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Chapter I Part VI is being newly inserted.

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## **Part 6 Basic Clearing Member Provisions**

### **1 Application of the Basic Clearing Member Provisions**

1.1 The provisions set forth in this Part 6 (the “**Basic Clearing Member Provisions**”) apply to entities other than a Clearing Member that participate in the Clearing of certain Transactions as a Basic Clearing Member (as defined in Part 1 Number 1.1.4) through a clearing agent (“**Clearing Agent**”) by entering into a Clearing Agreement with Eurex Clearing AG in the form appended to the Clearing Conditions as Appendix 11 (each a “**Basic Clearing Member Clearing Agreement**”).

1.2 Any Transaction between the Basic Clearing Member and Eurex Clearing AG shall be concluded only as a proprietary Transaction of the Basic Clearing Member (each a “**Basic Clearing Member Transaction**”). The Basic Clearing Member may not clear Transactions for clients, but only for its own account.

1.3 Basic Clearing Member Transactions may only be Market Transactions (except for Eurex Transactions, Eurex Bonds Transactions, FWB Transactions and ISE Transactions) or OTC Interest Rate Derivative Transactions. Market Transactions and OTC Transactions are concluded in accordance with the following provisions:

(1) Whenever an order or quote entered into the trading systems of a Market by a Basic Clearing Member or a Clearing Agent acting on behalf of the Basic Clearing Member is matched with another order or quote, in each case a Market Transaction with identical terms shall be concluded between Eurex Clearing AG and the relevant Basic Clearing Member.

(2) Whenever

(i) an Original OTC Transaction to which a Basic Clearing Member is a party is submitted to Eurex Clearing AG by a Clearing Agent on behalf of such Basic Clearing Member, either directly or via a third party information provider, as provided for in the Special Clearing Provisions, and

(ii) Eurex Clearing AG accepts such Original OTC Transaction for inclusion in the Clearing Procedures in accordance with the Special Clearing Provisions,

Eurex Clearing AG will, subject to the following provisions, interpose itself by means of a novation as central counterparty between the parties of the Original OTC Transaction.

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Any novation of Original OTC Transactions shall be subject to the novation procedures, criteria and effectiveness requirements specified in the Special Clearing Provisions. The OTC Transactions resulting from the novation shall not be subject to the valid existence of the Original OTC Transaction (abstract novation).

The Original OTC Transaction shall – subject to the Special Clearing Provisions – upon the novation becoming effective be replaced by two OTC Transactions, each on terms that are identical to the terms of the other OTC Transaction, one of which shall exist directly between Eurex Clearing AG and the Basic Clearing Member.

## **2 Admission Criteria; Continuing Obligations**

An entity may enter into a Basic Clearing Member Clearing Agreement as a Basic Clearing Member or as a Clearing Agent in accordance with the following conditions.

### **2.1 Basic Clearing Member**

#### **2.1.1 Granting of Clearing Licence**

- (1) The participation in the Clearing of Basic Clearing Member Transactions as a Basic Clearing Member requires a license issued by Eurex Clearing AG for each applicable Transaction Type (each a “**Basic Clearing Member Clearing Licence**”).
- (2) Eurex Clearing AG may grant a Basic Clearing Member Clearing License for a Transaction Type if the applicant meets the general prerequisites pursuant to Number 2.1.2 and the special prerequisites for the relevant Transaction Type set forth in the Special Clearing Provisions.
- (3) A Basic Clearing Member Clearing License for a Transaction Type will be granted upon the conclusion of (or an amendment to this effect of) the Basic Clearing Member Clearing Agreement.
- (4) Basic Clearing Member Clearing Licenses as well as any rights and obligations resulting therefrom may not be assigned or transferred by way of contractual agreement or otherwise without the consent of Eurex Clearing AG.

#### **2.1.2 General Prerequisites for Basic Clearing Member Clearing Licenses**

- (1) The Basic Clearing Member must be a credit institution, financial institution, investment firm, insurance undertaking, reinsurance undertaking, collective investment undertaking (in the case of an Unincorporated Fund, Sub-Fund or Fund Segment, acting through an Authorised Manager) as defined in Article 4(1) of the CRR or an institution for occupational retirement provision as defined in Article 6(a) of Directive 2003/41/EC, in each case domiciled in a member state of the EU or in Switzerland.
- (2) The Basic Clearing Member must have a technical connection to the systems of Eurex Clearing AG on the basis of the Basic Clearing Member Clearing Agreement,

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which shall incorporate the General Terms and Conditions to the Agreement on Technical Connection to the Clearing EDP of Eurex Clearing AG.

- (3) The Basic Clearing Member must have available own funds and provide evidence thereof in accordance with the requirements and procedures for Clearing Members set out in Part 1 Number 2.1.2 Paragraph (3), except that Part 1 Number 2.1.2 Paragraph (3) (d) shall not apply. If the own funds of the Basic Clearing Member fall below the minimum amount so required by Eurex Clearing AG from time to time, Eurex Clearing AG shall be entitled to require the Basic Clearing Member to provide Supplementary Margin; for the avoidance of doubt, non-compliance by the Basic Clearing Member with such requirement to provide Supplementary Margin shall constitute a Basic Clearing Member Termination Event. It is in Eurex Clearing AG's discretion to permit (or not permit) shortfalls in own funds to be made up, or continue to be made up, by Supplementary Margin.
- (4) Applicants not subject to own fund requirements under the CRD IV and the CRR must (i) have available equivalent regulatory capital and provide evidence thereof in accordance with the requirements and procedures for Clearing Members set out in Part 1 Number 2.1.2 Paragraph (3) (except that Part 1 Number 2.1.2 Paragraph (3) lit. (d) shall not apply) or (ii) where Eurex Clearing AG determines that the financial resources of the applicant shall be assessed on the basis of the assets under management of the applicant (including in the case of collective investment undertakings and in the case of applicants with assets being subject to certain forms of segregation), provide evidence of a value in respect of their assets under management in an amount and frequency as determined by Eurex Clearing AG in its sole discretion from time to time. If the equivalent regulatory capital or the value of the assets under management, as applicable, falls below the minimum value so required by Eurex Clearing AG from time to time, Eurex Clearing AG shall be entitled to require the Basic Clearing Member to provide Supplementary Margin; for the avoidance of doubt, non-compliance by the Basic Clearing Member with such requirement to provide Supplementary Margin shall constitute a Basic Clearing Member Termination Event. It is in Eurex Clearing AG's discretion to permit (or not permit) shortfalls below the minimum value to be made up, or continue to be made up, by Supplementary Margin.
- (5) Eurex Clearing AG must have conducted a positive internal assessment of the creditworthiness of the Basic Clearing Member prior to its admission and at least annually thereafter in accordance with the procedures and criteria defined for Clearing Members in Part 1 Number 1.6. The Basic Clearing Member is obliged to provide the data relevant to perform the respective assessments upon request of Eurex Clearing AG. Eurex Clearing AG determines dedicated thresholds or limits for each of the monitored risks. The Basic Clearing Member is required to comply with these thresholds and limits at all times.
- (6) The Basic Clearing Member must, upon admission and at all times thereafter, have a General Clearing Member appointed to act as its Clearing Agent in accordance with a Basic Clearing Member Clearing Agreement and such Clearing Agent must satisfy

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all requirements with respect to a Clearing Agent stipulated in these Clearing Conditions.

### **2.1.3 Rejection and Termination of Basic Clearing Member Clearing Licenses**

- (1) Part 1 Number 2.1.4 Paragraph (1) shall apply *mutatis mutandis* to a Basic Clearing Member Clearing License.
- (2) Basic Clearing Member Clearing Licenses may be terminated by Eurex Clearing AG or the Basic Clearing Member in accordance with Part 1 Number 13.1.
- (3) Upon the occurrence of a Basic Clearing Member Termination Date, all Basic Clearing Member Clearing Licenses of the affected Basic Clearing Member shall automatically expire.

### **2.1.4 Certain continuing Obligations of Basic Clearing Members**

- (1) Each Basic Clearing Member shall ensure that, at any time, sufficient funds are credited to the Basic Clearing Member Cash Accounts and that sufficient amounts of Securities and cash amounts for the settlement of Settlement Claims are credited to relevant security accounts and the corresponding cash accounts.
- (2) Each Basic Clearing Member shall – in accordance with any mandatory laws applicable to it – promptly inform Eurex Clearing AG if it is no longer in compliance with any of the prerequisites for any Basic Clearing Member Clearing License granted to it or if any other circumstances prevail, which might render any of these prerequisites no longer satisfied or if a Basic Clearing Member Termination Event or Basic Clearing Member Insolvency Termination Event has occurred.
- (3) Basic Clearing Members are obliged, at the request of Eurex Clearing AG, to provide Eurex Clearing AG with evidence of continued compliance with the prerequisites for a Basic Clearing Member Clearing License.
- (4) Each Basic Clearing Member shall notify Eurex Clearing AG immediately and without request if it is unable to fulfil any obligations under a Basic Clearing Member Transaction or any other obligations under a Basic Clearing Member Standard Agreement or Basic Clearing Member Clearing Agreement, including its obligations to deliver Basic Clearing Member Margin or Basic Clearing Member Variation Margin, if it becomes aware that its Clearing Agent is unable to fulfil any of the Clearing Agent's obligations under the Basic Clearing Member Clearing Agreement or any of the Basic Clearing Member's obligations that shall be performed through the Clearing Agent.

## **2.2 Clearing Agent**

- 2.2.1 The Clearing Agent must be a Clearing Member, hold a General Clearing License and meet the general and special prerequisites for each Transaction Type that the Basic Clearing Member intends to clear.

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2.2.2 Eurex Clearing AG retains the right to reject a Clearing Agent for a Basic Clearing Member in order to prevent and control adverse risk constellations in accordance with Eurex Clearing AG's risk management policy.

### 3 Role of Clearing Agent

3.1 The Clearing Agent acts on behalf and for the account of the Basic Clearing Member with respect to the rights and obligations of the Basic Clearing Member towards Eurex Clearing AG under the Basic Clearing Member Clearing Agreement and any Basic Clearing Member Transaction as further set out in this Part 6. Subject to Number 3.7, the entire clearing relationship between the Basic Clearing Member and Eurex Clearing AG shall accordingly be administered and settled through the Clearing Agent as further set out in these Basic Clearing Member Provisions.

The Clearing Agent shall, without prejudice to the right of Eurex Clearing AG pursuant to Number 7.3.1 Paragraph (2) and Number 7.3.2 Paragraph (2) to directly debit a Basic Clearing Member Cash Account held by the Clearing Agent, not have any obligation (i) to provide Basic Clearing Member Margin or Basic Clearing Member Variation Margin and/or (ii) to satisfy any Settlement Claims in respect of any Basic Clearing Member Transactions and any failure to do so shall as such not constitute a Termination Event in respect of the Clearing Agent.

3.2 By entering into the Basic Clearing Member Clearing Agreement with the Clearing Agent and Eurex Clearing AG, subject to Number 3.7, the Basic Clearing Member irrevocably authorizes (*bevollmächtigt*) the Clearing Agent to submit and receive, also on behalf of the Basic Clearing Member, all statements (including, without limitation, any notice, termination notice or other declaration to and from Eurex Clearing AG) and to take and accept all other acts on behalf of the Basic Clearing Member that are necessary or expedient to effect Basic Clearing Member Transactions and for the performance by or to the Basic Clearing Member of obligations arising thereunder or under the Basic Clearing Member Clearing Agreement. The Clearing Agent shall be entitled to grant sub-authorisations (*Untervollmachten*).

3.3 The Basic Clearing Member agrees that Eurex Clearing AG is entitled to discharge (*erfüllen*) all present and future delivery and payment obligations which may arise under the relevant Basic Clearing Member Clearing Agreement or any Basic Clearing Member Transaction by payment or delivery, respectively, to the Clearing Agent. Any such payment or delivery by Eurex Clearing AG to the Clearing Agent will discharge (*erfüllen*) the relevant payment or delivery obligation of Eurex Clearing AG to the Basic Clearing Member.

3.4 Eurex Clearing AG agrees that the Clearing Agent is entitled to discharge (*erfüllen*) all present and future delivery and payment obligations of the Basic Clearing Member which may arise under the relevant Basic Clearing Member Clearing Agreement or any Basic Clearing Member Transaction by payment or delivery, respectively, to Eurex Clearing AG. Any such payment or delivery by the Clearing Agent to Eurex Clearing AG will discharge (*erfüllen*) the relevant payment or delivery obligation of the Basic Clearing Member to Eurex Clearing AG.

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- 3.5 Unless otherwise set out in these Basic Clearing Member Provisions, any recourse, reimbursement or other claims of the Clearing Agent against the Basic Clearing Member resulting from the performance by the Clearing Agent of any claims arising under the relevant Basic Clearing Member Clearing Agreement or of any obligations of the Basic Clearing Member are solely a matter of, and subject to, any additional terms to the Basic Clearing Member Clearing Agreement, as such additional terms may be agreed on a bilateral basis between the Clearing Agent and the Basic Clearing Member in accordance with Number 4.1.5.
- 3.6 The Clearing Agent shall, subject to and in accordance with the General Clearing Provisions, participate in any default management process with respect to all Basic Clearing Member Transactions of a particular Basic Clearing Member (for which it acts as Clearing Agent). Subject to and in accordance with the DM Auction Rules, a Basic Clearing Member (with respect to which no Basic Clearing Member Termination Event has occurred) may, upon invitation by Eurex Clearing AG, participate in any default management process directly or through its Clearing Agent.
- 3.7 The Basic Clearing Member may, subject to the Clearing Agent's prior written consent, upon at least five (5) Business Days' prior written notice to Eurex Clearing AG and the Clearing Agent, limit the role, tasks, functions and authorities of the Clearing Agent to only some of the tasks, functions and authorities of the Clearing Agent set out or referred to in this Part 6 (the "**Clearing Agent Limitation Notice**"), except that a Clearing Agent Limitation Notice may not limit any of the Clearing Agent's tasks, functions and authorities set out or referred to in Number 3.6 or Number 9. The Clearing Agent Limitation Notice must set out the tasks, functions and authorities of the Clearing Agent that shall be subject to such limitation (and, as relevant, the scope of such limitation in respect to a particular task, function and authority) and the point in time at which such limitation shall take effect. Upon a limitation having become effective in accordance with the preceding sentences, the tasks, functions and authorities of the Clearing Agent specified in the Clearing Agent Limitation Notice shall be transferred to the Basic Clearing Member, and the relevant provisions of the Clearing Conditions shall be read accordingly. Upon the Clearing Agent Limitation Notice becoming effective, the relevant Basic Clearing Member Clearing Agreement shall automatically be amended accordingly. The provision of this Number 3.7 shall apply accordingly, with respect to a subsequent termination of a limitation of the Clearing Agent's tasks, functions and authorities.
- 3.8 If the Basic Clearing Member Cash Account is an account held by the Clearing Agent, upon the occurrence of a Basic Clearing Member Default Information Event, the Clearing Agent shall be entitled to withdraw, by written notice to Eurex Clearing AG (a "**Clearing Agent Debit Withdrawal Notice**"), the right of Eurex Clearing AG to debit such Basic Clearing Member Cash Account and Eurex Clearing AG shall, without undue delay (*unverzüglich*) after receipt of such Clearing Agent Debit Withdrawal Notice, cease to debit such Basic Clearing Member Cash Account for any payments owed by such Basic Clearing Member.

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3.9 The Clearing Agent shall notify Eurex Clearing AG and the Basic Clearing Member immediately and without request if it is, or becomes aware that it will be, unable to fulfil any of its obligations under the Basic Clearing Member Clearing Agreement.

#### **4 Content of Basic Clearing Member Clearing Agreement and the Basic Clearing Member Standard Agreement**

##### **4.1 Construction**

4.1.1 If a Basic Clearing Member Clearing Agreement is entered into by Eurex Clearing AG, a Clearing Agent and a Basic Clearing Member, such Basic Clearing Member Clearing Agreement will provide for terms and conditions applying (i) between Eurex Clearing AG, the Clearing Agent and the Basic Clearing Member and (ii) between Eurex Clearing AG and the Basic Clearing Member with respect to the Basic Clearing Member Standard Agreement (as defined below) and the Basic Clearing Member Transactions of such Basic Clearing Member.

4.1.2 All rights and obligations between Eurex Clearing AG and the Basic Clearing Member with respect to Basic Clearing Member Transactions under the Basic Clearing Member Clearing Agreement shall constitute a separate arrangement (each such arrangement a “**Basic Clearing Member Standard Agreement**”). All Basic Clearing Member Transactions and all Redelivery Claims between Eurex Clearing AG and the relevant Basic Clearing Member arising pursuant to the Basic Clearing Member Provisions under the relevant Basic Clearing Member Standard Agreement form a single agreement between the parties and such agreement constitutes a separate master agreement (*Rahmenvertrag*) between such parties which (subject to the provisions in these General Clearing Provisions on the termination of individual Basic Clearing Member Transactions) can be terminated only in its entirety.

4.1.3 Basic Clearing Member Transactions and all corresponding rights and obligations under the Basic Clearing Member Standard Agreement relating to the relevant Basic Clearing Member will be separate from:

- (a) all Basic Clearing Member Transactions and all corresponding rights and obligations under any other Basic Clearing Member Standard Agreement relating to any other Basic Clearing Member of the Clearing Agent,
- (b) all Own Transactions and all corresponding rights and obligations under the Elementary Proprietary Standard Agreement between the Clearing Agent (acting in its capacity as Clearing Member) and Eurex Clearing AG, and
- (c) any other rights and obligations under any other Standard Agreement established under any other Clearing Agreement between the Clearing Agent (acting in its capacity as Clearing Member) and Eurex Clearing AG pursuant to the Elementary Clearing Model Provisions, the Individual Clearing Model Provisions or the Net Omnibus Clearing Model Provisions.

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- 4.1.4 References in these Basic Clearing Member Provisions to a Basic Clearing Member Standard Agreement shall be construed solely by reference to the Basic Clearing Member Clearing Agreement and a certain Basic Clearing Member (and shall therefore exclude any other Basic Clearing Member Standard Agreement or any other Standard Agreement established under any other Clearing Agreement pursuant to the Clearing Conditions).
- 4.1.5 The Clearing Agent and the Basic Clearing Member may separately agree on additional terms to the Basic Clearing Member Clearing Agreement to the extent those additional terms do not conflict with the Basic Clearing Member Clearing Agreement. In the event of any inconsistencies between any such additional terms and the Basic Clearing Member Clearing Agreement, the Basic Clearing Member Clearing Agreement shall prevail.

**4.2 General principles applicable to the settlement of Basic Clearing Member Transactions and any Delivery and Redelivery of Basic Clearing Member Margin or Basic Clearing Member Variation Margin**

- 4.2.1 Eurex Clearing AG and the Basic Clearing Member shall be obliged to fulfil any payment obligations under the Basic Clearing Member Transactions or obligations to deliver or redeliver cover in respect of either the Basic Clearing Member Margin (as defined in Number 7.1) or the Basic Clearing Member Variation Margin (as defined in Number 8.1) under the relevant Basic Clearing Member Standard Agreement by transferring to the transferee all right, title and interest in and to the Eligible Margin Assets in the form of cash free and clear of any and all rights and claims of the transferring party and of any third person, howsoever arising, including, without limitation, pursuant to applicable law or regulation or under any statutory or other trust. The value of such assets shall, as of the date the transfer is effected, be at least equal to the value at that date of the concerned payment or delivery obligation.
- 4.2.2 The actual payment of Eligible Margin Assets in the form of cash in respect of Basic Clearing Member Margin or Basic Clearing Member Variation Margin gives rise to a corresponding contractual claim of the margin provider against the margin taker for repayment of equivalent assets in the same amount as such Eligible Margin Assets actually delivered (or increases an already existing repayment or redelivery claim; each such claim shall be referred to as a **“Redelivery Claim”**). Each such Redelivery Claim shall be allocated to the relevant Basic Clearing Member Standard Agreement.

In the case of Basic Clearing Member Margin in the form of cash, only the Basic Clearing Member may be the creditor of the relevant Redelivery Claim and in the case of Basic Clearing Member Variation Margin, Eurex Clearing AG or the Basic Clearing Member may be the creditor of the relevant Redelivery Claim.

For the purpose of the relevant Redelivery Claim, the term **“equivalent”** means the same amount in the same currency as such Eligible Margin Assets actually delivered in respect of the Basic Clearing Member Margin or the Basic Clearing Member Variation Margin.

A Redelivery Claim will become due with respect to (i) Basic Clearing Member Margin in the form of cash upon receipt of a respective declaration from the Clearing Agent (acting



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on behalf and for the account of the Basic Clearing Member) by Eurex Clearing AG prior to the then applicable cut-off time of any Business Day, as specified by Eurex Clearing AG on its website [www.eurexclearing.com](http://www.eurexclearing.com) for cash with respect to the relevant currency, if and to the extent the relevant applicable Default Basic Clearing Member Margin Requirement (as defined in Number 7.2.1) is below the aggregate value of all Eligible Margin Assets actually delivered in respect of the Basic Clearing Member Margin, and with respect to (ii) Basic Clearing Member Variation Margin in accordance with Number 8, in each case provided that no Termination Date with respect to the Clearing Agent and no Basic Clearing Member Termination Date has occurred, respectively.

- 4.2.3 Subject to Number 3.2.2 Paragraph (2) and (3) of the General Clearing Provisions, the term “**actually delivered**” when used in the Basic Clearing Member Provisions means (i) the actual credit of an Eligible Margin Asset in the form of cash to the relevant Eurex Clearing AG cash account, (ii) the actual credit of an Eligible Margin Asset in the form of Securities to the relevant Basic Clearing Member Pledged Securities Account and such Eligible Margin Asset being subject to a valid pledge in accordance with Number 7.6.1 Paragraph (3), or (iii) in the event of a set-off pursuant to Number 6, the legal effectiveness of such set-off. The term “**actual delivery**” shall be interpreted accordingly.

Where reference is made in the Basic Clearing Member Provisions to the “**aggregate value**” of Eligible Margin Assets in connection with the assessment of compliance with the Default Basic Clearing Member Margin Requirement or an obligation to deliver or redeliver cover in respect of the Basic Clearing Member Margin or the Basic Clearing Member Variation Margin, as applicable, the aggregate value will be determined by Eurex Clearing AG in accordance with Number 3.2.2 of the General Clearing Provisions.

## 5 Internal Accounts

In addition to the internal accounts set out in Number 4 of the General Clearing Provisions, Eurex Clearing AG establishes and maintains with respect to each Basic Clearing Member the following internal accounts:

### 5.1 Transaction Accounts

Eurex Clearing AG opens and maintains for each Basic Clearing Member one transaction account (each a “**Basic Clearing Member Own Account**”) in which the Basic Clearing Member Transactions of the relevant Basic Clearing Member shall be booked.

### 5.2 Internal Cash Accounts

- 5.2.1 With respect to each currency accepted by it, Eurex Clearing AG establishes and maintains for each Basic Clearing Member one internal cash account for the settlement of claims into which all daily settlement payments, fees and other cash payment obligations (other than any obligation to provide Basic Clearing Member Margin) arising under Basic Clearing Member Transactions or under the Clearing Conditions with respect or relating to the relevant Basic Clearing Member Standard Agreement shall be booked.

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5.2.2 The daily balance of each internal cash account (after taking into account any set-off pursuant to the Clearing Conditions) shall be debited or credited, as the case may be, to the respective Basic Clearing Member Cash Account to the extent that Eurex Clearing AG does not claim any credit balance in such account as Basic Clearing Member Margin or Basic Clearing Member Variation Margin.

### 5.3 Internal Margin Accounts

5.3.1 Eurex Clearing AG establishes and maintains for each Basic Clearing Member an internal client margin account (each an “**Internal Basic Clearing Member Margin Account**”) in which all Eligible Margin Assets that have been actually delivered to Eurex Clearing AG as Basic Clearing Member Margin in respect of the Basic Clearing Member Standard Agreement will be recorded.

5.3.2 For this purpose, (i) all credits and debits of Securities to the relevant Basic Clearing Member Pledged Securities Account (and, if an Accepted Collateral Management System is used, all pledges or releases of pledges of Securities made by use of such Accepted Collateral Management System), and (ii) all daily cash credits or debits in respect of Basic Clearing Member Margin to the Basic Clearing Member Cash Account will be allocated to the relevant Basic Clearing Member Standard Agreement and recorded on the relevant Internal Basic Clearing Member Margin Account.

### 5.4 Methods of assigning transfers or pledges of Eligible Margin Assets to a Basic Clearing Member Standard Agreement

Eurex Clearing AG will provide the Clearing Agent with specific customer identifiers with respect to each of such Clearing Agent’s Basic Clearing Members. Any transfer or pledge of Eligible Margin Assets to Eurex Clearing AG in respect of Basic Clearing Member Margin or Basic Clearing Member Variation Margin shall clearly refer to the applicable customer identifier.

## 6 Set-off

6.1 Any claim of Eurex Clearing AG and the Basic Clearing Member under a Basic Clearing Member Standard Agreement, including claims to provide cover in respect of Basic Clearing Member Margin or Basic Clearing Member Variation Margin, may only be set off against claims arising from Basic Clearing Member Transactions under the same Basic Clearing Member Standard Agreement or claims to provide cover in respect of Basic Clearing Member Margin or Basic Clearing Member Variation Margin of the respective other party under the same Basic Clearing Member Standard Agreement. Eurex Clearing AG is not entitled to set off its claims vis-à-vis the Clearing Member (acting as Clearing Agent for the Basic Clearing Member or otherwise) against claims of a Basic Clearing Member or to set off its claims vis-à-vis one Basic Clearing Member against claims of another Basic Clearing Member.

6.2 Any other set-off of claims between Eurex Clearing AG and the Basic Clearing Member or between Eurex Clearing AG and a Clearing Member acting as Clearing Agent for the Basic Clearing Member shall be prohibited. This does not apply to a set-off by the Basic

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Clearing Member or the Clearing Agent with claims which are undisputed or have been determined as legally binding.

## **7 Basic Clearing Member Margin**

### **7.1 General Obligation to provide Basic Clearing Member Margin**

7.1.1 The Basic Clearing Member is required to provide margin for all Basic Clearing Member Transactions under the relevant Basic Clearing Member Standard Agreement (“**Basic Clearing Member Margin**”) in such amounts, in such forms and at such times as are required pursuant to this Number 7 and the Special Clearing Provisions.

7.1.2 The purpose of Basic Clearing Member Margin actually delivered under the relevant Basic Clearing Member Standard Agreement is to collateralise all claims (whether present, future, actual, contingent or prospective) of Eurex Clearing AG arising under Basic Clearing Member Transactions, any Difference Claim and any other present and future claims of Eurex Clearing AG against the Basic Clearing Member under the relevant Basic Clearing Member Standard Agreement.

### **7.2 The Margin Requirement**

7.2.1 The amount of Eligible Margin Assets to be delivered as cover in respect of the relevant Margin for each Basic Clearing Member Standard Agreement shall be determined in accordance with Number 3.1 of the General Clearing Provisions (the “**Default Basic Clearing Member Margin Requirement**”).

7.2.2 Eurex Clearing AG will determine the Default Basic Clearing Member Margin Requirement separately with respect to each Basic Clearing Member Standard Agreement, based on the margin requirement for the Basic Clearing Member Transactions included in the relevant Basic Clearing Member Standard Agreement.

7.2.3 The Default Basic Clearing Member Margin Requirement with respect to each Basic Clearing Member Standard Agreement will be notified by Eurex Clearing AG to the Clearing Agent and the relevant Basic Clearing Member.

### **7.3 Margin Call**

#### **7.3.1 Margin Calls and direct debit prior to the end of a Business Day**

(1) If Eurex Clearing AG at any time prior to the end of a Business Day determines that the aggregate value of Eligible Margin Assets actually delivered as cover in respect of Basic Clearing Member Margin is less than the applicable Default Basic Clearing Member Margin Requirement under the relevant Basic Clearing Member Standard Agreement, Eurex Clearing AG will require the Basic Clearing Member to provide (additional) Eligible Margin Assets (including via the Clearing Agent) in accordance with the delivery procedures pursuant to Numbers 7.5 and 7.6 in an amount up to the relevant Default Basic Clearing Member Margin Requirement by the time specified by Eurex Clearing AG.

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- (2) Subject to Number 3.8, to the extent Eligible Margin Assets are not delivered with respect to a Margin Call in accordance with Paragraph (1), Eurex Clearing AG will (without having an obligation towards the Basic Clearing Member or the Clearing Agent to do so, on or around the time specified) directly debit the relevant Basic Clearing Member Cash Account in an amount equal to the requested amount of Eligible Margin Assets in accordance with the daily cash clearing procedure pursuant to Number 1.4.1 of the General Clearing Provisions. Any such direct debit shall discharge the relevant Margin Call relating to the relevant Basic Clearing Member Standard Agreement (and consequentially such direct debit will increase the respective Redelivery Claim of the Basic Clearing Member).
- (3) If a Clearing Agent elects to deliver, for the account of such Basic Clearing Member, (additional) Eligible Margin Assets in the form of cash pursuant to Number 3.3.2 of the General Clearing Provisions with respect to a Margin Call relating to Basic Clearing Member Margin under a specific Basic Clearing Member Standard Agreement, then:
  - (i) the Clearing Agent shall notify Eurex Clearing AG of such election;
  - (ii) Eurex Clearing AG shall make the relevant debit entry in the Internal Elementary Proprietary Margin Account of such Clearing Agent and the respective credit entry in the Internal Basic Clearing Member Margin Account with such cash credit being allocated to the Basic Clearing Member Standard Agreement, provided that the aggregate value of the remaining Eligible Margin Assets in respect of the Elementary Proprietary Margin would not be less than the applicable Margin Requirement; and
  - (iii) the related Redelivery Claim under the Elementary Proprietary Standard Agreement between Eurex Clearing AG and such Clearing Agent shall be reduced accordingly upon Eurex Clearing AG having made those record entries (which Eurex Clearing AG shall do without undue delay) in the Internal Basic Clearing Member Margin Account and an equivalent Redelivery Claim arises under the Basic Clearing Member Standard Agreement.

### **7.3.2 Margin Calls and direct debit at the end of a Business Day**

- (1) If Eurex Clearing AG at the end of a Business Day determines that the aggregate value of Eligible Margin Assets actually delivered as cover in respect of Basic Clearing Member Margin is less than the applicable Default Basic Clearing Member Margin Requirement under the relevant Basic Clearing Member Standard Agreement, Eurex Clearing AG will require the Basic Clearing Member to provide (additional) Eligible Margin Assets in the form of cash in the Clearing Currency in an amount sufficient to satisfy the Default Basic Clearing Member Margin Requirement by the time specified by Eurex Clearing AG.
- (2) Subject to Number 3.8, to the extent Eligible Margin Assets are not delivered with respect to a Margin Call in accordance with Paragraph (1), Eurex Clearing AG will (without having an obligation towards the Basic Clearing Member or the Clearing

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Agent to do so), on or around the time specified, directly debit the relevant Basic Clearing Member Account in the amount determined pursuant to Paragraph (1) in accordance with the daily cash clearing procedure pursuant to Number 1.4.1 of the General Clearing Provisions. Any such direct debit shall discharge the relevant Margin Call relating to the relevant Basic Clearing Member Standard Agreement (and consequentially such direct debit will increase the respective Redelivery Claim of the Basic Clearing Member).

(3) Number 7.3.1 Paragraph (3) shall apply *mutatis mutandis*.

#### 7.4 **Basic Clearing Member Excess Margin**

The Basic Clearing Member or Clearing Agent (acting on behalf and for the account of the Basic Clearing Member) may provide Eligible Margin Assets to Eurex Clearing AG in excess of the Default Basic Clearing Member Margin Requirement under the relevant Basic Clearing Member Standard Agreement (the “**Basic Clearing Member Excess Margin**”). Any Basic Clearing Member Excess Margin actually delivered shall form part of the relevant Basic Clearing Member Margin and shall, if and to the extent that such Basic Clearing Member Excess Margin consists of cash, be subject to a Redelivery Claim under the relevant Basic Clearing Member Standard Agreement.

Eurex Clearing AG will book any Eligible Margin Asset delivered to it as Basic Clearing Member Excess Margin into the relevant Internal Basic Clearing Member Margin Account and shall record the Eligible Margin Asset in the Internal Basic Clearing Member Margin Account as an Eligible Margin Asset for the account of the Basic Clearing Member.

#### 7.5 **Delivery of Eligible Margin Assets in the form of Cash**

Eligible Margin Assets in the form of cash shall be provided in accordance with the cash clearing procedure pursuant to Number 1.4.1 of the General Clearing Provisions.

#### 7.6 **Delivery of Eligible Margin Assets in the form of Securities**

7.6.1 Eligible Margin Assets in the form of Securities as cover in respect of the Basic Clearing Member Margin in respect of a Basic Clearing Member Standard Agreement shall be provided by transferring Eligible Margin Assets in the form of Securities to the relevant Basic Clearing Member Pledged Securities Account.

- (1) The Clearing Agent or the Basic Clearing Member shall instruct Clearstream Banking AG, Clearstream Banking S.A. or SIX SIS AG in a timely manner to transfer the relevant Securities to the Basic Clearing Member Pledged Securities Account and authorizes Clearstream Banking AG, Clearstream Banking S.A. or SIX AG to inform Eurex Clearing AG of such transfer. In case of a Third Party Account Holder, the Basic Clearing Member shall procure that the instructions and authorisations are given by the Third Party Account Holder.
- (2) In relation to Securities credited to any Basic Clearing Member Pledged Securities Account that confer voting rights or other optional rights (including, but not limited to,

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warrants, options, conversion and subscription rights, rights in connection with takeovers, other forms of offers or capital reorganisations, redemption rights, tenders, options to tender or non-mandatory puts or calls) or that provide for discretionary action or alternative courses of action, Eurex Clearing AG shall not be responsible for exercising such voting or optional rights or for taking up such discretionary actions or alternative courses of action.

- (3) The Basic Clearing Member shall, by way of one or more separate pledge agreements and in the form and upon terms satisfactory to Eurex Clearing AG, grant pledges to Eurex Clearing AG over all Securities which are at present or will in the future be credited to the relevant Basic Clearing Member Pledged Securities Account. Eurex Clearing AG may allow pledges to be granted by the Clearing Agent on behalf of the Basic Clearing Member or acting upon a disposal authorisation (*Verfügungsermächtigung*) of the Basic Clearing Member or by a Third Party Account Holder.

- 7.6.2 The security purpose (*Sicherungszweck*) of each pledge granted to Eurex Clearing AG in accordance with this Number 7.6 is to secure all claims (whether present, future, actual, contingent or prospective) of Eurex Clearing AG against the Basic Clearing Member arising under Basic Clearing Member Transactions, any Difference Claim and any other present and future claims of Eurex Clearing AG against the Basic Clearing Member arising under the relevant Basic Clearing Member Standard Agreement.
- 7.6.3 Notwithstanding Number 7.6.1, Basic Clearing Member Margin may also be provided to Eurex Clearing AG in the form of Securities by way of pledge by using an Accepted Collateral Management System.
- 7.6.4 To the extent required or expedient under its national laws, the Basic Clearing Member will arrange for the due filing and registration with any relevant competent authority or register of any security interest granted or to be granted pursuant to or in accordance with this Number 7.6 and will evidence the due filing and registration of such security interest to Eurex Clearing AG.

## **7.7 Redelivery and release of Eligible Margin Assets**

- 7.7.1 If and to the extent that the aggregate value of all Eligible Margin Assets actually delivered as Basic Clearing Member Margin in respect of the relevant Basic Clearing Member Standard Agreement exceeds the Default Basic Clearing Member Margin Requirement, the Clearing Agent (acting on behalf and for the account of the Basic Clearing Member) may either raise a Redelivery Claim or, prior to the then applicable cut-off time specified by Eurex Clearing AG with respect to any Business Day, require Eurex Clearing AG by submitting a release request to release the pledge over pledged Securities actually delivered in respect of Basic Clearing Member Margin. The release request shall be processed by Eurex Clearing AG during the same Business Day if such request is received by Eurex Clearing prior to the applicable cut-off time and, if such request is received after such cut-off time, on the next Business Day.

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7.7.2 The Clearing Agent (acting on behalf and for the account of the Basic Clearing Member) may select which Eligible Margin Assets credited to the Internal Basic Clearing Member Margin Account shall be redelivered or, as applicable, released from the pledge. Eurex Clearing AG will not and shall not be obliged to check whether there is, and whether the Clearing Agent complies with, any agreement between the Clearing Agent and the Basic Clearing Member.

7.7.3 The Redelivery Claim is discharged by Eurex Clearing AG if the relevant cash amount has been credited to the Basic Clearing Member Cash Account or to an account of a correspondent bank designated by the Basic Clearing Member (including via its Clearing Agent). Such discharge shall occur irrespective of any booking or forwarding errors of the depository, the settlement institution, the custodian, the deposit bank, the central securities depository or the correspondent bank.

## **8 Basic Clearing Member Variation Margin**

### **8.1 General Obligation to provide Basic Clearing Member Variation Margin**

Each of Eurex Clearing AG and the Basic Clearing Member shall be required to transfer (additional) cover in respect of daily profits or losses for all Basic Clearing Member Transactions under the Basic Clearing Member Standard Agreement (“**Basic Clearing Member Variation Margin**”) in such amounts and at such times as are required pursuant to this Number 8.

### **8.2 Basic Clearing Member Variation Margin Requirement**

Only Eligible Margin Assets in the form of cash shall be delivered as cover in respect of Basic Clearing Member Variation Margin. The amount of Eligible Margin Assets in form of cash to be delivered by the party obliged to provide Basic Clearing Member Variation Margin (the “**Basic Clearing Member Variation Margin Provider**”) to the other party (the “**Basic Clearing Member Variation Margin Taker**”) as cover in respect of the relevant Basic Clearing Member Variation Margin (the “**Basic Clearing Member Variation Margin Requirement**”) shall be determined in accordance with the Special Clearing Provisions.

### **8.3 Delivery of Basic Clearing Member Variation Margin and Redelivery Claim**

8.3.1 Basic Clearing Member Variation Margin shall be delivered and/or returned on each Business Day in accordance with the daily cash clearing procedure pursuant to Numbers 1.3 and 1.4.1 of the General Clearing Provisions.

8.3.2 Eligible Margin Assets in the form of cash actually delivered in respect of the Basic Clearing Member Variation Margin by the Basic Clearing Member Variation Margin Provider will give rise to or increase a Redelivery Claim of the Basic Clearing Member Variation Margin Provider against the Basic Clearing Member Variation Margin Taker. Any such Redelivery Claim shall become due if and to the extent that on any subsequent Business Day a profit amount has been determined in respect of the Basic Clearing Member Standard Agreement for the benefit of the Basic Clearing Member Variation

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Margin Provider in accordance with the Special Clearing Provisions (the applicable amount shall be the “**Redelivery Amount**”).

- 8.3.3 If equivalent Eligible Margin Assets in the form of cash have been actually delivered to the Basic Clearing Member Variation Margin Provider by the Basic Clearing Member Variation Margin Taker, the value of such Eligible Margin Assets will be applied to reduce (subject to a minimum of zero) the Redelivery Amount and the value of the Redelivery Claim then due. If the profit amount determined for the benefit of the Basic Clearing Member Variation Margin Provider is higher than its Redelivery Claim as of such time, the payment of the excess amount by the other party itself constitutes a delivery of Basic Clearing Member Variation Margin and in this case the Basic Clearing Member Variation Margin Provider shall become the Basic Clearing Member Variation Margin Taker and vice versa.

## **9 Clearing Fund Contributions for Basic Clearing Member Transactions and DM Auctions**

### **9.1 Clearing Fund Contribution**

- 9.1.1 The Clearing Agent shall make Contributions to the Clearing Fund with respect to all Basic Clearing Member Transactions under each Basic Clearing Member Standard Agreement in accordance with Part 1 Number 6. Basic Clearing Members shall not be entitled or obliged to make contributions to the Clearing Fund.
- 9.1.2 If a Termination Date and a Realisation Event occurs with respect to a Clearing Agent (irrespective of whether the underlying Termination Event relates to a Basic Clearing Member Clearing Agreement or any other Clearing Agreement to which the Clearing Agent is a party as a Clearing Member), the Contributions paid by the Affected Clearing Agent (as defined in Number 11.1.1) that are attributable to any Basic Clearing Member shall not form part of the Affected Clearing Agent’s own Contribution but shall be realised *pari passu* with the Contributions of all Non-Affected Clearing Members in accordance with Part 1 Number 6, in particular, the order of priority set out in Part 1 Number 6.2.1.
- 9.1.3 If a Basic Clearing Member Termination Date and a Realisation Event with respect to a Basic Clearing Member occur, the Contributions made by the Clearing Agent which are attributable to the Basic Clearing Member shall be realised in accordance with Part 1 Number 6, in particular, the order of priority set out in Part 1 Number 6.2.1.
- 9.1.4 If, following a Realisation Event with respect to a Basic Clearing Member, the Contribution attributable to the Basic Clearing Member is not sufficient to cover the Clearing Fund Secured Claims against the Basic Clearing Member, Eurex Clearing AG is entitled at its discretion to require from the Clearing Agent of the Basic Clearing Member further Contributions in accordance with Part 1 Number 6.3. Those further Contributions shall be used to cover the Clearing Fund Secured Claims against the Basic Clearing Member in accordance with Part 1 Number 6, in particular, the order of priority set out in Part 1 Number 6.2.1.



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## 9.2 DM Auctions

9.2.1 Basic Clearing Members are not obliged to participate in DM Auctions. Basic Clearing Members may choose to participate in DM Auctions (including through their Clearing Agent acting on their behalf), subject to certain restrictions as set forth in the DM Auction Rules and upon invitation of Eurex Clearing AG.

9.2.2 Irrespective of any participation of its Basic Clearing Members in DM Auctions pursuant to Number 9.2.1, Clearing Agents are obliged to participate in DM Auctions in accordance with Part 1 Number 7.5 as if they (instead of the Basic Clearing Members) were party to the Basic Clearing Member Transactions of their Basic Clearing Members. For the purposes of determining whether the Clearing Agent is a Mandatory Participant and the scope of the bidding obligation of the Clearing Agent in accordance with the DM Auction Rules, the Basic Clearing Member Transactions of all Basic Clearing Members of the Clearing Agent shall be attributed to the Clearing Agent as if it (instead of the Basic Clearing Members) were party to the Basic Clearing Member Transactions of its Basic Clearing Members.

## 10 Basic Clearing Member Termination Event

10.1 If at any time a Basic Clearing Member Insolvency Termination Event has occurred, the Basic Clearing Member Standard Agreement shall terminate with immediate effect as of such time and the Clearing of new Basic Clearing Member Transactions of the Basic Clearing Member will be suspended.

**“Basic Clearing Member Insolvency Termination Event”** shall have the same meaning as the term “Insolvency Termination Event” in Part 1 Number 7.2.2, provided that references therein to the Clearing Member shall be read as references to the Basic Clearing Member.

10.2 If a Basic Clearing Member Termination Event (other than a Basic Clearing Member Insolvency Termination Event) occurs or Disciplinary Procedures pursuant to the Disciplinary Procedures Rules (as defined in each case in Part 1 Number 14.2.1) are commenced against the Basic Clearing Member, Eurex Clearing AG may one or more times suspend or limit the Clearing of new Basic Clearing Member Transactions of such Basic Clearing Member. Eurex Clearing shall notify the affected Basic Clearing Member and its Clearing Agent of the decision to suspend or limit the Clearing and specify a reasonable period of time during which such suspension or limitation shall apply.

**“Basic Clearing Member Termination Event”** means

- (a) any of the events set out in Part 1 Number 7.2.1 Paragraphs (1) to (12), provided that references therein to the Clearing Member shall be read as references to the Basic Clearing Member;
- (b) the appointment of the Clearing Agent pursuant to the Basic Clearing Member Clearing Agreement or the granting of any authorisation by the Basic Clearing

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Member to the Clearing Agent pursuant to this Part 6 is or becomes invalid in whole or in part;

- (c) Eurex Clearing AG has received a Clearing Agent Debit Withdrawal Notice from the Clearing Agent; and/or
- (d) a Basic Clearing Member Default Information Event.

A “**Basic Clearing Member Default Information Event**” occurs if the Clearing Agent notifies Eurex Clearing AG that (i) the Basic Clearing Member has failed to perform any of its obligations vis-à-vis the Clearing Agent (irrespective of whether such obligations arise under the Basic Clearing Member Clearing Agreement) that the Clearing Agent considers material and/or (ii) an event has occurred which entitles the Clearing Agent to terminate the bilateral agreement between itself and the Basic Clearing Member. Eurex Clearing AG may rely on, and is not obliged to verify the contents of, any such notification from the Clearing Agent.

The Basic Clearing Member and the Clearing Agent shall provide at their own expense such information and evidence as Eurex Clearing AG in its reasonable opinion may deem necessary to conduct an investigation of the facts and circumstances relating to a Basic Clearing Member Termination Event.

Before limiting or suspending the Clearing of new Basic Clearing Member Transactions, Eurex Clearing AG shall, where reasonable in the circumstances, attempt to consult with the Basic Clearing Member, further to which Eurex Clearing AG may in its absolute discretion set a grace period within which the Basic Clearing Member may remedy the event in question. In the case of a Clearing Agent Debit Withdrawal Notice, such remedy may be made by (i) establishing a Basic Clearing Member Cash Account held by the Basic Clearing Member itself and granting to Eurex Clearing AG a right to directly debit such account in accordance with Number 7.3.1 Paragraph (2) or (ii) a replacement of the Clearing Agent (and, except for the provisions on a Replacement Notice and a DCM Election Notice, Numbers 11.2.1, 11.2.2, 11.2.3 and 11.2.7 to 11.2.10 shall apply to such replacement).

- 10.3 If a Basic Clearing Member Termination Event has occurred and is continuing, Eurex Clearing AG may give a written termination notice to such Basic Clearing Member (with a copy to its Clearing Agent) (the “**Basic Clearing Member Termination Notice**”) specifying the date and time on which the termination shall take effect.

Prior to the delivery of a Basic Clearing Member Termination Notice with respect to a Basic Clearing Member Termination Event, other than a Basic Clearing Member Termination Event pursuant to lit. (a) of the definition of “Basic Clearing Member Termination Event” in conjunction with Part 1 Number 7.2.1 Paragraph (1) (Failure to Pay; Failure to Deliver Margin), Paragraph (5) (Insolvency related Events), Paragraph (7) (Regulatory Actions), Paragraph (9) (Opening of Reorganisation or Restructuring Procedures and Similar Measures) and Paragraph (12) (Termination for serious cause (*Kündigung aus wichtigem Grund*)), Eurex Clearing AG shall

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- (a) attempt to notify, and consult with, the relevant Basic Clearing Member regarding the relevant event,
- (b) consider in good faith whether delivering a Basic Clearing Member Termination Notice is proportionate, having regard to
  - (aa) other courses of action available to Eurex Clearing AG (in particular the opening of Disciplinary Procedures pursuant to the Disciplinary Procedures Rules (as defined in each case in Part 1 Number 14.2.1)),
  - (bb) the interests of the Basic Clearing Member, and
  - (cc) whether the Basic Clearing Member Termination Event has a material adverse impact on the ongoing financial soundness of Eurex Clearing AG or the proper performance of the Clearing, and
- (c) ensure that the decision to deliver a Basic Clearing Member Termination Notice, as the case may be, has been approved by the chairman of the Executive Board of Eurex Clearing AG, a member of the Executive Board of Eurex Clearing AG or any other senior personnel of Eurex Clearing AG that Eurex Clearing AG deems to be appropriate.

Where Eurex Clearing has commenced Disciplinary Procedures against a Basic Clearing Member with respect to an Alleged Breach (as defined in the Disciplinary Procedures Rules), Eurex Clearing AG shall for as long as such Disciplinary Procedures are continuing, refrain from delivering a Basic Clearing Member Termination Notice to such Basic Clearing Member (or the Clearing Agent acting on its behalf) on the basis of those facts that have led to the determination of the Alleged Breach by Eurex Clearing AG.

- 10.4 If a Basic Clearing Member Termination Date has occurred in relation to a Basic Clearing Member Standard Agreement following a Basic Clearing Member Termination Event, the consequences of a Basic Clearing Member Termination as provided for in Number 10.5 shall apply.

A termination of the Basic Clearing Member Standard Agreement (the “**Basic Clearing Member Termination**”) occurs (a) if Eurex Clearing AG has set a grace period pursuant to Number 10.2, with effect from the end of such grace period if the Basic Clearing Member Termination Event specified in the notice of such grace continues and Eurex Clearing AG has notified the Basic Clearing Member and the Clearing Agent that such Basic Clearing Member Termination Event has not been remedied to Eurex Clearing AG’s satisfaction by the end of such grace period, (b) in the circumstances specified in Number 11.3.2, at the relevant time specified in Number 11.3.2 or (c) in all other cases, on the date and time specified in the Basic Clearing Member Termination Notice (the date of such Basic Clearing Member Termination being the “**Basic Clearing Member Termination Date**” and the respective termination time being the “**Basic Clearing Member Termination Time**”).

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## 10.5 Consequences of a Basic Clearing Member Termination

If a Basic Clearing Member Termination occurs, the following provisions shall apply.

### 10.5.1 Termination of Basic Clearing Member Transactions and Redelivery Claims

All current and future primary obligations (including payment and delivery obligations) under the relevant Basic Clearing Member Standard Agreement between Eurex Clearing AG and the Basic Clearing Member arising from Basic Clearing Member Transactions and any Redelivery Claim under the relevant Basic Clearing Member Standard Agreement shall expire (*auflösende Bedingung*) as of the Basic Clearing Member Termination Time and shall no longer be required to be performed by the relevant obligor. Furthermore, all due but unsatisfied obligations in respect of the relevant Basic Clearing Member Margin or Basic Clearing Member Variation Margin shall expire (*auflösende Bedingung*) as of the Basic Clearing Member Termination Time. The expiration affects all claims arising from Basic Clearing Member Transactions under the relevant Basic Clearing Member Standard Agreement independent of the time they came into existence or would have come into existence otherwise. These expired primary obligations and delivery obligations, respectively, are reflected by the Difference Claim (as defined below).

### 10.5.2 Difference Claim

The difference claim of either Eurex Clearing AG or the Basic Clearing Member under the relevant Basic Clearing Member Standard Agreement shall become unconditional and immediately due in the Termination Currency against the respective other party as of the end of the Last Valuation Date and shall be determined in accordance with Part 1 Number 7.3 (applied *mutatis mutandis* as if (i) the Basic Clearing Member were a Clearing Member in respect of its Basic Clearing Member Transactions, (ii) Basic Clearing Member Transactions were Transactions and (iii) the Basic Clearing Member Termination Time were the Termination Time, and provided that the Termination Currency shall be the Clearing Currency last agreed in writing between Eurex Clearing AG and the Clearing Agent (acting on behalf of the Basic Clearing Member)) using the Liquidation Price Approach (each a “**Difference Claim**”).

The Clearing Agent shall notify the applicable Clearing Currency to the Basic Clearing Member.

### 10.5.3 Notification

Eurex Clearing AG shall notify the value of the Difference Claim determined by it with respect to the relevant Basic Clearing Member Standard Agreement to the Clearing Agent and the Basic Clearing Member as soon as reasonably practicable after its determination, together with reasonable detail regarding the data and information forming the basis of the determination.

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#### 10.5.4 Payment of Difference Claim

The debtor of the Difference Claim under the Basic Clearing Member Standard Agreement between Eurex Clearing AG and the relevant Basic Clearing Member shall pay the determined amount of the Difference Claim as soon as reasonably practicable following the notification by Eurex Clearing AG of the payable amount pursuant to Number 10.5.3. If Eurex Clearing AG is the debtor of the Difference Claim, Eurex Clearing AG shall pay the determined amount of the Difference Claim in accordance with the instructions of the Basic Clearing Member.

The debtor of the Difference Claim shall not be obliged to pay any interest on the amount of the Difference Claim unless it is in default (*Verzug*) following the receipt of a payment reminder (*Mahnung*) by the other party. Default interest shall be paid on the basis of the effective overnight interest rate (as determined by Eurex Clearing AG by reference to such overnight interest rate references and with such adjustments as Eurex Clearing AG considers appropriate) applicable to the currency of the Difference Claim.

### 11 Consequences of a Termination Event with respect to a Clearing Agent

#### 11.1 Suspension or Restriction of Clearing

11.1.1 If a Termination Event or any of the following events occur with respect to a Clearing Agent, whether in relation to a Basic Clearing Member Clearing Agreement or any other Clearing Agreement to which the Clearing Agent is a party as a Clearing Member (the "**Affected Clearing Agent**"):

- (i) the existence of an unremedied breach by the Clearing Agent of a Basic Clearing Member Clearing Agreement, except where such breach is minor, technical or administrative in nature in the reasonable opinion of Eurex Clearing AG;
- (ii) a determination is made by Eurex Clearing AG that a limitation or suspension of Clearing is necessary for it to contain its exposure to the Clearing Agent or its Basic Clearing Member(s);
- (iii) the suspension or termination (other than a voluntary termination) of the Clearing Agent's membership of another clearing house, provided that the circumstances relating to that suspension or termination are, in Eurex Clearing AG's reasonable opinion, material to the management of the risk of Eurex Clearing AG;
- (iv) the commencement of Disciplinary Procedures as defined in Part 1 Number 7.2.1(b)(aa) against the Clearing Agent; or
- (v) any other event in respect of the Clearing Agent that could materially impact the ability of that Clearing Agent to perform its obligations under a Basic Clearing Member Clearing Agreement,

then Eurex Clearing AG may (taking into account the interests of the Affected Clearing Agent and its Basic Clearing Members):

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- (a) one or more times suspend or limit the Clearing of new Basic Clearing Member Transactions under all Basic Clearing Member Standard Agreements of the Affected Clearing Agent's Basic Clearing Members; and
- (b) refrain from paying any amounts owed to the Basic Clearing Member to any Basic Clearing Member Cash Account that is held by the Clearing Agent and instead pay such amounts to any account of the Basic Clearing Member notified by the Basic Clearing Member to Eurex Clearing AG from time to time.

11.1.2 Eurex Clearing AG shall notify the Affected Clearing Agent and its Basic Clearing Members of the decision to suspend or limit the Clearing and specify a reasonable period of time during which the suspension or limitation will apply.

11.1.3 The Affected Clearing Agent shall provide at its own expense such information and evidence as Eurex Clearing AG in its reasonable opinion may deem necessary to conduct an investigation of the facts and circumstances relating to a Termination Event or any of the events listed above.

11.1.4 Before limiting or suspending the Clearing of new Basic Clearing Member Transactions and without limiting its rights under Part 1 Number 7.2.1, Eurex Clearing AG shall, where reasonable in the circumstances, attempt to consult with the Affected Clearing Agent, further to which Eurex Clearing AG may in its absolute discretion set a grace period within which the Affected Clearing Agent may remedy the event in question.

## 11.2 Replacement of Affected Clearing Agent

11.2.1 If a Termination Event has occurred with respect to an Affected Clearing Agent, Eurex Clearing AG shall (i) if a Grace Period Notice has been given, without undue delay after the end of the relevant Grace Period or (ii) if a Termination Notice has been given, without undue delay after the time specified in the Termination Notice or (iii) in the case of an Insolvency Termination Event with respect to the Affected Clearing Member, without undue delay after the Termination Time, give notice to the Basic Clearing Members of the Affected Clearing Agent and all Clearing Members of the occurrence of the Termination Event and that the Replacement Period commences (the "**Replacement Notice**"). Eurex Clearing AG shall also be entitled to give a Replacement Notice if any of the events set out in Number 11.1.1 (i) to (v) have occurred and Eurex Clearing AG considers the delivery of the Replacement Notice appropriate in light of the relevant event. Where Eurex Clearing AG has taken any of the measures pursuant to Number 11.1.1 but has not yet issued a Replacement Notice, the Basic Clearing Member affected by these measures shall for as long as these measures continue be entitled to provide a Replacement Election Notice or DCM Election Notice and Numbers 11.2.3 to 11.2.10 shall apply in this respect.

"**Replacement Period**" means:

- (i) if an Insolvency Termination Event has occurred with respect to the Clearing Agent, the period from the occurrence of the Insolvency Termination Event until (and

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including) 13:00 hours Frankfurt am Main time on the immediately following Business Day; and

- (ii) if any other Termination Event has occurred with respect to the Clearing Agent, the period from the publication of the Replacement Notice until (and including) 13:00 hours Frankfurt am Main time on the immediately following Business Day.

Eurex Clearing AG may extend the Replacement Period in order to facilitate a Replacement by giving notice to all Clearing Members and the Basic Clearing Members of the Affected Clearing Agent.

11.2.2 Each Basic Clearing Member of the Affected Clearing Agent may elect, by giving notice to Eurex Clearing AG prior to the end of the Replacement Period, (i) to continue the Clearing of all its Basic Clearing Member Transactions under the Basic Clearing Member Standard Agreement with a Replacement Clearing Agent (the “**Replacement Election Notice**”), (ii) to continue the Clearing of its Transactions under a Clearing Agreement pursuant to Annex 1 of the Clearing Conditions as a Direct Clearing Member (“**DCM Election Notice**”), or (iii) to terminate and close-out its Basic Clearing Member Transactions under the Basic Clearing Member Standard Agreement (the “**Termination Election Notice**”). If Eurex Clearing AG does not receive a Replacement Election Notice or a DCM Election Notice, or receives a Termination Election Notice, prior to end of the Replacement Period, Number 11.3 shall apply.

11.2.3 If the Basic Clearing Member of the Affected Clearing Agent has provided a Replacement Election Notice and the Clearing Agent Replacement Requirements are satisfied, the Affected Clearing Agent ceases to be the Clearing Agent and another Clearing Member (the “**Replacement Clearing Agent**”) becomes the new Clearing Agent (such replacement of the existing Clearing Agent with respect to the Basic Clearing Member by the Replacement Clearing Agent, the “**Replacement**”).

“**Clearing Agent Replacement Requirements**” means all of the following requirements:

- (i) the Replacement Clearing Agent is a Clearing Member that meets the admission criteria for Clearing Agents pursuant to Number 2.2;
- (ii) the Replacement Clearing Agent and the Basic Clearing Member have entered into a Basic Clearing Member Clearing Agreement with Eurex Clearing AG or have agreed in form and substance satisfactory to Eurex Clearing AG to already be bound by the provisions set out in the form of the Basic Clearing Member Clearing Agreement appended to the Clearing Conditions of Eurex Clearing AG as Appendix 11 and to execute a Basic Clearing Member Clearing Agreement no later than five (5) Business Days after the end of the Replacement Period;
- (iii) the Basic Clearing Member has provided Eurex Clearing AG with sufficient Eligible Margin Assets to cover Basic Clearing Member Margin and Basic Clearing Member Variation Margin in respect of all Basic Clearing Member Transactions to which the Replacement relates or committed itself in form and substance satisfactory to Eurex Clearing AG to provide the relevant amount of Eligible Margin Assets without undue

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delay following the Replacement, for which purposes all Eligible Margin Assets actually delivered prior to such Replacement shall also be taken into account; and

- (iv) the Replacement Clearing Agent has made the Contribution to the Clearing Fund with respect to its capacity as the Clearing Agent of the Basic Clearing Member.

If the Clearing Agent Replacement Requirements are satisfied by the end of the Replacement Period, the existing Basic Clearing Member Clearing Agreement shall terminate at the end of the Replacement Period.

- 11.2.4 If the Basic Clearing Member of the Affected Clearing Agent has provided a DCM Election Notice and the DCM Requirements are satisfied, the Affected Clearing Agent ceases to be the Clearing Agent and the Basic Clearing Member shall assume the role of a Direct Clearing Member. The Basic Clearing Member Transactions shall be included in the Elementary Proprietary Standard Agreement of such new Direct Clearing Member, and henceforth the Clearing Conditions applicable to Direct Clearing Members shall apply with respect to such new Direct Clearing Member (the “**Replacement**”).

“**DCM Requirements**” means all of the following requirements:

- (i) the Basic Clearing Member meets the admission criteria for Direct Clearing Members pursuant to Number 2 of the General Provisions and has provided evidence thereof to the satisfaction of Eurex Clearing AG;
- (ii) the Basic Clearing Member has agreed with Eurex Clearing AG in writing to act as Direct Clearing Member in form and substance satisfactory to Eurex Clearing AG;
- (iii) the Basic Clearing Member has entered into a Clearing Agreement pursuant to Annex 1 with Eurex Clearing AG or has undertaken in form and substance satisfactory to Eurex Clearing AG that it will enter into a Clearing Agreement pursuant to Annex 1 no later than five (5) Business Days after the end of the Replacement Period;
- (iv) the Basic Clearing Member (acting as Direct Clearing Member) has provided Eurex Clearing AG with sufficient Eligible Margin Assets to cover Margin and Variation Margin in respect of all Transactions to which the Replacement relates or committed itself to provide the relevant amount of Eligible Margin Assets without undue delay following the Replacement; and
- (v) the Basic Clearing Member has made the Contribution to the Clearing Fund with respect to its capacity as the new Direct Clearing Member.

If the DCM Requirements are satisfied by the end of the Replacement Period, the existing Basic Clearing Member Clearing Agreement shall terminate at the end of the Replacement Period.

- 11.2.5 If neither the DCM Requirements nor the Clearing Agent Replacement Requirements are satisfied by the end of the Replacement Period, Number 11.3 shall apply.



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- 11.2.6 Each Basic Clearing Member may designate in advance by notice to Eurex Clearing AG another Clearing Agent as a potential Replacement Clearing Agent. The Clearing Agent so designated assumes no obligation to accept a Replacement. Eurex Clearing AG may provide for further or alternative procedures for the transfer of any assets that it deems necessary taking into account applicable laws with respect to any such Replacement.
- 11.2.7 If Eligible Margin Assets in the form of Securities have been credited to a Basic Clearing Member Pledged Securities Account maintained in the name of the Affected Clearing Agent and the Basic Clearing Member holds title in such Securities, Eurex Clearing AG shall instruct the relevant settlement location to transfer such Securities to the relevant account(s) specified (i) in the case of a Replacement pursuant to Number 11.2.3, by the Replacement Clearing Agent (acting on behalf of the Basic Clearing Member) for the purpose of providing Basic Clearing Member Margin at the time when the Clearing Agent Replacement Requirements are fulfilled or (ii) in the case of a Replacement pursuant to Number 11.2.4, by the new Direct Clearing Member for the purpose of providing Margin at the time when the DCM Requirements are fulfilled. Such transfer shall be without prejudice to the security interest granted to Eurex Clearing AG in the relevant Securities. The Clearing Agent hereby also irrevocably authorises (*bevollmächtigt*) Eurex Clearing AG to take all acts on behalf of the Clearing Agent that Eurex Clearing AG considers necessary or expedient to effect the transfer of the relevant Securities.
- 11.2.8 In respect of each Basic Clearing Member Standard Agreement to which the Replacement relates, Eurex Clearing AG shall:
- (i) in the case of a Replacement of the Affected Clearing Agent by a Replacement Clearing Agent, establish a new Basic Clearing Member Own Account and a new Internal Basic Clearing Member Margin Account and book the Basic Clearing Member Transactions, Basic Clearing Member Margin and the Basic Clearing Member Variation Margin to the new Basic Clearing Member Own Account and the new Internal Basic Clearing Member Margin Account, as applicable; and
  - (ii) if the Basic Clearing Member becomes a Direct Clearing Member, book the Basic Clearing Member Transactions, the Basic Clearing Member Margin and the Basic Clearing Member Variation Margin to the Own Account and the Internal Elementary Proprietary Margin Account of the new Direct Clearing Member, as applicable.
- The corresponding assets shall constitute Basic Clearing Member Margin and Basic Clearing Member Variation Margin of the relevant Basic Clearing Member or Elementary Proprietary Margin and Elementary Proprietary Variation Margin of the new Direct Clearing Member, as applicable.
- 11.2.9 During the Replacement Period:
- (i) the Clearing of new Basic Clearing Member Transactions under each Basic Clearing Member Standard Agreement of the Affected Clearing Agent's Basic Clearing Members shall be suspended unless Eurex Clearing AG permits otherwise;

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- (ii) all Redelivery Claims of the Affected Clearing Agent's Basic Clearing Members with respect to Basic Clearing Member Margin in the form of cash and Basic Clearing Member Variation Margin shall be deferred (*gestundet*); and
- (iii) Eurex Clearing AG shall not be obliged to provide any Basic Clearing Member Variation Margin to the Affected Clearing Agent's Basic Clearing Members.

11.2.10 In the case of a Replacement, Eurex Clearing shall release the Contributions of the Affected Clearing Agent to the Clearing Fund that are attributable to the Affected Clearing Agent acting as Clearing Agent for the Basic Clearing Member without undue delay (*unverzüglich*) following receipt of the Contributions to the Clearing Fund from the Replacement Clearing Agent or the new Direct Clearing Member, as applicable.

### **11.3 Termination of Basic Clearing Member Standard Agreement**

11.3.1 Upon the occurrence of a Termination Event or an Insolvency Termination Event with respect to a Clearing Agent, unless a Replacement pursuant to Number 11.2 has already been completed, Eurex Clearing AG shall be entitled to terminate the Basic Clearing Member Clearing Agreement (including the Basic Clearing Member Standard Agreement) by submitting a Basic Clearing Member Termination Notice to the Basic Clearing Member (with a copy to the Affected Clearing Agent) specifying the date and time on which the termination shall occur.

11.3.2 The relevant Basic Clearing Member Standard Agreement shall also terminate:

- (i) if Eurex Clearing AG has not received a Replacement Election Notice or a DCM Election Notice prior to the end of the Replacement Period, with effect as of the end of the Replacement Period;
- (ii) if Eurex Clearing AG has received a Replacement Election Notice or a DCM Election Notice, but the Clearing Agent Replacement Requirements or the DCM Requirements, respectively, are not satisfied prior to the end of the Replacement Period, with effect as of the end of the Replacement Period;
- (iii) if Eurex Clearing AG has received a Termination Election Notice prior to the end of the Replacement Period, with effect as of the time of receipt of such Termination Election Notice by Eurex Clearing AG.

## **12 Replacement of Clearing Agent that is not an Affected Clearing Agent**

12.1 Without prejudice to a replacement of an Affected Clearing Agent in accordance with Number 11.2, prior to the occurrence of an Insolvency Termination Event or Termination Event with respect to its Clearing Agent, the Basic Clearing Member may effect a replacement of its Clearing Agent in accordance with this Number 12 with respect to all or some of its Basic Clearing Member Transactions under the relevant Basic Clearing Member Standard Agreement only with the prior written consent of Eurex Clearing AG, the Clearing Agent and a replacement Clearing Agent and subject to the prior conclusion of a Basic Clearing Member Clearing Agreement in the form appended to the Clearing

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Conditions as Appendix 11 between Eurex Clearing AG, the Basic Clearing Member and the replacement Clearing Agent. Eurex Clearing AG's consent will not be unreasonably withheld.

Such replacement shall become effective only upon Eurex Clearing AG having received all of the documents set out below in form and substance satisfactory to it (provided that, where Eurex Clearing AG itself would be required to become a party to any such document for it to become effective, nothing in this Number 12 shall prejudice Eurex Clearing AG's decision whether or not to do so). Eurex Clearing AG shall notify the relevant parties in writing promptly upon being so satisfied and specify a replacement date binding on all relevant parties in such notice.

Original copies of the following documents shall be provided to Eurex Clearing AG:

- (i) a Basic Clearing Member Clearing Agreement in the form appended to the Clearing Conditions as Appendix 11 between Eurex Clearing AG, the Basic Clearing Member and the replacement Clearing Agent; and
- (ii) any other document which Eurex Clearing AG reasonably considers to be necessary or useful (if it has notified the relevant parties accordingly) in connection with such replacement,

duly executed, in each case, by or on behalf of all parties required to execute it.

12.2 In the case of a transfer of only some, but not all Basic Clearing Member Transactions, the following provisions apply in addition to the provisions of Number 12.1:

The Basic Clearing Member Transactions to which such transfer does not relate (and the relevant Redelivery Claims relating to Basic Clearing Member Margin and Basic Clearing Member Variation Margin allocated to such Basic Clearing Member Transactions) will continue to form part of the existing Basic Clearing Member Standard Agreement, and the Basic Clearing Member Transactions to which such transfer relates (and the relevant Redelivery Claims relating to Basic Clearing Member Margin and Basic Clearing Member Variation Margin allocated to such Basic Clearing Member Transactions) shall become part of the new Basic Clearing Member Standard Agreement. Following such partial transfers, the aggregate value of all Eligible Margin Assets actually delivered to Eurex Clearing AG in respect of Basic Clearing Member Margin allocated to the Basic Clearing Member Transactions that continue to form part of the existing Basic Clearing Member Standard Agreement must be equal to or exceed the applicable Default Basic Clearing Member Margin Requirement in respect of the existing Basic Clearing Member Standard Agreement.

12.3 In the case of a replacement of a Clearing Agent in accordance with this Number 12, Eurex Clearing shall, without undue delay (*unverzüglich*) following receipt of the Contributions to the Clearing Fund from the Replacement Clearing Agent, release the Contributions of the existing Clearing Agent to the Clearing Fund that are attributable to the existing Clearing Agent acting as Clearing Agent for the Basic Clearing Member in respect of the Basic Clearing Member Transactions to which such replacement relates.