

## DEFAULT MANAGEMENT COMMITTEE RULES

### 1 General Provisions for Default Management Committees and Market Advisors

#### 1.1 Default Management Committees

A DMC is a committee established by Eurex Clearing AG pursuant to Chapter I Part 1 Number 7.5.1 of the Clearing Conditions and Number 4 of the FCM Default Rules”) for purposes of advising and assisting the management board of Eurex Clearing AG in case of

- (i) the occurrence of a Termination with respect to a Clearing Member, an ISA Direct Clearing Member Termination (both as defined in the Clearing Conditions), a FCM Clearing Member Termination or a FCM Client Termination (both as defined in the FCM Regulations)
- (ii) Default Simulations, or
- (iii) to obtain advice on any DMC Matters (as defined in Chapter I Part 1 Number 7.5.1 Paragraph (2) of the Clearing Conditions and Number 4.1.2 of the FCM Default Rules) as deemed appropriate by Eurex Clearing AG.

#### 1.2 DMC Secretary

Eurex Clearing AG shall serve as the secretary of each DMC (the “**DMC Secretary**”) and shall perform the administrative duties set out herein.

#### 1.3 Definitions

Terms used and not otherwise defined in these DMC Rules shall have the meanings ascribed to them in the Clearing Conditions, the FCM Regulations or the FCM Default Rules, as applicable. In addition, the terms set out below shall have the meaning ascribed to them below:

“**Affiliate**” means, in respect of a Participating DMC Member Institution, any undertaking which is or becomes (i) a subsidiary undertaking or parent undertaking of such Participating DMC Member Institution or (ii) a subsidiary undertaking of a parent undertaking of such Participating DMC Member Institution.

“**Business Day**” is determined with respect to the relevant service in accordance with the Clearing Conditions or the FCM Regulations, as applicable.

“**DMC Deputy**” shall have the meaning given to such term in Chapter I Part 1 Number 7.5.1 Paragraph (5) of the Clearing Conditions with respect to a Clearing Member and Number 4 of the FCM Default Rules with respect to an FCM Clearing Member.

“**DMC Member**” shall have the meaning given to such term in Chapter I Part 1 Number 7.5.1 Paragraph (5) of the Clearing Conditions with respect to a Clearing Member and Number 4.1.5 of the FCM Default Rules with respect to an FCM Clearing Member.

“**DMC Member Eligibility Criteria**” means the following cumulative eligibility criteria for each DMC Member, who:

- (a) must be an employee of the Participating DMC Member Institution (or of an Affiliate) and shall have agreed to participate in a DMC;
- (b) must be able to demonstrate relevant experience with respect to products of the relevant Liquidation Group and have appropriate expertise in relation to the relevant DMC Matters;
- (c) is not subject to on-going investigations regarding misdemeanour in any trading related matter;
- (d) is not already a member of a default management committee or a similar committee of another central counterparty or exchange;
- (e) will not be subject to conflicts of interest following its acceptance as a DMC Member or will not be unable to act as DMC Member for whatever reasons; and
- (f) must be available for prompt participations in person in a DMC Meeting (as defined in Number 3.1) within two hours after receipt of an Invitation (as defined in Number 3.1).

“**Eligible Clearing Member**” means for the purposes of each Liquidation Group, a Clearing Member which (i) holds the respective license to clear at least one product out of the products combined in such Liquidation Group and (ii) has cleared at least one trade in a product from such Liquidation Group within the three months prior to the beginning of the relevant Assignment Phase itself, or acts as a Clearing Agent for one or more ISA Direct Clearing Members that have cleared at least one trade in a product from such Liquidation Group. ISA Direct Clearing Members do not qualify as Eligible Clearing Members.

“**Eligible FCM Clearing Member**” means for the purposes of each Liquidation Group, an FCM Clearing Member which (i) holds the respective license to clear at least one product out of the products combined in such Liquidation Group and (ii) has cleared at least one trade in a product from such Liquidation Group within the three months prior to the beginning of the relevant Assignment Phase.

“**Invitation**” means a meeting request notice delivered by Eurex Clearing AG to all DMC Members of the relevant DMC in accordance with Number 3.1.

“**Participating DMC Member Institution**” means, subject to Number 2.5, the Eligible Clearing Members or Eligible FCM Clearing Members which have been selected by Eurex Clearing AG in accordance with Number 2.2 and 2.4 and which are participating in a DMC.

#### 1.4 Market Advisors

In addition to a DMC, Eurex Clearing AG may agree with a Clearing Member or FCM Clearing Member on the nomination of Market Advisors with respect to one or more Liquidation Groups. The Market Advisors shall advise Eurex Clearing AG on a continuous basis on the most recent market developments, market liquidity, potential hedging options and hedging costs with respect to the Transactions Types forming part of the relevant Liquidation Groups in accordance with Number 7.

## 2 Composition of Default Management Committees

### 2.1 Establishment of DMCs

2.1.1 Eurex Clearing AG will establish a DMC in accordance with Chapter I Part 1 Number 7.5.1 (1) of the Clearing Conditions.

In addition, the following limitations and requirements shall apply with respect to the establishment of a DMC:

- (i) A DMC shall only be established with respect to a Liquidation Group, if there are at least five (5) Eligible Clearing Members and/or Eligible FCM Clearing Members.
- (ii) Eurex Clearing AG may, in its discretion, decide not to establish a DMC with respect to a Liquidation Group which does not have a substantial size.

2.1.2 Each DMC shall consist of at least two Participating DMC Member Institutions. Eurex Clearing AG will, with respect to each DMC, determine the required numbers of DMC Members ("**Required Number**"). Eurex Clearing AG will publish on its website ([www.eurexclearing.com](http://www.eurexclearing.com)) a table specifying the exact number of DMC Members for each DMC and the identity of the Participating DMC Member Institutions ("**DMC Composition Table**").

### 2.2 Selection of Participating DMC Member Institutions and Assignment Phase

2.2.1 Eurex Clearing AG will select the Participating DMC Member Institutions which shall participate in a DMC in accordance with Numbers 2.3 and 2.4 below.

2.2.2 Whenever a Participating DMC Member Institution needs to be selected, Eurex Clearing AG initiates the "**Assignment Phase**" by submitting a written notice to all Eligible Clearing Members and all Eligible FCM Clearing Members with respect to the relevant DMC informing on the commencement of the Assignment Phase ("**Assignment Phase Notice**").

During the Assignment Phase, Eurex Clearing AG shall determine the Eligible Clearing Member or Eligible FCM Clearing Member which shall participate as Participating DMC Member Institution.

2.2.3 The Assignment Phase begins with the submission of the Assignment Phase Notice and ends with the signing of the Agreement for the Participation in a Default Management Committee in the form of the Appendix attached to the DMC Rules ("**DMC Participation Agreement**").

An Assignment Phase Notice is submitted (i) with respect to all Participating DMC Member Institutions when the relevant DMC is established and (ii) only with respect to the relevant Participating DMC Member Institution(s) after either Eurex Clearing AG or the relevant Participating DMC Member Institution(s) performed its termination right pursuant to Number 2.3.2.

## **2.3 Term of the selection as Participating DMC Member Institution and Termination**

2.3.1 Each Participating DMC Member Institution will be selected for an indefinite period of time until either the Participating DMC Member Institution or Eurex Clearing AG has exercised its termination right pursuant Number 2.3.2.

2.3.2 Eurex Clearing AG or the Participating DMC Member Institution may terminate the DMC Participation Agreement at any time. Such termination requires written notice to the Participating DMC Member Institution or Eurex Clearing AG, respectively, with a prior notice period of 30 calendar days.

2.3.3 This DMC Participation Agreement shall terminate automatically when all Clearing Agreements or FCM Clearing Agreements between Eurex Clearing AG and the Participating DMC Member Institution (or, where applicable, its Clearing Member/FCM Clearing Member) have been terminated.

## **2.4 Guidelines for the Selection of Participating DMC Member Institutions**

### **2.4.1 General Principles**

Subject to Number 2.4.4 Paragraph (2), no Eligible Clearing Member and no Eligible FCM Clearing Member shall be selected as Participating DMC Member Institution

- (i) for more than one DMC at the same time; and
- (ii) if such Eligible Clearing Member or Eligible FCM Clearing Member served as Participating DMC Member Institution with respect to this particular DMC during the last two years.

Without prejudice to the right of an Eligible Clearing Member or an Eligible FCM Clearing Member to volunteer to serve as Participating DMC Member Institution in more than one DMC in accordance with the selection process in Number 2.4.2 below, Eurex Clearing AG shall, if an Eligible Clearing Member or an Eligible FCM Clearing Member qualifies as Participating DMC Member Institution with respect to more than one DMC, in its discretion, decide in which DMC such Eligible Clearing Member or Eligible FCM Clearing Member shall serve as Participating DMC Member Institution.

### **2.4.2 Selection Process for voluntarily participating Eligible Clearing Members and Eligible FCM Clearing Members**

- (1) All Eligible Clearing Members and Eligible FCM Clearing Members which intend to volunteer as Participating DMC Member Institution shall (i) inform Eurex Clearing AG thereof at the latest prior to the end of the 10th Business Day after receipt of the Assignment Phase Notice and (ii) specify in which DMC they wish to participate.
- (2) Eurex Clearing AG will then rank (whereby Eligible Clearing Members and Eligible FCM Clearing Members with higher cleared volumes (such cleared volumes will be calculated based on the aggregate notional amounts (actual or implied, as applicable), the "**Cleared Volumes**") will be ranked above those with lower Cleared Volumes) the volunteering Eligible Clearing Members and Eligible FCM Clearing Members based on

their respective Cleared Volumes in the three months preceding the relevant Assignment Phase in the relevant Liquidation Group. Volunteering Eligible Clearing Members and Eligible FCM Clearing Members will be selected by Eurex Clearing AG in accordance with such ranking.

- (3) Eurex Clearing AG will immediately inform each selected Eligible Clearing Member and Eligible FCM Clearing Member of their selection as Participating DMC Member Institutions pursuant to Paragraph (2) above at the latest prior to the end of the 20th Business Day after submission of the Assignment Phase Notice. Each selected Eligible Clearing Member or Eligible FCM Clearing Member shall sign the DMC Participation Agreement without undue delay. As of the signing of the DMC Participation Agreement by the selected Eligible Clearing Member or Eligible FCM Clearing Member and Eurex Clearing AG, the selected Eligible Clearing Member or Eligible FCM Clearing Member becomes a Participating DMC Member Institution.
- (4) If the Required Number of Eligible Clearing Members and/or Eligible FCM Clearing Member, as relevant, cannot be successfully selected due to the general principles set forth in Number 2.4.1, further Participating DMC Member Institutions shall be selected by Eurex Clearing AG in accordance with the non-voluntary selection process pursuant to Number 2.4.3.

### **2.4.3 Selection Process for non-voluntarily participating Eligible Clearing Members and Eligible FCM Clearing Members**

- (1) If the selection process for a voluntary participation of Eligible Clearing Members and Eligible FCM Clearing Members pursuant to Number 2.4.2 does not result in a sufficient number of Participating DMC Member Institutions, Eurex Clearing AG will rank (whereby Eligible Clearing Members and Eligible FCM Clearing Members with higher Cleared Volumes will be ranked first) the other Eligible Clearing Members and Eligible FCM Clearing Members based on their respective Cleared Volumes in the three months preceding the relevant Assignment Phase in the relevant Liquidation Group. Eurex Clearing AG will select the Eligible Clearing Members and Eligible FCM Clearing Members in accordance with such ranking.
- (2) Eurex Clearing AG will inform each selected Eligible Clearing Member and Eligible FCM Clearing Member of its selection as Participating DMC Member Institution pursuant to Paragraph (1) above at the latest prior to the end of the 20th Business Day after submission of the Assignment Phase Notice. Subject to Paragraph (3) below, each selected Eligible Clearing Member or Eligible FCM Clearing Member shall sign the DMC Participation Agreement without undue delay. As of the signing of the DMC Participation Agreement by the selected Eligible Clearing Member or Eligible FCM Clearing Member and Eurex Clearing AG, the selected Eligible Clearing Member or Eligible FCM Clearing Member becomes a Participating DMC Member Institution.
- (3) If an Eligible Clearing Member and Eligible FCM Clearing Member selected pursuant to Number 2.4.3 Paragraph (2) above can evidence to the satisfaction of Eurex Clearing AG at the latest ten Business Days after receiving the information regarding its selection as Participating DMC Member Institution that it participates in a DMC or fulfils a similar function for the same Liquidation Group or asset class with respect to another

central counterparty or exchange, such Participating DMC Member Institution shall not be obliged to become a Participating DMC Member Institution.

#### **2.4.4 Further Selection Process**

- (1) If a sufficient number of Participating DMC Member Institutions cannot be selected by Eurex Clearing AG in accordance with Numbers 2.4.2 and 2.4.3 above, Eurex Clearing AG will inform the DMP Coordinators (Chapter I Part 1 Number 7.5 of the Clearing Conditions) of all Eligible Clearing Members and the DMP Coordinators (Number 4 of the FCM Default Rules) of all Eligible FCM Clearing Members which have not already been selected as Participating DMC Member Institutions pursuant to Number 2.4.2 or 2.4.3 at the latest six weeks after the submission of the Assignment Phase Notice, and will ask all such Eligible Clearing Members and Eligible FCM Clearing Members again whether they want to volunteer as Participating DMC Member Institutions of the relevant DMC.
- (2) All Eligible Clearing Members and all Eligible FCM Clearing Members which intend to volunteer then (irrespective of whether the general principles set forth in Number 2.4.1 Paragraph (1) are met) as Participating DMC Member Institution for the relevant DMC shall inform Eurex Clearing AG thereof at the latest two weeks after the receipt of the information pursuant to Paragraph (1) above.
- (3) Eurex Clearing AG will then rank (whereby Eligible Clearing Members and Eligible FCM Clearing Members with higher Cleared Volumes will be ranked first) the volunteering Eligible Clearing Members and Eligible FCM Clearing Members based on their respective Cleared Volumes in the three months preceding the relevant Assignment Phase in the relevant Liquidation Group. Volunteering Eligible Clearing Members and volunteering Eligible FCM Clearing Members will be selected by Eurex Clearing AG in accordance with such ranking.
- (4) Eurex Clearing AG will inform each selected Eligible Clearing Member and Eligible FCM Clearing Member of its selection as Participating DMC Member pursuant to Paragraph (3) above at the latest ten weeks after the submission of the Assignment Phase Notice. Each selected Eligible Clearing Member or Eligible FCM Clearing Member shall sign the DMC Participation Agreement without undue delay. As of the signing of the DMC Participation Agreement by the selected Eligible Clearing Member or Eligible FCM Clearing Member and Eurex Clearing AG, the selected Eligible Clearing Member or Eligible FCM Clearing Member becomes a Participating DMC Member Institution.
- (5) If Eurex Clearing AG was not able to select the Required Number of Participating DMC Member Institutions for the relevant DMC according to the DMC Composition Table, no DMC shall be established.

#### **2.5 Substitution of Participating DMC Member Institution by an affiliated DC Market Participant or DC With System Access/Basic DC**

Each Participating DMC Member Institution which is a Clearing Member may request its substitution by an affiliated DC Market Participant or DC With System Access/Basic DC by giving written notice at least one month in advance of the intended substitution. Upon

acceptance of such substitution by Eurex Clearing AG, which acceptance shall not be unreasonably withheld, the relevant Eligible Clearing Member shall cease to be a Participating DMC Member Institution and the affiliated DC Market Participant or DC With System Access/Basic DC shall instead become a Participating DMC Member Institution and shall be obliged to sign the Agreement for the Participation in a Default Management Committee (substantially in the form set forth in the Appendix) as a Participating DMC Member Institution, provided that the relevant Eligible Clearing Member shall remain responsible for the fulfilment of such DC Market Participant's or DC With System Access/Basic DC's obligations under the DMC Rules.

## 2.6 DMC Member Nomination

The relevant Participating DMC Member Institutions shall nominate DMC Members which comply with the DMC Member Eligibility Criteria.

2.6.1 Each Participating DMC Member Institution shall notify Eurex Clearing AG of the identities and contact information (including names, phone numbers, e-mail addresses and CVs) of the DMC Members nominated by it by no later than one month after signing the DMC Participation Agreement (the "**Designation Notice**"). The relevant Participating DMC Member Institution shall evidence by adequate information to Eurex Clearing AG that its DMC Members satisfy the DMC Member Eligibility Criteria.

2.6.2 The DMC Member is nominated for an indefinite period of time until the DMC Member resigns, is replaced or removed from the DMC pursuant to Number 2.8.

2.6.3 Procedures for becoming a DMC Member

- (1) Upon receipt of a Designation Notice, Eurex Clearing AG validates the nominated DMC Member on the basis of the information provided by the Participating DMC Member Institution to evidence compliance with the DMC Member Eligibility Criteria. The Participating DMC Member Institution shall provide any further information or evidence of compliance with the DMC Member Eligibility Criteria as reasonably requested by Eurex Clearing AG.
- (2) Upon acceptance of a nominated DMC Member by Eurex Clearing AG, such nominated DMC Member shall, subject to Number 2.8, be a DMC Member of the relevant DMC.
- (3) Eurex Clearing AG shall only reject a nominated DMC Member if the nominated DMC Member does not satisfy the DMC Member Eligibility Criteria. Eurex Clearing AG shall immediately notify the relevant Participating DMC Member Institution of such rejection and the reasons therefor.
- (4) Upon a rejection of a nominated DMC Member by Eurex Clearing AG, the relevant Participating DMC Member Institution shall nominate a further individual as DMC Member in accordance with this Number 2.6 within five Business Days upon receipt of a rejection by Eurex Clearing AG.
- (5) If Eurex Clearing AG also rejects such further individual nominated as DMC Member, the relevant Participating DMC Member Institution shall cease to be a Participating DMC Member Institution and another Eligible Clearing Member or another Eligible FCM

Clearing Member shall be selected by Eurex Clearing AG in accordance with Number 2.4 to nominate a DMC Member. Eurex Clearing AG shall immediately notify the relevant Participating DMC Member Institution of its failure to nominate a further DMC Member.

## **2.7 Information Undertakings of Participating DMC Member Institutions**

Each Participating DMC Member Institution shall inform Eurex Clearing AG without undue delay (i) if the Participating DMC Member Institution becomes aware that its DMC Member no longer complies with the DMC Member Eligibility Criteria or (ii) if it merges with any other Participating DMC Member Institution(s) and if, therefore, more than one DMC Member nominated by Participating DMC Member Institutions which are Affiliates is DMC Member in the same DMC.

## **2.8 Removal of DMC Members, Suspension of DMC Membership**

Any DMC Member that resigns or is replaced or removed from a DMC pursuant to these DMC Rules shall no longer be a DMC Member and Eurex Clearing AG shall, in each case, accept a successor DMC Member of the relevant DMC in accordance with the DMC Member Eligibility Criteria.

### **2.8.1 Resignation**

A DMC Member may at any time resign from its appointment by giving not less than 30 calendar days' prior written notice of its resignation to the DMC Secretary provided that in any event such resignation shall only become effective upon the acceptance of a successor DMC Member.

### **2.8.2 Automatic Removal**

A DMC Member shall be automatically removed from a DMC on which it serves without any further notice upon (i) the occurrence of a Termination Date in relation to the Participating DMC Member Institution which has nominated such DMC Member or (ii) ceasing to be an employee of the Participating DMC Member Institution or of an Affiliate.

### **2.8.3 Removal in the case of a merger**

If two or more Participating DMC Member Institutions are subject to a merger and become affiliates, Eurex Clearing AG will, upon consultation with these Participating DMC Member Institution(s), remove all appointed DMC Members and DMC Deputies of such original Participating DMC Member Institutions except for one DMC Member.

### **2.8.4 Removal by Eurex Clearing AG**

Eurex Clearing AG has the right to remove a DMC Member from the DMC on which it serves by giving not less than five calendar days prior written notice to the Participating DMC Member Institution if

- (1) the DMC Member fails to participate in one DMC Meeting without reasonable excuse; or



- (2) the DMC Member fails to comply with the DMC Rules and such failure (if capable of remedy) has not been remedied after receipt of written notice thereof from the DMC Secretary giving a reasonable remedy period; or
- (3) the DMC Member no longer complies with either of the DMC Member Eligibility Criteria (a) or (c) through (f).

The notice period set forth in the preceding sentence does not apply in the case of (i) material breaches of the DMC Rules, (ii) a repeated breach of the DMC Rules or (iii) in case of another important reason (*wichtiger Grund*).

#### 2.8.5 Removal by Participating DMC Member Institution

A Participating DMC Member Institution is only entitled to remove the DMC Member nominated by it from the DMC on which it serves upon occurrence of an important reason in the person of the DMC Member (*wichtiger Grund*) provided that in any event such removal shall only become effective upon the acceptance of a successor DMC Member.

#### 2.8.6 Suspension of Membership in a DMC

Eurex Clearing AG may suspend with immediate effect a DMC Member from its capacity as DMC Member (i) upon the occurrence of a Termination Event in relation to the Participating DMC Member Institution which has nominated such DMC Member or in case of (ii) material breaches of the DMC Rules, (iii) a repeated breach of the DMC Rules or (iv) another important reason (*wichtiger Grund*).

### 2.9 Request to exercise Direction Right

Eurex Clearing AG may prior to exercising its rights pursuant to Number 2.8.4 Sentence 2 or Number 2.8.6 request the Participating DMC Member Institution (i) to use its direction right vis-à-vis the DMC Member or (ii) if the DMC Member is employed with an Affiliate, to request such Affiliate to use its direction right.

### 2.10 List of DMC Members

Eurex Clearing AG maintains a list of all DMC Members of the relevant DMC, including the relevant contact details (address, phone number, fax number, e-mail address) in accordance with the statutory data protection rules.

Eurex Clearing AG shall not be obliged to make available such list to Clearing Members, FCM Clearing Members, DC Market Participants or DCs With System Access/Basic DCs.

## 3 Procedures of DMCs

### 3.1 Convening a DMC Meeting

#### 3.1.1 Request for a DMC Meeting

The DMC Secretary may at any time convene a meeting of a DMC (a “**DMC Meeting**”) (i) upon the occurrence of a Termination Event or an Insolvency Termination Event with respect to a Clearing Member, an ISA Direct Clearing Member Termination Event or an ISA Direct Clearing Member Insolvency Termination Event with respect to an ISA Direct Clearing Member, a Termination Event or an Insolvency Termination Event with respect to an FCM Clearing Member, (ii) for a Default Simulation or (iii) to obtain advice on any DMC Matters as deemed appropriate by Eurex Clearing AG, in each case by delivering a meeting request notice (the “**Invitation**”) in accordance with this Number 3.1 to all DMC Members of the relevant DMC.

### 3.1.2 Invitation

Invitations shall be provided to each DMC Member by telephone and/or e-mail at the telephone number and/or e-mail address provided in the Designation Notice, or notified under Number 5.2.2, and addressed to such DMC Member personally. Invitations shall be delivered to DMC Members as soon as practical, but not less than 2 hours, before the DMC Meeting giving details about the date, time and place of the DMC Meeting.

If a Participating DMC Member Institution has provided Eurex Clearing AG with the identity and contact information of its chief compliance officer (“Chief Compliance Officer”) or a designee of the chief compliance officer (“Chief Compliance Officer Designee”) (including names, phone numbers, and e-mail addresses), Eurex Clearing AG shall inform the Chief Compliance Officer or the Chief Compliance Officer Designee (if applicable) by e-mail about any DMC Meeting of the relevant Participating DMC Member Institution, giving details about the date, time and place of the relevant DMC Meeting.

The Participating DMC Member Institution informs Eurex Clearing AG without undue delay of any changes with respect to the Chief Compliance Officer or the Chief Compliance Officer Designee.

### 3.1.3 Preparation of DMC Meeting

The DMC Secretary may convene a DMC Meeting in such manner as it reasonably considers appropriate to discuss the envisaged DMC Matters taking into account the urgency of such DMC Matters. Where the DMC Secretary considers it to be appropriate in extraordinary circumstances that DMC Members may attend DMC Meetings through means of remote access, it shall determine the requirements and conditions that apply for such a remote access and that DMC Members have to comply with. The DMC Secretary will prepare a meeting agenda which shall be distributed to the DMC Members (the “**DMC Meeting Agenda**”).

## 3.2 Meeting, Participation, Participation Duties

### 3.2.1 Meeting

DMC Meetings shall take place at the business premises of Eurex Clearing AG in London, Paris and Frankfurt am Main (or Eschborn). If the DMC Meetings take place at more than one location, the locations shall be linked to each other by video conference. To the extent technically practicable, video conferences shall likewise be established where DMC

Members attend a DMC Meeting through means of remote access where remote access has been permitted by the DMC Secretary.

### 3.2.2 Participation

Each Participating DMC Member Institution shall use reasonable endeavours to ensure that

- (1) its DMC Member participates in each DMC Meeting in person,
- (2) if its DMC Member is unable to attend a DMC Meeting it provides evidence to the DMC Secretary of its inability to attend the DMC Meeting in person,
- (3) if its DMC Member does not attend the DMC Meeting for whatever reason, the relevant DMC Deputy attends instead of the DMC Member, and
- (4) if the DMC Deputy is unable to attend such DMC Meeting it provides evidence to the DMC Secretary of its inability to attend the DMC Meeting in person.

The DMC Members (or, subject to the above, any DMC Deputies) attending a DMC Meeting shall be referred hereinafter as the **“Participating DMC Members”** and each a **“Participating DMC Member”**.

### 3.2.3 Duties of Participating DMC Members

Each Participating DMC Member Institution shall use reasonable endeavours to ensure that its Participating DMC Members comply with the following rules:

- (1) Participating DMC Members are not permitted to engage in any communication with the relevant Participating DMC Member Institution or any other third party with respect to DMC Matters or any other information obtained during DMC Meetings.
- (2) No Participating DMC Member may engage in any communication with another DMC Member outside of the DMC Meeting with respect to DMC Matters (except for any briefings between a DMC Member and its DMC Deputy that are indispensable in order to procure that each of them is in a position to attend the relevant DMC Meeting for the relevant other person).
- (3) Participating DMC Members are not permitted to bring any own means of electronic communication to the premises where the DMC Meeting takes place.
- (4) Participating DMC Members are not permitted to leave the DMC Meeting, unless the DMC Meeting has been officially closed by the DMC Secretary.

## 3.3 Voting Procedure

All decisions to be made by the DMC shall be made at a DMC Meeting by Majority vote of the Participating DMC Members. **“Majority”** shall mean at least 50 per cent of the Participating DMC Members. Each Participating DMC Member shall have one single vote.

## 3.4 Minutes of Meetings, Statements

### 3.4.1 Minutes

Minutes shall be taken of all DMC Meetings and signed by the DMC Secretary (“**DMC Minutes**”). The DMC Minutes shall set forth the place and date of the DMC Meeting, the Participating DMC Members, the DMC Matters on the DMC Meeting Agenda, the substance of the deliberations and the votes taken by the DMC. The DMC Secretary shall record in the DMC Minutes the identity of each Participating DMC Member with respect to any matter raised by such Participating DMC Member in the DMC Meeting.

#### 3.4.2 Statements

The DMC may appoint by Majority vote one or more Participating DMC Members to prepare, on behalf of the DMC, any proposal, response, statement or other document setting out the views of the DMC with respect to any DMC Matter (a “**Statement**”). Such Statement shall be incorporated into the Minutes and shall be deemed to set out the view of the DMC.

### 3.5 Participation of Non-DMC Members in DMC Meetings

#### 3.5.1 External Experts and other Attendees

- (1) Eurex Clearing AG may invite any external counsel or other external experts or may invite Disclosed Direct Clients or other clients to designate one of its employees to attend one or more DMC Meetings of a specific DMC to the extent and as long as such attendance is considered appropriate by Eurex Clearing AG (each an “**Attendee**”).
- (2) Each Attendee must sign an acknowledgement and undertaking letter provided by the DMC Secretary prior to its attendance in a DMC Meeting.
- (3) All Attendees shall form part of the relevant DMC but shall not have the right to vote in a DMC Meeting.
- (4) The costs of an Attendee for participating in a DMC Meeting shall be borne by Eurex Clearing AG.

#### 3.5.2 Participation of Employees of Eurex Clearing AG

Employees of Eurex Clearing AG may attend DMC Meetings for the purpose of handling the DMC Matters at any time but shall not have a right to vote and shall not be deemed to be DMC Members.

### 3.6 Assistance by Participating DMC Members as messenger of Eurex Clearing AG

Eurex Clearing AG may request one or more Participating DMC Members of a DMC to assist Eurex Clearing AG in the execution of DM Hedging Transactions or other legal declarations. Any such Participating DMC Member must act as messenger (i.e. as “*Bote*” under German law or a similar capacity under the laws of another jurisdiction, as applicable) of Eurex Clearing AG and shall not have the rights of, or be deemed to be, an attorney in fact (i.e. as a “*Stellvertreter*” under German law or in any other capacity under the law of another jurisdiction that would enable it to act on a principal’s behalf and directly bind the principal) of Eurex Clearing AG. Eurex Clearing AG will at all times maintain the ultimate decision on whether or not and under what terms and conditions a DM Hedging Transactions or a certain legal act is executed or not.

Each Participating DMC Member Institution shall instruct its Participating DMC Member to always inform (potential) contractual counterparties of Eurex Clearing AG that it is acting as messenger (i.e. as “*Bote*” under German law or a similar capacity under the laws of another jurisdiction, as applicable) of Eurex Clearing AG and not as an attorney in fact (i.e. as a “*Stellvertreter*” under German law or in any other capacity under the law of another jurisdiction that would enable it to act on a principal’s behalf and directly bind the principal) of Eurex Clearing AG and to prevent any acts or indications which could be interpreted as its entitlement to act as an attorney in fact.

## **4 Legal Relationship**

### **4.1 Status**

Each DMC Member always remains an employee of the respective Participating DMC Member Institution or, if applicable, its Affiliate, and does not qualify as an employee of Eurex Clearing AG. The DMC Members act under a mandate (*Auftrag*) of Eurex Clearing AG in their capacity as DMC Members.

### **4.2 Direction Rights**

Each Participating Member Institution shall instruct its DMC Members to follow the instructions of Eurex Clearing AG during a DMC Meeting with respect to all acts requested by Eurex Clearing AG in connection with the DMC Matters provided for in the DMC Rules.

During a DMC Meeting and with respect to all other acts requested by Eurex Clearing AG in connection with the DMC Matters provided for in the DMC Rules, a Participating DMC Member Institution shall not exercise, and if its DMC Member is employed by its Affiliate shall use reasonable endeavours to ensure that such Affiliate does not exercise, its employer direction rights vis-à-vis the DMC Member nominated by it unless it is requested by Eurex Clearing AG to use its direction rights in accordance with Number 2.10.

## **5 General Duties of DMC Members**

### **5.1 Duty of Care**

The Participating DMC Member Institution shall instruct, and if its DMC Member is employed by its Affiliate shall use reasonable endeavours to ensure that such Affiliate instructs, its DMC Member when acting in such capacity, to comply with any instructions of Eurex Clearing AG and to always act in the best interest of a successful default management process of Eurex Clearing AG.

### **5.2 Information Undertakings**

The Participating DMC Member Institution shall instruct its DMC Member and if its DMC Member is employed by its Affiliate shall use reasonable endeavours to ensure that such Affiliate instructs its DMC Member, to inform Eurex Clearing AG without undue delay

- 5.2.1 and, if possible, in advance if it is unable to attend DMC Meetings due to holidays, release from work, sickness or any other absence or unavailability; and
- 5.2.2 of any change of its contact details.

## 6 **Communications**

Unless otherwise provided for in these DMC Rules, any communication hereunder shall be made via e-mail to and from (as applicable) the relevant DMP Coordinator appointed by each Clearing Member or each FCM Clearing Member and the relevant Eurex Clearing AG representatives, provided that any invitations to actual DMC Meetings will be addressed directly to the DMC Members or DMC Deputies.

## 7 **Provisions for Market Advisors**

### 7.1 **Market Advisor Institutions**

Eurex Clearing AG may agree with a Clearing Member or FCM Clearing Member ("**Market Advisor Institution**") that the Market Advisor Institution may nominate individual persons, who meet the Market Advisor Eligibility Criteria, as market advisors ("**Market Advisor**") with respect to one or more Liquidation Groups.

Eurex Clearing AG will select and contact the Market Advisor Institution to agree in writing on the participation as Market Advisor Institution ("**Market Advisor Appointment**").

By agreeing on the Market Advisor Appointment, the Market Advisor Institution acknowledges that it is bound by the provisions under this Number 7.

### 7.2 **Nomination of Market Advisors**

The Market Advisor Appointment shall include the nomination of natural persons as Market Advisors with respect to one or more Liquidation Groups.

Each Market Advisor shall meet the following criteria ("**Market Advisor Eligibility Criteria**"):

- (i) the individual person must be an employee of the Market Advisor Institution and shall have agreed to serve as Market Advisor;
- (ii) the individual person must be able to demonstrate relevant experience with respect to the Transaction Types forming part of the relevant Liquidation Group(s); and
- (iii) the individual person is not subject to on-going investigations regarding misdemeanour in any trading related matter.

Even if the nominated Market Advisor meets the Market Advisor Eligibility Criteria, Eurex Clearing AG may at its own discretion reject the relevant nominee without giving reasons.

- 7.2.1 As part of the Market Advisor Institution Appointment, the Market Advisor Institution shall

- (i) specify for which Liquidation Group(s) the relevant Market Advisor is nominated and
- (ii) provide the identity and contact information (including names, phone numbers, and e mail addresses) of the relevant Market Advisor.

7.2.2 The Eligible Clearing Member informs Eurex Clearing AG without undue delay of any changes with respect to the Market Advisor Eligibility Criteria and the contact information of the relevant Market Advisor.

### **7.3 Tasks of the Market Advisor**

7.3.1 The Market Advisor shall advise Eurex Clearing AG on a continuous basis on the most recent market developments, market liquidity, potential hedging options and hedging costs with respect to the Transactions Types forming part of the relevant Liquidation Groups and any other issues connected thereto ("**Market Advisor Consultation**").

7.3.2 The Market Advisor Consultation shall take place at least once a year and can be held as a personal meeting or as a telephone or video conference. The Market Advisor Consultation may also require the completion of product surveys submitted by Eurex Clearing AG. The Market Advisor shall complete, to the best of his knowledge, such product questionnaires within three weeks after the receipt of the product questionnaire.

For the avoidance of doubt, the Market Advisor Consultation shall not cover any advice on the occurrence of a Termination of a Clearing Member, an ISA Direct Clearing Member Termination or an FCM Clearing Member Termination.

7.3.3 Each Market Advisor Consultation shall be performed separately per Market Advisor Institution.

### **7.4 Term of a Market Advisor**

7.4.1 The nomination as Market Advisor shall last for an indefinite period and shall continue until the Market Advisor resigns or is removed by Eurex Clearing AG or the Market Advisor Institution.

7.4.2 Resignation or Removal of Market Advisors

If a Market Advisor resigns or is removed by the Market Advisor Institution or by Eurex Clearing AG, the relevant Market Advisor shall no longer be a Market Advisor.

(1) Resignation

A Market Advisor may at any time and without observing any notice period resign by giving written notice of its resignation to Eurex Clearing AG.

(2) Automatic Removal

A Market Advisor shall be automatically removed without any further notice upon (i) the occurrence of a Termination Date in relation to the Market Advisor Institution which has nominated such Market Advisor or (ii) ceasing to be an employee of the Market Advisor Institution or of an Affiliate.

(3) Removal by Eurex Clearing AG or the Market Advisor Institution

Eurex Clearing AG and the Market Advisor Institution, which has nominated the relevant Market Advisor, each may remove the relevant Market Advisor by giving written notice to the Market Advisor Institution and/or Eurex Clearing AG without observing any notice period and without giving reasons.

## 7.5 Legal Relationship and Liability

7.5.1 Each Market Advisor remains at any time an employee of the relevant Market Advisor Institution and Eurex Clearing AG shall at no time have any direction right with respect to the Market Advisor.

7.5.2 Eurex Clearing AG will neither reimburse the Market Advisor Institution for the personnel costs of the Market Advisor nor pay the Market Advisor a remuneration.

7.5.3 The Market Advisor Institution shall, to the extent legally possible, not be liable, neither for breach of contract, nor in tort or on any other basis for any acts or omissions by the Market Advisor in connection with any Market Advisor Consultation. The liability of the Market Advisor under this Number 7.1.2 shall be limited to wilful misconduct (*Vorsatz*) and gross negligence (*grobe Fahrlässigkeit*).

## 7.6 Confidentiality

7.6.1 Except as required by applicable law, court order, regulation or as required or requested by any regulatory, self-regulatory or supervisory authority having appropriate jurisdiction, the Market Advisor Institution agrees (i) not to disclose any information any Market Advisor obtains during any Market Advisor Consultation ("**Confidential Market Advisor Information**") or (ii) not to use any such Confidential Market Advisor Information for its own benefit or the benefit of any third party.

7.6.2 The Market Advisor Institution represents and warrants by way of an independent guarantee and irrespective of fault (*selbständiges, verschuldensunabhängiges Garantieverprechen*) that the Market Advisor is obliged to keep confidentiality vis-a-vis all third parties with respect to Confidential Market Advisor Information, unless a disclosure of such information is required by applicable law, court order, regulation or as required or requested by any regulatory, self-regulatory or supervisory authority having appropriate jurisdiction.

## 7.7 Termination of the Market Advisor Appointment

7.7.1 Eurex Clearing AG and the Market Advisor Institution may terminate the Market Advisor Appointment at any time without observing any notice period and without giving reasons. Such termination requires a written notice to Eurex Clearing AG or the Market Advisor Institution, respectively.

7.7.2 This Market Maker Appointment shall terminate automatically at the same time when all Clearing Agreements or FCM Clearing Agreements between Eurex Clearing AG and the Market Advisor Institution are terminated.



## **8 Governing Law; Place of Jurisdiction**

- 8.1 Unless provided otherwise, the rights and obligations arising out of, and in connection with, these DMC Rules shall be governed by the substantive laws (*Sachrecht*), excluding German private international law, of the Federal Republic of Germany. Only the English language version of these DMC Rules is legally binding. A German language version is no longer provided.
- 8.2 Any non-contractual rights and obligations arising out of, and in connection with, these DMC Rules shall be governed by the substantive laws (*Sachrecht*), excluding German private international law, of the Federal Republic of Germany.
- 8.3 Exclusive place of jurisdiction for all disputes arising out of, or in connection with, these DMC Rules is Frankfurt am Main.

## **9 Amendments**

In respect of Clearing Members Eurex Clearing AG reserves the right to amend the DMC Rules in accordance with Chapter I Part 1 Number 17.2 of the Clearing Conditions; any amendments to these DMC Rules shall be published in accordance with Chapter I Part 1 Number 16.1 of the Clearing Conditions.

In respect of FCM Clearing Members these DCM Rules may be amended in accordance with Number 6.2 of the FCM Default Rules.

The current valid version of the DMC Rules is available via the internet ([www.eurexclearing.com](http://www.eurexclearing.com)).

# Appendix

## Agreement

for the Participation in a Default Management Committee

# Agreement for the Participation in a Default Management Committee

between

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Participating DMC Member Institution

and

Eurex Clearing AG, Frankfurt/Main.

This Agreement for the Participation in a Default Management Committee (the “**Agreement**”) is dated the last date specified on the signature page hereof and entered into

**BETWEEN:**

(1) \_\_\_\_\_

(legal name)

acting through /  having its ( registered) office at

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_’,  
as Participating DMC Member Institution (the “**Participating DMC Member Institution**”); and

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

The Participating DMC Member Institution 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 in this Agreement shall have the meaning given to them (i) in the Clearing Conditions of Eurex Clearing AG as amended from time to time (the “**Clearing Conditions**”), if a Clearing Member is a Party to this Agreement or a DC Market Participant or DC With System Access/Basic DC is party to this Agreement substituting (with Eurex Clearing AG's consent) the Clearing Member in accordance with Number 2.5 of the DMC Rules or (ii) in the rules of Eurex Clearing AG for the clearing of Swap Transactions by FCM Clearing Members as amended from time to time (the “**FCM Clearing Conditions**”), if an FCM Clearing Member is a Party to this Agreement.

**WHEREAS:**

- (A) The Parties have entered into a [Clearing Agreement on [●] which incorporates the **Clearing Conditions**][an FCM Clearing Agreement on [●] which incorporates the FCM Clearing Conditions]. This provision shall not apply if the Participating DMC Member Institution qualifies as an affiliated DC Market Participant or DC With System Access/Basic DC substituting (with Eurex Clearing AG's consent) the Clearing Member in accordance with Number 2.5 of the DMC Rules.
- (B) Eurex Clearing AG maintains a default management process to reduce the risks following a default by (i) a Clearing Member or an ISA Direct Clearing Member and the occurrence of a Termination Event or ISA Direct Clearing Member Termination Event resulting in a Termination or ISA Direct Clearing Member Termination and the calculation of one or more Difference Claims, as described in the Clearing Conditions, or (ii) an FCM Clearing Member and the occurrence of a Termination Event resulting in an FCM Clearing Member Termination or an FCM Client Termination and the calculation of one or more Difference Claims, as described in the FCM Clearing Conditions, Eurex Clearing AG establishes default management committees (each a "**DMC**") for the purpose of advising and assisting the Executive Board of Eurex Clearing AG with respect to the consequences of (a) a Termination with respect to Clearing Member or an ISA Direct Clearing Member Termination with respect to an ISA Direct Clearing Member and all other matters specified in the Clearing Conditions, as further set out in Chapter I Part 1 Number 7.5 of the Clearing Conditions or (b) an FCM Clearing Member Termination or an FCM Client Termination in relation to an FCM Clearing Member and all other matters specified in the FCM Default Rules, as further set out in Number 4.1.2 of the FCM Default Rules.
- (C) Each DMC is governed by the rules set forth in the default management committee rules and published by Eurex Clearing AG on its website [www.eurexclearing.com](http://www.eurexclearing.com) (the "**DMC Rules**").
- (D) Each DMC consists of individuals generally nominated by certain (i) Clearing Members and/or FCM Clearing Members that are selected in accordance with the DMC Rules or (ii) DC Market Participants or DCs With System Access/Basic DCs, if the Clearing Member was substituted (with Eurex Clearing AG's consent) by an affiliated DC Market Participant or DC With System Access/Basic DC in accordance with Number 2.5 of the DMC Rules.
- (E) Eurex Clearing AG may invite any external counsel or other external experts or may invite Disclosed Direct Clients or other clients to designate one of its employees to attend one or more DMC Meetings.

- (F) (i) When selected as Participating DMC Member Institution pursuant to the DMC Rules, or (ii) if the Participating DMC Member Institution qualifies as an affiliated DC Market Participant or DC With System Access/Basic DC substituting (with Eurex Clearing AG's consent) the Clearing Member in accordance with Number 2.5 of the DMC Rules, the Participating DMC Member Institution is obliged to nominate one of its employees or an employee of an Affiliate as DMC Member and another one of its employees or another employee of an Affiliate as DMC Deputy pursuant to the DMC Rules. The Participating DMC Member Institution is obliged to make the nominated DMC Member (or its DMC Deputy) available to Eurex Clearing AG for the purposes set out in the DMC Rules and pursuant to this Agreement.

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

**1 Integral Part of this Agreement**

The DMC Rules form an integral part of this Agreement.

**2 Obligation to nominate a DMC Member and its DMC Deputy**

When selected as a Participating DMC Member Institution pursuant to the DMC Rules with respect to a DMC, the Participating DMC Member Institution is obliged pursuant to the DMC Rules to nominate one of its employees or an employee of an Affiliate as a DMC Member and another of its employees or an employee of an Affiliate as its DMC Deputy for a participation in the relevant DMC pursuant to the requirements further set out in the DMC Rules.

**3 DMC Member or DMC Deputy**

- 3.1 The Participating DMC Member Institution and Eurex Clearing AG agree, that upon acceptance by Eurex Clearing AG of the Participating DMC Member Institution's nominated employee or an employee of its Affiliate as DMC Member or DMC Deputy in accordance with the DMC Rules, the Participating DMC Member Institution is obliged to make its DMC Member or DMC Deputy available to Eurex Clearing AG for the participation in all DMC Meetings convened from time to time in accordance with the DMC Rules and for all other matters requested by Eurex Clearing AG in connection with the DMC Matters provided for in the DMC Rules (each such meeting or activity in respect of such other matters, a "**DMC Activity**").
- 3.2 Subject to compliance with mandatory laws applicable to the Participating DMC Member Institution and its DMC Member or DMC Deputy, the Participating DMC Member Institution shall not prevent or restrict, but support and enable, its DMC Member or its DMC Deputy to perform their duties in their respective capacities as DMC Member or DMC Deputy. The Participating DMC Member Institution shall procure, if the DMC Member or the DMC Deputy is employed by an Affiliate that such Affiliate does not prevent or restrict but supports and enables its DMC Member or its DMC Deputy to perform their duties in their respective capacities as DMC Member or DMC Deputy.
- 3.3 The DMC Member or its DMC Deputy will be made available to Eurex Clearing AG for the duration of each DMC Activity (including travelling times and breaks). The duration of each DMC Activity will be determined by Eurex Clearing AG.
- 3.4 Each DMC Activity of the DMC Member or its DMC Deputy is personal.

- 3.5 Eurex Clearing AG is aware of and accepts that the DMC Member or its DMC Deputy will not be made available for periods of permitted absences from work (e.g. holiday, release from work, sickness or maternity) or post termination of the employment relationship with the Participating DMC Member Institution or an Affiliate. If the DMC Member or the DMC Deputy has neither an employment relationship with the Participating DMC Member Institution nor with its Affiliate, the Participating DMC Member Institution shall be obliged to notify Eurex Clearing AG thereof and nominate a replacement DMC Member or a replacement DMC Deputy pursuant to Clause 2 above.
- 3.6 At the time when the Participating DMC Member Institution nominates a DMC Member or a DMC Deputy, the Participating DMC Member Institution shall represent (*zusichern*) that it has no knowledge or information that may suggest that the DMC Member and its DMC Deputy nominated by it cannot be relied upon (*zuverlässig*) to fulfil their respective duties or that the DMC Member or DMC Deputy is or was subject to any criminal proceedings or regulatory proceedings. If the DMC Member or the DMC Deputy is employed by an Affiliate the Participating DMC Member Institution shall, prior to making such representation, enquire with such Affiliate whether such representation can reasonably be made.
- 3.7 Subject to Clause 6.5, the Participating DMC Member Institution or its Affiliate shall, to the extent legally possible, not be liable, neither for breach of contract, nor in tort or on any other basis for any acts or omissions by the DMC Member and its DMC Deputy in connection with a DMC Activity. In connection with any DMC Activity, the DMC Member and its DMC Deputy are neither an authorised agent (*Bevollmächtigter*) nor a vicarious agent (*Erfüllungsgehilfe*) of the Participating DMC Member Institution or its Affiliate.
- 3.8 The liability of the Participating DMC Member Institution under and in connection with this Agreement shall be limited to wilful misconduct (*Vorsatz*) and gross negligence (*grobe Fahrlässigkeit*).

#### **4 Remuneration**

Eurex Clearing AG will neither reimburse the Participating DMC Member Institution, nor, if the Participating DMC Member Institution is not the employer of the DMC Member and/or the DMC Deputy, the relevant Affiliate for the personnel costs of the DMC Member or the DMC Deputy nor pay the DMC Member or the DMC Deputy a remuneration. The Participating DMC Member Institution will continue to pay the DMC Member or the DMC Deputy nominated by it its usual remuneration for the duration of any DMC Activity and will reimburse any costs incurred by the DMC Member or the DMC Deputy in connection with a DMC Activity, or shall procure, if the DMC Member or the DMC Deputy is employed by an Affiliate, that such company continues to pay its usual remuneration and reimburses any costs.



## **5 Limitation of Participating DMC Member Institution's direction rights**

- 5.1 The Participating DMC Member Institution and Eurex Clearing AG agree for the period of a DMC Activity that,
- 5.1.1 the Participating DMC Member Institution may only exercise any direction rights vis-à-vis the DMC Member or the DMC Deputy nominated by it upon request by Eurex Clearing AG and if the DMC Member or the DMC Deputy is employed by an Affiliate, the Participating DMC Member Institution shall procure that such company only exercises its direction rights vis-à-vis the DMC Member or the DMC Deputy upon request by Eurex Clearing AG, provided, however, that the DMC Member or the DMC Deputy remains employed by the Participating DMC Member Institution or Affiliate (as applicable),
- 5.1.2 the DMC Member or the DMC Deputy (as applicable) shall be independent in exercising its duties as DMC Member or DMC Deputy and it shall not be prevented by the Participating DMC Member Institution (or, if the DMC Member or the DMC Deputy is employed by an Affiliate, such Affiliate) from complying with its duty of independence,
- 5.1.3 the DMC Member or the DMC Deputy (as applicable) shall neither be obliged nor entitled to report to the Participating DMC Member Institution, and, if the DMC Member or the DMC Deputy is employed by an Affiliate, to report to such Affiliate, and
- 5.1.4 during a DMC Activity with respect to any DMC Member or the DMC Deputy the compliance rules and restrictions as well as all other code of conduct and organisational requirements of Eurex Clearing AG as well as the DMC Rules and the Clearing Conditions shall apply and shall be binding.
- 5.2 Eurex Clearing AG shall provide all necessary documents to the DMC Member or DMC Deputy (as applicable) to enable such DMC Member or DMC Deputy to comply with the compliance rules and restrictions as well as all other code of conduct and organisational requirements of Eurex Clearing AG as well as the DMC Rules and the Clearing Conditions or FCM Clearing Conditions, as applicable.
- 5.3 Any participation of the DMC Member or the DMC Deputy in DMC Activities shall be supervised by Eurex Clearing AG.

## **6 Confidentiality**

- 6.1 Except as expressly contemplated otherwise in this Agreement or as required by applicable law, court order, regulation or as required or requested by any regulatory, self-regulatory or supervisory authority having appropriate jurisdiction, the Participating DMC Member Institution agrees (i) not to disclose any Confidential Information (as defined below) and (ii) not to use any such Confidential Information for its own benefit or the benefit of any third party (including, where applicable, its Clearing Member/FCM Clearing Member). The Participating DMC Member Institution's obligation under this Clause 6.1 shall continue to apply until the earlier of two years after (i) the end of the employment relationship with the DMC Member and/or the DMC Deputy nominated by

the Participating DMC Member Institution or the employment relationship of its Affiliate with the DMC Member and/or the DMC Deputy and (ii) the termination of this Agreement.

- 6.2 The Participating DMC Member Institution represents and warrants by way of an independent guarantee and irrespective of fault (*selbständiges, verschuldensunabhängiges Garantieverprechen*) that the DMC Member or the DMC Deputy and, if the DMC Member or the DMC Deputy is employed by an Affiliate, such Affiliate, and the Chief Compliance Officer or the Chief Compliance Officer Designee (if applicable), is obliged to keep confidentiality vis-a-vis all third parties (including, where applicable, its Clearing Member/FCM Clearing Member) with respect to Confidential Information (as defined below). The Participating DMC Member Institution undertakes to keep up this confidentiality obligation (and procures that such confidentiality obligation is kept up) until the earlier of two years after (i) the end of the employment relationship with the DMC Member, the DMC Deputy, the Chief Compliance Officer or the Chief Compliance Officer Designee (if applicable), or the employment relationship of the Affiliate with the DMC Member or the DMC Deputy and (ii) the termination of this Agreement.
- 6.3 The Participating DMC Member Institution shall direct (or, if the Participating DMC Member Institution is not the employer of the DMC Member or its DMC Deputy shall use reasonable endeavours to ensure that its employer directs) the DMC Member, the DMC Deputy, the Chief Compliance Officer or the Chief Compliance Officer Designee (if applicable), (i) not to disclose any Confidential Information (as defined below) to the Participating DMC Member Institution (and, if different to the Participating DMC Member Institution, the employer of the DMC Member and/or the DMC Deputy) and to third parties (including, where applicable, its Clearing Member/FCM Clearing Member) and (ii) not to use any Confidential Information for its own benefit or the benefit of the Participating DMC Member Institution (and, if different to the Participating DMC Member Institution, the employer of the DMC Member and/or the DMC Deputy) or for the benefit of any third parties (including, where applicable, its Clearing Member/FCM Clearing Member).
- 6.4 The Participating DMC Member Institution shall indemnify Eurex Clearing AG for all damages resulting from any intentional (*vorsätzlich*) or grossly negligent (*grob fahrlässig*) breach by the DMC Member or the DMC Deputy of the confidentiality obligation set forth in Clause 6.2 and the direction set forth in Clause 6.3.
- 6.5 Subject to compliance with the terms of this Clause 6, the Participating DMC Member Institution (and, where applicable, its Clearing Member/FCM Clearing Member) is not prevented from carrying out any transactions in respect of investments, provided that the Participating DMC Member Institution (or, where applicable, its Clearing Member/FCM Clearing Member) does not make use of any Confidential Information obtained from the DMC Member or the DMC Deputy nominated by it in breach of the DMC Member's or the DMC Deputy's confidentiality obligations.
- 6.6 The relevant DMC Member or the DMC Deputy shall be entitled to disclose Confidential Information to employees working in the compliance departments of the Participating DMC Member Institution or (if the Participating DMC Member Institution is not the employer of the DMC Member or its DMC Deputy) the Affiliate, provided that such

disclosure is required to ensure compliance with internal compliance requirements of the Participating DMC Member Institution or (if the Participating DMC Member Institution is not the employer of the DMC Member or its DMC Deputy) the Affiliate. Clauses 6.2 to 6.4 shall apply accordingly with respect to such employees working in the compliance departments.

**“Confidential Information”** means (a) any and all business and trade secrets of Eurex Clearing AG obtained from the DMC or in connection therewith, and (b) all matters arising out of the DMC or any current or past DMC Activity in which the DMC Member or the DMC Deputy is or was involved, including any discussions, deliberations, proceedings, or results of any votes, or any determinations or acts made under the DMC Rules except for information which

- (a) is or becomes public information other than as a direct or indirect result of a breach (of which the DMC Member, the DMC Deputy, the Chief Compliance Officer or the Chief Compliance Officer Designee (if applicable), the Participating DMC Member Institution or the Affiliate is aware) of the confidentiality obligation in this Clause 6; or
- (b) is identified in writing at the time of delivery as non-confidential by Eurex Clearing AG or any of its advisors; or
- (c) was already known to the DMC Member, the DMC Deputy, the Chief Compliance Officer or the Chief Compliance Officer Designee (if applicable), the Participating DMC Member Institution or the Affiliate before the date the information is disclosed to it in accordance with Paragraphs (a) or (b) above or is lawfully obtained by such DMC Member, DMC Deputy, Chief Compliance Officer or Chief Compliance Officer Designee (if applicable), Participating DMC Member Institution or Affiliate after that date, from a source which is, as far as that DMC Member, DMC Deputy, Chief Compliance Officer or Chief Compliance Officer Designee (if applicable), Participating DMC Member Institution or Affiliate, is aware, unconnected with Eurex Clearing AG and which, in either case, as far as that DMC Member, DMC Deputy, Chief Compliance Officer or Chief Compliance Officer Designee (if applicable), Participating DMC Member Institution or Affiliate is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

## **7 Information Undertakings of the Participating DMC Member Institution**

The Participating DMC Member Institution shall inform Eurex Clearing AG without undue delay of any developments involving the Participating DMC Member Institution and/or its Affiliate employing a DMC Member and/or its DMC Deputy of which the Participating DMC Member Institution has become aware and which may affect its obligations under this Agreement or may result in a breach of the DMC Rules.

The Participating DMC Member Institution undertakes to remove its DMC Member and/or DMC Deputy from the DMC pursuant to Number 2.9.5 of the DMC Rules if it becomes aware of a development involving the DMC Member and/or its DMC Deputy which affects

the ability or suitability of the DMC Member and/or DMC Deputy to perform its duties as such or results in a breach of the DMC Rules.

## **8 Term**

- 8.1 Eurex Clearing AG and the Participating DMC Member Institution may terminate this Agreement at any time. Such termination requires a written notice to the Participating DMC Member Institution or to Eurex Clearing AG, respectively, with a prior notice period of 30 calendar days.
- 8.2 This Agreement shall terminate automatically at the same time when all Clearing Agreements or FCM Clearing Agreements between Eurex Clearing AG and the Participating DMC Member Institution (or, where applicable, its Clearing Member/FCM Clearing Member).

## **9 Amendments**

- 9.1 Eurex Clearing AG reserves the right to amend this Agreement (i) if the Participating DMC Member Institution is a Clearing Member or has been substituted for a Clearing Member in accordance with Number 2.5 of the DMC Rules, in accordance with Chapter I Part 1 Number 17.2 of the Clearing Conditions and (ii) if the Participating DMC Member Institution is an FCM Clearing Member, in accordance with Number 6.2 of the FCM Default Rules.
- 9.2 The Participating DMC Member Institution accepts each change and amendment to the DMC Rules and this Agreement, unless it objects by sending a written notice to Eurex Clearing AG within the Regular Notification Period or the Prolonged Notification Period, as applicable. Eurex Clearing AG will inform the Participating DMC Member Institution of the effects of such approval in the relevant publication of such changes and amendments. The right to terminate the Agreement pursuant to Clause 8.2 shall remain unaffected.

## **10 Governing Law; Jurisdiction, Place of Performance**

- 10.1 Governing Law
- 10.1.1 This Agreement is governed by the substantive laws (*Sachrecht*), excluding German private international law of Germany.
- 10.1.2 Any non-contractual rights and obligations arising out of or in connection with this Agreement shall also be governed by the substantive laws (*Sachrecht*), excluding German private international law of Germany.

10.2 Jurisdiction

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

**11 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 (*ergänzende Vertragsauslegung*) by a valid, legal and enforceable provision, which most closely approximates the parties' commercial intention. This shall also apply *mutatis mutandis* to any gaps (*Vertragslücken*) in this Agreement.

**AUTHORISED SIGNATURES**  
**to the Agreement**

---

[insert legal name] (as Participating DMC Member  
Institution)

---

(place)

---

(date)

---

(signature)

---

(signature)

---

(printed name)

---

(printed name)

---

(title)

---

(title)

**Eurex Clearing AG**

---

(place)

---

(date)

---

(signature)

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(signature)

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(printed name)

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(printed name)

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(title)

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(title)