

Appendix 2 to the FCM Regulations of Eurex Clearing AG:

## Pledge Agreement

relating to pledges of Eligible Margin Assets in the form of Securities

As of 20.09.2021

This agreement (the “**Agreement**”) is dated the last date set out on the signature page hereof and entered into

**BETWEEN:**

(1) \_\_\_\_\_  
(legal name)

acting through /  having its ( registered) office at

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ as FCM Clearing Member (the “**FCM Clearing Member**”); and

(2) Eurex Clearing Aktiengesellschaft, a stock company (*Aktiengesellschaft*) incorporated under the laws of the Federal Republic of Germany, registered in the commercial register of the local court (*Amtsgericht*) in Frankfurt am Main under HRB 44828 and having its registered office at Mergenthalerallee 61, 65760 Eschborn, Federal Republic of Germany (“**Eurex Clearing AG**”).

The FCM Clearing Member and Eurex Clearing AG are hereinafter also referred to as the “**Parties**” and each of them as a “**Party**”. Unless the context requires otherwise, terms used but not defined in this Agreement shall have the meaning given to them in the *FCM Regulations for Eurex Clearing AG* (the “**FCM Regulations**”) (including by way of reference made therein).

**WHEREAS:**

- (A) The Parties have entered or will enter into a Clearing Agreement in the form as appended to the FCM Regulations as Appendix 1 (as the same may have been or will be amended from time to time, the “Clearing Agreement”).
- (B) The FCM Clearing Member intends to grant pledges for the benefit of Eurex Clearing AG for purposes of providing Initial Margin in accordance with the FCM Regulations.

**NOW THEREFORE**, the Parties agree as follows:

**1 FCM Regulations**

This Agreement incorporates by reference the FCM Regulations as amended from time to time. The FCM Regulations are available for download on the Eurex Clearing Website.

**2 Granting of Pledges**

**2.1 German Securities Accounts**

The following securities account(s) or sub-account(s) of the FCM Clearing Member have been established with Clearstream Banking AG, Frankfurt am Main (“**CBF**”) under German law:

*Cascade and/or CBF Int 6-series Securities Margin Account/Sub-Account number(s):*

each account specified (if any) an “**Own Pledged Securities Account**” for the purposes of granting of Initial Margin or Supplementary Margin for Own Transactions in accordance with the FCM Regulations; and

*Cascade and/or CBF Int 6-series Securities Margin Account/Sub-Account number(s):*

each account specified (if any) a “**FCM Client Pledged Securities Account**” for the purposes of granting Initial Margin or Supplementary Margin for FCM Client Transactions in accordance with the FCM Regulations.

**2.2 Pledges of Securities in German Securities Accounts**

For the avoidance of doubt, any pledges granted over securities in this Clause 2.2 include securities in the form of book-entries (*Gutschriften in Wertpapierrechnung*).

### **2.2.1 Granting of pledges with respect to Own Pledged Securities Accounts**

If one or more Own Pledged Securities Accounts have been established pursuant to Clause 2.1, in order to provide Initial Margin or Supplementary Margin for Own Transactions in accordance with Chapter I Number 3 of the FCM Regulations, the FCM Clearing Member hereby pledges to Eurex Clearing AG all securities which are at present or are in the future deposited in any such Own Pledged Securities Account(s).

### **2.2.2 Granting of pledges with respect to FCM Client Pledged Securities Accounts**

If one or more FCM Client Pledged Securities Accounts have been established pursuant to Clause 2.1, in order to provide Initial Margin or Supplementary Margin for FCM Client Transactions in accordance with Chapter I Number 3 of the FCM Regulations, the FCM Clearing Member hereby pledges to Eurex Clearing AG all securities which are at present or are in the future deposited in any such FCM Client Pledged Securities Account(s).

### **2.2.3 Appropriation right with respect to securities pledged pursuant to Clause 2.2.1**

The FCM Clearing Member and Eurex Clearing AG agree that each pledge granted by the FCM Clearing Member to Eurex Clearing AG in accordance with Clause 2.2.1 shall include a right of Eurex Clearing AG to appropriate (and to make use of) one or more of the securities which, at the time of the exercise of such appropriation right, are credited to the relevant Own Pledged Securities Account (the "Relevant Pledged Securities"). Such right of Eurex Clearing AG to appropriate (and to make use of) the Relevant Pledged Securities shall be conditional upon the occurrence of a Termination Event or an Insolvency Termination Event and a Termination Date with respect to such FCM Clearing Member.

Accordingly, the FCM Clearing Member hereby irrevocably offers to transfer the Relevant Pledged Securities to Eurex Clearing AG and Eurex Clearing AG accepts this offer by exercising its appropriation right which shall be made by written notice to the FCM Clearing Member.

The FCM Clearing Member hereby confirms that it has taken notice of the information statement set out in Appendix 3 to the FCM Regulations and grants, as evidenced by its signature to this Agreement, its express consent with the use of the Relevant Pledged Securities by Eurex Clearing AG (in accordance with Article 15 (1) b) of Regulation (EU) 2015/2365) pursuant to this Clause 2.2.1.

### **2.2.4 Common provisions for each of the pledges granted pursuant to Clauses 2.2.1 and 2.2.2**

For the purpose of each of the pledges granted pursuant to Clauses 2.2.1 and 2.2.2, the FCM Clearing Member hereby:

- (1) assigns its claim for surrender (*Herausgabebanspruch*) of the relevant securities (that are the subject of the relevant pledge) against CBF to Eurex Clearing AG;
- (2) undertakes, if the FCM Clearing Member does not have a claim for surrender of the relevant securities against CBF, to instruct (substantially in the form set out in

Schedule 1 hereto), without undue delay, CBF to (a) establish a bailment (*Begründung eines Besitzmittlungsverhältnisses*) with Eurex Clearing AG in respect of the securities that are or will be credited to such account, (b) change its bailment intention (*Besitzmittlungswillen*) accordingly and (c) appropriately record such change of its bailment intention; and

- (3) undertakes to promptly notify CBF of the conclusion of this Agreement (substantially in the form set out in Schedule 1 hereto).

Upon the relevant pledge becoming enforceable (*Pfandreife*), Eurex Clearing AG may sell the pledged securities without prior notice in a private sale or may appropriate such securities in whole or in part. The appropriation right expires upon it being exercised by Eurex Clearing AG or upon the sale of the pledged securities.

## 2.3 Security Purpose (*Sicherungszweck*) of the Pledges

2.3.1 The pledges of the Securities pursuant to Clauses 2.2.1 shall secure the Proprietary Secured Claims pursuant to Chapter I Number 3.3 Paragraph (1) of the FCM Regulations.

2.3.2 The pledges of the Securities pursuant to Clauses 2.2.2 shall secure the FCM Client Secured Claims pursuant to Chapter I Number 3.3 Paragraph (2) of the FCM Regulations.

## 2.4 References

The Parties further agree that references in the FCM Regulations to Initial Margin or Supplementary Margin for Own Transactions and Initial Margin or Supplementary Margin for FCM Client Transactions, respectively, that relate to Eligible Margin Assets in the form of Securities for purposes of the FCM Regulations shall include references to Securities that are subject to those pledges granted pursuant to or in accordance with Clauses 2.2.1 and 2.2.2 above that refer to Initial Margin or Supplementary Margin for Own Transactions and Initial Margin or Supplementary Margin for FCM Client Transactions to be granted in accordance with Chapter I Number 3 of the FCM Regulations.

## 2.5 Registration

To the extent required by applicable law for the valid creation and/or enforceability of a security interest, the FCM Clearing Member will arrange for the due filing and registration of any security interest granted pursuant to or in accordance with Clauses 2.2.1 and 2.2.2 with any relevant competent authority or any relevant competent register, and will evidence the due filing and registration of such security interest to Eurex Clearing AG.

## 3 Limitation on Realization of the Pledged Securities

If the FCM Clearing Member has established one or more FCM Client Pledged Securities Account(s) pursuant to Clause 2.1 and, in the systems of Eurex Clearing AG, any pledged securities deposited in any such account are allocated to a particular FCM Client Netting Set, Eurex Clearing AG shall, upon any of the pledges pursuant to Clauses 2.2.1 and 2.2.2 becoming enforceable (*Pfandreife*), only enforce the pledge with respect to

such pledged securities, and only apply any proceeds from the enforcement of the pledge over such pledged securities, to satisfy those FCM Client Secured Claims that relate to such particular FCM Client Netting Set.

#### 4 Representations

The FCM Clearing Member represents and warrants by way of an independent guarantee and irrespective of fault (*selbständiges, verschuldensunabhängiges Garantieverprechen*) to Eurex Clearing AG that

- (1) at the time when the relevant securities are credited to the relevant securities account or sub-account to which any of the pledges set out or referred to in Clauses 2.2 relate, it is the owner of the securities or otherwise entitled or authorized to pledge the securities to Eurex Clearing AG and that such securities are not subject to any prior or equal claims of third parties, except for any rights and claims arising pursuant to the standard business terms of any CSD or as a matter of law. The FCM Clearing Member shall not, for the duration of any such pledge, permit any such claims to arise without the prior consent of Eurex Clearing AG;
- (2) at the time it enters into this Agreement:
  - (a) it has the power to enter into, deliver and perform this Agreement and any other documentation relating to this Agreement to which it is a party and has taken all necessary action to authorize such execution, delivery and performance;
  - (b) its entry into, delivery and performance of this Agreement and any other documentation relating to this Agreement to which it is a party do not conflict with any law or regulation applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any agreement or instrument by which it is bound or which affects any of its assets;
  - (c) it has all governmental and other consents that are required to have been obtained by it with respect to its entry into and performance of this Agreement and are in full force and effect and all conditions of any such consents have been complied with;
  - (d) no order has been made or applied for or resolution passed for the suspension of payments or dissolution, termination of existence, liquidation, winding-up, bankruptcy, insolvency, judicial management or curatorship, in each case, with respect to it;
  - (e) no moratorium in respect of all or any debts or a composition or an arrangement with creditors or any similar proceeding or arrangement by which its assets are submitted to the control of its creditors is ordered, declared or applied for, in each case, with respect to it;
  - (f) no liquidator, trustee, administrator, receiver or similar officer has been appointed in respect of it or in respect of all or a substantial part of its assets;

- (g) it is able to pay its debts as and when they fall due, will not become unable to pay its debts as a consequence of entering into this Agreement; and
- (h) no event has occurred or circumstance arisen with respect to it which, had the Parties already entered into this Agreement, might (whether or not with the giving of notice and/or the passage of time and/or the fulfilment of any other requirement) constitute a Termination Event or Insolvency Termination Event with respect to the FCM Clearing Member.

## **5 Amendments; Execution of this Agreement**

- 5.1 This Agreement shall be amended pursuant to Chapter I Number 16.2 of the FCM Regulations, applied mutatis mutandis.

In addition, the Agreement may be amended at any time by written agreement between Eurex Clearing AG and the FCM Clearing Member.

- 5.2 If the Parties execute this Agreement and have already signed any previous version of this Agreement (each an "Original Agreement"), the Parties agree that, by signing this Agreement, new pledges shall be granted over all securities which are at present or are in the future deposited in the relevant securities accounts specified in Clause 2.1 irrespective of whether pledges over such securities have already been granted in any Original Agreement or any other agreement.

- 5.3 The validity of the pledges granted pursuant to or in accordance with Clause 2.2 shall be independent from the validity and enforceability of any pledges already granted over all securities which are at present or are in the future deposited in any securities accounts specified in Clause 2.1 pursuant to, or in accordance with, an Original Agreement or any other agreement.

- 5.4 The signing of this Agreement shall not constitute a release of the pledges already granted over all securities which are at present or are in the future deposited in any securities accounts specified in Clause 2.1 pursuant to, or in accordance with, an Original Agreement or any other agreement.

## **6 Governing Law; Jurisdiction, Place of Performance; Severability Clause**

### **6.1 Governing Law**

- 6.1.1 This Agreement (except for Clause 2.4) is governed by the substantive laws, excluding German private international law, of the Federal Republic of Germany. Clause 2.4 is governed by the substantive laws of the United States of America and of the State of New York.

- 6.1.2 Any non-contractual rights and obligations arising out of or in connection with this Agreement (except for Clause 2.4) shall also be governed by substantive laws, excluding German private international law of the Federal Republic of Germany. Any non-contractual rights and obligations arising out of or in connection with Clause 2.4 shall be governed by the substantive laws of the United States of America and of the State of New York.

## **6.2 Jurisdiction**

The courts in Frankfurt am Main, Federal Republic of Germany shall have exclusive jurisdiction (*ausschließlicher Gerichtsstand*) over any action or other legal proceedings arising out of or in connection with this Agreement.

## **6.3 Place of Performance**

The place of performance shall be Frankfurt am Main, Federal Republic of Germany.

## **6.4 Severability Clause**

If any provision contained in this Agreement is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected. Such invalid, illegal or unenforceable provision shall be replaced by means of supplementary interpretation by a valid, legal and enforceable provision, which most closely approximates the Parties' commercial intention. This shall also apply *mutatis mutandis* to any gaps in this Agreement.

**AUTHORIZED SIGNATURES**

**to the Agreement relating to pledges of Eligible Margin Assets in the form of Securities**

_____	_____	_____
[insert legal name] (as FCM Clearing Member)	(place)	(date)
_____	_____	_____
(signature)	(signature)	
_____	_____	_____
(printed name)	(printed name)	
_____	_____	_____
(title)	(title)	

**Eurex Clearing AG**

	_____	_____
	(place)	(date)
_____	_____	_____
(signature)	(signature)	
_____	_____	_____
(printed name)	(printed name)	
_____	_____	_____
(title)	(title)	

**Schedule 1  
Form of Notice of Pledge to Clearstream Banking AG**

By registered mail

**To:**

Clearstream Banking AG  
60485 Frankfurt am Main  
("CBF")

**From:**

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\*Pledgor

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\*Address line 1 \*Street no.

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\*Address line 2

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\*Postal code \*Town/city

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\*Country

---

\*First name and surname of the contact person

---

\*Phone \*Fax

---

\*E-mail

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\_\_\_\_\_  
(Date)

## Notice of pledge of securities in securities account(s)

Dear Sirs,

We hereby notify you that \_\_\_\_\_ (the “**Pledgor**”) has pledged in favor of Eurex Clearing AG (the “**Pledgee**”), in accordance with a pledge agreement dated \_\_\_\_\_ between the Pledgor and the Pledgee (the “**Pledge Agreement**”) any securities that are at present or are in the future deposited in any of the following German securities account(s) held with you in the name of the Pledgor:

Account holder name	Account/Sub-Account number

Therefore, the Pledgor hereby instructs CBF to (a) establish a bailment (*Begründung eines Besitzmittlungsverhältnisses*) with Eurex Clearing AG in respect of all securities that are or will at any time be credited to any such account(s), (b) change its bailment intention (*Besitzmittlungswillen*) accordingly and (c) appropriately record such change of its bailment intention.

The Pledgor further asks CBF, to the extent not previously waived, to waive any prior ranking pledge CBF may have according to the General Terms and Conditions of CBF (*Allgemeine Geschäftsbedingungen der Clearstream Banking AG*) or any other retention right with respect to the above-mentioned securities account(s).

Please confirm receipt and acknowledgement of this letter by countersigning and sending a copy of this letter to us and Eurex Clearing AG, Member/Vendor Services & Admission/Clearing (DSG), (Mergenthalerallee 61, 65760 Eschborn, Federal Republic of Germany).

Kind regards,

\_\_\_\_\_  
Name and capacity

\_\_\_\_\_  
Acting for the Pledgor

CBF hereby confirms receipt, acknowledges the terms of the letter set out above and agrees to waive any prior ranking pledge CBF may have according to the General Terms and Conditions of CBF (*Allgemeine Geschäftsbedingungen der Clearstream Banking AG*) or any other retention right with respect to the above-mentioned securities account(s).

Clearstream Banking AG

\_\_\_\_\_

\_\_\_\_\_

(place)

\_\_\_\_\_

(date)

\_\_\_\_\_

(signature)

\_\_\_\_\_

(signature)

\_\_\_\_\_

(printed name)

\_\_\_\_\_

(printed name)

\_\_\_\_\_

(title)

\_\_\_\_\_

(title)

\* \* \* \* \*