

Chapter VIII of the Clearing Conditions of Eurex Clearing AG

# Clearing of OTC Interest Rate Derivative Transactions, OTC FX Transactions and OTC XCCY Transactions

As of 11.07.2019

\*\*\*\*\*

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

\*\*\*\*\*

## Part 1    **General Provisions**

[...]

### 1.2        **Conclusion of Transactions**

[...]

#### 1.2.3     **Novation Criteria**

(1) Eurex Clearing AG will accept an Original OTC Transaction for inclusion in the Clearing in accordance with the novation process if all of the following novation criteria are fulfilled:

[...]

9. The Clearing Member must have complied with the scheduled intraday margin calls as further set out below and if applicable:

(a) If Eurex Clearing AG determines that the aggregate value of the Eligible Margin Assets actually delivered to Eurex Clearing AG by the Clearing Member is insufficient to provide the cover required in order to fulfil the margin requirements (as set forth in Part 2 Number 2.1.7, Part 3 Number 3.1.7 and Part 4 Number 4.1.7) also taking into account all CCP Transactions arising pursuant to Part 2 Numbers 2.5, 2.6 and 2.7 and Part 4 Number 4.98 (any such shortfall of Eligible Margin Assets, the “**Shortfall Margin Requirement**”), Eurex Clearing AG will require the Clearing Member or the Basic Clearing Member, as the case may be, to provide additional Eligible Margin Assets intra-day in an amount up to the Shortfall Margin Requirement (such amount, the “**Shortfall Margin Amount**”) in accordance with the following provisions.

(b) Eurex Clearing AG shall notify the Clearing Member of (A) the Transactions arising pursuant to Part 2 Numbers 2.5, 2.6 and 2.7 and

Part 4 Number 4.89 to be covered by the Shortfall Margin Requirement as well as (B) the Shortfall Margin Amount in both the relevant Preliminary OTC Margin Call Report and OTC Margin Call Report.

A “**Preliminary OTC Margin Call Report**” means a preliminary report produced by Eurex Clearing AG and made available at 12:00 noon, 2 p.m. and 6 p.m. (each Frankfurt am Main time) that specifies the CCP Transactions arising pursuant to Part 2 Numbers 2.5, 2.6 and 2.7 and Part 4 Number 4.89 as well as the Shortfall Margin Amount as calculated by Eurex Clearing AG as per the time when the relevant Preliminary OTC Margin Call Report is made available (the “**Preliminary Shortfall Margin Amount**”).

An “**OTC Margin Call Report**” means a report produced by Eurex Clearing AG and made available at 1 p.m., 3 p.m., 7 p.m., and 10:30 p.m. (each Frankfurt am Main time) that specifies (i) the CCP Transactions arising pursuant to Part 2 Numbers 2.5, 2.6 and 2.7 and Part 4 Number 4.89 and (ii) the Final Shortfall Margin Amount.

The “**Final Shortfall Margin Amount**” shall be the lower of the (i) Preliminary Shortfall Margin Amount and (ii) the Shortfall Margin Amount calculated by Eurex Clearing AG as per the time when the relevant OTC Margin Call Report is made available.

[...]

10. If such Original OTC Transaction is transmitted to the system of Eurex Clearing AG in order to be novated into an OTC Currency Transaction, then the transaction will only be accepted for the inclusion in the Clearing if the pay-in cash flows and the pay-out cash flows in a relevant currency of such transaction do not result in or contribute to a breach of certain thresholds on the two following business days as set out below:

(a) The novation of such Original OTC Transaction and the resulting payment obligations to be settled (including payment obligations with respect to trade related fees and Variation Margin (calculated on the basis of Forecasted Variation Margin only), but excluding payment obligations with respect to Margin, Settlement Compensation Margin, FX PAI and XCCY PAI) must not result in or contribute to any of the a requirement of the Clearing Member to pay a Prefunding Amount in accordance with Part 3 Number 3.2.1 Paragraph (2) s-exceeding on the two Business Days for the relevant Currency Pair (as set out in Part 3 Number 3.1.45.1 Paragraph (4)) immediately following the date of the novation – assuming, for the purposes of this lit. (a) only, that Part 3 Number 3.2.1 Paragraph (2) applied and any of these two Business Days were a relevant Settlement Day for the purposes of determining a Prefunding Amount in accordance with Part 3 Number 3.2.1 Paragraph (2); and

(b) The novation of such Original OTC Transaction must not result in or contribute to (A) the CM USD Pay-Out Total Settlement Amount EX exceeding the USD Pay-Out Limit, (B) the CM USD Pay-Out Total Settlement Amount CUM exceeding the FX Swap Line Maximum Amount for USD or (C) the CM GBP Pay-Out Total Settlement Amount exceeding the GBP Pay-Out Limit pursuant to Part 3 Number 3.3, in each case on any of the two Relevant Currency Pair Business Days immediately following the date of the novation,

(x) assuming, for the purposes of this lit. (b) only, that Part 3 Number 3.3 applied and any of these two Relevant Currency Pair Business Days were a relevant Settlement Day for the purposes of making the calculations in accordance with Part 3 Number 3.3; and

(y) provided that, for the purposes of this lit. (b) only, references in the defined terms used in Part 3 Number 3.3 to "Market Movement NPV Change Amount" shall be read as references to "Stressed NPV Change Amounts" and, for the purpose of determining the TAG CM USD Pay-Out Verification Total Settlement Amount CUM, the Stressed NPV Change Amount shall be taken into account instead of the Market Movement NPV Change Amount.

"**Stressed NPV Change Amount**" means any Stressed VM Amount and Stressed STM Amount.

"**Stressed VM Amount**" means an amount in USD determined by Eurex Clearing AG at its reasonable discretion (*billiges Ermessen*) in accordance with the general margin framework of Eurex Clearing AG and equal to the market risk component of the Initial Margin (as defined in Chapter I Part 1 Number 3.1.8) with respect to each Transaction Accounts Group of a Clearing Member to which CTM Currency Transactions of such Clearing Member relate, reflecting the theoretical Variation Margin magnitude in such CTM Currency Transactions in case of a large market move within a one-business-day time window.

"**Stressed STM Amount**" means an amount in USD determined by Eurex Clearing AG at its reasonable discretion (*billiges Ermessen*) in accordance with the general margin framework of Eurex Clearing AG and equal to the market risk component of the Initial Margin (as defined in Chapter I Part 1 Number 3.1.8) with respect to each Transaction Accounts Group of a Clearing Member to which STM Currency Transactions of such Clearing Member relate, reflecting the theoretical Currency STM Amounts magnitude in such STM Currency Transactions in case of a large market move within a one-business-day time window.

and:

~~(i) its respective GBP Maximum Amount (as applicable at the time of the proposed novation) also taking into account the relevant Clearing Member GBP OTC Currency Transactions Payment Obligations with respect to the same Settlement Date; and/or~~

~~(ii) its respective USD Maximum Amount (as applicable at the time of the proposed novation) also taking into account the relevant Clearing Member USD OTC Currency Transactions Payment Obligations with respect to the same Settlement Date; and~~

[...]

- (2) If a novation criterion is not fulfilled but the relevant OTC Trade Novation Report has nevertheless been made available via the system of Eurex Clearing AG and, accordingly, novation is effective, Eurex Clearing AG is entitled to terminate the CCP Transactions by notifying (i) the relevant Clearing Member(s) and the relevant Basic Clearing Member(s) (or the Clearing Agent(s) acting on behalf of the relevant Basic Clearing Member(s)) in writing (including by fax or e-mail) provided that the CCP Transaction(s) created upon novation of the Original OTC Transaction were not subject to (i) any netting or accumulation pursuant to Part 2 Number 2.6 or Part 4 Number 4.89 or (ii) a transfer pursuant to Part 2 Number 2.7 or (iii) trade amendment pursuant to Part 2 Number 2.7 and, (ii) if a Swap Transaction was created upon novation of the Original OTC Transaction, the relevant FCM Clearing Member(s), provided that such Swap Transaction was not subject to any netting, accumulation, transfer or trade amendment pursuant to the FCM Regulations.

[...]

### 1.2.7 Daily Novation Process

[...]

- (6) A Clearing Member, a DC With System Access or a Basic Clearing Member (or Clearing Agent acting on behalf of the Basic Clearing Member) may subsequently cancel the submission with respect to any CCP Transaction intended to be transferred pursuant to Part 2 Number 2.7 or to be terminated pursuant to Part 2 Number 2.8 and/or Part 4 Number 4.110, provided that (i) the cancellation request is entered by the Clearing Member, the DC With System Access or the Basic Clearing Member (or Clearing Agent acting on behalf of the Basic Clearing Member) into the system of, and received by, Eurex Clearing AG, and (ii) each of the responsible Clearing Member, in case the request is entered by a DC With System Access and the other Clearing Member, Basic Clearing Member (or Clearing Agent acting on behalf of the Basic Clearing Member) or FCM Clearing Member that is involved in such transfer or termination has given its prior consent in the system of Eurex Clearing AG to such cancellation.

### 1.2.8 Specific Provisions with respect to the Novation of CCP Transactions resulting out of Post-Trade Events

- (1) Number 1.2 shall apply *mutatis mutandis* to the novation in connection with post-trade events pursuant to Part 2 Number 2.6 – 2.8 (in addition to the requirements set out in Part 2 Number 2.6 – 2.8, respectively) or pursuant to Part 4 Number 4.89 (in addition to the requirements set out therein), in each case (i) if a CCP Transaction shall be subject to such novation or shall result from such novation and (ii) unless explicitly stated otherwise.
- (2) If a post-trade event pursuant to Part 2 Number 2.6, 2.7 or Part 4 Number 4.89 would lead to a novation resulting in a CCP Transaction, and all novation criteria are fulfilled except for the requirement to provide sufficient Eligible Margin Assets, the submission for novation will be pending and will remain included in the daily novation process until the end of the relevant Business Day. At the end of each Business Day, all such pending submissions for novations which do not fulfil all novation criteria, including the requirement to provide sufficient Eligible Margin Assets, will be rejected. For the avoidance of doubt, this shall mean that the relevant CCP Transactions existing prior to such intended post-trade event will remain in place and no novation pursuant to the relevant post-trade event will take place.

[...]

## **Part 2 Clearing of OTC Interest Rate Derivative Transactions**

### **2.1 General Provisions**

#### **2.1.5 Novation Criteria and Process Regarding OTC Interest Rate Derivative Transactions**

[...]

### **2.2 General product-related terms for OTC Interest Rate Derivative Transactions**

[...]

#### **2.2.5 Rates for calculating the Floating Amount**

- (1) The applicable Relevant Rate (in case of ISDA Interest Rate Derivative Transactions) or Base Rate (in case of DRV Interest Rate Derivative Transactions) applied by Eurex Clearing AG in calculating Floating Amounts will be set out in the OTC Trade Novation Report on the basis of the floating rate index specified in the Trade Record transmitted to Eurex Clearing AG via the ATS whereby:

[...]

- (n) Fallback index level: In case one of the rates under items (a) to (i) above is not published by the relevant body at the respective usual time, Eurex Clearing AG sets the rate used for the calculation of floating amounts in its reasonable discretion (*billiges Ermessen*).
- (o) Successor index: In case a floating rate index is discontinued to be published by the relevant body, Eurex Clearing AG sets a successor index in its reasonable discretion (*billiges Ermessen*) taking into account relevant guidance notes of ISDA.

[...]

- (5) Where the Relevant Rate (in case of ISDA Interest Rate Derivative Transactions) or Base Rate (in case of DRV Interest Rate Derivative Transactions) is not available on the relevant screen page, Eurex Clearing AG determines the applicable rate in its reasonable discretion (*billiges Ermessen*) on the basis of the arithmetic mean of the rates at which deposits (in the relevant contractual currency, with an equivalent maturity and in the same, or approximately the same, notional amount) are offered by at least four major banks to prime banks in the relevant interbank market at approximately the time at which the relevant rate should have been available on the applicable screen.

[...]

## 2.6 Trade Netting and Accumulation

- (1) Eurex Clearing AG may agree with a Clearing Member or a Basic Clearing Member (or Clearing Agent acting on behalf of the Basic Clearing Member) upon the mutual cancellation (“**netting**”) and the accumulation of CCP Transactions that are OTC Interest Rate Derivative Transactions provided that such CCP Transactions are part of the same Standard Agreement. In this case, the netting and accumulation shall be carried out on the basis of the following provisions agreed upon by Eurex Clearing AG and the Clearing Member or Basic Clearing Member (or Clearing Agent acting on behalf of the Basic Clearing Member). Such agreement may be terminated by the Clearing Member or Basic Clearing Member (or Clearing Agent acting on behalf of the Basic Clearing Member) with the effect on the Business Day following the receipt of the termination notice by Eurex Clearing AG.

If (i) Eurex Clearing AG and a Clearing Member have agreed upon the netting and accumulation of CCP Transactions pursuant to this Number 2.6 and (ii) the relevant Clearing Member holds an OTC Currency Products Clearing License and fulfils the additional requirements set out in Part 4 Number 4.1.3, the netting and accumulation shall also be carried out with respect to OTC XCCY Transactions pursuant to Part 4 Number 4.89.

[...]



## **Part 3 Clearing of OTC FX Transactions**

### **3.1 General Provisions**

[...]

#### **3.1.4 CTM FX Transactions and STM FX Transactions**

[...]

- (3) If an FX STM Election is made, the relevant Original STM Eligible FX Transaction shall be amended upon the effectiveness of the novation pursuant to Part 1 Number 1.2.1 (provided the point in time of such effectiveness falls on or after the FX STM Effective Date) so that the additional primary payment obligations of the Clearing Member and Eurex Clearing AG set out in Number 3.2.1 Paragraph (4) shall arise under the relevant STM FX Transaction.

[...]

#### **3.1.5 Novation Criteria and Process Regarding OTC FX Transactions**

[...]

##### **3.1.5.1 Transaction Type Specific Novation Criteria**

The following Transaction Type specific novation criteria must be fulfilled for OTC FX Transactions (based on the trade record transmitted to Eurex Clearing AG via the relevant ATS):

[...]

- (4) Maximum remaining term

The remaining term of an OTC FX Transaction from the date of novation to the termination date must be (i) in case of an OTC FX Spot Transaction, no more than 2 Business Days, (ii) in case of an OTC FX Forward no more than 2 years and (iii) in case of an OTC FX Swap, no more than 2 years for the far leg; as regards the remaining term of the near leg there must be a period of at least 1 Business Day between the near leg and the far leg of the relevant OTC FX Swap. The termination date and a Business Day for the Currency Pair EUR/USD, must be a TARGET Settlement Day, a CLS Settlement Day and a New York Banking Day (**“EUR/USD Business Day”**) and, for the Currency Pair GBP/USD, a TARGET Settlement Day, a CLS Settlement Day, a London Banking Day and a New York Banking Day (**“GBP/USD Business Day”** and together with EUR/USD Business Day, a **“Relevant Currency Pair Business Day”**).

[...]

## 3.2 Product-related terms for OTC FX Transactions

[...]

### 3.2.1 Payment obligations

(1) The relevant Clearing Member and Eurex Clearing AG shall pay the amounts payable under and in accordance with the terms of the relevant CCP Transaction as specified in the relevant OTC Trade Novation Report on the basis of the trade record submitted via the relevant ATS and which are as follows:

(a) subject to Number 3.34.3.2, with respect to OTC FX Spot Transactions, one party shall pay to the other party on the relevant Settlement Date the Currency A Amount against the payment of a corresponding amount in the other currency of the Currency Pair at the applicable FX rate as specified in the relevant OTC Trade Novation Report;

[...]

(b) subject to Number 3.34.3.2, with respect to OTC FX Forwards, one party shall pay to the other party on the relevant Settlement Date the Currency A Amount against the payment of a corresponding amount in the other currency of the Currency Pair at the applicable FX rate as specified in the relevant OTC Trade Novation Report;

(c) subject to Number 3.34.3.2, with respect to OTC FX Swaps, (i) under the near leg of the relevant OTC FX Swap one party ("**OTC FX Party A**") shall pay to the other party ("**OTC FX Party B**") on the relevant Settlement Date for the near leg the Currency A Amount against the payment by OTC FX Party B of a corresponding amount in Currency B at the applicable FX rate for the near leg as specified in the relevant OTC Trade Novation Report and (ii) under the far leg of the relevant OTC FX Swap OTC FX Party B shall pay OTC FX Party A on the relevant Settlement Date for the far leg the Currency A Amount against the payment by OTC FX Party A of a corresponding amount in Currency B at the applicable FX rate for the far leg as specified in the relevant OTC Trade Novation Report; both the near leg and the far leg of the OTC FX Swap are entered into simultaneously;

"**Currency B**" means the respective other currency of the relevant Currency Pair (as opposed to the currency of the Currency A Amount); ~~and~~

~~(d) if~~

~~(x) the Clearing Member USD OTC Currency Transactions Payment Obligations are in excess of the applicable USD Maximum Amount with respect to the Clearing Member and a Settlement Date (such excess amount, which is denominated in USD, the "**USD Prefunding Amount**"), or~~

~~(y) the Clearing Member GBP OTC Currency Transactions Payment Obligations are in excess of the applicable GBP Maximum Amount with respect to the Clearing Member and a Settlement Date (such excess amount, which is denominated in GBP, the “GBP Prefunding Amount” and each the GBP Prefunding Amount and the USD Prefunding Amount, a “Prefunding Amount”);~~

~~(2) (a) then Where the pay-in cash flows in a relevant currency on a settlement date exceed a certain threshold, the amount of such excess shall be prefunded by the Clearing Member in accordance with the following provisions:~~

~~‡The Clearing Member shall pay to Eurex Clearing AG as cover for the payment obligations of the Clearing Member pursuant to Paragraph (1)~~

~~(A) resulting in the CM USD Total Settlement Amount, the USD Prefunding Amount; and~~

~~(B) resulting in the CM GBP Total Settlement Amount, the GBP Prefunding Amount~~

~~(the GBP Prefunding Amount and the USD Prefunding Amount, each a “Prefunding Amount”).~~

~~“CM USD Total Settlement Amount” means the aggregate net amount resulting from netting (*verrechnen*) the TAG CM USD Total Settlement Amounts of such Clearing Member.~~

~~“TAG CM USD Total Settlement Amount” means the amount of the payments to be made or to be received (calculated on a net basis) on the same Settlement Date by a Clearing Member in respect of (i) all OTC Currency Transactions in USD that relate to the same Transaction Accounts Group and (ii) with respect to a Proprietary Transaction Accounts Group, all FX Hedging Transactions in USD; if such net amount results in a payment (a) to be made by the Clearing Member, such net amount shall be expressed as a negative figure or (b) to be received by the Clearing Member, such net amount shall be expressed as a positive figure.~~

~~“CM GBP Total Settlement Amount” means the aggregate net amount resulting from netting (*verrechnen*) the TAG CM GBP Total Settlement Amounts of such Clearing Member.~~

~~“TAG CM GBP Total Settlement Amount” means the amount of payments to be made or to be received (calculated on a net basis) on the same Settlement Date by a Clearing Member in respect of (i) all OTC Currency Transactions in GBP that relate to the same Transaction Accounts Group and (ii) with respect to a Proprietary Transaction Accounts Group, all FX Hedging Transaction in GBP; if such net amount results in a payment (a) to be made by the Clearing Member, such net amount shall be expressed as a negative figure or (b) to be received~~

by the Clearing Member, such net amount shall be expressed as a positive figure.

“USD Prefunding Amount” means, with respect to a Clearing Member and a Settlement Date, the higher of the USD Prefunding Amount Without SVM and the USD Prefunding Amount With SVM.

“USD Prefunding Amount Without SVM” means, with respect to a Clearing Member and a Settlement Date,

(i) the CM USD Pay-In Verification Total Settlement Amount, provided that, for the purposes of this calculation, (A) if such amount is a positive figure, the CM USD Pay-In Verification Total Settlement Amount shall be zero and (B) if such amount is a negative figure, the CM USD Pay-In Verification Total Settlement Amount shall be the absolute figure of such negative amount,

minus

(ii) the USD Pay-In Limit,

provided that if the result is a negative amount, the USD Prefunding Amount Without SVM shall be zero.

“CM USD Pay-In Verification Total Settlement Amount” means the aggregate net amount resulting from netting (*verrechnen*) the TAG CM USD Pay-In Verification Total Settlement Amounts of such Clearing Member (the resulting amount can be a positive or a negative figure).

“TAG CM USD Pay-In Verification Total Settlement Amount” means the TAG CM USD Total Settlement Amount, provided that with respect to a Client Transaction Accounts Group this amount shall be zero if the TAG CM USD Total Settlement Amount relating to such Client Transaction Accounts Group is a positive figure.

“USD Prefunding Amount With SVM” means, with respect to a Clearing Member and a Settlement Date,

(i) the CM USD SVM Pay-In Verification Total Settlement Amount, provided that, for the purposes of this calculation, (A) if such amount is a positive figure, the CM USD SVM Pay-In Verification Total Settlement Amount shall be zero and (B) if such amount is a negative figure, the CM USD SVM Pay-In Verification Total Settlement Amount shall be the absolute figure of such negative amount,

minus

(ii) the sum of (x) the USD Pay-In Limit and (y) the NPV Change Buffer,

provided that if the result is a negative amount, the USD Prefunding Amount With SVM shall be zero.

“**CM USD SVM Pay-In Verification Total Settlement Amount**” means the aggregate net amount resulting from netting (*verrechnen*) the TAG CM USD SVM Pay-In Verification Total Settlement Amounts of such Clearing Member.

“**TAG CM USD SVM Pay-In Verification Total Settlement Amount**” means the TAG CM USD Total Settlement Amount minus the Stressed NPV Change Amount, provided that, with respect to a Client Transaction Accounts Group, if this calculation results in a positive figure, this amount shall be zero.

“**USD Pay-In Limit**” means, for payment obligations of a particular Clearing Member payable through the CLS CCP Service in USD in respect of all OTC Currency Transactions and FX Hedging Transactions and a Settlement Date (calculated on a net basis), an amount equal to the applicable USD Pay-Out Limit subject to any amendments pursuant to the following sentence. Each USD Pay-In Limit can be amended by Eurex Clearing AG at its reasonable discretion (*billiges Ermessen*) at any time by either increasing or reducing it. If the amendment results in a reduction of the relevant USD Pay-In Limit, then Eurex Clearing AG is required to give at least three (3) months' prior notice to the relevant Clearing Member unless there are exceptional circumstances which require a shorter notice period in order to effectively manage the risks of Eurex Clearing AG in its capacity as central counterparty, in particular taking into account the notional exposures of the Clearing Member's relevant OTC Currency Transactions and the resulting amount of Variation Margin to be settled through the CLS CCP Service, in which case the notice period can be less than three (3) months.

“**NPV Change Buffer**” means with respect to a Settlement Date and a Clearing Member:

- (i) an amount in USD equal to the fraction of (A) the Aggregate Alternative Liquidity Amount (numerator) and (B) the number of Relevant Nostro Cover-2 Clearing Members (denominator); or
- (ii) if Eurex Clearing AG determines that a calculation in accordance with item (i) is not possible or not permissible, an amount in USD equal to the product of (A) the FX Swap Line Maximum Amount for USD and (B) the Buffer Factor.

Eurex Clearing AG will inform the Clearing Members from time to time in accordance with the procedure set out in Chapter I Part 1 Number 17.2 if the NPV Change Buffer shall be calculated in accordance with item (ii) and of any subsequent switch between the two calculation methods.

If item (i) above applies or, in the case of an application of item (ii) above, the Buffer Factor is amended, Eurex Clearing AG will determine the applicable NPV

Change Buffer for each Clearing Member on the first Business Day of each calendar quarter for such calendar quarter and will notify the Clearing Members of their applicable NPV Change Buffers. If the NPV Change Buffer is calculated in accordance with item (ii) above, (x) an adjustment of the FX Swap Line Maximum Amount will result in a change of the NPV Change Buffer and (y) in case of an Adjustment Postponement, the revised NPV Change Buffer will only become effective at the same time as the adjusted FX Swap Line Maximum Amount.

“Aggregate Alternative Liquidity Amount” means, as determined by Eurex Clearing AG at its reasonable discretion (*billiges Ermessen*), the aggregate amount (in USD) of swap lines (other than from any FX Swap Line Agreement) available to Eurex Clearing AG.

“Relevant Nostro Cover-2 Clearing Members” means, as determined by Eurex Clearing, such Clearing Members that maintain their Currency Products Cash Accounts for USD with the two CLS Nostro Banks with which the largest numbers of Clearing Members maintain their Currency Products Cash Accounts in USD.

“Buffer Factor” means 0.10, subject to amendments by Eurex Clearing AG from time to time in accordance with the procedure set out in Chapter I Part 1 Number 17.2.

“GBP Prefunding Amount” means, with respect to a Clearing Member and a Settlement Date,

(i) the CM GBP Pay-In Verification Total Settlement Amount, provided that, for the purposes of this calculation, (A) if such amount is a positive figure, the CM GBP Pay-In Verification Total Settlement Amount shall be zero and (B) if such amount is a negative figure, the CM GBP Pay-In Verification Total Settlement Amount shall be the absolute figure of such negative amount,

minus

(ii) the GBP Pay-In Limit,

provided that if the result is a negative amount, the GBP Prefunding Amount shall be zero.

“CM GBP Pay-In Verification Total Settlement Amount” means the aggregate net amount resulting from netting (*verrechnen*) the TAG CM GBP Pay-In Verification Total Settlement Amounts of such Clearing Member (the resulting amount can be a positive or a negative figure).

“TAG CM GBP Pay-In Verification Total Settlement Amount” means the TAG CM GBP Total Settlement Amount, provided that with respect to a Client Transaction Accounts Group this amount shall be zero if the TAG CM GBP

Total Settlement Amount relating to such Client Transaction Accounts Group is a positive figure.

“GBP Pay-in Limit” means, for payment obligations of a particular Clearing Member payable through the CLS CCP Service in GBP in respect of all OTC Currency Transactions (and FX Hedging Transactions) and a Settlement Date (calculated on a net basis), an amount equal to the applicable GBP Pay-Out Limit, subject to any amendments pursuant to the following sentence. Each GBP Pay-In Limit can be amended by Eurex Clearing AG at its reasonable discretion (*billiges Ermessen*) at any time by either increasing or reducing it. If the amendment results in a reduction of the relevant GBP Pay-In Limit, then Eurex Clearing AG is required to give at least three (3) months' prior notice to the relevant Clearing Member unless there are exceptional circumstances which require a shorter notice period in order to effectively manage the risks of Eurex Clearing AG in its capacity as central counterparty, in particular taking into account the notional exposures of the Clearing Member's relevant OTC Currency Transactions and the resulting amount of Variation Margin to be settled through the CLS CCP Service, in which case the notice period can be less than three (3) months. of the

- (b) The Clearing Member OTC Currency Transactions Payment Obligations shall pay (ix) the portion of the relevant Prefunding Amount that relates to the relevant Clearing Member CM OTC Currency Transactions Payment Obligations settling on the second following Business Day (if any), two Business Days prior to the relevant Settlement Date and (iiy) to the extent not accounted for under (ix) above, the portion of the relevant Prefunding Amount that relates to the relevant Clearing Member CM OTC Currency Transactions Payment Obligations settling on the next following Business Day (if any), one Business Day prior to the relevant Settlement Date (such Clearing Member, the “Prefunding Amount Payer”).

“Clearing Member GBP OTC Currency Transactions Payment Obligations” means the payment obligations (calculated on a net basis) of a Clearing Member in respect of all OTC Currency Transactions in GBP (including payment obligations with respect to trade related fees, Variation Margin (for purposes of the Prefunding Amount calculated on the basis of Forecasted Variation Margin only) and Currency STM Amounts (for purposes of the Prefunding Amount calculated on the basis of Forecasted Currency STM Amounts only), but excluding payment obligations with respect to Margin, Settlement Compensation Margin, FX PAI, XCCY PAI and Currency PAA) which settle on the same Settlement Date.

“Clearing Member USD OTC Currency Transactions Payment Obligation” means the payment obligations (calculated on a net basis) of a Clearing Member in respect of all OTC Currency Transactions in USD (including payment obligations with respect to trade related fees, Variation Margin (for purposes of the Prefunding Amount calculated on the basis of Forecasted

~~Variation Margin only) and Currency STM Amounts (for purposes of the Prefunding Amount calculated on the basis of Forecasted Currency STM Amounts only), but excluding payment obligations with respect to Margin, Settlement Compensation Margin, FX PAI, XCCY PAI and Currency PAA) which settle on the same Settlement Date.~~

- (c) Any of the total settlement amounts to which any of the terms defined in this Number 3.2.1 Paragraph (2) refer shall include payments (in the relevant currency) with respect to trade related fees, Forecasted Variation Margin and Forecasted Currency STM Amounts, but exclude payment obligations with respect to Margin, Settlement Compensation Margin, FX PAI, XCCY PAI and Currency PAA). Any of the payments that are taken into account in the terms defined in this Number 3.2.1 Paragraph (2) shall, if they are to be made by the Clearing Member, be expressed as negative amounts and, if they are to be made to the Clearing Member, be expressed as positive amounts.

~~“Clearing Member~~**CM OTC Currency Transactions Payment Obligations”** ~~means the payment obligations reflected in the CM USD Total Settlement Amount or CM GBP Total Settlement Amount, as applicable the Clearing Member GBP OTC Currency Transactions Payment Obligations and the Clearing Member USD OTC Currency Transactions Payment Obligations.~~

~~“Forecasted Variation Margin” means, for the purposes of Part 4 Number 1.2.3 Paragraph (1) Clause 10 and the calculation of the Clearing Member OTC Currency Transactions Payment Obligations, an amount calculated in USD with respect to each OTC Currency Transaction in accordance with the following formula:~~

[...]

~~“Forecasted Currency STM Amount” means, for the purposes of Part 4 Number 1.2.3 Paragraph (1) Clause 10 and the calculation of the Clearing Member OTC Currency Transactions Payment Obligations, an amount calculated in USD with respect to each STM Currency Transaction in accordance with the following formula:~~

[...]

~~“GBP Maximum Amount” means an amount denominated in GBP as determined by Eurex Clearing AG in its discretion with respect to each individual Clearing Member and as notified by Eurex Clearing AG to each of the Clearing Members. Each GBP Maximum Amount can be amended by Eurex Clearing AG in its discretion at any time by either increasing or reducing it. If the amendment results in a reduction of the relevant GBP Maximum Amount, then Eurex Clearing AG is required to give at least 3 (three) months' prior notice to the relevant Clearing Member unless there are exceptional circumstances which require a shorter notice period in order to effectively manage the risks of~~



~~Eurex Clearing AG in its capacity as central counterparty, in particular taking into account the notional exposures of the Clearing Member's relevant OTC Currency Transactions and the resulting amount of Variation Margin to be settled through the CLS CCP Service, in which case the notice period can be less than three months. When determining and amending the GBP Maximum Amount, Eurex Clearing AG also takes into account its exposures vis-à-vis the CLS Nostro Banks in order to effectively manage the risks of Eurex Clearing AG in its capacity as central counterparty.~~

~~— **"USD Maximum Amount"** means an amount denominated in USD as determined by Eurex Clearing AG in its discretion with respect to each individual Clearing Member and as notified by Eurex Clearing AG to each of the Clearing Members. Each USD Maximum Amount can be amended by Eurex Clearing AG in its discretion at any time by either increasing or reducing it. If an amendment results in a reduction of the relevant USD Maximum Amount, then Eurex Clearing AG is required to give at least 3 (three) months' prior notice to the relevant Clearing Member unless there are exceptional circumstances which require a shorter notice period in order to effectively manage the risks of Eurex Clearing AG in its capacity as central counterparty, in particular taking into account the notional exposures of the Clearing Member's relevant OTC Currency Transactions and the resulting amount of Variation Margin to be settled through the CLS CCP Service, in which case the notice period can be less than three months. When determining and amending the USD Maximum Amount, Eurex Clearing AG also takes into account its exposures vis-à-vis the CLS Nostro Banks in order to effectively manage the risks of Eurex Clearing AG in its capacity as central counterparty.~~

~~— Subject to Number 3.2.2.3 and Number 3.2.1 Paragraph (1) (d), any payments to be made by the Clearing Member to Eurex Clearing AG under this Number 3.2.1 (other than payments by the Clearing Member with respect to any relevant Prefunding Amount) shall be made — with respect to each currency of the Currency Pairs — on a net basis and directly to the relevant CLS Central Bank Account through the CLS CCP Service no later than 8:00 a.m. (Frankfurt am Main time) (the **"CLS Cut-Off Time"**) (as timing is of the essence). The provisions of Section 376 German Commercial Code (*Handelsgesetzbuch*) shall, however, not apply.~~

~~— A payment to be made by the Clearing Member to Eurex Clearing AG in respect of (an) OTC FX Transaction(s) (including payments with respect to Variation Margin, FX PAI, FX STM Amounts, FX PAA and trade related fees but excluding payments with respect to any relevant Prefunding Amount, Investment Loss Shortage Amount, Margin or Settlement Compensation Margin) on a relevant payment date shall be referred to as the **"Relevant FX Payment"** (and together with the Relevant XCCY Payment (as defined in Part 4 Number 4.2.1 Paragraph (1)), the **"Relevant FX/XCCY Payments"**)~~

~~Subject to Number 3.2.1 Paragraph (2) (a), any payments to be made by Eurex Clearing AG to the Clearing Member under this Number 3.2.1 shall be made with respect to each currency of the Currency Pairs on a net basis and directly to the relevant Currency Products Cash Account of the Clearing Member through the CLS CCP Service.~~

~~(2) The following applies with respect to Prefunding Amounts:~~

(ad) Eurex Clearing AG will debit any (portion of the) relevant Prefunding Amount from the relevant Clearing Member Cash Account of the Prefunding Amount Payer in accordance with the daily cash clearing procedure pursuant to Chapter I Part 1 Number 1.4.1. The relevant Prefunding Amount shall be paid (and, as applicable, returned) by transferring to the transferee all rights, title and interest in and to the relevant cash, as the case may be, free and clear from any and all rights and claims of the transferring party and of any third person, including, without limitation, pursuant to applicable regulation or under any statutory or other trust. On the relevant Settlement Date, Eurex Clearing AG will transfer any relevant Prefunding Amount received as set out above to the relevant CLS Central Bank Account through the CLS CCP Service; the relevant Prefunding Amount shall be applied in discharge of the relevant **Clearing MemberCM** OTC Currency Transactions Payment Obligations on a pro-rata basis at the time Eurex Clearing AG has received all Debit Notifications in respect of all amounts owed by Eurex Clearing AG to the Recipient Clearing Members on that Settlement Date.

If the relevant **Clearing MemberCM** OTC Currency Transactions Payment Obligations have decreased after a relevant Prefunding Amount has been paid, Eurex Clearing AG is not obliged to return the relevant portion of such Prefunding Amount, but will apply the relevant full Prefunding Amount against the relevant **Clearing MemberCM** OTC Currency Transactions Payment Obligations on the relevant Settlement Date. In case the relevant **Clearing MemberCM** OTC Currency Transactions Payment Obligations have decreased below the relevant Prefunding Amount, Eurex Clearing AG will return the amount of the relevant Prefunding Amount which could not be applied against the relevant **Clearing MemberCM** OTC Currency Transactions Payment Obligations on the relevant Settlement Date to the Prefunding Amount Payer. Such return shall be made – with respect to the relevant currency of the Currency Pairs – by payment through the CLS CCP Service directly to the relevant Currency Products Cash Account of the Prefunding Amount Payer.

Any Prefunding Amount which has been neither applied against the relevant **Clearing MemberCM** OTC Currency Transactions Payment Obligations nor returned to the Prefunding Amount Payer pursuant to the above provisions, shall constitute a Redelivery Claim of the relevant Clearing Member in the case of a Termination with respect to the relevant Standard Agreement of the Clearing Member.

(be) Chapter I Part 1 Numbers 3.4.4 and 3.4.5 shall apply *mutatis mutandis* to any Prefunding Amount actually credited to the relevant Eurex Clearing AG cash account as if it were Eligible Margin Assets in the form of cash delivered in respect of Margin.

(ef) If a Relevant Currency Surplus has occurred and Eurex Clearing AG concludes that a Residual Currency Surplus cannot be or has not been eliminated in full by taking measures pursuant to Chapter I Part 1 Number 3.2.5 (a) and/or (b), Eurex Clearing AG may, by notice (which may also be provided via email or telephone) to any Prefunding Amount Payer in respect of which any Prefunding Amount in one or more of the Relevant Currencies has been paid to Eurex Clearing AG and has not been applied or repaid, inform such Prefunding Amount Payer that Eurex Clearing AG intends pay to such Prefunding Amount Payer an aggregate amount in one or more of the Relevant Currencies up to the remaining Residual Currency Surplus and require such Prefunding Amount Payer to repay the identical amount in the Relevant Currencies to Eurex Clearing AG. Such notice may be revoked by Eurex Clearing AG at any time.

In such notice Eurex Clearing AG will inform the relevant Prefunding Amount Payer of the amount and time of the payment in one or more of the Relevant Currencies that shall be made by Eurex Clearing AG and specify a reasonable time for such corresponding repayment of the identical amount in the Relevant Currency by the Prefunding Amount Payer to become due. The payment by Eurex Clearing AG will reduce the Prefunding Amount paid by the Prefunding Amount Payer accordingly. Eurex Clearing AG may directly debit the relevant Clearing Member Cash Account for the repayment. The amount so repaid to Eurex Clearing shall constitute (or, as applicable, increase) a Prefunding Amount in the Relevant Currencies.

[....]

For the avoidance of doubt, a payment by Eurex Clearing AG to a Prefunding Amount Payer pursuant to this Paragraph (2)(ef) as such does not constitute a failure to pay the relevant Prefunding Amount pursuant to Number 3.34.1; however, a failure by the Clearing Member to make the repayment of the Prefunding Amount in accordance with this Paragraph (2)(ef) constitutes a failure to pay pursuant to Chapter I Part 1 Number 7.2.1 Paragraph (1).

(3) (a) Payments under the relevant OTC FX Transaction will not be owed under the relevant CCP Transaction and are not subject to these Clearing Conditions in case these payments were due on or before the day of novation.

(b) Subject to Number 3.2.2.3 and Number 3.2.1 Paragraph (2)(a) – (c), any payments to be made by the Clearing Member to Eurex Clearing AG under this Number 3.2.1 (other than payments by the Clearing Member with respect to any relevant Prefunding Amount) shall be made with respect to each currency of the Currency Pairs – on a net basis, and directly to the relevant CLS Central Bank Account through the CLS CCP Service no later than 8:00 a.m. (Frankfurt

am Main time) (the “CLS Cut-Off Time”) (as timing is of the essence). The provisions of Section 376 German Commercial Code (Handelsgesetzbuch) shall, however, not apply.

(c) A payment to be made by the Clearing Member to Eurex Clearing AG in respect of (an) OTC FX Transaction(s) (including payments with respect to Variation Margin, FX PAI, FX STM Amounts, FX PAA and trade related fees but excluding payments with respect to any relevant Prefunding Amount, Investment Loss Shortage Amount, Margin or Settlement Compensation Margin) on a relevant payment date shall be referred to as the “Relevant FX Payment” (and together with the Relevant XCCY Payment (as defined in Part 4 Number 4.2.1 Paragraph (1)), the “Relevant FX/XCCY Payments”).

(d) Subject to Number 3.2.1 Paragraph (2)(d), any payments to be made by Eurex Clearing AG to the Clearing Member under this Number 3.2.1 shall be made – with respect to each currency of the Currency Pairs – on a net basis and directly to the relevant Currency Products Cash Account of the Clearing Member through the CLS CCP Service.

[...]

### **3.2.2 Discharge of payment obligations through CLS CCP Service; Finality**

[...]

#### **3.2.2.2 Discharge of payment obligations of Eurex Clearing AG**

The payment obligations of Eurex Clearing AG under this Part 3, Part 4 and the FX Swap Line Agreement(s) towards the Clearing Members in a particular currency on a Settlement Date to be discharged by payment through the CLS CCP Service (the “**Relevant Payment Obligations**”) shall be validly discharged on a pro rata basis each time the relevant CLS Central Bank Account has been credited with an amount in the relevant currency on such Settlement Date. Eurex Clearing AG will instruct CLS Bank to transfer, following the credit of all amounts in all currencies owed to Eurex Clearing AG to the relevant CLS Central Bank Account(s) in the normal course of business, the relevant amounts to the relevant Currency Products Cash Accounts of the relevant Clearing Members in accordance with such instructions. If any amount is re-transferred to the relevant Payer Clearing Member in accordance with Number 3.34.3.3, the Relevant Payment Obligations which have been discharged on a pro rata basis by the crediting of such amount shall be re-established subject to Number 3.43.3.3.

[...]

#### **3.2.2.3 Discharge of payment obligations in case of unavailability of CLS CCP Service**

[...]

(3) If (i) an Affected Payer Clearing Member has paid any amount to Eurex Clearing AG outside the CLS CCP Service in accordance with Paragraph (1)

in full discharge of the relevant payment obligation to Eurex Clearing AG (the “**Further Payment Amount**”), (ii) the Affected Payer Clearing Member has not otherwise recovered the Affected Payer Clearing Member Amounts and (iii) subsequently, Eurex Clearing AG has irrevocably and finally recovered any Affected Payer Clearing Member Amount in whole or in part (the “**Late Recovery Amount**”), Eurex Clearing AG shall pay to the Affected Payer Clearing Member an amount from the Late Recovery Amount not exceeding the Further Payment Amount, provided that, if in respect of more than one Affected Payer Clearing Member the requirements set out in items (i) and (ii) are met and Eurex Clearing AG has received a Late Recovery Amount, Eurex Clearing AG shall pay to each such Affected Payer Clearing Member a pro rata share of the Late Recovery Amount reflecting such Affected Payer Clearing Member's share in the sum of all Further Payment Amounts paid by all Affected Payer Clearing Members.

Eurex Clearing AG shall in its reasonable discretion (*billiges Ermessen*) claim any Affected Payer Clearing Member Amount from CLS Bank. The Affected Payer Clearing Member shall reimburse Eurex Clearing AG for any costs and expenses incurred in connection with such claim (regardless of whether the Affected Payer Clearing Member Amount can be successfully recovered in whole or in part from CLS Bank). Eurex Clearing AG may request an advance payment from the Affected Payer Clearing Member in respect of reasonably expected costs and expenses to be incurred when claiming the Affected Payer Clearing Member Amount from CLS Bank.

[...]

### **3.3 Pay-Out Limits; Pay-Out Limit Breach Contractual Penalty**

(1) In addition to the pay-in limits set out in Number 3.2.1 Paragraph (2), the Clearing Member shall be subject to the GBP Pay-Out Limit and the USD Pay-Out Limit (each a “Pay-Out Limit”).

A breach of a Pay-Out Limit shall not affect the settlement of any then outstanding OTC Currency Transactions and FX Hedging Transactions.

“GBP Pay-Out Limit” means, for payment receivables of a particular Clearing Member payable through the CLS CCP Service in GBP and a Settlement Date (calculated on a net basis), the applicable FX Swap Line Maximum Amount for GBP.

“USD Pay-Out Limit” means, for payment receivables of a particular Clearing Member payable through the CLS CCP Service in USD and a Settlement Date (calculated on a net basis), the applicable FX Swap Line Maximum Amount for USD.

(2) Where the pay-out cash flows in USD on a settlement date exceed a certain threshold, the Clearing Member shall be subject to a contractual penalty in accordance with the following provisions:

The Clearing Member is obliged to pay a contractual penalty to Eurex Clearing AG in relation to OTC Currency Transactions in USD (the “**USD Pay-Out Limit Breach Contractual Penalty**”), if, on the relevant Settlement Date, either

- (A) the CM USD Pay-Out Total Settlement Amount EX exceeds the USD Pay-Out Limit; or
- (B) the CM USD Pay-Out Total Settlement Amount CUM exceeds the sum of (x) the FX Swap Line Maximum Amount for USD and (y) the NPV Change Buffer,

(each such excess, the “**USD Pay-Out Excess Amount**”).

“**CM USD Pay-Out Total Settlement Amount EX**” means the aggregate net amount resulting from netting (*verrechnen*) the TAG CM USD Pay-Out Verification Total Settlement Amounts EX of such Clearing Member (the resulting amount can be a positive or a negative figure).

“**TAG CM USD Pay-Out Verification Total Settlement Amount EX**” means the amount of the payments to be made or to be received (calculated on a net basis) on the same Settlement Date by a Clearing Member in respect of (i) all OTC Currency Transactions in USD (excluding any Market Movement NPV Change Amount) that relate to the same Transaction Accounts Group and (ii) with respect to a Proprietary Transaction Accounts Group, all FX Hedging Transactions in USD (excluding any Market Movement NPV Change Amount); if such net amount results in a payment (a) to be made by the Clearing Member, such net amount shall be expressed as a negative figure or (b) to be received by the Clearing Member, such net amount shall be expressed as a positive figure.

“**Market Movement NPV Change Amount**” means any Market Movement STM Amount and Market Movement Variation Margin.

“**Market Movement STM Amount**” means an amount calculated in USD with respect to each STM Currency Transaction in accordance with the following formula:

$$\text{Market Movement STM Amount}(t) = NPV_{\$}(t) - NPV_{\$}(t - 1)$$

where:

$NPV(t)$  denotes the net present value of the trade at time  $t$ .

“**Market Movement Variation Margin**” means an amount calculated in USD with respect to each CTM Currency Transaction in accordance with the following formula:

$$\text{Market Movement VM}_{\$}(t) = NPV_{\$}(t) - NPV_{\$}(t - 1)$$

where:

$NPV(t)$  denotes the net present value of the trade at time  $t$ .

“**CM USD Pay-Out Total Settlement Amount CUM**” means the aggregate net amount resulting from netting (*verrechnen*) the TAG CM USD Pay-Out Verification Total Settlement Amounts CUM of such Clearing Member (the resulting amount can be a positive or a negative figure).

“**TAG CM USD Pay-Out Verification Total Settlement Amount CUM**” means the amount of the payments to be made or to be received (calculated on a net basis) on the same Settlement Date by a Clearing Member in respect of (i) all OTC Currency Transactions in USD (including any Market Movement NPV Change Amount) that relate to the same Transaction Accounts Group and (ii) with respect to a Proprietary Transaction Accounts Group, all FX Hedging Transactions in USD (including any Market Movement NPV Change Amount); if such net amount results in a payment (a) to be made by the Clearing Member, such net amount shall be expressed as a negative figure or (b) to be received by the Clearing Member, such net amount shall be expressed as a positive figure.

Any of the total settlement amounts to which any of the terms defined in this Number 3.3 Paragraph (2) refer shall include payments (in the relevant currency) with respect to trade related fees, Forecasted Variation Margin and Forecasted Currency STM Amounts, but exclude payment obligations with respect to Margin, FX PAI, XCCY PAI and Currency PAA).

- (3) Where the pay-out cash flows in GBP on a settlement date exceed a certain threshold, the Clearing Member shall be subject to a contractual penalty in accordance with the following provisions:

The Clearing Member is obliged to pay a contractual penalty to Eurex Clearing AG in relation to OTC Currency Transactions in GBP (the “**GBP Pay-Out Limit Breach Contractual Penalty**”, and the GBP Pay-Out Limit Breach Contractual Penalty and the USD Pay-Out Limit Breach Contractual Penalty, each a “**Pay-Out Limit Breach Contractual Penalty**”), if, on the relevant Settlement Date, the CM GBP Pay-Out Total Settlement Amount exceeds the GBP Pay-Out Limit (such excess, the “**GBP Pay-Out Excess Amount**”).

“**CM GBP Pay-Out Total Settlement Amount**” means the aggregate net amount resulting from netting (*verrechnen*) the TAG CM GBP Pay-Out Verification Total Settlement Amounts of such Clearing Member (the resulting amount can be a positive or a negative figure).

“**TAG CM GBP Pay-Out Verification Total Settlement Amount**” means the amount of the payments to be made or to be received (calculated on a net basis) on the same Settlement Date by a Clearing Member in respect of (i) all OTC Currency Transactions in GBP that relate to the same Transaction Accounts Group and (ii)

with respect to a Proprietary Transaction Accounts Group, all FX Hedging Transactions in GBP; if such net amount results in a payment (a) to be made by the Clearing Member, such net amount shall be expressed as a negative figure or (b) to be received by the Clearing Member, such net amount shall be expressed as a positive figure.

Any of the total settlement amounts to which any of the terms defined in this Number 3.3 Paragraph (3) refer shall include payments (in the relevant currency) with respect to trade related fees, Variation Margin and Currency STM Amounts, but exclude payment obligations with respect to Margin, FX PAI, XCCY PAI and Currency PAA).

(4) The amount of the relevant Pay-Out Limit Breach Contractual Penalty – as determined by Eurex Clearing AG – is the equivalent in the relevant Clearing Currency of 5 basis points of,

(i) in the case of a breach of the GBP Pay-Out Limit, the GBP Pay-Out Excess Amount; and

(ii) in the case of a breach of the USD Pay-Out Limit, the higher of the USD Pay-Out Excess Amount resulting from the application of (x) Paragraph (2)(A) and (y) Paragraph (2)(B),

in each case of (i) and (ii), with a minimum of EUR 2,500.00, CHF 3,000.00 or GBP 2,000.00, as applicable, and a maximum of EUR 10,000,000.00, CHF 12,000,000.00 or GBP 8,000,000.00, as applicable.

### **3.33.4 Failure to Pay with respect to an OTC Currency Transaction**

[...[...]

#### **3.3.13.4.1 Failure to Pay Relevant Prefunding Amount**

[...]

#### **3.3.23.4.2 Failure to Pay Relevant FX/XCCY Payment or Investment Loss Shortage Amount**

- (1) If on a relevant Settlement Date a Clearing Member (a “**Late CM**”) fails (each an “**FX/XCCY Failure to Pay**”):
  - (a) to make a Relevant FX/XCCY Payment in full (taking into account any Prefunding Amount paid by such Late CM) by the CLS Cut-Off Time (this cut-off time also applies if the CLS CCP Service is not available for settlement and settlement is instructed outside the CLS CCP Service pursuant to Number 3.2.2.3); or
  - (b) to pay the relevant Investment Loss Shortage Amount in full by the Investment Loss Shortage Cut-Off Time,



Eurex Clearing AG shall – in addition to the rights granted pursuant to the provisions of Chapter I Part 1 Number 7 and notwithstanding the provisions of Chapter I Part 1 Number 1.4.5 with respect to an FX Disruption Event – have the right to (i) carry out the process as set out in Numbers 3.34.3.1 and 3.34.3.2 below (the “**Step-in Process**”) to the extent of the unpaid amount (the “**FX/XCCY Failure to Pay Amount**”) or (ii) carry out the process as set out in Number 3.34.3.3 below (the “**Roll-Over**”).

[...]

#### **3.3.3.4.3 Consequences of an FX/XCCY Failure to Pay**

- (1) If an FX/XCCY Failure to Pay has occurred, Eurex Clearing AG shall have the right to either (i) exercise its option under one or more of the FX Swap Line Agreements as set out in Number 3.34.3.1 below, (ii) pay an Alternative Currency Amount as set out in Number 3.34.3.2 below or (iii) postpone certain payment obligations as set out in Number 3.34.3.3 below.

[...]

#### **3.3.3.4.3.1 Step-in Process – Exercise of FX Swap Lines**

- (1) Eurex Clearing AG shall have the right to exercise – in accordance with Paragraphs (2) and (3) below in its sole discretion – its options to enter into one or more foreign exchange swap transactions traded over the counter FX Hedging Transactions with one or more Eligible FX Swap Line Counterparties. Such exercise shall, in each case, be made in accordance with the terms of the relevant FX Swap Line Agreement (as defined in Number 3.1.3 Paragraph (6) above), up to the relevant FX Swap Line Maximum Amount outstanding with respect to the relevant FX Swap Line Counterparty/ies, in each case in accordance with the terms of the relevant FX Swap Line Agreement (as defined in Number 3.1.3 Paragraph (6) above). By exercising its options as set out in the previous sentence, Eurex Clearing AG enters into one or more FX Hedging Transaction(s) with each of the relevant Eligible FX Swap Line Counterparties (each such transaction an “FX Hedging Transaction” and each such Eligible FX Swap Line Counterparty an “**FX Hedge Counterparty**”). The FX Hedging Transactions shall be included in the Clearing pursuant to Chapter I Part 1 Number 1.2.2 Paragraph (4)(c). If an STM Election has been made by the Clearing Member, such FX Hedging Transactions shall be STM FX Transactions.

The FX Swap Line Maximum Amount for FX Hedging Transaction(s) with respect to USD is USD 250,000,000.00 and the FX Swap Line Maximum Amount for FX Hedging Transaction(s) with respect to GBP is GBP 100,000,000.00. Each FX Swap Line Maximum Amount can be amended in accordance with the procedure set out in Chapter I Part 1 Numbers 17.2 and 17.3.

“FX Hedging Transaction” means a foreign exchange swap transaction traded over the counter.

**“FX Swap Line Counterparty”** means each Clearing Member participating in the Clearing of OTC Currency Transactions.

~~**“FX Swap Line Maximum Amount”** means an aggregate maximum amount designated in one of the currencies of the Currency Pairs.~~

~~**“Eligible FX Swap Line Counterparty”** means each FX Swap Line Counterparty that has payment receivables (calculated on a net basis) in respect of OTC Currency Transactions as well as any far legs of FX Hedging Transactions in the currency denomination (other than EUR) of the FX/XCCY Failure to Pay Amount on the date of the intended exercise by Eurex Clearing AG of its option to enter into an FX Hedging Transaction.~~

(2) ~~The exercise by Eurex Clearing AG of its option(s) is subject to compliance with all of the following conditions, with respect to each of USD and GBP:~~

~~(i) The option(s) may be exercised, multiple times with respect to an FX/XCCY Failure to Pay and the same Eligible FX Swap Line Counterparty.~~

~~(ii) The aggregate Gap Currency Amounts payable by such Eligible FX Swap Line Counterparty as a result of such exercise(s) on the date of such exercise may not exceed the lower of~~

~~(A) the applicable FX Swap Line Maximum Amount outstanding with respect to the relevant Eligible FX Swap Line Counterparty, and~~

~~(B) the Total Pay-Out Amount of such Eligible FX Swap Line Counterparty.~~

~~(iii) The aggregate amount of the Gap Currency Amounts with respect to outstanding FX Hedging Transactions payable by such Eligible FX Swap Line Counterparty may not exceed the Overall FX Swap Line Limit with respect to such Eligible FX Swap Line Counterparty.~~

~~**“FX Swap Line Maximum Amount”** means an aggregate maximum amount designated by each FX Swap Line Counterparty in USD or GBP, subject to the applicable FX Swap Line Maximum Amount Floor and the applicable FX Swap Line Maximum Amount Cap. Each FX Swap Line Counterparty must designate the FX Swap Line Maximum Amount when entering into the FX Swap Line Agreement and may, thereafter adjust the FX Swap Line Maximum Amount (subject to the then applicable FX Swap Line Maximum Amount Floor and the then applicable FX Swap Line Maximum Amount Cap) by notice to Eurex Clearing AG with effect as of any Swap Line Determination Date and subject to a notice period of three (3) months, provided that if, on such Swap Line Determination Date, any FX Hedging Transaction with such FX Swap Line Counterparty is outstanding, such adjustment will only become effective on the next Business Day on which no FX Hedging Transaction with such FX Swap Line Counterparty is outstanding (the **“Adjustment Postponement”**). In the absence of any express determination by the relevant FX Swap Line Counterparty, the FX Swap Line Maximum Amount with respect to such FX Swap Line Counterparty shall be equal to the FX Swap Line Maximum Amount~~

~~Floor. Eurex Clearing AG is entitled to exercise its option(s) multiple times for as long as the relevant FX Swap Line Counterparty holds its OTC Currency Products Clearing License, but only to the extent that the then relevant outstanding FX Swap Line Maximum Amount is not exceeded by such further exercise(s) of the option(s). The relevant outstanding FX Swap Line Maximum Amount will be reduced by the amount of each FX Hedging Transaction resulting from the exercise of such option and re-increased by such amount if and when the relevant FX Hedging Transaction is fully settled.~~

**“Total Pay-Out Amount”** means, with respect to an Eligible FX Swap Line Counterparty and the relevant currency of the Gap Currency Amounts, the payment receivable (calculated on a net basis) of such Eligible FX Swap Line Counterparty resulting from all payments to be made or received by such Eligible FX Swap Line Counterparty through the CLS CCP Service in such currency in respect of (i) all OTC Currency Transactions and (ii) all far legs of outstanding FX Hedging Transactions on the date of the intended exercise by Eurex Clearing AG of its option(s) to enter into FX Hedging Transactions (and without taking into account such exercise).

**“FX Swap Line Maximum Amount Floor”** means (i) with respect to USD, USD 250,000,000.00 and (ii) with respect to GBP, GBP 100,000,000.00 or such other amount in USD and GBP, respectively, that may be designated by Eurex Clearing AG at its reasonable discretion (*billiges Ermessen*) as the applicable FX Swap Line Maximum Amount Floor by notice to the FX Swap Line Counterparties with effect as of any Swap Line Determination Date and subject to a notice period of three (3) months, provided that if, on such Swap Line Determination Date, any FX Hedging Transaction with an FX Swap Line Counterparty is outstanding, the designation of such other amount will only become effective vis-à-vis such FX Swap Line Counterparty on the next Business Day on which no FX Hedging Transaction with such FX Swap Line Counterparty is outstanding.

**“FX Swap Line Maximum Amount Cap”** means (i) with respect to USD, USD 2,000,000,000.00 and (ii) with respect to GBP, GBP 2,000,000,000.00 or such other amount in USD and GBP, respectively, that may be designated by Eurex Clearing AG at its reasonable discretion (*billiges Ermessen*) as the applicable FX Swap Line Maximum Amount Cap by notice to the FX Swap Line Counterparties with effect as of any Swap Line Determination Date and subject to a notice period of three (3) months, provided that if, on such Swap Line Determination Date, any FX Hedging Transaction with an FX Swap Line Counterparty is outstanding, the designation of such other amount will only become effective vis-à-vis such FX Swap Line Counterparty on the next Business Day on which no FX Hedging Transaction with such FX Swap Line Counterparty is outstanding.

**“Swap Line Determination Date”** means [1 January] and [1 July] of each calendar year.

**“Overall FX Swap Line Limit”** means 2.5 times the FX Swap Line Maximum Amount.

- (3) If more than one Eligible FX Swap Line Counterparty exists, Eurex Clearing AG may, at its reasonable discretion (*billiges Ermessen*) (and subject to compliance with Paragraphs (1) and (2)), (i) exercise its options vis-à-vis one or more of such Eligible FX Swap Line Counterparties and (ii) in the case of several FX Hedge Counterparties distribute such exercises among such FX Hedge Counterparties, in each case of (i) and (ii) above, according to a certain methodology. Eurex Clearing AG will inform the FX Swap Line Counterparties from time to time of such methodology.
- (4) When exercising any of its options in accordance with this Number 3.4.3.1 Eurex Clearing AG shall determine the remaining term for the far leg of the resulting FX Hedging Transaction. Such remaining term from the due date of the near leg until the maturity date of the far leg must be no more than seven (7) Relevant Currency Pair Business Days (the Business Day on which such remaining term ends, the “**FX Hedging Transaction Far Leg Due Date**”).
- (35) ~~Subject to the relevant FX Swap Line Maximum Amount applicable to the relevant FX Hedge Counterparty, u~~Under each near leg of an FX Hedging Transaction Eurex Clearing AG receives from the relevant FX Hedge Counterparty an amount up to the amount of FX/XCCY Failure to Pay Amount as specified by Eurex Clearing AG in accordance with the conditions set out in Paragraph (2) above and ~~corresponding to and~~ in the currency denomination of the FX/XCCY Failure to Pay Amount (the “**Gap Currency-A Swap Amount**”). In return for the receipt of the Gap Currency A Swap Amount, Eurex Clearing AG pays the relevant FX Hedge Counterparty a corresponding amount in the other currency of a relevant Currency Pair which relates to the currency of the Gap Currency-A Swap Amount at the applicable FX Swap Line Near Leg FX Rate (the “**Non-Gap Currency-B Swap Amount**”).

“FX Swap Line Near Leg FX Rate” means an amount equal to

(x) the FX Swap Line Spot Rate,

minus

(y) the sum of (i) the Applicable Swap Points for “overnight” (ON) and (ii) the Applicable Swap Points for “tomorrow next” (TN),

and as set out in the trade confirmation relating to the relevant FX Hedging Transaction transmitted by Eurex Clearing AG to the FX Hedge Counterparty in the course of exercising the option under the FX Swap Line Agreement; provided that, where Eurex Clearing AG shall receive the Quote Currency under the near leg of the FX Hedging Transaction, the relevant FX Swap Line Near Leg FX Rate shall be applied as the fraction of (x) 1 (numerator) and (y) such rate (denominator) (the “**Inversion**”).

“FX Swap Line Spot Rate” means

(i) with respect to FX Hedging Transactions for EUR/USD, the mid-market rate determined from the FX rates appearing on the Reuters Screen EURUSDFIXP=WM (a WM/Reuters Intra-Day Spot Rate); and

(ii) with respect to FX Hedging Transactions for GBP/USD, the mid-market rate determined from the FX rates appearing on the Reuters Screen GBPUSDFIXP=WM (a WM/Reuters Intra-Day Spot Rate),

in each case of (i) and (ii) above, at 7:00 a.m. (Frankfurt am Main time) on the relevant FX Swap Line Exercise Day (where no information on the relevant FX rate is available on the relevant Reuters Screen page, the FX Swap Line Near Leg FX Rate will be the relevant mid-market rate determined from the FX rates appearing on the Bloomberg Screen BFix at 7:00 a.m. (Frankfurt am Main time) on the relevant FX Swap Line Exercise Day).

"Base Currency" means the first currency of a Currency Pair.

"Quote Currency" means the second currency of a Currency Pair.

Under the far leg of the FX Hedging Transaction,

(a) if the Gap Currency Amount is denominated in the Base Currency, Eurex Clearing AG pays to the relevant FX Hedge Counterparty the Gap Currency Amount in return for the payment by that FX Hedge Counterparty of an amount in the currency denomination of the Non-Gap Currency Amount, which equals the product of (x) the figure of the Gap Currency Amount (without regard to its currency denomination) and (y) the applicable FX Swap Line Far Leg FX Rate; and

(b) if the Gap Currency Amount is denominated in the Quote Currency, the relevant FX Hedge Counterparty pays to Eurex Clearing AG the Non-Gap Currency Amount ~~pays to the relevant FX Hedge Counterparty the Currency A Swap Amount~~ in return for the payment by Eurex Clearing to that FX Hedge Counterparty of an amount in the currency denomination of the Gap Currency Amount, which equals the product of (x) the figure of the Non-Gap Currency Amount (without regard to its currency denomination) and (y) the applicable FX Swap Line Far Leg FX Rate~~the Currency B Swap Amount.~~

"FX Swap Line Far Leg FX Rate" means the sum of

(x) the FX Swap Line Near Leg FX Rate (disregarding the Inversion), and

(y) the Applicable Swap Points for the Relevant Maturity,

as set out in the trade confirmation relating to the relevant FX Hedging Transaction transmitted by Eurex Clearing AG to the FX Hedge Counterparty in the course of exercising the option under the FX Swap Line Agreement.

"Applicable Swap Points" means:

(a) If the Gap Currency Amount is denominated in the Quote Currency, the ask quote of the swap points; and

(b) if the Gap Currency Amount is denominated in the Base Currency, the bid quote of the swap points.

in each case of (a) and (b), appearing on the Reuters Screen WM/REUTERS FORWARD RATES (a WM/Reuters Forward Rate) at 7:00 a.m. (Frankfurt am Main time) on the relevant FX Swap Line Exercise Day for the relevant Currency Pair and maturity. Where no information on the swap points is available on the relevant Reuters Screen page, the Applicable Swap Points shall be zero.

"Relevant Maturity" means the following:

- (i) If the FX Hedging Transaction Far Leg Due Date is the first Relevant Currency Pair Business Day following the FX Swap Line Exercise Day, the Applicable Swap Points for "overnight" (ON) will be applied.
- (ii) If the FX Hedging Transaction Far Leg Due Date is the second Relevant Currency Pair Business Day following the FX Swap Line Exercise Day, the sum of the Applicable Swap Points for "overnight" (ON) and "tomorrow next" (TN) will be applied.
- (iii) If the FX Hedging Transaction Far Leg Due Date is the seventh Relevant Currency Pair Business Day following the FX Swap Line Exercise Day, the sum of the Applicable Swap Points for "overnight" (ON), "tomorrow next" (TN) and "spot week" (SW) will be applied.
- (iv) If the FX Hedging Transaction Far Leg Due Date is the third, fourth, fifth or sixth Relevant Currency Pair Business Day after the FX Swap Line Exercise Day, Eurex Clearing AG will apply a linear interpolation, for such relevant Business Day, between the value resulting from applying item (ii) and the value resulting from applying item (iii).

(46) If the Gap Currency-A-Swap Amount under an FX Hedging Transaction is denominated in GBP (such FX Hedging Transaction is referred to as a "**Gap Currency-A-Swap Amount GBP/USD FX Hedging Transaction**") provided that a Corresponding EUR/USD FX Hedging Transaction (as defined below) is also entered into, Eurex Clearing AG shall also have the right to enter into a corresponding FX Hedging Transaction for EUR/USD (the "**Corresponding EUR/USD FX Hedging Transaction**") at the same time and with the same FX Hedge Counterparty as with respect to the Gap Currency-A-Swap Amount GBP/USD FX Hedging Transaction. Under the near leg of the Corresponding EUR/USD FX Hedging Transaction, Eurex Clearing AG shall receive an amount equivalent to the Non-Gap Currency-B-Swap Amount (which Eurex Clearing AG is required to pay under the Gap Currency A-Swap Amount GBP/USD FX Hedging Transaction) in return for the payment by Eurex Clearing AG to that FX Hedge Counterparty of a corresponding amount in EUR at the applicable Near Leg FX Swap Line FX Rate (the "**EUR Amount**").

Under the far leg of that Corresponding EUR/USD FX Hedging Transaction, the relevant FX Hedge Counterparty pays to Eurex Clearing AG the EUR Amount in

~~return for the payment by Eurex Clearing to that FX Hedge Counterparty of an amount in the currency denomination of the Non-Gap Currency Amount (of the Gap Currency Amount GBP/USD FX Hedging Transaction), which equals the product of (x) the figure of the EUR Amount (without regard to its currency denomination) and (y) the applicable FX Swap Line Far Leg FX Rate. Eurex Clearing AG shall pay to that FX Hedge Counterparty an amount equivalent to the Currency B Swap Amount (under the Currency A Swap Amount GBP/USD FX Hedging Transaction) in return for the payment by that FX Hedge Counterparty of the EUR Amount. A~~

Corresponding EUR/USD FX Hedging Transaction shall not count towards the FX Swap Line Maximum Amount with respect to USD.

~~(57) The payments under the near leg of the FX Hedging Transaction – as further set out in the terms of the FX Swap Line Agreement – are due and payable within two hours of Eurex Clearing AG exercising its option under the FX Swap Line Agreement (with respect to each FX Hedging Transaction an “**FX Swap Line Exercise Day**”) or by such other time as notified by Eurex Clearing AG (which may be shorter than two hours after exercise of the option). The payments under the far leg of the FX Hedging Transaction – as further set out in the terms of the FX Swap Line Agreement – are due and payable on the FX Hedging Transaction Far Leg Due Date Business Day immediately following the FX Swap Line Exercise Day by such time as notified by Eurex Clearing AG.~~

~~(68) Any payments to be made by an FX Hedge Counterparty to Eurex Clearing AG under an FX Hedging Transaction shall be made directly to the relevant CLS Central Bank Account through the CLS CCP Service.~~

Any payments to be made by Eurex Clearing AG to an FX Hedge Counterparty under an FX Hedging Transaction shall be made directly to the relevant Currency Products Cash Account of the Clearing Member through the CLS CCP Service.

The payments to be made by the FX Hedge Counterparty under the ~~far~~near leg of an FX Hedging Transaction shall be made – with respect to each currency of the Currency Pairs – on a net basis. This shall not apply with respect to (i) any payments in the relevant currency to be made by Eurex Clearing AG under the near leg of any FX Hedging Transaction with such Clearing Member and (ii) any payments to be made by any party under the far leg of any FX Hedging Transaction with such Clearing Member, provided, however, that in the case of (i) above, payments in the relevant currency to be made by Eurex Clearing AG under the near leg of any Gap Currency Amount GBP/USD FX Hedging Transaction with such Clearing Member shall also be made on a net basis.

~~(7) In addition, Eurex Clearing AG is obliged to pay to the FX Hedge Counterparty the relevant FX Hedging Transaction Spread Amount with respect to an FX Hedging Transaction. If Eurex Clearing AG enters into a Currency A Swap Amount GBP/USD FX Hedging Transaction, it shall, however, only be obliged to pay an FX Hedging Transaction Spread Amount with respect to the Currency A Swap Amount GBP/USD FX Hedging Transaction but not with respect to the Corresponding EUR/USD~~

~~FX Hedging Transaction. The FX Hedging Transaction Spread Amount is not payable through the CLS CCP Service.~~

~~**“FX Hedging Transaction Spread” means**~~

~~(i) with respect to FX Hedging Transactions for EUR/USD, the relevant spread appearing on the Reuters Screen EURON= or where no information is available on such page, the relevant spread appearing on the Bloomberg Screen EURON CURRENCY;~~

~~(ii) subject to (iii) below, with respect to FX Hedging Transactions for GBP/USD, the relevant spread appearing on the Reuters Screen GBPON= or where no information is available on such page, the relevant spread appearing on the Bloomberg Screen GBPON CURRENCY; and~~

~~(iii) with respect to a Currency A Swap Amount GBP/USD FX Hedging Transaction, the relevant spread appearing on the Reuters Screen EURGBPON= or where no information is available on such page, the relevant spread appearing on the Bloomberg Screen EURGBPON CURRENCY;~~

~~in each case of (i) to (iii) above, at 7:00 a.m. (Frankfurt am Main time) on the relevant FX Swap Line Exercise Day.~~

~~**“FX Hedging Transaction Spread Amount” means**~~

~~(i) with respect to an FX Hedging Transaction for EUR/USD, an amount denominated in USD, which equals (a) the figure of the EUR-denominated amount under such FX Hedging Transaction (without regard to its currency denomination) (b) multiplied by the relevant FX Hedging Transaction Spread;~~

~~(ii) with respect to an FX Hedging Transaction for GBP/USD, an amount denominated in USD, which equals (a) the figure of the GBP-denominated amount under such FX Hedging Transaction (without regard to its currency denomination) (b) multiplied by the relevant FX Hedging Transaction Spread; and~~

~~(iii) with respect to a Currency A Swap Amount GBP/USD FX Hedging Transaction, an amount denominated in GBP, which equals (a) the figure of the EUR Amount under the Corresponding EUR/USD FX Hedging Transaction (without regard to its currency denomination) (b) multiplied by the relevant FX Hedging Transaction Spread.~~

~~If the FX Hedging Transaction Spread is a negative number, the FX Hedging Transaction Spread Amount shall be zero.~~

~~**“FX Swap Line FX Rate” means, (i) with respect to FX Hedging Transactions for EUR/USD, the FX rate appearing on the Reuters Screen EURUSDFIXP=WM (a WM/Reuters Intra-Day Spot Rate) and (ii) with respect to FX Hedging Transactions for GBP/USD, the FX rate appearing on the Reuters Screen GBPUSDFIXP=WM (a**~~



~~WM/Reuters Intra-Day Spot Rate), in each case of (i) and (ii) above, at 7:00 a.m. (Frankfurt am Main time) on the relevant FX Swap Line Exercise Day and as set out in the trade confirmation relating to the relevant FX Hedging Transaction transmitted by Eurex Clearing AG to the FX Hedge Counterparty in the course of exercising the option under the FX Swap Line Agreement. Where no information on the relevant FX rate is available on the relevant Reuters Screen page, the FX Swap Line FX Rate will be the relevant FX rate appearing on the Bloomberg Screen BFix at 7:00 a.m. (Frankfurt am Main time) on the relevant FX Swap Line Exercise Day.~~

### **3.3.3-23.4.3.2 Step-in Process – Payment of Alternative Currency Amount**

- (1) If and to the extent Eurex Clearing AG is unable to source through the exercise of its option(s) pursuant to Number 3.34.3.1, above an amount in the currency (the **"Unavailable FX/XCCY Currency"**) which it would have received from the Late CM if the latter had performed its payment obligation(s) under the relevant CCP Transaction (including with respect to an Investment Loss Shortage Amount) (an **"Unavailable FX/XCCY Currency Amount"**), then Eurex Clearing AG shall be entitled to discharge:
- (i) in case of one affected Non-Late CM, its payment obligation corresponding to the Unavailable FX/XCCY Currency Amount by paying a corresponding amount to such Non-Late CM; or
  - (ii) in case of more than one affected Non-Late CM, its payment obligations which in aggregate correspond to the Unavailable FX/XCCY Currency Amount by paying a corresponding amount on a pro rata basis to each such Non-Late CM,

in case of (i) and (ii) above, in an Available Currency based on the relevant WM/Reuters Intra-Day Spot Rate at 7:00 a.m. (Frankfurt am Main time) on the relevant payment date, provided that, in the case of (ii) above, if a USD Pay-Out Excess Amount (in case the Unavailable FX/XCCY Currency is USD) or a GBP Pay-Out Excess Amount (in case the Unavailable FX/XCCY Currency is GBP) has arisen with respect to one or more Non-Late CMs (the **"Pay-Out Excess Non-Late CMs"**), Eurex Clearing AG shall exercise its right to pay such corresponding amount in the following order: First, in respect of such Pay-Out Excess Non-Late CMs on a pro rata basis up to (A) the higher of the USD Pay-Out Excess Amount resulting from the application of (x) Number 3.3 Paragraph (2)(A) and (y) Number 3.3 Paragraph (2)(B) (in case the Unavailable FX/XCCY Currency is USD) and (B) the GBP Pay-Out Excess Amount (in case the Unavailable FX/XCCY Currency is GBP), second (and for the remaining corresponding amount), in respect of all Non-Late CMs (each corresponding amount so paid to a CM, ~~each~~ an **"Alternative Currency Amount"**). Any payment of an Alternative Currency Amount shall be made directly to the relevant Currency Products Cash Account of the Non-Late CM through the CLS CCP Service.

[...]

- (2) Eurex Clearing AG shall pay to each recipient of an Alternative Currency Amount the respective Alternative Currency Difference Amount. For the avoidance of doubt, no Alternative Currency Difference Amount shall be paid through the CLS CCP Service.

[...]

**“Unavailable Currency Amount Payment Obligation”** means any payment obligation referred to in Number 3.34.3.2 Paragraph (1) Sub-Paragraphs (i) and (ii).

### **3.3.3.33.4.3.3 Roll-Over**

In the case of Extraordinary Circumstances, Eurex Clearing AG shall have the right to postpone its and all other Clearing Members' respective payment obligations under the relevant OTC Currency Transactions due for settlement on such Settlement Date once until the next day which is a Relevant Currency Pair Business Day ~~for all relevant Currency Pairs (as set out in Number 3.1.5.1 Paragraph (4))~~ (the **“Roll-over Business Day”**) provided that with respect to any cash amounts paid by any Payer Clearing Member (if any) to fulfil any of its payment obligations arising under this Part 3 or Part 4 towards Eurex Clearing AG which have been credited to the relevant CLS Central Bank Account but not actually been credited to the relevant Currency Products Cash Account(s) of the Recipient Clearing Member(s), Eurex Clearing AG will instruct CLS Bank as soon as reasonably practicable but no later than the CLS Processing Time to re-transfer any such amounts from the relevant CLS Central Bank Account to the relevant Currency Products Cash Account(s) of the relevant Payer Clearing Member(s). If such postponement has occurred, Eurex Clearing AG shall be entitled to carry out the Step-in Process on the Roll-over Business Day (if an FX/XCCY Failure to Pay occurs on such Roll-over Business Day).

**“Extraordinary Circumstances”** means one or more of the following circumstances:

- (i) a CLS Nostro Bank which supports at least two Clearing Members has failed to process payment instructions received by such Clearing Member(s);
- (ii) the FX/XCCY Failure to Pay Amount exceeds the sum of all relevant outstanding FX Swap Line Maximum Amounts (in the relevant currency) which Eurex Clearing AG would be entitled to vis-à-vis all relevant FX Swap Line Counterparties; or
- (iii) any other material circumstance exists which in the reasonable discretion (*nach billigem Ermessen*) of Eurex Clearing AG makes a full compensation of the FX/XCCY Failure to Pay Amount through the Step-in Process highly unlikely and, thus, after due consideration of the interests of all affected Clearing Members and the market, justifies the postponement of the payment obligations under the relevant OTC Currency Transactions as further set out in this Paragraph 3.34.3.3.

### **3.3.3.43.4.3.4 FX/XCCY Failure to Pay Costs and other costs**

- (1) The Late CM shall (i) pay an amount corresponding to the Alternative Currency Difference Amount, if any, to Eurex Clearing AG and (ii) reimburse Eurex

Clearing AG (irrespective of fault) for any losses, costs or expenses Eurex Clearing AG may incur in connection with or as a result of the Step-in Process or Roll-Over, including any losses, costs or expenses ~~relating and corresponding to an FX Hedging Transaction Spread Amount payable by Eurex Clearing AG resulting from the application of any Applicable Swap Points~~ ((i) and (ii) being referred to as “FX/XCCY Failure to Pay Costs”). Any such payment or reimbursement claim shall be a “Secured Claim” for the purpose of Chapter I Part 2 Subpart A Number 4.3.3.

- (2) The Late CM shall also reimburse any relevant Non-Late CM for any losses, costs or expenses the relevant Non-Late CM may incur as a result of (i) the process set out in Number 3.34.3.2 above or (ii) the Roll-Over. The obligations of a Clearing Member to make a Relevant FX/XCCY Payment in full by the CLS Cut-Off Time and, if applicable, to pay the relevant Investment Loss Shortage Amount in full by the Investment Loss Shortage Cut-Off Time (as further set out in Number 3.45.1) shall have protective effects for the benefit of Non-Late CMs and this provision shall constitute a contract with protective effects for the benefit of third parties (*Vertrag mit Schutzwirkung zugunsten Dritter*).
- (3) If Eurex Clearing AG incurs any FX/XCCY Failure to Pay Costs and the Late CM becomes an Affected Clearing Member, such costs shall be taken into account when determining the Difference Claim with respect to the Late CM unless such costs and/or expenses have already been paid by the Late CM to Eurex Clearing AG or the obligation to pay such costs and/or expenses has already been discharged ~~by virtue of Eurex Clearing AG realising all or part of the Eligible Margin Assets provided as Settlement Compensation Margin and/or Margin otherwise~~.
- (4) For the avoidance of doubt, a Non-Late CM or FX Hedge Counterparty shall not be entitled to claim compensation from Eurex Clearing AG for any losses, costs and/or expenses which a Non-Late CM or FX Hedge Counterparty may incur in connection with Eurex Clearing AG exercising its rights pursuant to Numbers 3.34.3.1 to 3.34.3.3 above except where expressly set out in Numbers 3.34.3.1 and 3.34.3.2 above.

#### **3.3.43.4.4 Late Payment**

- (1) Without limiting any rights of Eurex Clearing AG set out in Number 3.34.3 above and without prejudice to the fact that timing is of the essence as regards the Relevant FX/XCCY Payment, if the Late CM makes the Relevant FX/XCCY Payment after the CLS Cut-Off Time on the relevant Settlement Date (the “**Late Payment**” and the amount of such Late Payment, the “**Late Payment Amount**”), then any payments with respect to OTC Currency Transactions (i) which are owed by Eurex Clearing AG to the Late CM on such date (including but not limited to the payments relating to the Relevant FX/XCCY Payment) and (ii) which are to be made through the CLS CCP Service will be made by Eurex Clearing AG only on the Business Day immediately following the relevant Settlement Date (the “**Deferred Payment**” and the amount of such Deferred Payment, the “**Deferred Payment Amount**”). Eurex Clearing AG shall be entitled to discharge its obligation to make the Deferred Payment by paying

in whole or in part a corresponding amount in (a) any currency of a Currency Pair in respect of which the Late CM uses the Clearing services pursuant to this Part 3 or Part 4 or (b) Euro based on the mid-market rate of the relevant WM/Reuters Intra-Day Spot Rate at 7:00 a.m. (Frankfurt am Main time) on the Business Day following the relevant payment date. For the avoidance of doubt, Number 3.2.2.2 above shall also apply in the case of Deferred Payments.

[...]

### **3.43.5 Investment Loss with respect to OTC Currency Transactions**

An Investment Loss (as further set out in Chapter I Part 1 Number 3.45.6) may occur with respect to (i) a Prefunding Amount, (ii) a Late Payment Amount and/or (iii) a Corresponding Pay-In Amount, in each case denominated in a Commercial Bank Currency and in relation to an OTC Currency Transaction.

#### **3.4.43.5.1 Investment Loss with respect to Prefunding Amounts and Late Payment Amounts**

The following provisions apply to a Prefunding Amount Investment Loss and a Late Payment Amount Investment Loss:

[...]

- (2) Eurex Clearing AG shall determine the relevant Investment Loss Shortage Amount in its reasonable discretion (*billiges Ermessen*) taking into account, in particular, the amount of the Investment Loss which has occurred with respect to a Prefunding Amount, Late Payment Amount or Corresponding Pay-In Amount and the relevant Investment Counterparty, the aggregate amounts of Prefunding Amounts, Late Payment Amounts and Deferred Payment Amounts to be transferred to the relevant CLS Central Bank Account through the CLS CCP Service on the relevant Settlement Date and the extent to which other Affected Payers or Affected Payment Receivers, if any, were affected by the Prefunding Amount Investment Loss, Late Payment Amount Investment Loss or Corresponding Pay-In Amount Investment Loss, respectively.

[...]

#### **3.4.23.5.2 Investment Loss with respect to Corresponding Pay-in Amounts**

The following provisions apply to a Corresponding Pay-In Amount Investment Loss:

[...]

- (2) Eurex Clearing AG shall determine the relevant Corresponding Pay-In Amount Investment Loss Shortage Amount. Number 3.4.43.5.1 Paragraph 0(2) shall apply *mutatis mutandis*.

[...]

### **3.4.33.5.3 Definitions**

[...]

“**Late Payment Amount Investment Loss Shortage Amount**” means an amount up to the amount of the relevant Late Payment Amount which has actually been paid to Eurex Clearing AG pursuant to Number 3.34.4 Paragraph (2) above.

[...]

“**Prefunding Amount Investment Loss Shortage Amount**” means an amount up to the amount of the relevant Prefunding Amount which has actually been paid to Eurex Clearing AG pursuant to Number 3.2.1 Paragraph (2) ~~(a)~~ above.

### **3.53.6 Step-In Process and Roll-Over in the case of a Termination**

In case a Termination Date has occurred with respect to a Clearing Member, Eurex Clearing AG shall have the right to carry out (i) the Step-in Process or (ii) the Roll-Over with respect to OTC Currency Transactions during and as part of the default management process pursuant to Chapter I Part 1 Number 7.5 subject to the following modifications:

- (i) Numbers 3.34.2 and 3.34.3 shall apply *mutatis mutandis* to the Terminated Transactions (as defined in Chapter I Part 1 Number 7.5) which were OTC Currency Transactions as if the relevant payments that would have had to be made by the Affected Clearing Member under such Terminated Transactions in the absence of the Termination were Relevant FX/XCCY Payments with respect to which an FX/XCCY Failure to Pay had occurred;

[...]

### **3.63.7 Failure to Pay with respect to FX Swap Line**

[...]

### **3.73.8 Acknowledgements by Clearing Members**

The Clearing Member acknowledges that:

- (i) if the CLS CCP Service becomes unavailable for settlement for any reason (including, but not limited to, insolvency of CLS Bank), (x) the Clearing Member will – in the circumstances set out in Number 3.2.2.3 – be required to discharge its payment obligation by making the relevant payment outside the CLS CCP Service to an account notified to it by Eurex Clearing AG for such purpose despite the fact that the Clearing Member may have already made a payment through the CLS CCP Service to the relevant CLS Central Bank Account and/or (y) the Clearing Member will – in the circumstances set out in Number 3.89 Paragraphs (2) and (3) – be required to indemnify Eurex Clearing AG by paying an amount equivalent to the relevant Prefunding Amount or Late Payment Amount, respectively, to an account notified to it by Eurex Clearing AG for such purpose despite the fact that the Clearing

Member has already paid the Prefunding Amount or Late Payment Amount, respectively, to Eurex Clearing AG;

- (ii) without prejudice to the consequences of any non-compliance with the USD Pay-In Limit or USD Pay-Out Limit (and NPV Change Buffer, as applicable) (the “USD Limits”) and/or the GBP Pay-In Limit or GBP Pay-Out Limit (the “GBP Limits”) that are set out in this Part 3, it is under no obligation to submit Original OTC Transactions for Clearing which result in exceeding the USD ~~Limits~~ ~~Maximum Amount~~ (and/or ~~the GBP Limits~~ ~~Maximum Amount~~) (as applicable to it from time to time) on any Settlement Date and that it may reduce its portfolio size in order to avoid exceeding the USD ~~Maximum Amount~~ ~~Limits~~ (and/or GBP ~~Maximum Amount~~ ~~Limits~~) (as applicable to it from time to time);
- (iii) if certain pay-out cash flows of the Clearing Member in USD or GBP on a Settlement Date exceed certain thresholds (as set out in Part 3 Number 3.3) it is obliged to pay the relevant Pay-Out Limit Breach Contractual Penalty;
- (iv) to the extent Eurex Clearing AG is unable to source the Unavailable FX/XCCY Currency Amount through the exercise of its option(s) as set out in Number 3.34.3.1, Eurex Clearing AG shall be entitled to discharge its payment obligation with respect to the Unavailable FX/XCCY Currency Amount by paying a corresponding amount in the Available Currency as further set out in Number 3.34.3.2;
- (iv) in the case of Extraordinary Circumstances, Eurex Clearing AG shall be entitled to postpone its and all other Clearing Members' respective payment obligations under the relevant OTC Currency Transactions due for settlement on the relevant Settlement Date until the next Relevant Currency Pair Business Day ~~immediately following such Settlement Date~~ as further set out in Number 3.34.3.3;
- (vi) it shall pay the Prefunding Amount Investment Loss Shortage Amount or Late Payment Amount Investment Loss Shortage Amount (which can be an amount up to the relevant Prefunding Amount or Late Payment Amount, respectively) in the circumstances set out in Number 3.54.1;
- (vii) it shall pay the FX/XCCY Failure to Pay Costs if, *inter alia*, it fails to pay the relevant Investment Loss Shortage Amount in full by the relevant Investment Loss Shortage Cut-Off Time;
- (viii) the payment obligations of Eurex Clearing AG under the Deferred Payment shall be reduced by an amount equal to the Corresponding Pay-In Amount Investment Loss Shortage Amount pursuant to Number 3.45.2 Paragraph (1); and
- (ix) Eurex Clearing AG is entitled to claim compensation from the Clearing Member for any Prefunding Amount Clearing Member-Related Investment Loss, Late Payment Amount Clearing Member-Related Investment Loss and Corresponding Pay-In Amount Clearing Member-Related Investment Loss, in each case as further set out in Chapter I Part 1 Number 3.45.6 (which may also be the case if an Investment

Loss occurs with respect to an Investment Party which is unrelated to the actual holding of Prefunding Amounts, Late Payment Amounts or Corresponding Pay-In Amounts, respectively).

### **3.83.9 Indemnity by Clearing Members**

[...]

### **3.93.10 Use and Disclosure of Data**

#### **3.9.43.10.1 Use of data provided by Eurex Clearing AG**

[...]

#### **3.9.23.10.2 Consent to disclose data to CLS Bank**

[...]

### **3.403.11 Limitation of liability**

Eurex Clearing AG shall only be liable for wilful misconduct (*Vorsatz*) or gross negligence (*grobe Fahrlässigkeit*) of CLS Bank, unless CLS Bank violates any of its essential obligations (*wesentliche Vertragspflichten*) in connection with providing the CLS CCP Service with respect to OTC FX Transactions. An essential obligation is an obligation, the performance of which is necessary for the execution of the contract and in which the Clearing Member trusts and may trust. In case of simple negligence (*einfache Fahrlässigkeit*), the liability of Eurex Clearing AG is restricted to damages typically foreseeable at the time of granting the Clearing License. This Number 3.110 shall not affect the statutory liability for damages incurred as a result of injury to life, body or health as well as the liability pursuant to the German Product Liability Act.

[...]

### **3.443.12 Testing and Trialling**

[...]

### **3.423.13 Suspension of Clearing**

If one or more of a Clearing Member's CLS Nostro Banks (i) fail to (A) participate in the Testing and Trialling as set out in Number 3.142 or (B) apply the standard customary for nostro banks in carrying out payment instructions received by the Clearing Member or (ii) become subject to any of the events set out in Chapter I Part 1 Number 7.2.1 Paragraphs (5), (7) or (8), then Eurex Clearing AG may one or more times suspend or limit the Clearing of new OTC FX Transactions of such Clearing Member in accordance with Chapter I Part 2 Subpart A Number 6.2 which shall apply *mutatis mutandis*.

### **3.133.14 CLS Nostro Bank**

- (1) A Clearing Member is allowed to substitute one or more of its CLS Nostro Banks, if (i) Eurex Clearing AG has received at least 90 calendar days' prior written notice of such substitution and (ii) the substitute CLS Nostro Bank has been recognised and approved by Eurex Clearing AG (such recognition and approval is, *inter alia*, subject to the CLS Nostro Bank's successful participation in the Testing and Trialling). For the avoidance of doubt, if the recognition and approval process of the substitute CLS Nostro Bank takes longer than 90 calendar days, the substitution shall only become effective after such recognition and approval. Subject to the previous sentences, if the substitution of the CLS Nostro Bank(s) does not result in the reduction of the respective GBP ~~Maximum Amount Limits~~ and USD ~~Maximum Amount Limits~~ of any of the other Clearing Members applicable at the time of the proposed substitution, Eurex Clearing may agree to a shorter notice period.

[...]



## Part 4 Clearing of OTC XCCY Transactions

### 4.1 General Provisions

[...]

#### 4.1.4 CTM XCCY Transactions and STM XCCY Transactions

[...]

(5) For the purposes of this Chapter VIII,

[...]

(b) **“CTM Currency Transaction” means any CTM FX Transaction and CTM XCCY Transaction.**

(c) **“Existing STM Eligible XCCY Transaction”** means a CTM XCCY Transaction that is an Own Transaction and was created as a CTM XCCY Transaction between the Clearing Member and Eurex Clearing by way of novation prior to the XCCY STM Election.

(de) **“Original STM Eligible XCCY Transaction”** means an Own Transaction that is an OTC XCCY Transaction and is created by way of novation pursuant to Part 1 Number 1.2.1.

(ee) **“XCCY STM Effective Date”** means the date agreed between Eurex Clearing AG and Clearing Member as effective date of the XCCY STM Election.

(fe) **“XCCY STM Election”** means the election by the Clearing Member that all (but not some only) of its Own Transactions which are OTC XCCY Transactions shall be Settled-to-Market.

(gf) **“STM Eligible XCCY Transactions”** means, with respect to a Clearing Member, all of its (i) Existing STM Eligible XCCY Transactions, (ii) Original STM Eligible XCCY Transactions and (iii) Own Transactions that are OTC XCCY Transactions and are created upon novation pursuant to Number 4.89.

#### 4.1.5 Novation Criteria and Process Regarding OTC XCCY Transactions

[...]

### 4.2 General product-related terms for OTC XCCY Transactions

The following general product-related terms shall apply to the OTC XCCY Transactions provided for in Numbers 4.3 and 4.45.

#### 4.2.1 Payment Obligations

- (1) The relevant Clearing Member and Eurex Clearing AG shall pay the amounts payable under and in accordance with the terms of the relevant CCP Transaction as specified in the relevant OTC Trade Novation Report on the basis of the trade record submitted via the ATS in respect of OTC XCCY Transactions and which are as follows:
- (a) subject to Number 4.45 in connection with Part 3 Number 3.34.3.2, the relevant Clearing Member and Eurex Clearing AG each agree to pay to the respective other party the floating amounts as determined in accordance with Number 4.2.4 and as applicable to each of the parties on the relevant Floating Rate Payer Payment Dates;
  - (b) subject to Number 4.45 in connection with Part 3 Number 3.34.3.2, (i) as regards the initial exchange of payments under the OTC XCCY Transaction, one party ("**XCCY Party A**") agrees to pay to the other party ("**XCCY Party B**") on the relevant Initial Exchange Date the Initial Exchange Amount 1 against the payment by XCCY Party B of the Initial Exchange Amount 2 and (ii) as regards the final exchange of payments under that OTC XCCY Transaction XCCY Party A agrees to pay XCCY Party B on the relevant Final Exchange Date the Final Exchange Amount 1 against the payment by XCCY Party B of the Final Exchange Amount 2; the obligation of both parties to make the initial exchange of payments and the obligation of both parties to make the final exchange of payments under the OTC XCCY Transactions are entered into simultaneously;
  - (c) subject to Number 4.45 in connection with Part 3 Number 3.34.3.2, the relevant Clearing Member and Eurex Clearing AG each agree to pay – if, according to the terms of the relevant OTC XCCY Transaction and Number 4.2.6, they are the party required to do so – to the respective other party the MTM Amount (if any) with USD being the Variable Currency (as defined in Section 10.2 of the 2006 ISDA Definitions) on the relevant Floating Rate Payer Payment Dates ~~;~~ ~~and~~
- (2) (a) Where the pay-in cash flows in a relevant currency on a settlement date exceed a certain threshold, the amount of such excess shall be prefunded by the Clearing Member in accordance with the following provisions:
- ~~(d)~~ ~~†~~The Clearing Member shall pay the relevant Prefunding Amount, if any, to Eurex Clearing AG in accordance with Part 3 Number 3.2.1 Paragraphs ~~(1)~~ ~~(d)~~ ~~and~~ (2).

- (b) Subject to Number 4.2.2.3 and this Number 4.2.1 Paragraph ~~(12)~~ ~~(d)~~, any payments to be made by the Clearing Member to Eurex Clearing AG under this Number 4.2.1 (other than payments by the Clearing Member with respect to any Prefunding Amount) shall be made – with respect to each currency of the Currency Pairs – on a net basis and directly to the relevant CLS Central Bank Account through the CLS CCP Service no later than the CLS Cut-Off Time (as timing is of the essence). The provisions of Section 376 German Commercial Code (*Handelsgesetzbuch*) shall, however, not apply.
- (c) A payment to be made by the Clearing Member to Eurex Clearing AG in respect of (an) OTC XCCY Transaction(s) (including payments with respect to Variation Margin, XCCY PAI, XCCY STM Amounts, XCCY PAA and trade related fees but excluding payments with respect to any relevant Prefunding Amount, Investment Loss Shortage Amount, Margin or Settlement Compensation Margin) on a relevant payment date shall be referred to as the “**Relevant XCCY Payment**”.
- (d) Subject to Number 4.2.1 Paragraph (2) in connection with Number 3.2.1 Paragraph (2) ~~(ad)~~, any payments to be made by Eurex Clearing AG to the Clearing Member under this Number 4.2.1 shall be made – with respect to each currency of the Currency Pairs – on a net basis and directly to the relevant Currency Products Cash Account of the Clearing Member through the CLS CCP Service.

~~(2) The provisions with respect to Prefunding Amounts as set out in Part 3 Number 3.2.1 Paragraph (2) apply.~~

[...]

- (5) The following additional primary payment obligations apply under STM XCCY Transactions:

- (a) The Clearing Member or Eurex Clearing AG, as the case may be, shall pay an XCCY STM Amount on each Business Day (i) from (and including) the XCCY STM Effective Date (in case an STM XCCY Transaction was an Existing STM Eligible XCCY Transaction), the date of novation pursuant to Part 1 Number 1.2.1 (in case an STM XCCY Transaction was an Original STM Eligible XCCY Transaction) or the date of novation pursuant to Number 4.89.2, as relevant, (ii) to (and including) the earlier of the “Termination Date” of the STM XCCY Transaction (as specified in the relevant OTC Trade Novation Report), the date of the cancellation pursuant to Number 4.89.2, or the date of a termination pursuant to Number 4.110, as relevant (the relevant date under (ii) is the “**XCCY Last STM Amount Payment Date**”).

[...]

#### 4.2.5 Rates for calculating the Floating Amounts

- (1) The applicable Relevant Rate applied by Eurex Clearing AG in calculating floating amounts will be set out in the OTC Trade Novation Report on the basis of the floating rate index specified in the trade record transmitted to Eurex Clearing AG via the ATS whereby:

[...]

- (d) Fallback index level: In case one of the rates under items (a) to (c) above is not published by the relevant body at the respective usual time, Eurex Clearing AG sets the relevant rate used for the calculation of floating amounts in its reasonable discretion (*billiges Ermessen*).
- (e) Successor index: In case a floating rate index is discontinued to be published by the relevant body, Eurex Clearing AG sets a successor index in its reasonable discretion (*billiges Ermessen*) taking into account relevant guidance notes of ISDA.

[...]

- (5) Where the Relevant Rate is not available on the relevant screen page, Eurex Clearing AG determines the applicable rate in its reasonable discretion (*billiges Ermessen*) on the basis of the arithmetic mean of the rates at which deposits (in the relevant contractual currency, with an equivalent maturity and in the same, or approximately the same, notional amount) are offered by at least four major banks to prime banks in the relevant interbank market at approximately the time at which the relevant rate should have been available on the applicable screen.

[...]

#### 4.4 Pay-Out Limits; Pay-Out Limit Breach Contractual Penalty

The Pay-Out Limits and the consequences in case of a breach of a Pay-Out Limit, each as set out in Part 3 Number 3.3, shall apply in relation to OTC XCCY Transactions.

#### 4.44.5 Failure to Pay with respect to an OTC XCCY Transaction

If on a relevant Settlement Date the Late CM fails to make a Relevant XCCY Payment in full (taking into account any Prefunding Amount paid by the Late CM) by the CLS Cut-Off Time (this cut-off time also applies if the CLS CCP Service is not available for settlement and settlement is instructed outside CLS pursuant to Number 4.2.2.2), the provisions of Part 3 Number 3.34 shall apply.

#### 4.54.6 Investment Loss with respect to OTC XCCY Transactions

An Investment Loss (as further set out in Chapter I Part 1 Number 3.45.6) may occur with respect to (i) a Prefunding Amount, (ii) a Late Payment Amount and/or (iii) a Corresponding Pay-In Amount, in each case denominated in a Commercial Bank Currency and in relation to an OTC XCCY Transaction. In such case, the provisions of Part 3 Number 3.45 shall apply.

#### **4.64.7 Step-In Process and Roll-Over in the case of a Termination**

In case a Termination Date has occurred with respect to a Clearing Member, the provisions of Part 3 Number 3.56 shall apply.

#### **4.74.8 Failure to Pay with respect to FX Swap Line**

If an FX Hedge Counterparty fails to perform its payment obligations under the relevant FX Hedging Transaction under the relevant FX Swap Line Agreement, the provisions of Part 3 Number 3.67 shall apply.

#### **4.84.9 Trade Netting and Accumulation**

[...]

If (i) Eurex Clearing AG and a Clearing Member have agreed upon the netting and accumulation of CCP Transactions pursuant to this Number 4.89 and (ii) the relevant Clearing Member holds an Interest Rate Derivatives Clearing License, the netting and accumulation shall also be carried out with respect to OTC Interest Rate Derivative Transactions pursuant to Part 2 Number 2.6.

#### **4.8.14.9.1 Inclusion of CCP Transactions in the Netting and Accumulation Process**

[...]

#### **4.8.24.9.2 Netting and Accumulation Procedure**

[...]

#### **4.94.10 Trade Amendment**

[...]

#### **4.104.11 Early Termination**

[...]

- (2) Any early termination pursuant to this Number 4.110 shall take effect when a respective OTC Trade Daily Summary Report is made available to the relevant Clearing Members via Eurex Clearing AG's system.
- (3) Without prejudice to the early termination provisions set out in this Number 4.110 and any termination rights a Clearing Member may have pursuant to Chapter I, Clearing Members have no right to exercise any early termination option under any CCP Transaction and no mandatory early termination shall apply to a CCP Transaction. This paragraph shall not restrict the parties to a CCP Transaction to agree on a bilateral basis that one party shall have a right to demand from the other party its consent to a termination of the CCP Transaction.

- (4) A CCP Transaction may only be early terminated (i) together with a CCP Transaction between Eurex Clearing AG and another Clearing Member and which has identical terms, (ii) against the payment of a cash settlement amount calculated by the Calculation Agent on the basis of the daily evaluation price (as set out in Number 4.1.5) and (iii) provided that:
- (a) Eurex Clearing AG and both Clearing Members have given their consent to such termination;
  - (b) both Clearing Members were a party to the Original OTC Transaction; and
  - (c) none of the two CCP Transactions created upon novation of the Original OTC Transaction was subject to any netting or accumulation pursuant to Number 4.89.

If both Clearing Members have given their consent to the early termination request in accordance with Number 4.10-11 Paragraph (4) lit. (a), they may cancel such a request as long as the risk check performed by Eurex Clearing AG has not yet been successfully completed.

An early termination pursuant to this Number 4.10-11 may also be effected with respect to part of a CCP Transaction.

- (5) Any amounts payable under this Number 4.10-11 shall be paid directly through the CLS CCP Service.

#### **4.114.12 Acknowledgements by Clearing Members**

The Clearing Members acknowledges that:

- (i) if the CLS CCP Service becomes unavailable for settlement for any reason (including, but not limited to, insolvency of CLS Bank), (x) the Clearing Member will – in the circumstances set out in Number 4.2.2.3 in connection with Part 3 Number 3.2.2.3 – be required to discharge its payment obligation by making the relevant payment outside the CLS CCP Service to an account notified to it by Eurex Clearing AG for such purpose despite the fact that the Clearing Member may have already made a payment through the CLS CCP Service to the relevant CLS Central Bank Account and/or (y) the Clearing Member will – in the circumstances set out in Number 4.123 Paragraphs (2) and (3) – be required to indemnify Eurex Clearing AG by paying an amount equivalent to the relevant Prefunding Amount to an account notified to it by Eurex Clearing AG for such purpose despite the fact that the Clearing Member has already paid the Prefunding Amount to Eurex Clearing AG;
- (ii) without prejudice to the consequences of any non-compliance with the USD Limits and/or the GBP Limits that are set out in Part 3, it is under no obligation to submit Original OTC Transactions for Clearing which result in exceeding the USD ~~Maximum Amount~~Limits (and/or GBP ~~Limits Maximum Amount~~) (as applicable to it from time to time) on any Settlement Date and that it may reduce its portfolio size in order to

avoid exceeding the USD ~~Maximum Amount~~ Limits (and/or GBP ~~Maximum Amount~~) Limits (as applicable to it from time to time);

- (iii) if certain pay-out cash flows of the Clearing Member in USD or GBP on a Settlement Date exceed certain thresholds (as set out in Number 4.4 in connection with Part 3 Number 3.3) it is obliged to pay the relevant Pay-Out Limit Breach Contractual Penalty;
- (iv) to the extent Eurex Clearing AG is unable to source the Unavailable FX/XCCY Currency Amount through the exercise of its option(s) as set out in Number 4.4 in connection with Part 3 Number 3.34.3.1, Eurex Clearing AG shall be entitled to discharge its payment obligation with respect to the Unavailable FX/XCCY Currency Amount by paying a corresponding amount in the Available Currency as further set out in Number 4.45 in connection with Part 3 Number 3.34.3.2;
- (iv) in the case of Extraordinary Circumstances, Eurex Clearing AG shall be entitled to postpone its and all other Clearing Members' respective payment obligations under the relevant OTC Currency Transactions due for settlement on the relevant Settlement Date until the next Relevant Currency Pair Business Day as further set out in Number 4.45 in connection with Part 3 Number 3.34.3.3;
- (vi) it shall pay the Prefunding Amount Investment Loss Shortage Amount or Late Payment Amount Investment Loss Shortage Amount (which can be an amount up to the relevant Prefunding Amount or Late Payment Amount, respectively) in the circumstances set out in Number 4.56 in connection with Part 3 Number 3.45.1;
- (vii) it shall pay the FX/XCCY Failure to Pay Costs if, *inter alia*, it fails to pay the relevant Investment Loss Shortage Amount in full by the relevant Investment Loss Shortage Cut-Off Time;
- (viii) the obligations of Eurex Clearing AG under the Deferred Payment shall be reduced by an amount equal to the Corresponding Pay-In Amount Investment Loss Shortage Amount pursuant to Number 4.5-6 in connection with Part 3 Number 3.45.2 Paragraph (1); and
- (~~viii~~ix) Eurex Clearing AG is entitled to claim compensation from the Clearing Member for any Prefunding Amount Clearing Member-Related Investment Loss, Late Payment Amount Clearing Member-Related Investment Loss and Corresponding Pay-In Amount Clearing Member-Related Investment Loss, in each case as further set out in Chapter I Part 1 Number 3.45.6 (which may also be the case if an Investment Loss occurs with respect to an Investment Party which is unrelated to the actual holding of Prefunding Amounts, Late Payment Amounts or Corresponding Pay-In Amounts, respectively).

#### **4.124.13 Indemnity by Clearing Member**

[...]

#### **4.134.14 Use and Disclosure of Data**

##### **4.13.14.14.1 Use of data provided by Eurex Clearing AG**

[...]

##### **4.13.24.14.2 Consent to disclose data to CLS Bank**

[...]

#### **4.144.15 Limitation of liability**

Eurex Clearing AG shall only be liable for wilful misconduct (*Vorsatz*) or gross negligence (*grobe Fahrlässigkeit*) of CLS Bank, unless CLS Bank violates any of its essential obligations (*wesentliche Vertragspflichten*) in connection with providing the CLS CCP Service with respect to OTC XCCY Transactions. An essential obligation is an obligation, the performance of which is necessary for the execution of the contract and in which the Clearing Member trusts and may trust. In case of simple negligence (*einfache Fahrlässigkeit*), the liability of Eurex Clearing AG is restricted to damages typically foreseeable at the time of granting the Clearing License. This Number ~~4.13.15~~ shall not affect the statutory liability for damages incurred as a result of injury to life, body or health as well as the liability pursuant to the German Product Liability Act.

#### **4.154.16 Testing and trialling**

Each Clearing Member shall participate in the Testing and Trialling as set out in Part 3 Number 3.142. The Clearing Member shall induce its relevant CLS Nostro Bank(s) to also participate in the Testing and Trialling.

#### **4.164.17 Suspension of Clearing**

If one or more of a Clearing Member's CLS Nostro Banks (i) fail to (A) participate in the Testing and Trialling as set out in Number 4.156 in connection with Part 3 Number 3.11 or (B) apply the standard customary for nostro banks in carrying out payment instructions received by the Clearing Member or (ii) become subject to any of the events set out in Chapter I Part 1 Number 7.2.1 Paragraphs (5), (7) or (8), then Eurex Clearing AG may one or more times suspend or limit the Clearing of new OTC XCCY Transactions of such Clearing Member in accordance with Chapter I Part 2 Subpart A Number 6 which shall apply *mutatis mutandis*.

#### **4.174.18 CLS Nostro Bank**

- (1) A Clearing Member is allowed to substitute one or more of its CLS Nostro Banks, if (i) Eurex Clearing AG has received at least 90 calendar days' prior written notice of such substitution and (ii) the substitute CLS Nostro Bank has been recognised and approved by Eurex Clearing AG (such recognition and approval is subject to the CLS Nostro Bank's successful participation in the Testing and Trialling). For the avoidance of doubt, if the recognition and approval process of the substitute CLS Nostro Bank takes longer than 90 calendar days, the substitution shall only become



effective after such recognition and approval. Subject to the previous sentences, if the substitution of the CLS Nostro Bank(s) does not result in the reduction of the respective GBP ~~Maximum Amount Limits~~ and USD ~~Maximum Amount Limits~~ of any of the other Clearing Members applicable at the time of the proposed substitution, Eurex Clearing may agree to a shorter notice period.

[...]

\*\*\*