

Chapter V of the Clearing Conditions of Eurex Clearing AG

# Transactions Concluded at the Frankfurter Wertpapierbörse

As of 04.10.2021

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Clearing Conditions of Eurex Clearing AG

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Chapter V Preamble

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## **Preamble**

This Chapter V forms an integral part of the Clearing Conditions of Eurex Clearing AG and respective references in other rules or documents to the Clearing Conditions shall also apply to this Chapter V.

Chapter I together with this Chapter V and all references to other Chapters or Annexes of the Clearing Conditions shall apply for all Clearing Members with a respective Clearing License.

## Transactions Concluded at the Frankfurter Wertpapierbörse

<b>Content</b>	<b>Page</b>
<b>Part 1</b>	
<b>General Provisions.....</b>	<b>1</b>
1.1 Clearing Licenses.....	2
1.1.1 Granting of Clearing Licenses.....	2
1.1.2 Prerequisites for Clearing Licenses.....	2
1.2 Margin Requirement.....	2
1.3 Clearing of Off-Book Trades.....	2
1.4 Clearing Members acting as DC Market Participants.....	3
<b>Part 2</b>	
<b>Clearing of Transactions concluded at the Frankfurter Wertpapierbörse (FWB).....</b>	<b>4</b>
2.1 General Obligations.....	4
2.2 Failure to Deliver.....	5
2.2.1 Failure to Deliver Securities.....	5
2.2.2 Non-Delivery of Rights.....	11
2.2.3 Non-Delivery of Partial Rights.....	12
2.2.4 Deviating Timing Provisions, Obligation to Tolerate, Costs.....	13
2.2.5 Pair-Off Service.....	13
2.3 Corporate Actions.....	16
2.4 Daily Assessment.....	18
2.5 Transaction Netting.....	18
2.5.1 General provisions.....	18
2.5.2 Net Processing Methods.....	19
2.5.3 Effectiveness of Netting and Aggregation; Reporting.....	23
2.5.4 Discharge of the Delivery Obligations to be performed under the FWB Transactions resulting from Netting and Aggregation.....	23

## Part 1 General Provisions

- (1) Eurex Clearing AG carries out the Clearing of Transactions in securities and rights concluded at the Frankfurter Wertpapierbörse (“**FWB**”) (“**FWB Transactions**”), provided that the securities or rights underlying the respective FWB Transaction can be settled by Eurex Clearing AG and the respective Settlement Location and that the prerequisites pursuant to Paragraph (2) are fulfilled.
- (2) Eurex Clearing AG determines, in agreement with FWB, which FWB Transactions respectively which securities and rights underlying these FWB Transactions shall be included in the Clearing. The FWB Transactions being included in the Clearing shall be published by Eurex Clearing AG to the Clearing Members via electronic publication in the internet exclusively, available on the Eurex Clearing Website.
- (3) If and to the extent that the Clearing or other respective rules have been agreed upon between Eurex Clearing AG and FWB, the provisions of Chapter I shall also apply to the Clearing of FWB Transactions concluded at FWB unless otherwise provided hereinafter.
- (4) Not more than three different Clearing Members may clear FWB Transactions concluded in the electronic trading system of FWB with respect to the same DC Market Participant or the same Indirect Client Market Participant. In this case, the provisions on the change of the Clearing Member (Chapter I Part 1 Number 8), on the default rules relating to DC Market Participants or Indirect Client Market Participants (Chapter I Part 1 Number 10) and other agreements between Clearing Members and DC Market Participants or Indirect Client Market Participants relating to the clearing of FWB Transactions (Chapter I Part 1 Number 12) shall apply only insofar as the respective legal relationship between the relevant Clearing Member and the DC Market Participant (or, in the case of an Indirect Client Market Participant, the Direct Client to which it relates) is affected.

Notwithstanding Chapter I Part 1 Number 15.1, Eurex Clearing AG may inform a Clearing Member if one of its DC Market Participants or Indirect Client Market Participants assigns the Clearing of FWB Transactions to a second or third Clearing Member. The name of such other Clearing Member will not be disclosed.

- (5) A DC Market Participant or Indirect Client Market Participant may on behalf of the Clearing Member enter into the trading system of FWB orders and quotes for all securities belonging to the securities classes agreed upon among the Clearing Member and the DC Market Participant or Indirect Client Market Participant as well as for all securities tradable in the continuous auction trading model.
- (6) The Clearing Conditions incorporate by reference the Exchange Rules for the Frankfurter Wertpapierbörse, the Conditions for Transactions at the Frankfurter Wertpapierbörse and other rules and regulations of the Frankfurter Wertpapierbörse with respect to the Clearing of Transactions concluded on the Frankfurter

Wertpapierbörse pursuant to Part 2, each in their German version and as amended from time to time.

## **1.1 Clearing Licenses**

### **1.1.1 Granting of Clearing Licenses**

A Clearing License is required in order to participate in the Clearing of FWB Transactions, and Eurex Clearing AG shall grant such Clearing License upon written application.

### **1.1.2 Prerequisites for Clearing Licenses**

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

(2) The applicant shall meet the following additional requirements:

Evidence of authorisation to use the securities lending facility offered by Clearstream Banking AG for settlement purposes.

(3) Upon written request and after submission of respective evidence by the applicant or a Clearing Member, Eurex Clearing AG may allow that the prerequisites for a Clearing License pursuant to Paragraph (2) (b) and additionally, as an option, the prerequisites pursuant to Paragraph (2) (a) are wholly complied with and evidence is provided for by one or more settlement institutions in the name and on behalf of the applicant or the Clearing Member. Chapter I Part 1 Number 2.1.2 Paragraph (7) and (8) apply *mutatis mutandis*.

## **1.2 Margin Requirement**

The following applies in addition to the relevant basic provisions on margin requirements set out in Chapter I:

the Current Liquidating Margin and the Additional Margin shall be the applicable Margin Types.

## **1.3 Clearing of Off-Book Trades**

As part of the Clearing of FWB Transactions, Eurex Clearing AG also provides, besides the Clearing of FWB Transactions, the Clearing of off-book-trades concluded pursuant to Part I.a. of the Conditions for Transactions on the Frankfurter Wertpapierbörse ("**Off-Book Trades**"). The provisions in Chapter I, and this Chapter V shall apply to Off-Book Trades *mutatis mutandis* unless not regulated otherwise in the Conditions for Transactions on the Frankfurter Wertpapierbörse.

#### **1.4 Clearing Members acting as DC Market Participants**

A Clearing Member may enter with one or two other Clearing Members into a bilateral legal relationship as a DC Market Participant in respect of FWB Transactions. If FWB Transactions of a Clearing Member, acting as a DC Market Participant, are cleared by another Clearing Member, the rules applicable or relating to DC Market Participants shall apply accordingly.

## **Part 2 Clearing of Transactions concluded at the Frankfurter Wertpapierbörse (FWB)**

### **2.1 General Obligations**

- (1) With regard to the settlement of FWB Transactions, Chapter I Part 1 Numbers 1.2.5 and 1.4 apply, unless otherwise stated hereinafter.
- (2) Eurex Clearing AG shall be the contractual counterparty to all deliveries and payments under FWB Transactions.
- (3) Clearing Members must fulfil their delivery and payment obligations in accordance with the instructions of Eurex Clearing AG.
- (4) The following shall apply to the procedures for delivery and payment with respect to securities held in collective safe custody pursuant to Paragraph (1) to (3):

All physical deliveries, shall be made versus payment (*Zug-um-Zug*) within the settlement period determined by Eurex Clearing AG on the second Business Day after the trading day unless otherwise specified ("**Contractual Settlement Date**").

- (5) The following shall apply to the procedures for delivery and with respect to WP Credits (*Gutschriften in Wertpapierrechnung*) pursuant to Paragraphs (1) to (3):

All transfers of WP Credits shall be made versus payments (*Zug-um-Zug*) on the Contractual Settlement Date.

- (6) The usage of the T2S system for the settlement of securities transactions facilitates partial deliveries of securities during the day. Thus, deliveries of securities may also occur by means of partial deliveries which, accordingly, have a discharging effect. This shall likewise apply for the settlement of securities transactions via central securities depositories (in particular (I)CSDs) that facilitate partial deliveries of securities during the day to the extent Eurex Clearing AG supports such functionality for the respective central securities depository.
- (7) If the Contractual Settlement Date is a Business Day following Labour Day (1 May) and if, with respect to the security to be delivered, a corporate action pursuant to Number 2.3 is to be carried out on one of these holidays, all physical deliveries and payments shall be performed on the next following Business Day.

## 2.2 Failure to Deliver

### 2.2.1 Failure to Deliver Securities

In case of a failure to deliver shares covered by Article 15 of Regulation (EU) No. 236/2012 (“**Shares**”) or other securities (“**Other Securities**”, and together with Shares “**Securities**”)<sup>1</sup> owed under a FWB Transaction, the following provisions apply.

#### (1) General Provisions

##### (a) Failure to Deliver Shares

If the Shares to be delivered by the Clearing Member having the delivery obligation (taking into account the results of a netting or aggregation pursuant to Number 2.5.2, if applicable) have not been delivered to the Settlement Location on the 4<sup>th</sup> Business Day following the delivery date at the latest until the respective End-of-Settlement time (as published by Eurex Clearing AG on the Eurex Clearing Website) (“**Settlement Cut-Off Time**”), Eurex Clearing AG will initiate a buy-in process within the meaning of Chapter I Part 1 Number 1.4.4 (1), whereby Eurex Clearing AG attempts to acquire the relevant Securities from a third party, unless the Clearing Member having the delivery obligation holds an identical claim against Eurex Clearing AG which may be set off against the claim Eurex Clearing AG holds against such Clearing Member. Where Eurex Clearing AG initiates a buy-in process, Eurex Clearing AG may (i) directly purchase the Securities from a third party, (ii) appoint a third party buy-in agent to acquire the Securities for Eurex Clearing AG and/or (iii) conduct an auction in accordance with the Auction Terms. If Eurex Clearing AG conducts an auction in accordance with the Auction Terms, to acquire the non-delivered Shares, Paragraph (2) (a) shall apply.

##### (b) Failure to deliver Other Securities

If the Clearing Member does not deliver the Other Securities owed under a FWB Transaction on the delivery date, Eurex Clearing AG is entitled to initiate a buy-in process within the meaning of Chapter I Part 1 Number 1.4.4 (1). Where Eurex Clearing AG initiates a buy-in process, Eurex Clearing AG may (i) directly purchase the Other Securities from a third party, (ii) appoint a third party buy-in agent to acquire the Other Securities for Eurex Clearing AG and/or (iii) conduct an auction in accordance with the Auction Terms. If Eurex Clearing AG conducts an auction in accordance with the Auction Terms, to acquire the non-delivered Other Securities Number 2.2.1 Paragraph (2) (a) shall apply and the buy-in can be made on the 5<sup>th</sup>, 10<sup>th</sup> and 27<sup>th</sup> Business Day following the delivery date until the respective Settlement Cut-Off Time, provided that (i) the Clearing Member having the delivery obligation does not hold an identical claim against Eurex Clearing AG which may be set off against the claim Eurex Clearing AG holds against such Clearing Member and that (ii) the owed Other Securities

<sup>1</sup> For subscription rights securitised and held in collective safe custody, the procedure pursuant Paragraph 2 applies.



have not been completely delivered. If a buy-in attempt fails, the defaulting Clearing Member must be given time for delivery until the next replacement purchase or the cash settlement.

If the required Other Securities cannot be acquired wholly or partially by way of a buy-in, Eurex Clearing AG is entitled to perform a cash settlement pursuant to Number 2.2.1 Paragraph (3).

If the Securities consist of subscription rights that are certificated or held in collective safe custody, then the procedure pursuant to Number 2.2.2 applies.

(c) Partial deliveries

If only a partial delivery of securities occurs, the Paragraphs (a) and (b) above as well as the following rules shall apply accordingly with regard to the outstanding partial deliveries. Due to different average price calculation of the T2S system and the system of Eurex Clearing AG concerning partial deliveries, it may occur for incomplete deliveries on the delivery day, that the Clearing Member obliged to deliver is credited an amount which, in total, exceeds the selling price. Eurex Clearing AG shall notify the Clearing Member obliged to deliver accordingly and is authorised to debit any exceeding amounts accordingly and to credit these amounts to the buyer. The Clearing Member obliged to deliver must ensure that a respective amount is available on its relevant RTGS Account or euroSIC Account.

(2) Buy-in by auction, costs of buy-in

(a) Buy-in according to Auction Terms

If Eurex Clearing AG conducts an auction in accordance with the Auction Terms, to acquire the non-delivered Other Securities, the replacement of the Securities will be performed by means of an auction. Eurex Clearing AG will publish for each class of Securities a maximum price for the respective auction up to which Eurex Clearing AG is ready to accept bids. The maximum price for this auction results from the settlement price determined by Eurex Clearing AG for the class of Securities in question plus a premium as determined in Number 5 of the Auction Terms of Eurex Clearing AG. Any company other than the defaulting Clearing Member ("**Seller**") which previously concluded a corresponding contract with Eurex Clearing AG may participate in such auctions.

Eurex Clearing AG reserves the right to postpone the auction by one or more Business Days in the case that the Securities are subject to a corporate action or to determine another Business Day for the execution of the auction for important reason (an important reason being, for instance, if the settlement day of the relevant Settlement Location ends after 15:00 CET).

Once the buy-in has been announced, the Clearing Member having the delivery obligation is no longer entitled to deliver Securities to Eurex Clearing AG on the day of auction as well as until a written notification of Eurex Clearing AG.

If the Securities to be delivered are replaced by means of an auction, the defaulting Clearing Member's obligation to deliver resulting from the original FWB Transaction expires with debt-discharging effect.

(b) Costs of the Auction

Eurex Clearing AG charges the defaulting Clearing Member with a fee for each buy-in carried out for the replacement in relation to a class of Securities in an amount of (i) 0.1 per cent of the value of the fixed income Securities to be delivered under the relevant FWB Transaction, or (ii) in the case of Securities other than fixed income Securities, 10 per cent of the value of the Securities to be delivered under the relevant FWB Transaction, however at least EUR 250 and (subject to the below) at maximum EUR 5,000. When converting fees into the invoice currency, Eurex Clearing AG will use a commercially reasonable exchange rate applicable at the relevant point in time. Where Eurex Clearing AG appoints a third party buy-in agent to acquire the Securities for Eurex Clearing AG, the Clearing Member having failed to deliver the relevant Securities to Eurex Clearing AG on the applicable delivery date, shall reimburse Eurex Clearing AG for the costs charged by the buy-in agent in relation to the buy-in process. Such obligation is in addition to the charges by Eurex Clearing AG as specified above, provided that in this case, these charges shall be subject to a maximum amount of EUR 3,000, (or in case charges are calculated in CHF, USD or GBP, an amount of CHF 4,200, USD 4,200 or GBP 2,700, respectively).

(3) Cash Settlement

(a) General Provisions

If a replacement of the non-delivered Securities pursuant to Paragraph (1) and (2) was not successful in whole or in parts, Eurex Clearing AG may determine, on a day after the delivery day (the "**Determination Day**") a cash settlement regarding the non-delivered and non-replaced shares.

The Determination Day is (i) the 8<sup>th</sup> Business Day after the delivery day in the case of Shares and (ii) a point in time between the 30<sup>th</sup> and the 36<sup>th</sup> Business Day after the delivery day in the case of Other Securities.

If proceedings pursuant to Chapter 11 of the US-American Bankruptcy Code are initiated against the issuer of the Securities to be delivered, Eurex Clearing AG may, determine such cash settlement on the 6<sup>th</sup> Business Day following the delivery day already.

(b) Cash Settlement Amount

The cash settlement amount is determined as follows:

(aa) The highest of (i) the settlement price of the respective class of securities as determined by Eurex Clearing AG plus a premium of 100 per cent, (ii) the selling price and (iii) the purchase price of the relevant FWB Transaction will be determined. For Transactions in fixed income Securities, the cash settlement amount is determined without taking into account accrued interest and by adding a premium of 300 basis points.

(bb) The highest price so determined is multiplied by the number of non-delivered Securities owed under the non-performed FWB Transaction.

(c) Consequences of Cash Settlement

Upon determination of the cash settlement, the defaulting Clearing Member's delivery obligations under the non-performed FWB Transaction expire with debt-discharging effect. The defaulting Clearing Member is obliged to pay to Eurex Clearing AG the determined cash settlement amount.

In the case of Securities of the same class owed by Eurex Clearing AG to one or more other Clearing Member(s), which have not been delivered on the Determination Day at the latest, the provisions above shall apply accordingly to the extent equalling the number of Securities owed and not delivered in time by the defaulting Clearing Member to Eurex Clearing AG.

After receipt Eurex Clearing AG will forward the cash settlement amount to the Clearing Member to whom delivery has not been effected in due time.

(d) Specific Provisions for Other Securities

If a cash settlement pursuant to Number Paragraph (3) (a) and (b) in respect of non-delivered Other Securities should not be possible in whole or in part, Eurex Clearing AG will attempt to replace the Other Securities. Such further replacement purchase takes place initially on the 37<sup>th</sup> Business Day after the delivery day and will be effected pursuant to Paragraph (2) (a).

If the Other Securities cannot be acquired by way of the relevant replacement purchase, Eurex Clearing AG will determine a further cash settlement initially between the 40<sup>th</sup> and the 46<sup>th</sup> Business Day after the delivery day. The cash settlement amount is determined pursuant to Paragraph (3) (b). The defaulting Clearing Member shall be given time to deliver the Other Securities before the determination of the cash settlement. If proceedings pursuant to Chapter 11 of the US-American Bankruptcy Code are initiated against the issuer of the Other Securities to be delivered, Eurex Clearing AG may determine a cash settlement on the 6<sup>th</sup> Business Day following the delivery day already. The consequences of the determination of the cash settlement are determined pursuant to Paragraph (3) (c).

The replacement and the cash settlement will be repeated every 10 Business Days until all Other Securities required to be delivered have been delivered or until the cash settlement has been effected.

(e) Cash Settlement Fee

Eurex Clearing AG will charge a fee from the defaulting Clearing Member for every determined cash settlement in an amount of 0.0025 per cent of the value of the Securities to be delivered under the relevant FWB Transaction, however at least EUR 250 and at maximum EUR 1,000. When converting fees into the invoice currency, Eurex Clearing AG will use a commercially reasonable exchange rate applicable at the relevant point in time.

(4) Disclosure of Delivery Claim

(a) Assertion of Temporary Rights

If the defaulting Clearing Member does not deliver Securities in time that provide for rights or are connected with rights that can be asserted within a specified period of time only, Eurex Clearing AG discloses its claim for delivery of these Securities to the Clearing Member to whom delivery has not been effected in due time in accordance with Number 2.2.2 Paragraph (1).

(b) Exchange Offers for Securities

If the defaulting Clearing Member does not deliver Securities in time that can be exchanged against other Securities or cash in the context of a corporate action or which are subject to an optional right in the context of a mandatory corporate action, and if the Clearing Member to whom delivery has not been effected in due time has suffered a damage as a result thereof and has evidenced such damage vis-a-vis Eurex Clearing AG within the statutory limitation period, Eurex Clearing AG may disclose its claim for delivery of these Securities to the Clearing Member to whom delivery has not been effected in due time in accordance with Number 2.2.2 Paragraph (1).

The disclosure may also be made if the claim has already been fulfilled.

(c) Cash Distributions on ETF shares

If the defaulting Clearing Member does not deliver ETF shares in time on which cash distributions are payable pursuant to Number 2.3 Paragraph (2) (a), and if the Clearing Member to whom delivery has not been effected in due time has suffered a damage as a result thereof and has evidenced such damage vis-a-vis Eurex Clearing AG within the statutory limitation period, Eurex Clearing AG may disclose its claim for delivery of these Securities to the Clearing Member to whom delivery has not been effected in due time in accordance with Number 2.2.2 Paragraph (1).

The disclosure may also be made if the claim has already been fulfilled.

(5) Interest Payments in case of Fixed Income Securities

If the defaulting Clearing Member does not deliver fixed income Securities in time on which interest payments are payable, Eurex Clearing AG will collect the amount of such interest payments from the defaulting Clearing Member at the relevant due date and transfer such amount to the Clearing Member to whom delivery is due.

(6) Contractual Penalty

(a) Non-delivery of Shares

A Clearing Member is obliged to pay a contractual penalty to Eurex Clearing AG if it does not deliver Shares for which the principal trading venue is in a Member State of the European Union at the latest on the delivery day until the respective Settlement Cut-Off Time. This contractual penalty applies regardless of actual damages incurred by Eurex Clearing AG.

The amount of the daily contractual penalty is 0.2 basis points of the value of the non-delivered Shares. The defaulting Clearing Member is obliged to pay the contractual penalty for each day of non-delivery, regardless of whether the right to deliver is excluded pursuant to Paragraph (2) (a), up to and including the day on which the replacement pursuant to Paragraph (2) or the payment of the cash settlement amount as determined pursuant to Paragraph (3) occurs.

(b) Non-delivery of Securities

A Clearing Member is obliged to pay a contractual penalty to Eurex Clearing AG and Eurex Clearing AG is obliged to pay a contractual penalty to the relevant other Clearing Member expecting delivery, if the Clearing Member or Eurex Clearing AG does not deliver Shares and Other Securities on which dividend or bonus payments are payable. This contractual penalty applies regardless of actual damages incurred by Eurex Clearing AG or the Clearing Member to whom delivery has not been effected, respectively.

This Paragraph (6) (b) shall not apply to the delivery of Securities pursuant to Paragraph (4) (b) or the delivery of ETF shares pursuant to Paragraph (4) (c).

Eurex Clearing AG may waive the assertion of contractual penalties in the case of non-delivery of certain Securities. Eurex Clearing AG will inform the Clearing Members thereof by circular.

The assertion of the contractual penalty against Eurex Clearing AG by the Clearing Member to whom delivery has not been effected must be in written form by using a template accessible on the Eurex Clearing Website, within 30 days following the delivery day.

The amount of the relevant contractual penalty is calculated using the following criteria:

- (aa) For the amount of the contractual penalty owed by the Clearing Member, the number of Securities due on the delivery day is multiplied by the amount equal to 35 per cent of the net dividend. For the amount of the contractual penalty owed by Eurex Clearing AG, the number of Securities due on the delivery day is multiplied by the amount equal to 15 per cent of the net dividend. The net dividend is calculated from the dividend due to the shareholder after deduction of payable taxes and duties.
- (bb) The calculation of the relevant contractual penalty is made regardless of the delivery of the Securities by the defaulting Clearing Member or a replacement purchase and delivery by Eurex Clearing AG.
- (cc) The penalty is charged in the currency of the Securities.

The relevant contractual penalty may only be asserted if the calculation results in an amount in the relevant currency of at least EUR or GBP 5,000, USD, CAD or CHF 7,000, AUD 8,000, PLN 20,000, DKK 38,000, NOK 40,000, SEK 48,000 or JPY 550,000.

The relevant contractual penalty may not be asserted if securities are not delivered on the first Business Day following Labour Day (1 May) and if, with respect to these securities, a corporate action pursuant to Number 2.3 Paragraph (2) (c) or (e) is to be carried out on one of these holidays.

(c) Consequence of Payment of the Penalty

As far as the Clearing Member obliged to deliver has paid to Eurex Clearing AG a contractual penalty, Eurex Clearing AG will not assert damages up to the amount of the penalty. As far as Eurex Clearing AG has paid to the Clearing Member to whom delivery has not been effected a contractual penalty, such Clearing Member will not assert damages up to the amount of the penalty. The assertion of further damages by Eurex Clearing AG as well as the Clearing Member to whom delivery has not been effected in time remains unaffected.

## 2.2.2 Non-Delivery of Rights

If the Clearing Member does not deliver rights or rights resulting from Securities to be delivered, with the exception of partial rights pursuant to Number 2.2.3, in time on the delivery day, Eurex Clearing will, following the respective Settlement Cut-Off Time on the last day of the subscription period, or, if this point in time occurs earlier, the 20<sup>th</sup> Business Day after the delivery day, take the following measures.

- (1) Eurex Clearing AG discloses its claim for transfer of the rights which have not been delivered in time by the defaulting Clearing Member to the Clearing Member to whom delivery is due to the extent that the number of rights to be delivered by the defaulting Clearing Member corresponds to the number of rights to be transferred by Eurex Clearing AG to the Clearing Member to whom delivery is due.

- (2) The disclosure pursuant to Paragraph (1) is made for the purpose to enable the defaulting Clearing Member to enter into an assumption of debt (Section 414 of the German Civil Code) with the Clearing Member to whom delivery is due.

A valid assumption of debt in favour of Eurex Clearing AG presupposes that (i) both relevant Clearing Members agree on a certain number of rights that shall be delivered by the defaulting Clearing Member instead of Eurex Clearing AG to the Clearing Member to whom delivery is due and that (ii) the standardised agreement for the assumption of the delivery obligation ("**Obligation Assumption Agreement**") made available by Eurex Clearing AG has been signed by both Clearing Members and submitted to Eurex Clearing AG.

For the execution of such Obligation Assumption Agreement, Eurex Clearing AG authorises the Clearing Member to whom delivery is due to waive vis-à-vis the defaulting Clearing Member with debt-discharging effect its claim for the delivery of the rights in the number as agreed by both Clearing Members as well as all present and future secondary claims in connection therewith.

- (3) Eurex Clearing AG will set a time period of 10 Business Days at maximum during which the Obligation Assumption Agreement must be signed. Both Clearing Members shall submit the signed Obligation Assumption Agreement to Eurex Clearing AG at the latest until 10:00 CET on the Business Day following the last day of such time period.
- (4) As soon as the signed Obligation Assumption Agreement has been received by Eurex Clearing AG, the obligation of Eurex Clearing AG to deliver the rights to the Clearing Member to whom delivery is due as well as all present or future secondary claims in connection therewith cease to exist with immediate debt-discharging effect in the number of rights to be transferred as agreed upon by both Clearing Members.
- (5) In the case that no Obligation Assumption Agreement between the respective Clearing Members has been submitted to Eurex Clearing AG within the time period pursuant to Paragraph (3), Eurex Clearing AG will determine a cash settlement with respect to the rights to be delivered by the defaulting Clearing Member in accordance with Number 2.2.1 Paragraph (3) (b) and (c) with the provision that the calculated value of the right at the time of the cash settlement shall replace the determined settlement price.

### 2.2.3 Non-Delivery of Partial Rights

If the Clearing Member does not deliver partial rights or partial rights resulting from Securities to be delivered in time on the delivery day, Eurex Clearing will, following the respective Settlement Cut-Off Time on the last day of the subscription period, or, if this point in time occurs earlier, the 20<sup>th</sup> Business Day after the delivery day, determine a cash settlement in relation to the non-delivered partial rights.

The cash settlement amount is determined on the basis of the price set for the partial right by the Settlement Location on the day on which Eurex Clearing AG determines the

cash settlement. Number 2.2.1 Paragraph (3) (b) (bb) as well as Number 2.2.1 Paragraph (3) (c) apply accordingly.

#### **2.2.4 Deviating Timing Provisions, Obligation to Tolerate, Costs**

At the earliest from the 1<sup>st</sup> Business Day after the delivery date, Eurex Clearing AG may, in its reasonable discretion and pursuant to Numbers 2.2.1 to 2.2.3, perform a replacement, a cash settlement or a disclosure if due to extraordinary risks Eurex Clearing AG believes that the collateral deposited with Eurex Clearing AG by the Clearing Member having the delivery obligation is no longer sufficient to secure its Transactions or if Eurex Clearing AG, due to other serious reasons, deems the performance of the aforementioned measures necessary.

Eurex Clearing AG may in addition deviate from the deadlines set forth in Number 2.2.1 to 2.2.3 if compliance with these deadlines would lead to the result that measures pursuant to Number 2.2.1 to 2.2.3 cannot be performed or if their performance would cause disproportional effort or costs, or if such deviation is required by other deadlines or by obligations resulting from the Securities.

The measures pursuant to Number 2.2.1 to 2.2.4 shall be binding on the Clearing Member to whom delivery has not been made in due time.

The defaulting Clearing Member is obliged to bear the costs resulting from measures pursuant to Number 2.2.1 to 2.2.4.

#### **2.2.5 Pair-Off Service**

In case of a failure to deliver Shares or Other Securities, a Clearing Member may request a Pair-Off in accordance with this Number 2.2.5 to avoid the initiation of a buy-in process by Eurex Clearing AG pursuant to Number 2.2.1. If

- (i) a Clearing Member is not able to deliver Shares or Other Securities on a Pair-Off Date under one or more FWB Transactions, under which such Clearing Member is acting as the seller (each a "**Sell Transaction**") and
- (ii) the Clearing Member has not received identical Shares or Other Securities on the same Pair-Off Date under one or more FWB Transactions, under which the Clearing Member is acting as a buyer (each a "**Buy Transaction**"),

the Clearing Member may request the set-off of such delivery obligations in accordance with the requirements stipulated under this Number 2.2.5 ("**Pair-Off**").

Eurex Clearing AG publishes a procedures manual on the Eurex Clearing Website providing further information of this service ("**Pair-Off Procedures Manual**").

##### **(1) Pair-Off Request**

A Pair-Off is only initiated by Eurex Clearing AG on written request by the Clearing Member ("**Pair-Off Request**") and after written acceptance by Eurex Clearing AG.



A Pair-Off Request must be submitted to Eurex Clearing AG by using a specific form (available on the Eurex Clearing Website - "**Pair-Off Request Form**").

In the Pair-Off Request Form, the Clearing Member shall specify

- (i) all Sell Transactions and Buy Transactions (each a "**Pair-Off Transaction**"), which shall form part of such Pair-Off, and
- (ii) the final result of the Pair-Off as calculated by the Clearing Member.

Eurex Clearing AG is entitled to limit the right of a Clearing Member to submit Pair-Off Requests pursuant to this Number 2.2.5 as further specified in the Pair-Off Procedures Manual.

(2) **Timing**

A Pair-Off Request can only be submitted, if each Sell Transaction forming part of a Pair-Off Request is not settled

- (i) in case of a Sell Transaction relating to Shares, on the 4<sup>th</sup> Business Day after the Contractual Settlement Date, or
- (ii) in case of a Sell Transaction relating to Other Securities, on the 5<sup>th</sup> Business Day after the Contractual Settlement Date

(each such Business Day under (i) and (ii), a "**Pair-Off Date**").

The Pair-Off Request Form shall be submitted on the Pair-Off Date within the timeframe as specified by Eurex Clearing AG in the Pair-Off Procedures Manual ("**Pair-Off Period**").

(3) **Pair-Off Eligibility Requirements**

A Pair-Off Request may only be accepted by Eurex Clearing AG pursuant to Paragraph (4) below, if it meets the following requirements ("**Pair-Off Eligibility Requirements**"):

- (a) each Sell Transaction included in the relevant Pair-Off Request has not been settled prior to the submission of the Pair-Off Request,
- (b) each Buy Transaction combined in the relevant Pair-Off Request has not been settled prior to the submission of the Pair-Off Request,
- (c) all Pair-Off Transactions included in the relevant Pair-Off Request relate to shares, securities, rights or other instruments with the same ISIN (or other securities identification number) ("**Pair-Off Securities**"),
- (d) all payment obligations under all Pair-Off Transactions included in the relevant Pair-Off Request are denominated in the same currency,

- (e) the relevant Pair-Off Securities are not subject to a corporate action from the Trade Date (including) until the Pair-Off Date (including),
- (f) all Pair-Off Transactions included in the relevant Pair-Off Request form part of the same Transaction Account,
- (g) the Clearing Member has designated the same Settlement Location with respect to all Pair-Off Transactions included in the relevant Pair-Off Request,
- (h) the Clearing Member has designated the same securities accounts with the relevant Settlement Location to be used for performing the delivery obligations under all Pair-Off Transactions included in the relevant Pair-Off Request, and
- (i) any other requirement Eurex Clearing AG stipulates in the Pair-Off Procedures Manual.

For the avoidance of doubt, a FWB Transaction can only form part of a Pair-Off Request once.

(4) **Verification, Acceptance or Rejection of Pair-Off Requests**

A Pair-Off Request will only be exercised, if

- (i) Eurex Clearing AG received the Pair-Off Request Form on the Pair-Off Date within the Pair-Off Request Period,
- (ii) the Pair Off-Request meets all Pair-Off Eligibility Requirements, and
- (iii) Eurex Clearing AG accepted the Pair-Off Request by submitting a written acceptance notice ("**Pair-Off Acceptance Notice**") prior to the acceptance cut-off time as specified in the Pair-Off Procedures Manual ("**Acceptance Cut-Off Time**").

Eurex Clearing AG will – in its own discretion and using best efforts – accept a Pair-Off Request, if it deems itself capable of processing the Pair-Off Request. When making this determination, Eurex Clearing AG particularly considers the point in time when the relevant Pair-Off Request was received by Eurex Clearing AG. For the avoidance of doubt, even in case a Pair-Off Request meets all Pair-Off Eligibility Requirements and is also received within the Pair-Off Request Period, Eurex Clearing AG is not obliged to accept such Pair-Off Request.

If Eurex Clearing AG determines that it does not have the capability to process the relevant Pair-Off Request, Eurex Clearing AG is entitled to reject such Pair-Off Request. Eurex Clearing AG will inform the Clearing Member about the rejection in writing as soon as practicably possible.

(5) **Consequences of an accepted Pair-Off Request**

Upon acceptance of the Pair-Off Request by Eurex Clearing AG, Eurex Clearing AG will within the processing time as specified in the Pair-Off Procedures Manual ("**Pair-Off Processing Time**"):

- (i) fully or partially set-off all delivery and payment obligations arising from all Pair-Off Transactions included in the relevant Pair-Off Request with discharging effect,
- (ii) fully or partially settle all Pair-Off Transactions forming part of the set-off under (i) in cash,
- (iii) amend or delete any settlement instruction relating to the relevant Pair-Off Transactions or enter new settlement instructions within the settlement systems of the relevant Settlement Location in accordance with the result of the set-off, and
- (iv) if the delivery obligation arising from the relevant Sell Transaction is not fully set-off, initiate a buy-in process in accordance with Number 2.2.1 with respect to such remaining delivery obligation.

The Pair-Off Acceptance Notice shall constitute the declaration of set-off. Each set-off effected pursuant to this Number 2.2.5 shall become effective upon execution within the Pair-Off Processing Time

### 2.3 Corporate Actions

- (1) Any Corporate Action carried out in respect of securities which relate to unperformed FWB Transactions, shall be processed by the relevant Settlement Location in accordance with the applicable rules of the relevant Settlement Location.

"**Corporate Actions**" means any dividend payments interest payments, bonus payments or other cash distributions, transformations, the granting of subscription rights to shares or comparable rights, conversion offers, occurrence of the final maturity of fixed income securities, or any other similar action or event.

Eurex Clearing AG will not and shall not be obliged to check whether the relevant Settlement Location processed the corporate action correctly.

- (2) Cash Settlement of Fractions and Purchase Attempt

In case of the occurrence of non-minimum/non-multiple unit conform quantities of securities or rights resulting from a corporate action processed by the relevant Settlement Location ("**Fractions**"), Eurex Clearing AG shall be entitled to settle a Fraction by payment of a cash amount ("**Cash Settlement**"). Eurex Clearing AG shall notify the affected Clearing Members about the Cash Settlement without undue delay.

Upon the occurrence of the Cash Settlement, the delivery obligations relating to the Fractions shall expire with debt-discharging effect and the Clearing Member obliged

to deliver shall in lieu pay to Eurex Clearing AG and Eurex Clearing AG shall forward to the Clearing Member entitled to receive a cash amount in the currency of the underlying FWB Transaction and equal to the market value of the Fractions on the record date of the relevant corporate action event ("**Record Date**") as determined by Eurex Clearing AG in its reasonable discretion and notified to the Clearing Members.

Eurex Clearing AG assesses if a cash settlement shall occur or whether a physical delivery with a minimum/multiple conform quantity of securities or rights – in accordance with the original delivery obligation - is nevertheless possible subject to a prior purchase. If this is the case, Eurex Clearing AG attempts to purchase the relevant securities or rights using the cash amount received from the Clearing Member obliged to deliver, on the day following the Record Date and – if necessary - on the day following that day for a purchase price that may not exceed 120 per cent of the market value on the Record Date ("**Purchase Attempt**"). If a Purchase Attempt is successful, Eurex Clearing AG delivers the relevant securities or rights to the Clearing Member entitled to receive, if a Purchase Attempt is not successful, a cash settlement with respect to the securities or rights occurs, in each case the delivery obligations vis-à-vis the Clearing Member entitled to receive expire with debt discharging effect.

If the Clearing Member obliged to deliver has delivered a minimum/multiple conform quantity of securities or rights to Eurex Clearing AG despite a cash settlement by Eurex Clearing AG relating to such securities or rights in favour of the Clearing Member entitled to receive, Eurex Clearing AG shall sell the relevant securities or rights and use the proceeds to compensate the cash settlement ("**Sale**").

In the event of a non-delivery (as described in Number 2.2) and the occurrence of any ,Corporate Action ,the Clearing Member obliged to deliver shall cover any losses incurred to Eurex Clearing AG as a result of a Purchase Attempt or Sale.

(3) Reversal of FWB Transactions

If an FWB Transaction is reversed after its conclusion pursuant to the Conditions for Transactions on Frankfurter Wertpapierbörse, the debits/credits, arising from corporate actions, to the accounts of Clearing Members concerned shall also be reversed with the value date of the FWB Transaction reversal.

(4) Corrections to corporate actions

In case corporate actions were carried out incorrectly by the relevant Settlement Location, Eurex Clearing AG shall be entitled to undertake the required corrections to corporate actions.

If corporate actions in regard of as yet unperformed or performed FWB Transactions were not carried out and afterwards corrected or implemented by the relevant Settlement Location, Eurex Clearing AG shall reserve the right to waive the subsequent implementation of the corporate action in favour of assigning to the

claimant Clearing Member its claims against other Clearing Members arising out of corresponding identical transactions with debt-discharging effect.

(5) Change of method of holding in custody

If, due to a corporate action on the part of an issuer, securities held in collective custody or ancillary rights need to be held on a trust-custody basis or in a different way (hereinafter referred to as “**change of method of holding in custody**”) Eurex Clearing AG is entitled according to its best judgement and by safeguarding of the interests of the respective Clearing Member to effectuate transactions to be performed by Eurex Clearing AG by using securities or ancillary rights subject to such a change of method of holding in custody.

Eurex Clearing AG is also entitled, in case of delivery obligations with shares, fractional rights and ancillary rights which are not fully feasible, to clear such delivery obligations at Clearstream Banking AG on the first Business Day after the Business Day on which the delivery obligation came into existence after respective order by Eurex Clearing AG. Numbers 2.2.1 and 2.2.2 do not apply.

## 2.4 Daily Assessment

- (1) For each delivery in securities and rights which has not yet been fulfilled, gains and losses at the respective Business Day shall be determined and balanced against the deposited securities. For all deliveries not having been fulfilled yet, the amount of the securities to be deposited is determined by the difference between the price of the transaction and the daily settlement price of the Business Day.
- (2) The daily settlement price shall be determined by Eurex Clearing AG after close of trading and shall be communicated to the Clearing Members.

## 2.5 Transaction Netting

Eurex Clearing AG and the Clearing Member may agree upon a netting of FWB Transactions on the relevant Trade Date (“**Transaction Netting**”) subject to and in accordance with the following provisions:

### 2.5.1 General provisions

- (1) The Transaction Netting shall occur at the end of each Trade Date and relates to all FWB Transactions (including FWB Transactions originating from different trading venues of the Frankfurter Wertpapierbörse and Off-Book Trades) that form part of the same Netting Unit.
- (2) A “**Netting Unit**” comprises all FWB Transactions meeting the following requirements:
  - (a) all FWB Transactions have the same Trade Date,

- (b) all FWB Transactions are concluded on the same trading venue of FWB or the Clearing Member has chosen to combine FWB Transactions concluded on both trading venues of FWB,
  - (c) all delivery obligations under all FWB Transactions need to be fulfilled on the same Business Day,
  - (d) all such delivery obligations relate to shares, securities, rights or other instruments ("Relevant Securities"), in each case with the same ISIN (or other securities identification number),
  - (e) all payment obligations under all FWB Transactions are denominated in the same currency,
  - (f) all FWB Transactions are booked into the same Transaction Account,
  - (g) the Clearing Member has designated the same Settlement Location with respect to all FWB Transactions, and
  - (h) the Clearing Member has designated the same securities accounts with the relevant Settlement Location to be used for performing the delivery obligations under all FWB Transactions.
- (3) With respect to any FWB Transaction that forms part of a Netting Unit, the provisions on set-offs set out in Chapter I Part 1 Number 1.3.1 of the Clearing Conditions do not apply.

## 2.5.2 Net Processing Methods

- (1) The Clearing Member may specify by submitting a form provided by Eurex Clearing AG on its website which of the following processing methods (each a "**Net Processing Method**") shall be applicable:
- (i) all FWB Transactions shall be netted in accordance with Paragraph (2) ("**Netting**"),
  - (ii) all FWB Transactions with a delivery obligation of the Clearing Member shall be aggregated and all FWB Transactions with a delivery obligation for Eurex Clearing AG shall be aggregated in accordance with Paragraph (3) ("**Aggregation**") , or
  - (iii) no Transaction Netting shall apply in accordance with Paragraph (4) ("**Gross Processing**"),

Netting shall be the default Net Processing Method. Eurex Clearing AG ensures that the relevant Net Processing Method specified by the Clearing Member shall be applied in Eurex Clearing AG's systems as soon as reasonably practicable.

- (2) **Netting**

If Netting is the applicable Net Processing Method, the following shall apply with respect to each Netting Unit:

(a) **Novation**

Within the end-of-day processing by Eurex Clearing AG on the relevant Trade Date, the following new FWB Transaction shall be established via novation:

All FWB Transactions under the same Netting Unit shall be novated (noviert) into, and replaced with, one FWB Transaction with (I) a delivery obligation for either the Clearing Member or Eurex Clearing AG that is equal to the netted delivery obligations under such FWB Transactions immediately prior to the novation and (II) a payment obligation for either Eurex Clearing AG or the Clearing Member that is equal to the netted payment obligations under such FWB Transactions immediately prior to the novation ("**Net Position**").

(b) **Strange Nets**

(i) A "**Strange Net**" occurs, if the Novation under Paragraph (a) results in the establishment of an FWB Transaction

- (I) with only an obligation to deliver Relevant Securities, but without a primary contractual payment obligation,
- (II) with only a payment obligation, but without an obligation to deliver Relevant Securities,
- (III) with a delivery obligation and a payment obligation for one (but not for the other) party, or
- (IV) without a delivery obligation and without a payment obligation.

(ii) The Clearing Member can specify separately with respect to each Netting Unit by submitting a form provided by Eurex Clearing AG on its website which of the following strange net processing methods (each a "**Strange Net Processing Method**") shall be applicable:

- (I) the Strange Net shall be unwound and Aggregation shall be the applicable Net Processing Method with respect to such Netting Unit instead of Netting ("**Unwinding**"), or
- (II) the Strange Net shall be processed as free-of-payment without the establishment of any delivery obligation.

Unwinding shall be the default Strange Net Processing Method for each Netting Unit.

(3) **Aggregation**

If Aggregation is the applicable Net Processing Method, the following provisions shall apply with respect to each Netting Unit:

(a) Transaction Netting via Aggregation

Within the end-of-day processing by Eurex Clearing AG on the relevant Trade Date, the following two FWB Transactions shall be established via novation:

- (i) all FWB Transactions under the same Netting Unit with a delivery obligation for the Clearing Member shall be novated (noviert) into, and replaced with, one FWB Transaction with (I) a delivery obligation for the Clearing Member that is equal to the aggregated delivery obligations under such FWB Transactions immediately prior to the novation and (II) a payment obligation for Eurex Clearing AG that is equal to the aggregated payment obligations under such FWB Transactions immediately prior to the novation ("**Aggregated Sell Position**"); and
- (ii) all FWB Transactions under the same Netting Unit with a delivery obligation for Eurex Clearing AG shall be novated (noviert) into, and replaced with, one FWB Transaction with (I) a delivery obligation for Eurex Clearing AG that is equal to the aggregated delivery obligations under such FWB Transactions immediately prior to the novation and (II) a payment obligation for the Clearing Member that is equal to the aggregated payment obligations under such FWB Transactions immediately prior to the novation ("**Aggregated Buy Position**").

(b) Linking before Aggregation

- (i) Prior to the Aggregation under Paragraph (3) (a), the Clearing Member may in the systems of Eurex Clearing AG combine specific FWB Transactions forming part of the same Netting Unit (each a "**Linked FWB Transaction**") into one or more specific sub-units ("**Linking Unit**") prior to the applicable cut-off time specified by Eurex Clearing AG ("**Linking**").
- (ii) Netting of Linked FWB Transactions

Within the end-of-day processing by Eurex Clearing AG on the relevant Trade Date, all Linked FWB Transactions within the relevant Linking Unit shall be netted (verrechnet) and a netting result shall be calculated ("Linking Net Result") specifying the following :

- (i) all primary contractual payment obligations under all Linked FWB Transactions within the relevant Linking Unit shall be netted (verrechnet) and
- (ii) all primary contractual delivery obligations under all Linked FWB Transactions within the relevant Linking Unit shall be netted (verrechnet).



For the avoidance of doubt, this netting (Verrechnung) does not lead to the establishment of another FWB Transaction and leaves the Linked FWB Transactions unamended.

(iii) Processing of the Linking Net Result

If the Linking Net Result does not result in a Strange Net, the Linked Net Result forms part of the Transaction Netting via Aggregation in accordance with Paragraph (3) (a).

If the Linking Net Result results in a Strange Net, the following applies:

- (I) if the Linking Net Result includes a delivery obligation, but without a payment obligation, the Linking Net Result shall form part of the Transaction Netting via Aggregation in accordance with Paragraph (3) (a);
- (II) if the Linking Net Result includes a payment obligation, without a delivery obligation, the Linking Net Result shall be processed separately outside the Aggregation pursuant to Paragraph (3) (a);
- (III) if the Linking Net Result includes a delivery obligation and a payment obligation for the same party, such Linking Net Result shall be separated into two separate Linking Net Results:
  - (i) a "Linking Net Delivery Result" with a delivery obligation for either the Clearing Member or Eurex Clearing AG that is equal to the delivery obligation under such Linking Net Result, but with no payment obligation and shall form part of the Transaction Netting via Aggregation in accordance with Paragraph (3) (a); and
  - (ii) a "Linking Net Payment Result" with a payment obligation for either the Clearing Member or Eurex Clearing AG that is equal to the payment obligation under such Linking Net Result, but with no delivery obligation and shall be processed separately outside the Aggregation pursuant to Paragraph (3) (a); or
- (IV) without a delivery obligation and without a payment obligation, the Linked Net Position shall be processed separately outside the Aggregation pursuant to Paragraph (3) (a).

(4) Gross Processing

If Gross Processing is the applicable Net Processing Method, all FWB Transactions forming part of the relevant Netting Unit remain unaffected and no novation of such Transactions shall occur.

(5) Netting and Aggregation between Clearing Member and Direct Clients

If any FWB Transaction that is subject to an aggregation or netting pursuant to Number 2.5.2 (2) or Number 2.5.2 (3) is a Client-Related Transaction, it is the responsibility of the Clearing Member and the relevant Direct Client to agree on a bilateral basis on the consequences (if any) that such aggregation or netting may have on the relevant corresponding transaction between them.

### 2.5.3 Effectiveness of Netting and Aggregation; Reporting

- (1) Any Netting or Aggregation pursuant to Number 2.5.2 (2) and Number 2.5.2 (3) shall automatically become effective upon completion of the end-of-day processing by Eurex Clearing AG for the relevant Trade Date.
- (2) Eurex Clearing AG will inform the Clearing Member of the results of any Netting or Aggregation pursuant to Number 2.5.2 (2) and Number 2.5.2 (3) after the completion of the end-of-day processing on the relevant Trade Date by submitting a report ("Net Clearing Report").

In case the Clearing Member has chosen Netting as Net Processing Method, Eurex Clearing AG will determine in the Net Clearing Report with respect to each FWB Transaction forming part of the relevant Netting Unit whether such FWB Transaction forms part of (i) either the netting result or (ii) the remaining buy or sell obligation ("Surplus Flag"). The Surplus Flag shall serve as recommendation only and shall not constitute a legally binding obligation between Eurex Clearing AG and the Clearing Member.

### 2.5.4 Discharge of the Delivery Obligations to be performed under the FWB Transactions resulting from Netting and Aggregation

- (1) The settlement of the FWB Transactions resulting from Netting and Aggregation pursuant to Number 2.5.2 (2) and Number 2.5.2 (3) between Eurex Clearing AG and the relevant Clearing Member shall occur on the date following two Business Days after the Trade Date if not specified otherwise ("Settlement Date") and is effected by the relevant Settlement Location processing the relevant delivery instructions (including any relevant payment instructions).
- (2) In addition to the settlement confirmation submitted by the relevant Settlement Location to the holder of the relevant settlement account, Eurex Clearing AG will inform the Clearing Member of the settlement status of each such FWB Transaction at the end of each relevant Settlement Date by submitting a settlement report ("**Settled Delivery Report**"). If the Transaction Netting has resulted in a Strange Net pursuant to Number 2.5.2 (2) (b) (i) (IV), the Settlement Delivery Report will include such Strange Net and will specify such Strange Net as "settled".
- (3) If the Settled Delivery Report provides information on the (partial) settlement of the relevant FWB Transaction pursuant to Number 2.5.2 (2) and Number 2.5.2 (3), the delivery obligations arising under such FWB Transactions shall, at the point in time of the submission of the Settled Delivery Report by Eurex Clearing AG, be deemed to be (partially) discharged. For the avoidance of doubt, the actual (partial) discharge

of the delivery obligations arising under such FWB Transactions occurs prior to the submission of the Settled Delivery Report in accordance with the settlement confirmation submitted by the relevant Settlement Location with respect to such FWB Transactions.

- (4) If a FWB Transaction resulting from a Transaction Netting qualifies as a Client-Related Transaction, it is the responsibility of the Clearing Member and the relevant Direct Client(s) to agree on a bilateral basis on the consequences (if any) that such Netting or Aggregation may have on the relevant corresponding transaction(s) between them. The Clearing Member procures to implement non-discretionary measures in its systems which provide for the (partial) allocation and distribution of the Relevant Securities delivered to the Clearing Member (as stated in the Settled Delivery Report) in relation to such Client-Related Transaction among its clients to which such FWB Transactions relate, in particular in scenarios where the delivery claims of the Clearing Member under such FWB Transaction remain partially unsatisfied.