

**Disclosure pursuant to Article 39 (7) EMIR with  
respect to the Clearing Conditions of  
Eurex Clearing AG**

**July 2023**

## **Disclosure pursuant to Article 39 (7) of Regulation (EU) No 648/2012 of the European Parliament and the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ("EMIR") with respect to the Clearing Conditions of Eurex Clearing AG**

### **1. Purpose and Scope**

Eurex Clearing AG ("**Eurex Clearing**") as a central counterparty ("**CCP**") is required pursuant to Article 39 (7) EMIR to publicly disclose certain information on the levels of protection and segregation which it provides.

This document (the "**Clearing Conditions Disclosure Document**") sets out the information required to be disclosed under Article 39 (7) EMIR. It provides a summary description of the client clearing models currently offered by Eurex Clearing under the Clearing Conditions of Eurex Clearing AG (the "**Clearing Conditions**") that provide for different levels of client segregation, including information on the main legal implications of the respective levels of segregation and applicable insolvency law.

Capitalised terms not defined in this Clearing Conditions Disclosure Document shall have the meaning ascribed to them in the Clearing Conditions.

**The information in this Clearing Conditions Disclosure Document is subject to change and is qualified in its entirety by the Clearing Conditions. The content of this Clearing Conditions Disclosure Document is restricted to a descriptive summary of certain provisions of the Clearing Conditions as they apply to each of the clearing models. This Clearing Conditions Disclosure Document does not provide (and does not intend to provide) any analysis of, or advice regarding any legal, accounting, regulatory or other effects of the Clearing Conditions. Accordingly, this Clearing Conditions Disclosure Document is not a substitute for an own legal and economic analysis of the Clearing Conditions and the clearing models described herein, and Eurex Clearing does not assume any liability for the content of this Clearing Conditions Disclosure Document or any omissions therefrom.**

Furthermore, this Clearing Conditions Disclosure Document only provides a general overview on the levels of protection and segregation under the clearing models offered by Eurex Clearing. In particular, it does not provide any guidance on any restrictions or limitations which may arise from the applicable laws of the jurisdictions in which the Clearing Members and/or their customers have their registered seat. Eurex Clearing has published a list of those jurisdictions in which the protection and segregation could be limited on its website under the following link: <https://www.eurex.com/ec-en/services/risk-management/client-asset-protection-emir/jurisdictions>.

For a summary description of the client clearing models offered by Eurex Clearing under the FCM Clearing Conditions ("**FCM Clearing Conditions**"), please refer to the document setting out the information required to be disclosed under Article 39 (7) EMIR with respect to the FCM Clearing Conditions ("**FCM Clearing Conditions Disclosure Document**").<sup>1</sup>

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1) A copy of the FCM Clearing Conditions Disclosure Document can be downloaded from Eurex Clearing's website under the following link: <https://www.eurex.com/ec-en/join/lsoc>

## 2. The Clearing Models

Eurex Clearing currently offers the following client clearing models under the Clearing Conditions and the FCM Clearing Conditions providing for different levels of client segregation:

- the Elementary Clearing Model (“**ECM**”)<sup>2</sup>;
- the Individual Segregated Account (“**ISA**”),
- the “**LSOC Without Excess Model**”; and
- the “**LSOC With Excess Model**”.

The LSOC Without Excess Model and the LSOC With Excess Model are regulated in the FCM Clearing Conditions. Regarding the information required to be disclosed under Article 39 (7) EMIR with respect to the LSOC Without Excess Model and the LSOC With Excess Model, please refer to the FCM Clearing Condition Disclosure Document.

The ECM and the ISA operate as so-called “principal-to-principal” models. This means that Eurex Clearing only looks to the Clearing Member as a principal in respect of cleared transactions and corresponding margin (even where the relevant transactions are cleared for the account of a client).

The clearing models are governed by Chapter I of the Clearing Conditions as follows:

- Chapter I Part 1 contains the General Clearing Provisions that apply to each clearing model;
- Chapter I Part 2 contains the provisions for the ECM; and
- Chapter I Part 4 contains the provisions for the ISA.

Eurex Clearing does not charge separate fees for the use of a specific clearing model. Costs related to clearing are set out in the price list of Eurex Clearing.

The ISA Direct Provisions under Chapter I Part 6 of the Clearing Conditions do not provide for the clearing of transactions for clients, but only for clearing of proprietary Transactions. Accordingly, no further information on the ISA Direct Provisions is provided in this Clearing Conditions Disclosure Document.

### 2.1. The Elementary Clearing Model

The Elementary Clearing Model is an omnibus client segregation model within the meaning of Article 39 (2) EMIR. It provides for the segregation of proprietary positions and assets of a Clearing Member from its client-related positions and assets.

Client-related positions and assets may relate to clients of the Clearing Member (“**Direct Clients**”) and clients of such Direct Clients (“**Indirect Clients**”). Direct Clients are further

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2) As of 4 December 2017, the “Net Omnibus Clearing Model” has been integrated into the Elementary Clearing Model and is no longer offered under the name Net Omnibus Clearing Model. Under the Elementary Clearing Model additional rules apply specifically with respect to CASS Transactions that have previously been subject to the Net Omnibus Clearing Model. These additional rules shall enable Clearing Members to clear client transactions in accordance with the UK Financial Conduct Authority’s (“**FCA**”) Client Asset Sourcebook (“**CASS**”), as has been the case for the Net Omnibus Clearing Model. The Clearing Member shall be solely responsible, and Eurex Clearing does not assume any liability, for compliance with the CASS rules.

divided into Direct Clients that are disclosed to Eurex Clearing (“**Disclosed Direct Clients**”) and Direct Clients that are not known to Eurex Clearing (“**Undisclosed Direct Clients**”).

Eurex Clearing differentiates between the following categories of Disclosed Direct Clients:

- “**DC Market Participants**”, i.e. Disclosed Direct Clients that are trading participants on one or more Markets in relation to which Eurex Clearing offers its clearing services and which conduct the Post-Trade Management with respect to the transactions relating to them;
- “**DCs With System Access**”, i.e. Disclosed Direct Clients (other than DC Market Participants) that have access to the systems of Eurex Clearing and can conduct the Post-Trade Management with respect to the Transactions relating to them; and
- “**Basic DCs**”, i.e. Disclosed Direct Clients that do not conduct the Post-Trade Management with respect to Transactions relating to them. From a functional point of view, Basic DCs can be set up in the systems of Eurex Clearing either with or without a Member ID. The Clearing Member has a choice when setting up the relevant Direct Disclosed Client.

Clients do not bear the risk of losses arising from proprietary transactions of their Clearing Member or from client-related transactions cleared under another Clearing Model.

Clients in an omnibus model, however, do bear the risk of losses arising from (i) other client-related transactions of the Clearing Member forming part of the relevant NOSA UDC Transaction Accounts Group or (ii) a shortfall in Eligible Margin Assets actually delivered to cover the overall Margin Requirement determined with respect to the relevant Internal Omnibus Margin Account.

#### 2.1.1. Structure

Any Transaction between Eurex Clearing and a Clearing Member to be cleared under the Elementary Clearing Model (“**ECM Transaction**”) is entered into as a proprietary transaction of the Clearing Member (an “**Own Transaction**”) or a Client-Related Transaction (an “**Omnibus Transaction**”, which may be a UDC-Related Transaction or a DC-Related Transaction (in each case including own transactions of the relevant Direct Client and transactions of such Direct Client that relate to Indirect Clients).

Under the Elementary Clearing Model Eurex Clearing offers its Clearing Members the following omnibus client segregation:<sup>3</sup>

- (a) “**net omnibus client segregation**” where margin is posted by the Clearing Member to Eurex Clearing on a net basis across Transactions relating to multiple Direct Clients, and
- (b) “**gross omnibus client segregation**” where margin is posted by the Clearing Member to

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<sup>3</sup> **Please Note:** Generally, the segregation and protection level for a specific Disclosed Direct Client does not change after the relevant Transaction Account relating to such Disclosed Direct Client is setup in Eurex Clearing’s systems. With respect to FWB Transactions, the segregation and protection level for a DC Market Participant can be reduced in case the client’s Clearing Member opted for “**Optimised Trade Date Netting**”. In such case, all FWB Transactions relating to the relevant DC Market Participant will automatically be rededicated to a specific NOSA UDC Account allowing the Clearing Member to apply Trade Date Netting across several DC Market Participants. Instead of being subject to a more privileged Gross Omnibus Segregation, all FWB Transactions of such DC Market Participants will be subject to a Net Omnibus Segregation with a reduced segregation protection (i.e. calculation of a single Difference Claim for entire omnibus account, no direct return of any remaining assets after end of DMP, chances for successful porting very low). The Clearing Member and Eurex Clearing will inform each DC Market Participant upon the choice of the Clearing Member to apply Optimised Trade Date Netting.

Eurex Clearing on a gross basis across Transactions relating to a particular Direct Client.

In addition, Eurex Clearing offers net omnibus segregated accounts and gross omnibus segregated accounts for indirect client clearing. Gross omnibus segregated accounts for Indirect Clients are only available for Eurex Transactions pursuant to Chapter II of the Clearing Conditions and OTC Interest Rate Derivative Transactions pursuant to Chapter VIII Part 2 of the Clearing Conditions and OTC NDF Transactions pursuant to Chapter VIII Part 5 of the Clearing Conditions.

Eurex Clearing opens and maintains with respect to each Clearing Member the following types of Transaction Accounts in which the ECM Transactions of the Clearing Member have to be booked:

- (a) "**Clearing Member Own Account(s)**" with respect to Own Transactions of the Clearing Member;
- (b) "**NOSA UDC Account(s)**" with respect to UDC-Related Transactions of the Clearing Member relating to transactions of multiple Undisclosed Direct Clients;
- (c) "**DC Own Account(s)**" with respect to own transactions of each Disclosed Direct Client of the Clearing Member;
- (d) "**NOSA Indirect Client Account(s)**" for the clearing of Client-Related Transactions relating to multiple Indirect Clients of a Direct Client of the Clearing Member; and
- (e) "**GOSA Indirect Client Account(s)**" for the clearing of Eurex Transactions, OTC Interest Rate Derivative Transactions, OTC NDF Transactions relating to one particular Indirect Client of a Direct Client of the Clearing Member.

Transaction Accounts will be combined in one or more Transaction Accounts Groups. The Transactions booked to the Transaction Accounts forming part of the same Transaction Accounts Group and the Eligible Margin Assets allocated to the Transaction Accounts of such Transaction Accounts Group shall constitute a separate ECM Standard Agreement which is the legal basis for a close-out netting (and the determination of a net claim resulting therefrom) and/or a porting in case of a default of the Clearing Member.

Therefore, Eurex Clearing requires the Clearing Member to allocate each Indirect Client Account to one of the following types of Client Transaction Accounts Groups:

- (a) a "**NOSA UDC Transaction Accounts Group**" shall comprise one NOSA UDC Account and any Indirect Client Accounts linked to the specific NOSA UDC Account; and
- (b) a "**DC Transaction Accounts Group**" shall comprise a DC Own Account and any other Transaction Account linked to this DC Own Account, which may include one or more DC Own Accounts relating to the same Disclosed Direct Client and/or one or more Indirect Client Accounts.

In the Elementary Clearing Model, the contractual rights and obligations of a Clearing Member arising with respect to Own Transactions are legally segregated from the rights and obligations arising with respect to Omnibus Transactions. This segregation is achieved by an allocation of the respective Transactions to separate ECM Standard Agreements, the Proprietary Standard Agreement for Own Transactions and the Omnibus Standard Agreement(s) for Omnibus Transactions. All Omnibus Transactions booked to any Transaction Account allocated to the same Client Transaction Accounts Group shall constitute a separate Omnibus Standard Agreement. Omnibus Transactions between Eurex Clearing and the relevant Clearing Member under an Omnibus Standard Agreement and any Allocated Redelivery Claims for Margin and

any Redelivery Claims for Variation Margin, in each case relating to such Omnibus Standard Agreement, form a single agreement between such parties and such agreement constitutes a separate master agreement (*Rahmenvertrag*) between such parties.

Furthermore, Eurex Clearing supports Clearing Members domiciled in the UK that wish to clear certain Eurex Transactions or OTC Interest Rate Derivative Transactions in accordance with the rules of the Client Asset Sourcebook (CASS) of the United Kingdom Financial Conduct Authority ("**CASS Rules**") for the benefit of their clients. The Clearing Member shall be solely responsible, and Eurex Clearing does not assume any liability, for compliance with the CASS rules. The Clearing Member may designate, by notice to Eurex Clearing, the relevant Client Transaction Accounts Groups (each together with the applicable Internal CASS Omnibus Margin Account) to constitute (either individually or collectively) a client transaction account for the purposes of the CASS rules ("**CASS Client Account**"). Any Internal CASS Omnibus Margin Account may only and must relate to one CASS Client Account. Eurex Clearing will ensure that positions and assets forming part of a CASS Client Account are legally segregated from any non-CASS Transactions and assets. Eurex Clearing, upon request, provides Clearing Members with trust acknowledgement letters in order to enable them to comply with their obligations under the CASS rules in respect of client money.

#### 2.1.2. Porting and Close-out

If a Termination Event occurs with respect to a Clearing Member, Eurex Clearing will initiate a porting process separately with respect to each relevant Omnibus Standard Agreement. Each Disclosed Direct Client may port individually to a non-defaulting Clearing Member ("**Replacement Clearing Member**"). In the absence of porting, any remaining balance following the completion of the default management process that is allocatable to the Disclosed Direct Client will be directly returned to the relevant client. If the Porting Requirements with respect to an Omnibus Standard Agreement are fulfilled within the ECM Porting Period, all rights and obligations of the defaulted Clearing Member under such Omnibus Standard Agreement, including with respect to corresponding margin, will be transferred to the Replacement Clearing Member.

Any Eligible Margin Assets that are allocated to an Internal Omnibus Margin Account, but do not relate to a specific Omnibus Standard Agreement constitute "**Excess Collateral**". Excess Collateral shall only be transferred to a Replacement Clearing Member, if the transfer is made to the same Replacement Clearing Member and includes all Omnibus Transactions that are covered by this Internal Omnibus Margin Account.

"**ECM Porting Period**" means, subject to an extension by Eurex Clearing AG with respect to one or more or all Omnibus Standard Agreements,

- (i) if an Insolvency Termination Event has occurred, the period from the occurrence of the Insolvency Termination Event until (and including)
  - (a) with respect of a DC Transaction Accounts Group, 13:00 hours (Frankfurt am Main time) on the immediately following Business Day and
  - (b) with respect to a NOSA UDC Transaction Account Group, until lapse of 4 business hours following the occurrence of an Insolvency Termination Event; and
- (ii) if any other Termination Event has occurred, the period from the publication of the ECM Porting Notice until (and including)
  - (a) with respect to a DC Transaction Accounts Group, 13:00 hours (Frankfurt am Main time) on the immediately following Business Day and

(b) with respect to a NOSA UDC Transaction Accounts Group, until lapse of 4 business hours following the publication of the ECM Porting Notice.

Eurex Clearing AG may extend the ECM Porting Period with respect to one or more or all Omnibus Standard Agreements in order to facilitate a porting by giving notice to the Affected Clearing Member and the affected Disclosed Direct Clients of the Affected Clearing Member. All other Clearing Members may be informed by Eurex Clearing AG of the extension in accordance with Number 16.1 of the General Clearing Provisions. Eurex Clearing AG may likewise inform other market participants or the public of the extension.

If the Porting Requirements are not fulfilled within the ECM Porting Period, the relevant Omnibus Standard Agreement will be closed out and a separate Difference Claim will be calculated. The Difference Claim reflects all claims and obligations with respect to the relevant Omnibus Standard Agreement, including (without limitation) those arising from transactions and from cash margin. Omnibus Margin in the form of securities is pledged to Eurex Clearing and not included in the Difference Claim. Omnibus Margin in the form of securities will therefore be enforced to the extent required for the discharge of the Difference Claim.

Following the completion of the Clearing Member's default management process by Eurex Clearing, any balance owed by Eurex Clearing shall be returned as follows

- a) with respect to a NOSA UDC Transaction Accounts Group
  - (i) any Difference Claim payable by Eurex Clearing, will be paid to the defaulted Clearing Member for the account of all Undisclosed Direct Clients under the relevant Omnibus Standard Agreement and
  - (ii) any remaining Securities that have been pledged as Omnibus Margin and allocated to the relevant Omnibus Standard Agreement will be released and such release shall constitute a return to the defaulting Clearing Member for the account of the relevant Undisclosed Direct Clients of the Clearing Member.

and

- b) with respect to a DC Transaction Accounts Group
  - (i) any Difference Claim payable by Eurex Clearing, will be paid to the relevant Disclosed Direct Client, and
  - (ii) any remaining Securities that have been pledged as Omnibus Margin and allocated to the relevant Omnibus Standard Agreement will be released and transferred to the relevant Disclosed Direct Client.

Any Excess Collateral in the form of Securities shall be released or transferred, and Unallocated Redelivery Claims shall be satisfied by a payment of the relevant amount, as follows:

- (i) if all Direct Clients whose Client Transaction Accounts relate to the Internal Omnibus Margin Account to which such Excess Collateral is allocated have appointed, are represented or are acting through the same Authorised Manager, such Excess Collateral in form of Securities shall be transferred to, and such Unallocated Redelivery Claims shall be paid to, such Authorised Manager (for the account of all such Direct Clients); and
- (ii) otherwise such Excess Collateral in form of Securities shall be released to, and such Unallocated Redelivery Claims shall be paid to, the Affected Clearing Member, and any such release or payment to the Affected Clearing Member shall constitute a return to the

Affected Clearing Member for the account of the relevant Direct Clients.

With respect to the Proprietary Standard Agreement, all current and future payment and delivery obligations thereunder will expire as of the Termination Time and a separate Difference Claim will be calculated.

#### 2.1.3. Set-off

Claims of Eurex Clearing or the Clearing Member, including claims to provide cover in respect of margin, may only be set off within the Proprietary Standard Agreement or each Omnibus Standard Agreement, but not across those ECM Standard Agreements. Eurex Clearing is further entitled to apply payment netting of cash payment claims arising across the ECM Standard Agreements in the course of its day-to-day operations, unless such payment netting has been excluded or limited by the Clearing Member.

In the case of a Clearing Member default, Eurex Clearing is entitled to set off any Difference Claim it may have against the Clearing Member under an Omnibus Standard Agreement against any Difference Claim it owes to the Clearing Member under the Proprietary Standard Agreement (but not vice versa).

#### 2.1.4. Margin Requirements

The margin requirements under the ECM are determined separately with respect to the Proprietary Standard Agreement and each Omnibus Standard Agreement. The required amount of margin is calculated in line with the general margin calculation methods set out in the Clearing Conditions.

For each Omnibus Standard Agreement, the margin requirement is the sum of the separate margin requirements determined (i) across all DC Own Accounts (if any) and (ii) for each other account which is part of the relevant Client Transaction Accounts Group.

Margin in the form of cash is granted in the form of an outright transfer. Margin in the form of securities is provided by way of a pledge.

With respect to the ECM, Eurex Clearing AG allocates the relevant Eligible Margin Assets either to the proprietary or client business of the relevant Clearing Member on a by-asset-basis, i.e. the relevant Eligible Margin Assets will either be booked to the Internal Proprietary Margin Account or one or more Internal Omnibus Margin Accounts of the relevant Clearing Member in accordance with its instructions. All Eligible Margin Assets so booked to an Internal Omnibus Margin Account will be further allocated by means of an allocation algorithm to each Client Transaction Account linked to such Internal Omnibus Margin Account.

With the allocation algorithm applied by Eurex Clearing to assign each Client Transaction Accounts Group with margin collateral out of a common Internal Omnibus Margin Account, clients will receive a portion of the available margin collateral based on their margin requirement. Eurex Clearing can only allocate margin collateral that has been actually delivered to Eurex Clearing by the Clearing Member. Clients should be aware that the margin collateral determined through the allocation algorithm to be transferred to a Replacement Clearing Member in case of porting or to be return to them in case of a close-out may be different from the specific margin collateral that a client delivered to the Clearing Member.

A Clearing Member may request the set-up of multiple Internal Margin Accounts and thus establish multiple omnibus collateral pools.

The Clearing Member is required to separately demand margin from its clients with respect to

the transactions between them that correspond to the Omnibus Transactions.

#### 2.1.5. Insolvency Law

The arrangements on porting and on the calculation of a separate Difference Claim with respect to each ECM Standard Agreement following a close-out netting fall within the scope of the relevant requirements set out in Article 48 (5) and (7) EMIR. Their operation also relies on the German EMIR implementation act pursuant to which measures taken by a CCP in accordance with the requirements on default procedures set out in Article 48 EMIR shall not be impaired by restrictions under German insolvency law that might otherwise be applicable.

As a result of the formation of separate Omnibus Standard Agreements per Transaction Accounts Group, Own Transactions of a Clearing Member, UDC-Related Transactions, and DC-Related Transactions (including transactions of the Direct Client as well as transactions relating to the Direct Client's Indirect Clients) are segregated from each other in the insolvency of a Clearing Member.

Positions and assets relating to Undisclosed Direct Clients may be subject to mutualised losses within such Omnibus Standard Agreement following a default of their Clearing Member. This is the case as UDC-Related Transactions relating to multiple Undisclosed Direct Clients are combined in one Omnibus Standard Agreement, for which one Difference Claim may be determined reflecting the net value of all such UDC-Related Transactions. Payment of any such Difference Claim by Eurex Clearing will not be made to the relevant clients directly, but to the defaulted Clearing Member for the account of the relevant clients.

Due to the lack of any security interests, clients may not have any preferential rights *in rem* to the Difference Claim or to any assets that were transferred to Eurex Clearing by the Clearing Member as margin. Accordingly, such clients may be unsecured general insolvency creditors in insolvency proceedings over the assets of the Clearing Member.

Transactions relating to a Disclosed Direct Clients are maintained in segregated accounts. These clients will still face fellow customer risk associated with a shortfall in margin collateral actually delivered. Disclosed Direct Clients may port individually to a new Clearing Member and in the absence of porting, any remaining balance that is allocatable to the Disclosed Direct Client will be directly returned to the relevant client.

## 2.2. **The Individual Segregated Account**

The ISA is an individual client segregation model within the meaning of Article 39 (3) EMIR. It provides for the segregation of DC-Related Transactions (including transactions relating to clients of the relevant Disclosed Direct Client (Indirect Clients)) of the Clearing Member with respect to each Disclosed Direct Client. Disclosed Direct Client bear neither the risk of losses relating to proprietary transactions of their Clearing Member nor the risk of losses relating to other Client-Related Transactions of their Clearing Member. Additionally, all Eligible Margin Assets provided as Margin to Eurex Clearing with respect to a specific Disclosed Direct Client is segregated from the Eligible Margin Assets of all other clients of the Clearing Member.

Under the ISA, Eurex Clearing facilitates indirect clearing services by providing, upon request of the Clearing Member, separate Transaction Accounts for ISA Transactions relating to Indirect Clients of the relevant Disclosed Direct Client. Also, under the ISA, Eurex Clearing offers net omnibus segregated accounts and gross omnibus segregated accounts with respect to Indirect Clients. GOSA Indirect Client Accounts are only available for Eurex Transactions

pursuant to Chapter II of the Clearing Conditions, OTC Interest Rate Derivative Transactions pursuant to Chapter VIII Part 2 of the Clearing Conditions and OTC NDF Transactions pursuant to Chapter VIII Part 5.

### 2.2.1. Structure

The contractual rights and obligations of a Clearing Member towards Eurex Clearing with respect to each Disclosed Direct Client are legally segregated from all other rights and obligations between such Clearing Member and Eurex Clearing.

Eurex Clearing opens and maintains with respect to each Clearing Member the following types of Transaction Accounts in which the ISA Transactions of the Clearing Member have to be booked:

- (a) one or more **DC Own Accounts**;
- (b) one or more **NOSA Indirect Client Accounts**;
- (c) one or more **GOSA Indirect Client Accounts**

(each such account an “**ISA Transaction Account**”). All ISA Transaction Accounts of a Clearing Member relating to a particular Disclosed Direct Client shall form a separate group of Transaction Accounts (each such group an “**ISA Transaction Accounts Group**”).

All rights and obligations between Eurex Clearing and the relevant Clearing Member with respect to all ISA Transactions booked to any ISA Transaction Account belonging to the same ISA Transaction Accounts Group constitute a separate agreement (each an “**ISA Standard Agreement**”), which is the legal basis for a close-out netting (and the determination of a net claim resulting therefrom) and/or a porting in case of a default of the Clearing Member<sup>4</sup>.

All ISA Transactions between Eurex Clearing and the relevant Clearing Member under an ISA Standard Agreement and any Redelivery Claims for Margin or Variation Margin, in each case relating to such ISA Standard Agreement, form a single agreement between such parties and such agreement constitutes a separate master agreement (*Rahmenvertrag*) between such parties, which can be terminated only in its entirety.

The Clearing Member may request Eurex Clearing to maintain separate operational sub pools with respect to a Disclosed Direct Client (each an “**ISA Sub Pool**”). If ISA Sub Pools are established, each ISA Transaction Account relating to the relevant Disclosed Direct Client must be assigned to a particular ISA Sub Pool. Each ISA Sub Pool shall operationally be treated separately from any other ISA Sub Pool, subject to and in accordance with the ISA Sub Pool Provisions. The use of ISA Sub Pools will in particular, without limitation, neither result in additional Standard Agreements nor separate Difference Claims. The Clearing Member represents and warrants to Eurex Clearing that (a) it has informed the Disclosed Direct Client of its election to use ISA Sub Pools in connection with the Clearing and of any potential adverse economic effects that the usage of ISA Sub Pools may have for that Disclosed Direct

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<sup>4</sup> **Please Note:** Generally, the segregation and protection level for a specific Disclosed Direct Client does not change after the relevant Transaction Account relating to such Disclosed Direct Client is setup in Eurex Clearing’s systems. With respect to FWB Transactions, the segregation and protection level for a DC Market Participant can be reduced in case the client’s Clearing Member opted for “**Optimised Trade Date Netting**”. In such case, all FWB Transactions relating to the relevant DC Market Participant will automatically be rededicated to a specific NOSA UDC Account allowing the Clearing Member to apply Trade Date Netting across several DC Market Participants. Instead of being subject to a more privileged Individual Segregation, all FWB Transactions of such DC Market Participants will be subject to a Net Omnibus Segregation with a reduced segregation protection (i.e. calculation of a single Difference Claim for entire omnibus account, no direct return of any remaining assets after end of DMP, chances for successful porting very low). The Clearing Member and Eurex Clearing will inform each DC Market Participant upon the choice of the Clearing Member to apply Optimised Trade Date Netting.

Client in comparison to the Clearing of ISA Transactions without the use of ISA Sub Pools; and (b) the Disclosed Direct Client is willing to bear the potential economic risks and adverse effects which are related to a use of ISA Sub Pools, in particular, without limitation, in respect of potentially higher Margin Requirements and Default Fund Contribution requirements resulting from the operational treatment associated with the use of ISA Sub Pools.

Under the ISA, it is the responsibility of the Clearing Member to agree with each of its Disclosed Direct Clients on appropriate bilateral client-clearing arrangements allowing for individual client segregation in accordance with any applicable regulatory requirements.

Clearing Members domiciled in the UK have the option to clear ISA Transactions in accordance with the CASS provisions. The Clearing Member shall be solely responsible, and Eurex Clearing does not assume any liability, for compliance with the CASS rules. The Clearing Member may designate, by notice to Eurex Clearing, one or several ISA Transactions Accounts Groups (each together with the applicable Internal ISA CASS Margin Account(s) and the applicable Internal ISA CASS Cash Account(s)) to constitute (either individually or collectively) a client transaction account for the purpose of the CASS Rules (each ISA Transactions Accounts Group so individually designated, and all ISA Transaction Accounts Groups so collectively designated, an **“ISA CASS Client Account”**). Upon the instruction of the Clearing Member, Eurex Clearing will, in its internal systems, establish and maintain for each Clearing Member one or more Internal ISA Margin Accounts with respect to Eligible Margin Assets for ISA CASS Transactions (each an **“Internal ISA CASS Margin Account”**). Margin in the form of Securities in relation to an Internal ISA CASS Margin Account can only be provided by way of granting pledges. Any Internal ISA CASS Margin Account may only and must relate to an ISA Transaction Accounts Group that forms part of an ISA CASS Client Account. Eurex Clearing will ensure that positions and assets forming part of an ISA CASS Client Account are legally segregated from any non-CASS Transactions and collateral. Eurex Clearing, upon request, provides Clearing Members with trust acknowledgement letters in order to enable them to comply with their obligations under the CASS rules in respect of client money.

#### 2.2.2. Porting and Close-out

The occurrence of a Termination Event with respect to a Clearing Member will, at the election of the Disclosed Direct Client, initiate a porting process by which all rights and obligations under the ISA Standard Agreement shall be transferred and all Redelivery Claims for Margin and Variation Margin relating thereto shall be assigned to a transferee Clearing Member (Replacement Clearing Member). If the Disclosed Direct Client chooses not to port or if the Porting Requirements are not met within the applicable ISA Porting Period, a close-out netting will take place.

**“ISA Porting Period”** means

- (a) if an Insolvency Termination Event has occurred, the period from the occurrence of the Insolvency Termination Event until (and including) 13:00 hours (Frankfurt am Main time) on the immediately following Business Day; and
- (b) if any other Termination Event has occurred, the period from the publication of the ISA Porting Notice until (and including) 13:00 hours (Frankfurt am Main time) on the immediately following Business Day.

Eurex Clearing AG may extend the ISA Porting Period with respect to one or more ISA Standard Agreements in order to facilitate a porting by giving notice to the affected Clearing Member and the affected Disclosed Direct Clients. All other Clearing Members may be

informed of the extension in accordance with Number 16.1 of the General Clearing Provisions. Eurex Clearing AG may likewise inform other market participants or the public of the extension.

If close-out netting occurs, all payment and delivery obligations under the relevant ISA Standard Agreement between Eurex Clearing and the Clearing Member expire and will be combined into a separate Difference Claim.

Eurex Clearing shall return any balance owed by it in respect of such ISA Standard Agreement following the completion of the default management process with respect to the Clearing Member. Any Difference Claim in relation to such ISA Standard Agreement owed by Eurex Clearing shall be discharged by payment of the relevant amount to the relevant Disclosed Direct Client as follows:

- If Eligible Margin Assets in the form of Securities have been transferred to Eurex Clearing by way of full title as Margin in relation to such ISA Standard Agreement, such Securities are considered in the relevant Difference Claim. Eurex Clearing may upon request of the Disclosed Direct Client discharge the Difference Claim by delivering the Securities that have been delivered to Eurex Clearing with respect to the relevant Disclosed Direct Client.
- If Eligible Margin Assets in the form of Securities have been pledged to Eurex Clearing as Margin in relation to such ISA Standard Agreement and if such pledged Securities are not realised by Eurex Clearing during its default management process (the "**ISA Direct Return Securities**"), Eurex Clearing shall transfer the ISA Direct Return Securities to the relevant Disclosed Direct Client and any pledges over such Securities shall be released.

### 2.2.3. Set-off

Claims of Eurex Clearing or the Clearing Member, including claims to provide cover in respect of Margin, may only be set off within the respective ISA Standard Agreement.

Eurex Clearing is entitled to make payment nettings across ISA Standard Agreements with Clearing Members in its day-to-day operations, unless such payment netting has been excluded or limited by the Clearing Member. Eurex Clearing is not entitled to apply any other set-offs other than payment netting across different ISA Standard Agreements.

In case of a Clearing Member default, Eurex Clearing is also entitled to set off any Difference Claim it has against the Clearing Member under an ISA Standard Agreement against any Difference Claim it owes to the same Clearing Member under the Proprietary Standard Agreement (but not vice versa).

### 2.2.4. Margin Requirements

The Clearing Member is required to provide Margin for all ISA Transactions in respect of each Internal ISA Margin Account ("**Margin**"). The amount of Eligible Margin Assets to be delivered as cover in respect of Margin shall be determined by Eurex Clearing separately with respect to each Internal ISA Margin Account reflecting the sum of the calculations for all ISA Transaction Accounts that relate to such Internal ISA Margin Account.

Margin in the form of cash is granted in the form of an outright transfer. Margin in the form of securities is provided either by way of pledge or by way of title transfer. Prior to the establishment of each Internal ISA Margin Account, the Clearing Member shall elect in the systems of Eurex Clearing whether to provide Eligible Margin Assets in the form of Securities to Eurex Clearing by way of granting pledges ("**Security Interest Margin Election**") or by way

of title transfer ("**Title Transfer Margin Election**").

The Clearing Member is required to separately demand margin from its Disclosed Direct Client in an amount which shall at least be equal to the sum of the Margin Requirement applicable to each ISA Transaction Account.

#### 2.2.5. Insolvency Law

The arrangements on porting and on the calculation of a separate Difference Claim with respect to each ISA Standard Agreement following a close-out netting fall within the scope of the relevant requirements set out in Article 48(6) and (7) EMIR. Their operation also relies on the German EMIR implementation act pursuant to which measures taken by a CCP in accordance with the requirements on default procedures set out in Article 48 EMIR shall not be impaired by restrictions under German insolvency law that might otherwise be applicable.

As a result of the formation of separate ISA Standard Agreements, separate close-out nettings can be applied for the Transactions within each such ISA Standard Agreement. In the absence of porting, any remaining balance that is allocatable to the Disclosed Direct Client will be directly returned to the relevant Disclosed Direct Client (further details outlined under item 2.2.2 above). As a consequence, an insolvency administrator of the Clearing Member would not have any claim to the relevant margin assets.

If the Clearing Member fails to meet its obligation to forward the margin assets to Eurex Clearing which it has received from the Disclosed Direct Client, the Disclosed Direct Client will be exposed to the insolvency risk of the Clearing Member in such amount because the Difference Claim of the Clearing Member against Eurex Clearing will not increase accordingly. The Disclosed Direct Client can however mitigate this transit risk by opting for direct transfer of margin to and from Eurex Clearing. In such case the legal consequence as outlined under this item 2.2.5 and item 2.2.2 do not change.

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