

## **EUREX CLEARING AG STATUTES FOR THE DISCIPLINARY COMMITTEE**

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

- (1) The following statutes (the "**Statutes**") shall apply to the procedures of the disciplinary committee (the "**Disciplinary Committee**").
- (2) The Disciplinary Committee shall be established pursuant to Chapter I Part 1 Number 14.2.1 of the Clearing Conditions for Eurex Clearing AG (the "**Clearing Conditions**") for the purpose of consulting with and, subject to applicable law and regulation, making recommendations to the Executive Board of Eurex Clearing AG with respect to the Relevant Matters (as defined in § 2 below).
- (3) Notwithstanding anything to the contrary in these Statutes, Eurex Clearing AG shall not have any obligation to accept any proposal made by, or take any action proposed by, the Disciplinary Committee, and any deliberation and/or decision of Eurex Clearing AG with respect to any such proposal shall be made at the sole discretion of Eurex Clearing AG, with no obligation whatsoever to the Disciplinary Committee in respect of such deliberation or decision or the reasoning thereof.
- (4) Terms used and not otherwise defined in these Statutes shall have the meanings ascribed to them in the Clearing Conditions. However, for the purpose of these Statutes a reference to a Clearing Member shall also include both General Clearing Members acting as Clearing Agents and ISA Direct Clearing Members, and FCM Clearing Members.
- (5) 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.

### **§ 2 Relevant Matters**

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

- (1) Any Disciplinary Procedures submitted to the Disciplinary Committee in accordance with the Disciplinary Procedures Rules; and
- (2) any other matters expressly assigned to the Disciplinary Committee in the Clearing Conditions.

### § 3 Committee Members

- (1) The Disciplinary Committee consists of 5 (five) Disciplinary Committee members (each a "**Committee Member**") which will be selected by Eurex Clearing AG prior to each Meeting in accordance with Paragraph (2).
- (2) Eurex Clearing AG shall with respect to each Meeting, taking into account the nature of the Alleged Breach (as defined in Clause 1 Paragraph 2 of the Disciplinary Procedure Rules), appoint in its discretion the Committee Members so that the Disciplinary Committee shall have the following composition:
  - (a) 2 (two) managers of Eurex Clearing AG;
  - (b) a representative of Eurex Clearing AG's risk, membership or legal department; and
  - (c) 2 (two) independent representatives (who shall not be employees or directors of Eurex Clearing AG or Deutsche Börse AG and/or the Clearing Member that is subject to the action hereunder or its affiliate(s)), drawn from market participants, experts, lawyers or other persons having suitable experience (each an "**Independent Committee Member**").
- (3) One of the Independent Committee Members shall serve as chairman of the Disciplinary Committee (the "**Chairman**").
- (4) Eurex Clearing AG shall provide a secretary of the Disciplinary Committee (the "**Committee Secretary**") and shall perform administrative duties. The Committee Secretary has no voting rights.

### § 4 Initiation of a Disciplinary Committee Meeting

- (1) The Disciplinary Committee becomes active in accordance with Chapter I Number 4 of the Disciplinary Procedures Rules if the Committee Secretary upon receipt of a notice by Eurex Clearing AG convenes a meeting of the Disciplinary Committee (a "**Meeting**") by written (*Textform*) notice ("**Notice**") in accordance with this § 4. Meetings shall be held at a location determined by the Committee Secretary. Any Committee Members who do not attend in person may participate by telephone or video conference.
- (2) A Notice of a Meeting shall:
  - (a) be delivered to each Committee Member by e-mail and/or facsimile no later than five Business Days prior to the date of such Meeting;

- (b) specify the date and time of the Meeting, which shall be between 1:00 p.m. and 6:00 p.m. Central European time on a Business Day;
  - (c) set out the arrangements for Committee Members to attend by telephone and/or video conference;
  - (d) set out an agenda specifying in reasonable detail the matter(s) to be discussed at such Meeting, together with the Report and any CM Response (as defined in Clause 5 Paragraph 1 of the Disciplinary Procedure Rules) received by Eurex Clearing AG in accordance with the Disciplinary Procedures Rules so as to provide reasonable background in relation to the Alleged Breach (the "**Agenda**"); and
  - (e) details of the precise composition of the Disciplinary Committee for the respective meeting date and the invited Parties and Guests.
- (3) The Committee Members attending a respective Meeting (either in person or by telephone or video conference) shall hereinafter be referred to as the "**Participating Committee Members**" and each a "**Participating Committee Member**".
- (4) Invited Parties and Guests according to § 5 below shall receive the Notice as well.

## § 5 **Parties and Guests**

- (1) The "**Parties**" are
  - (a) the relevant Clearing Member; and
  - (b) Eurex Clearing AG.
- (2) Each Party shall send at least one representative ("**Representative**") who shall be duly appointed to represent the relevant Party during the Meeting.
- (3) "**Guests**" of a Party in a Meeting may be
  - (a) experts;
  - (b) legal advisors;
  - (c) accounting advisors/external auditors; and/or
  - (d) any other person who may be suitable to support the disciplinary investigation.

- (4) Parties who want to be supported by a Guest shall inform Eurex Clearing AG and the Committee Secretary of the name, profession and address of each Guest in accordance with Chapter I Number 4 of the Disciplinary Procedures Rules. If the Clearing Member has failed to submit a CM Response or such CM Response did not contain the required information about the Guests of such Clearing Member the Disciplinary Committee shall decide whether the Guests of the relevant Clearing Member may attend the Meeting. A Representative shall always be entitled to attend the Meeting. To ensure the efficiency of the Meeting, not more than 4 (four) Representatives and/or Guests of each Party may attend a Meeting.
- (5) Eurex Clearing AG and/or the Clearing Member shall only be entitled to object to the attendance of a Guest of the respective other Party if there is a substantiated conflict of interest.

## **§ 6 Disciplinary Committee Quorum, Procedure and Voting**

- (1) The quorum for a valid Meeting shall be 5 (five) Committee Members (the "**Quorum**").
- (2) In the event that a Quorum is not so present at the commencement of and throughout a duly convened Meeting, such Meeting shall be adjourned by the Chairman to the next following Business Day. A Quorum at such adjourned Meeting shall consist of the then Participating Committee Members provided that notice of the adjourned Meeting has been given to all Committee Members in accordance with § 4 above (provided that § 4 Paragraph (2) (a) shall not apply and that such notice has included a statement to the effect that the Participating Committee Members at such adjourned Meeting would constitute a Quorum).
- (3) The Chairman opens the Meeting and suggests the matters to be discussed in the course of the Meeting, on the basis of the Report, the CM Response, and such other information and documentation as the Disciplinary Committee considers appropriate. In particular, the Disciplinary Committee shall decide whether new facts or information may be presented by a Clearing Member who has failed to provide a CM Response in accordance with the Disciplinary Procedures Rules, including where an incomplete CM Response has been provided.
- (4) Having considered the Report, the CM Response and any other information and documentation provided to the Disciplinary Committee during the Meeting, the Disciplinary Committee must determine whether, in its view, the Alleged Breach has been committed and whether the recommended mitigating actions and/or Sanctions are considered to be appropriate. The Meeting of the Disciplinary Committee shall be completed by the end of the day, unless the Disciplinary Committee decides that it requires more time in which case the Meeting shall be reconvened by the Chairman as soon as reasonably practicable.

- (5) The Disciplinary Committee shall make its determination by a majority of the Participating Committee Members, provided that no determination shall be made without at least three (3) Committee Members casting their votes.
- (6) For the purpose of all voting procedures hereunder each Participating Committee Member shall have one single vote. In the event that any vote is tied, the Chairman shall have the casting vote.

## **§ 7 Minutes of Meetings and Voting**

- (1) The Committee Secretary shall procure that with respect to each Meeting, minutes (the “**Minutes**”) are prepared. The Minutes shall set forth the place and the date of the Meeting, the identity of each Participating Committee Member and each Representative, the matters on the Agenda, the substance of the deliberations and the votes taken by the Disciplinary Committee as well as how each Participating Committee Member has voted with respect to each matter raised at the Meeting.
- (2) The Minutes should further set out the grounds on which the Disciplinary Committee has determined that the Alleged Breach has or has not been committed and its proposal as to mitigating actions and/or the Sanctions, if any, that should be imposed by Eurex Clearing AG.
- (3) The Minutes shall be approved by the Committee Secretary and the Chairman.

## **§ 8 Costs**

The costs of the Meeting will be borne by the Party against which the Disciplinary Committee has decided. In case a Fine is recommended, which is lower than the Fine initially proposed by Eurex Clearing AG, the costs will be shared pro rata between Eurex Clearing AG and the Clearing Member provided that the Disciplinary Committee may decide to allocate costs in any other way it considers appropriate. If the Clearing Member has not submitted a CM Response and the case is decided in favour of the Clearing Member in whole or in part on the basis of information which the Clearing Member only presented after the period for submitting a CM Response has lapsed the Clearing Member shall bear the costs of the Meeting.

Costs in relation to any Guests shall be borne in all cases by the Party who required the Guest to attend the Meeting.

## § 9 Confidentiality

Except as expressly contemplated in these Statutes or as may be required by applicable law or court order or by a regulatory, self-regulatory or supervisory authority having appropriate jurisdiction, each Independent Committee Member shall agree (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 or the benefit of any third person and (iii) to sign a confidentiality undertaking to this respect which shall be addressed to Eurex Clearing AG and which shall also be for the benefit of all Clearing Members which are or will become subject to Disciplinary Procedures (*Vertrag zu Gunsten Dritter*). Each Party shall ensure that its Representatives and Guests are subject to the same confidentiality obligation.

"**Confidential Information**" means all matters relating to the Disciplinary Committee, including any discussions, deliberations, proceedings or results of any vote, except for information which

- (a) is or becomes public information other than as a direct or indirect result of a breach (of which the Independent 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 Independent 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 Independent Committee Member after that date, from a source which is, as far as that Independent Committee Member is aware, unconnected with Eurex Clearing AG and which, in either case, as far as that Independent Committee Member is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

## § 10 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.

## § 11 Amendments

These Statutes may be amended in accordance with Chapter I Part 1 Number 17.2 of the Clearing Conditions.

In respect of FCM Clearing Members these Statutes for the Disciplinary Committee may be amended in accordance with Chapter I Number 16.2 of the FCM Regulations.

**§ 12      Publication**

These Statutes will be published on the Eurex Clearing Website.

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