the EMIR Risk Committee shall be made at a Meeting (subject to § 9 (2)) by majority vote of the Participating EMIR Risk Committee Members.
- (2) Notwithstanding Paragraph (1), the Chairman may determine in a Meeting that decisions and recommendations on a specific matter (including EMIR Matters) to be made by the EMIR Risk Committee can be made outside a Meeting provided that the following requirements are met:
  - (a) the relevant matter was listed as an item on the Agenda of such Meeting,
  - (b) the relevant matter was discussed in detail at such Meeting, and
  - (c) no participating EMIR Risk Committee Member has objected against such procedure.

To prepare such decision or recommendation, the Chairman shall serve a notice to all EMIR Risk Committee Members by email or facsimile specifying the relevant matter with respect to which a decision or recommendation shall be made. The EMIR Risk Committee Members shall cast their votes by email or facsimile. The provisions under Paragraphs (3) and (4) shall apply accordingly.

With respect to the quorum, the provisions under § 6 shall apply accordingly.

The EMIR Risk Committee Members shall be informed about any decision or recommendation taken in accordance with this Paragraph (2).

- (3) For the purpose of all voting procedures hereunder, each Participating EMIR Risk Committee Member shall have one single vote. In the event that any vote is tied, the Chairman shall cast the decisive vote.
- (3) The Chairman will not allow an EMIR Risk Committee Member to cast a its vote on a particular matter, if he determines or has reasons to believe that the EMIR Risk Committee Member has an actual or potential conflict of interest on that particular matter.

## § 8 External independent experts; Supervisory Authorities

- (1) The Chairman shall coordinate the invitation of external independent experts as well as employees and members of corporate bodies of Eurex Clearing AG to participate in a Meeting (each an “**Invitee**”) upon being addressed by an EMIR Risk Committee Member. Invitees shall have no voting rights in Meetings of the EMIR Risk Committee.
- (2) Eurex Clearing AG bears the reasonable costs directly relating to a participation of an Invitee in a Meeting (reasonable fees which accrue for the time the Invitee is present, travel expenses and expenses for accommodation, if required). The Supervisory Board (in case of advice pursuant to § 1 (2) (a)) and the Executive Board (in case of advice pursuant to § 1 (2) (b)) may decide that Eurex Clearing AG bears further costs (such as, e.g., fees for memoranda or other reports to be prepared by external independent experts).
- (3) The competent supervisory authorities shall be entitled to attend Meetings of the EMIR Risk Committee without voting rights and to be informed about the activities and decisions of the EMIR Risk Committee.
- (4) The Executive Board will promptly inform the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* – “**BaFin**”) of any decision of the Supervisory Board or the Executive Board in which the Supervisory Board or the Executive Board decided not to follow advice given by the EMIR Risk Committee with respect to any Relevant Matter. For this purpose the Supervisory Board will immediately inform the Executive Board of any such decision.

## § 9 Minutes of Meetings

- (1) Minutes shall be taken of all Meetings (the “**Minutes**”). The Minutes shall set forth place and date of the Meeting, the Participating EMIR Risk Committee Members, the matters on the agenda, the substance of the deliberations and the votes taken by the EMIR Risk Committee. The EMIR Risk Committee Secretary shall record in the Minutes the identity of each Participating EMIR Risk Committee Member.
- (2) The EMIR Risk Committee may appoint one or more EMIR Risk Committee Members to prepare, on behalf of the EMIR Risk Committee, any proposal, response, statement or other document setting out the views of the EMIR Risk Committee with respect to any Relevant Matter or Additional 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 EMIR Risk Committee Members, deliver such Statement to the Supervisory Board (in case of advice pursuant to § 1 (2) (a)) or the Executive Board (in case of advice pursuant to § 1 (2) (b)), whereupon such Statement shall be incorporated into the Minutes of the Meeting in which the EMIR Risk Committee appointed the EMIR Risk Committee

Members to prepare the Statement and shall be taken to set out the view of the EMIR Risk Committee.

## § 10 Fees; Compensation

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

## § 11 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 Committee Authorised Person agrees during the relevant EMIR Risk 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 § 11 shall prevent an EMIR Risk Committee Member nominated or proposed by a particular Committee Authorised Person or such Committee Authorised Person from sharing Confidential Information with personnel of such Committee Authorised Person, its Affiliates as well as its professional advisors (together with the EMIR Risk Committee Members, the "**Authorised Persons**") solely for the purpose of preparing for the relevant matters which are to be discussed in the EMIR Risk Committee or for evaluating the business relationship of such Committee Authorised Person with Eurex Clearing AG. The Committee Authorised Person shall procure that such Authorised Persons are bound by confidentiality obligations to the Committee Authorised Person comparable to the confidentiality obligation assumed by the Committee Authorised Person to Eurex Clearing AG. Upon reasonable request by Eurex Clearing AG (in particular, for legal or regulatory purposes), the identities of the Authorised Persons shall be disclosed to Eurex Clearing AG. Confidential Information shall, in particular, not be used (a) to facilitate the implementation or development of services competing with those of Eurex Clearing AG or (b) in connection with any breach of law. In case of any breach of this confidentiality obligation by the Committee Authorised Person or an Authorised Person (to whom, in the case of an Authorised Person other than a EMIR Risk Committee Member, a Committee Authorised Person 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 Committee Authorised Person shall be liable for any foreseeable damages of Eurex Clearing AG, caused by that breach.

“**Confidential Information**” means (i) all information relating to the EMIR Risk Committee, including, but not limited to, any discussions, deliberations, proceedings or results of any vote, and (ii) any and all secrets of entities of Deutsche Börse Group, obtained from the EMIR Risk 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 Committee Authorised Person or the EMIR Risk Committee Member is aware) of this confidentiality obligation; or
  - (b) is identified in writing at the time of delivery as non-confidential by Eurex Clearing AG or any of its advisers; or
  - (c) is known by the Committee Authorised Person or the EMIR Risk 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 Committee Authorised Person or the EMIR Risk Committee Member after that date, from a source which is, as far as that Committee Authorised Person or the EMIR Risk Committee Member is aware, unconnected with Eurex Clearing AG and which, in either case, as far as that Committee Authorised Person or the EMIR Risk 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 the EMIR Risk Committee invites Invitees these shall enter into a confidentiality agreement with Eurex Clearing AG. 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 § 11 (1).

## § 12 **Fiduciary Duties; Limitation of Liability**

- (1) No EMIR Risk Committee Member shall, to the extent legally possible, owe any fiduciary duties (*Treuepflichten*) or other duties to protect (*Schutzpflichten*) Eurex Clearing AG, the shareholders of Eurex Clearing AG, any directors, managers or officers of Eurex Clearing AG or its shareholders, the Clearing Members, Disclosed Direct Clients, FCM Clients, other customers of the Clearing Members or any other person by reason of such service on the EMIR Risk Committee or the appointment of a Member to the EMIR Risk Committee. The obligations of the Nominated Supervisory Board Members as Members of the Supervisory Board shall remain unaffected.

- (2) In exercising its rights or performing its duties under these Statutes, Eurex Clearing AG shall only be liable *vis-à-vis* any Committee Authorised Person or any EMIR Risk Committee Member 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.
- (3) Nothing in this § 12, however, shall exclude or restrict any statutory liability for damages incurred as a result of injury to life, body or health.

### **§ 13 Sub-Committee**

The EMIR Risk Committee may with respect to certain subjects establish sub-committees (each a “**Sub-Committee**”). EMIR Risk Committee Members shall not be obliged to participate in Sub-Committees. These Statutes apply *mutatis mutandis* to any Sub-Committees. All decisions made by a Sub-Committee shall be presented to the EMIR Risk Committee for further consideration. The EMIR Risk Committee is not bound by any decisions of a Sub-Committee.

### **§ 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 17 of the Clearing Conditions after consultation with the EMIR Risk Committee.

### **§ 16 Publication**

These Statutes will be published on the website [www.eurexclearing.com](http://www.eurexclearing.com).

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