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# Clearing Conditions of European Com- modity Clearing AG

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## Preamble

European Commodity Clearing AG (ECC) with registered offices in Leipzig is a central counterparty (CCP) and operates a system for collateralisation and settlement of the transactions concluded or registered on the markets approved by it. ECC holds a license as a Central Counterparty under Regulation 648/2012 (EMIR) and under the German Banking Act and is a designated payment system as Central Counterparty and Clearinghouse for spot and derivatives commodity markets in accordance with Article 10 of the Directive 98/26/EC on settlement finality in payment and securities settlement systems ("Settlement Finality Directive").

ECC provides Clearing Services for various European commodity and commodity future exchanges and markets on which various commodity groups are traded. An overview of the licensed markets and the products which can be traded there is available at <http://www.ecc.de/ecc-en/about-ecc/partners-products>.

Physical settlement of all transactions for which ECC has assumed clearing is provided through a settlement entity, which is directly bound by these Clearing Conditions in the relationship to ECC and the Trading Participants as a result of commissioning by ECC. The physical settlement of transactions in Emission Rights is effected by ECC AG acting as settlement entity.

The settlement and the collateralisation of the transactions shall be carried out subject to the provisions of these Clearing Conditions. The rules and regulations of the respective markets shall apply as supplements hereto. The Clearing Conditions shall be binding for all Clearing Members and Non-Clearing Members in the respectively valid version.

In as far as the Clearing Conditions are part of a contract concluded between a System Clearing Member and ECC or of a contract concluded between a Settlement Bank and ECC, the provisions regarding the payment system in chapter 8, the provisions in chapter 7. as well as all provisions and definitions of terms in these Clearing Conditions referring to System Clearing Members or Settlement Banks as participants in the system together form an independent contractual agreement ("System Agreement"). The entirety of these System Agreements constitutes a formal agreement within the meaning of article 2 a) of the Settlement Finality Directive which forms a system within the meaning of the Settlement Finality Directive.



## 1. Definition of Terms

Accounting cut-off	The time on every Business day established by ECC for every spot product. Spot Market trades concluded or registered after the accounting cut-off are considered concluded or registered on the next Business Day.
Allowance	Allowance within the meaning of Article 3 (a) of Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the European Community.
Auction Delivery Account	Delivery account for auctioned certificates in accordance with Article 13 of the Regulation (EU) No. 389/2013 of 2 <sup>nd</sup> May 2013 establishing a Union Registry (Registry Regulation)
Auctioneer	Any public or private entity appointed by a (Member) State to auction Allowances on its behalf pursuant to Article 22 (1) of the Auctioning Regulation with a mandate to auction Allowances and receive and disburse the auction proceeds on behalf of the (Member) State appointing it pursuant to Article 23 (a), (b) and (c) of the Auctioning Regulation. Any reference to an Auctioneer in these Clearing Conditions shall be understood as a reference to such appointed entity in its capacity as representative of the respective appointing (Member) State.
Back-up Clearing Member	A System Clearing Member that can take over clearing forthwith in the event of a change of the clearer.
Balancing Agreement	All contractual agreements between the transmission system operator or hub operator and the Trading Participant as well as between the transmission system operator/hub operator and ECC or the Settlement Entity respectively regarding the settlement of power and natural gas deliveries.
Batch Processing	Process of ECC on every business day for settlement, position administration as well as calculation and booking of margins for all transactions for which ECC has taken over clearing.
Business Day	The days from Monday to Friday with the exception of those days which are marked as days that are not Business Days in the calendar published by ECC at <a href="http://www.ecc.de">http://www.ecc.de</a> .
Business hours	From 7.30 am until 7.00 pm on every Business Day.
Capacity Guarantee	An intangible, tradable, fungible, and transferable certificate according to Art. L. 335-1 f. des Code de l'énergie and the décret n° 2012-1405 created by the French national Transmission System Operator and issued to an electricity producer for

	a given calendar year on the producible capacity of its generating plants.
Cash Collateral Account	Internal inventory account in which Trading Participants' cash collateral is booked by ECC in accordance with section 3.6.8.
Cash Pledge Account	Pledge account of the System Clearing Member with regard to a given Non-Clearing Member kept at ECC in the event of passing through of collateral.
CCP	Central Counter-party, central counter-party within the meaning of Art. 1 paragraph 31 KWG [German Banking Act]
Clearing	Position keeping and financial and physical settlement of transactions as well as collateralisation of transactions.
Clearing Broker	Clearing Member which enables his clients to access a Market if such client (Clearing Broker Client) does not have access to this Market itself. Clients which use their Clearing Member as Clearing Broker must be approved as Non-Clearing Members and Trading Participants by ECC.
Clearing Broker Client	Non-Clearing Member that gets access to a market via its Clearing Member and that is approved as a Trading Participant by ECC.
Clearing House	Central counterparty for the transactions included in clearing.
Clearing Member	Participant in the clearing procedure who has a System Clearing License as a System Clearing Member or a Direct Clearing Participant (DCP) Clearing License as a DCP Clearing Member. A Clearing Member can also be licensed by ECC as a Trading Participant for one of the products.
Clearing Member Representative	The administrator of a Clearing Member, i.e. the person who has provisionally or finally been commissioned to carry out a procedure whose subject is the distribution of the debtor's assets to satisfy the creditors' claims (insolvency proceedings) and who has powers of management and rights of disposal regarding the assets of the debtor in accordance with the respective legislation in connection with insolvency proceedings before a court of law, an authority or another competent body. In as far as an administrator has not been appointed, the Clearing Member itself shall be considered the Clearing Member Representative.

Clearing System	The IT system of ECC, in particular, the spot market settlement or the IT system of Eurex Clearing AG used by ECC (Eurex Clearing System), including the IT infrastructure of ECC, Eurex or their respective service providers connected with it.
Client	Client of a System Clearing Member that has not concluded any NCM Agreement with the System Clearing Member and ECC and participates in Clearing through this System-Clearing Member. ECC distinguishes between Omnibus clients and other clients, section 2.3.1.
Compression	A process for risk reduction in which derivatives market transactions between ECC and a Clearing Member and between a Clearing Member and a Non-Clearing Member which refer to the same contract or contracts of an Intermarket Spread Products expire at uniform times and are replaced by a new uniform derivatives market transaction the payment and delivery obligations of which correspond to the balance of all payment and delivery obligations of the derivatives market transactions replaced.
Contract	Standardised unit of measurement for transactions. In the case of Spot Market contracts, this refers to the quantity of the commodity; in the case of Derivatives Market contracts, it refers to the quantity of the commodity and the maturity date of the delivery. The contract specifications determine the arrangements of any given contract.
Correspondent Bank	Bank appointed by ECC as being authorised to hold Settlement Accounts in various currencies for System Clearing Members.
DCP Clearing Member	Clearing Member that has a Direct Clearing Participant (DCP) Clearing License and which is exclusively entitled to clear own Spot Market transactions.
Default Fund	May also be referred to as Clearing Fund in ECC documentations.
Delivery Period	The Delivery Period is according to the respective contract specification the period which is defined for delivery.
Derivatives Market	Market or sub-market on which transactions in products with a deferred settlement date (usually later than 2 Business Days) are concluded and/or registered.
Derivatives Market Transaction	Transaction by a Trading Participant which has a deferred settlement date (futures or options).

ECC	European Commodity Clearing AG. As the central counter-party ECC is the clearing house for all of the transactions included in clearing.
ECC Lux	European Commodity Clearing Luxembourg S.à r.l., a subsidiary of ECC and Settlement Entity for all markets, for which ECC has assumed clearing excluding the markets in Emission Rights.
EEX	European Energy Exchange. EEX is a market with various sub-markets on which Spot Market and Derivatives Market Transactions are traded or registered in the framework of exchange trading.
Electronic-Eye	Computer programs which continuously receive market prices of products traded on the Markets from the trading system of the Market and evaluate such market prices. As soon as the price of an order which is received by the Electronic Eye lies within the range previously set by the exchange participant, the Electronic Eye automatically generates an order which is then channelled into the trading system of the Market through the programmable interfaces of the Market to facilitate its execution.
Emergency Member Stop	Procedure supported by the system for the temporary exclusion from trading of either (i) a Non-Clearing Member by the Clearing Member or (ii) a Clearing Member and all Non-Clearing Members of this Clearing Member by ECC on some or all markets on which these Trading Participants are admitted to trading.
Emission Rights	Allowances and Certified Emission Reductions (CERs).
Foreign currency	Other currencies than EUR and which are approved by ECC as a means of payment.
General Omnibus Participant	All clients and Non-Clearing Members of a Clearing Member that are neither Special Segregated Non-Clearing Members nor Omnibus Clients or Simple Omnibus Participants.
General Segregated Non-Clearing Member	Non-Clearing Member that are no Special Segregated Non-Clearing Members.
General Segregated Participants	General Segregated Non-Clearing Members and other clients.
Guarantee of Origin	An electronic document according article 3 section 6 of the Directive 2003/54 EG, which provides evidence to an end consumer, about the share or a specific amount of energy that, has been produced out of renewable resources.

Indirect Clients	According to Art. 1 lit. b) of Del. Reg. 149/2013, clients of a System Clearing Member's clients that receive clearing services from a System Clearing Member's clients via an Indirect Clearing Agreement.
Intermarket Liquidity Provider	Non-Clearing Member that contributes to the provision of liquidity on two markets with the help of Intermarket Spread Products on these markets and that has concluded corresponding agreements regarding this with the respective markets.
Intermarket Spread Product	Combination of two futures contracts which are traded on different Markets and which have the same risk characteristics according to ECC's assessment.
Known Participants	Special Segregated Participants and General Segregated Non-Clearing Members
Margin Requirement	The collateral to be provided by a Clearing Member calculated on every Business Day and requested by ECC in accordance with these Clearing Conditions.
Market	Regulated exchange, multilateral trading facility, non-multilateral trading facility, organised trading facility or comparable organisation which permits the conclusion or registration of transactions in products included in clearing by ECC.
Market Coupling	A mechanism for the integration of power markets through coordinated pricing and the allocation of transmission capacities.
Market Coupling Clearing Transaction	A transaction between ECC and a Market Coupling Counterparty as a result of which the cross-border power deliveries between ECC and a Market Coupling Counterparty are settled in the context of market coupling.
Market Coupling Contract	A contract which makes the available transmission capacity between two market areas tradable in the form of Physical Transmission Rights ("PTR") and which makes this the possible subject of clearing services.
Market Coupling Counterparty	A CCP or a party commissioned to settle power exchange transactions which is included in market coupling and settles Market Coupling Clearing Transactions with ECC on the basis of market coupling contracts.
NCM Agreement	Agreement between a Clearing Member, a Non-Clearing Member and ECC as well as, if applicable, any supplementary agreements

Non-Clearing Member	Participant in the clearing procedure who has concluded an NCM Agreement with a System Clearing Member and is approved as a Trading Participant for certain products by ECC.
Omnibus Account	Account under which the transactions and positions of those Omnibus Clients for which this account is created are recorded separately from the Clearing Member's own positions provided the preconditions for keeping of such an Omnibus Account are fulfilled. In accordance with Section 3.6.7 para 2, separate securities Clearing Accounts are introduced for Omnibus Accounts.
Omnibus Agreement	With regard to every Omnibus Account, an agreement between a Clearing Member, the Omnibus Clients, ECC and an Omnibus Representative acting for the Omnibus Clients in which the Omnibus Representative and the Clearing Member confirm that the Omnibus Representative has been authorised by all Omnibus Clients of this Omnibus Account to submit or receive statements and that he has been appointed as a fiduciary for possible transfers of money, securities or Emission Rights from the transfer of collateral. Moreover, in the Omnibus Agreement the Clearing Member confirms that the accounts for the Omnibus Clients are kept separately within its settlement systems and that it acts as the Trading Participant for the respective Omnibus Account. Every reference to an Omnibus Representative in these Clearing Conditions should be understood as a reference to the respective Omnibus Representative acting for the Omnibus Clients of the respective Omnibus Account.
Omnibus Client	Client of a Clearing Member whose trades and positions are kept in an Omnibus Account of its Clearing Member and with regard to which the collateral provided by it are passed through in accordance with Section 3.5.6 et seq.
Omnibus Representative	Representative of Omnibus Clients who is authorised by all Omnibus Clients to make or receive statements on their behalf (in as far as this is expressly provided for in the Clearing Conditions for the Omnibus Representative) and who is appointed as a fiduciary for possible transfers of cash, securities or Emission Rights from the transfer of collateral.
Order Parameters	Particularly decisions about whether the order is to be initiated, the point in time, the price or the quantity of the order or how the order is adapted with limited or no involvement of humans at all, after its submission.

Payment Bank	Bank appointed by ECC as being authorised to hold Settlement Accounts in various currencies for ECC.
Position	The balance of several Derivatives Market Transactions regarding the same contract which have not been settled yet.
Product	Spot Market contract or all Derivatives Market contracts with the same underlying and different maturity dates which are traded on a market and have been included in clearing by ECC.
Registry Based Products	Emission Rights, Guarantees of Origin and Capacity Rights.
Segregated Account	In a Segregated Account, trades and positions of the Special Segregated Participant are recorded separately from a) the proprietary positions of the Clearing Member, b) of trades and positions of other Special Segregated Participants of this Clearing Member, c) trades and positions of the General Omnibus Participants of this Clearing Member and d) trades and positions of the Simple Omnibus Participants of this Clearing Members. In accordance with Section 3.6.7 para 2, separate Collateral Clearing Accounts are kept for Segregated Accounts.
Settlement Account	<p>Every TARGET2 account or any other account of System Clearing Members held at a correspondence bank approved by ECC as settlement account, to which the daily balance of their Clearing Accounts is credited or from which such is debited.</p> <p>Every account kept for DCP Clearing Members at a Settlement Bank.</p> <p>Every TARGET2- CBF 6 Series or other Settlement Account at a Payment Bank used by ECC.</p> <p>ECC specifies for every product which types of accounts have to be used as Settlement Accounts and publishes the respective Settlement Accounts on its website.</p>
Settlement Bank	Institute that has concluded a system agreement with ECC and, if applicable, a Settlement Bank Agreement, keeps one or several settlement accounts for DCP Clearing Members and carries out payment instructions for DCP Clearing Members towards ECC.
Settlement Bank Agreement	Agreement between a Settlement Bank, a DCP Clearing Member and ECC regarding keeping of a Settlement Account and which upon request of ECC arranges, <i>inter alia</i> , pledging of



	the credit claims of the DCP Clearing Member booked in the Settlement Account to ECC.
Settlement Entity	Performs the physical settlement of all transaction for which ECC has assumed clearing towards the Trading Participants and as a result owes towards the Trading Participants clearing and settlement services in relation to the physical settlement of the respective spot and physically settled derivatives markets, which are de facto predominantly performed by ECC. \$Settlement Entity is ECC Lux. For all Emission Rights markets ECC AG acts as Settlement Entity itself.
Share in Collective Holding	Shares in the total inventory of Registry Based Products held by the Settlement Entity in its trading account at the respective registry for all Trading Participants which are credited in internal inventory accounts. The Settlement Entity keeps these Registry Based Products in trust (“fiduziarische Treuhand”) for Trading Participants in accordance with the provisions of the Clearing Conditions.
Simple Omnibus	A Simple Omnibus solely consists of those Simple Omnibus Participants of a Clearing Member which are allocated to the Simple Omnibus concerned within the clearing systems of ECC.
Simple-Omnibus Participant	Certain clients and Non-Clearing Members of a Clearing Member, which are neither Special Segregated Non-Clearing Members, nor Omnibus Clients.
Special Segregated Non-Clearing Member	A Non-Clearing Member that has chosen the version “individual segregation” in the collateral agreement and whose securities are passed through in accordance with section 3.5.6 et seq.
Special Segregated Participant	Special Segregated Non-Clearing Member and Omnibus Clients.
Spot Market	Market or sub-market on which transactions regarding products are concluded and/or registered which are usually settled within a period of two Business Days.
Spot Market Transaction	Transaction by a Trading Participant which is usually fulfilled within two Business Days.
Stop Button	Technical implementation of the Emergency Member Stop in the Eurex clearing system.
Stop Limit	A contractual limit for the Non-Clearing Members risk position which is contractually agreed between the Clearing Member



	and the Non-Clearing Member and upon exceeding of which the Clearing Member will submit a request for the exclusion of the Trading Participant concerned from trading on the markets cleared by ECC (see Stop Button).
Stop Request	Technical implementation of the Emergency Member Stop within the ECC Self-Service Limit Maintenance system.
Supervisory Risk Weight	Risk weight for an unsecured exposure towards a Clearing Member in the standardized approach for credit risk according to the German implementation of the Directives of the European Union on regulatory capital of banks (2006/48/EC -Capital Requirements Directive and 2006/49/EC - Capital Adequacy Directive) (currently Solvency Regulation - Solvabilitätsverordnung).
System Agreement	Independent contractual agreement under the provision regarding the payment system in section 8, the provisions in section 7 as well as all provisions and definitions of terms in these Clearing Conditions which refer to System Clearing Members or Settlement Banks as participants in the system. The entirety of these System Agreements constitutes a formal agreement within the meaning of article 2 a) of the Settlement Finality Directive which forms a system within the meaning of the Settlement Finality Directive.
System Clearing Member	Clearing Member which has a System Clearing License and is entitled to clear own transactions, client transactions and transactions of Non-Clearing Members.
System for algorithmic trading	Computer algorithms that determine single order parameters automatically without being quote machines, Electronic Eyes or order routing systems.
Trade	Every Spot Market or Derivatives Market Transaction in one of the products approved by ECC which Trading Participants have concluded or registered in a market themselves or via the market access of a Clearing Broker and which is settled by ECC.
Trading	Comprises order book trading at a market and the registration of trades at a market.
Trading Conditions	Conditions passed by a market in accordance with which transactions are concluded and/or registered.
Trading Day	The days specified by the respective market on which trading takes place or on which transactions can be registered.

Trading Limit	Limiting of orders which is technically provided in the trading system of the Market which can be entered into the trading system of a Market by a participant.
Trading Participant	Company which is approved as a Trading Participant on a market, which is as well approved as a Trading Participant for one product by ECC and which takes part in the clearing procedure on ECC as a Non-Clearing Member or as a Clearing Member.
Trading Participant Bank Guarantee	First-demand bank guarantee covering current and future liabilities which a DCP Clearing Member or Non-Clearing Member has towards ECC under or in connection with its participation in clearing provided by an institute accepted by ECC, whose guarantee amount is denominated in a currency approved by ECC and whose conditions correspond to the guarantee conditions specified by ECC.
Trading Participant Cash Collateral	Cash collateral provided to ECC by a Trading Participant in EUR and GBP which ECC keeps in an internal inventory account as a cash collateral account for this Trading Participant in each case.
Trading Participant Collateral	Collateral which can be considered in the calculation of the amount of the margin requirement in accordance with section 2.6.2 in the form of (1) collateral regarding Shares in Collective Holdings which are credited in ECC inventory accounts, (2) Trading Participant Cash Collateral and (3) Trading Participant Bank Guarantees.
Transaction	Conclusion of a transaction on a market in accordance with the said market's rules.
Unsettled trade	Spot Market or Derivatives Market Transaction, which has not yet been settled financially and/or physically.
In as far as the following provisions refer to one of the persons specified above in the singular, each of these rules shall apply to all of such persons. Rules concerning a Clearing Member in the relationship with Non-Clearing Members, Omnibus Clients, Omnibus Representatives, Clients or Settlement Banks shall apply to this Clearing Member each exclusively in the relationship with such Non-Clearing Members, Omnibus Customers, Omnibus Representatives, Customers or Settlement Banks with whom this Clearing Member has a Contractual Relationship.	

## 2. License for Participation in Clearing on ECC and Persons involved in Clearing

### 2.1 Clearing Member

#### 2.1.1 Clearing License

- (1) A clearing license is required for participation in clearing as a Clearing Member. The clearing license is obtained by means of the conclusion of a corresponding clearing agreement (Clearing Agreement) with ECC. A clearing license authorizes the holder to clear transactions in products which are currently approved or will be approved by ECC. The clearing license can be restricted by ECC with regard to individual products in case the Clearing Member does not fulfil the preconditions which are specific for the respective product.
- (2) A system clearing license can be granted as a general clearing license or as a direct clearing license. A general clearing approval authorizes the holder to clear transactions on its own account, customer transactions or transactions by Non-Clearing Members. A direct clearing license authorizes the member concerned to clear transactions on own account, customer transactions as well as transactions by affiliated Non-Clearing Members. General clearing license and direct clearing license are considered as system clearing licences within the meaning of these Clearing Conditions also when granted before 1st August 2016.
- (3) A DCP clearing license exclusively authorises DCP Clearing Members to clear its own Spot Market transactions.

#### 2.1.2 General Preconditions to be fulfilled by a System Clearing Member

- (1) Only institutions fulfilling the following preconditions can be granted a clearing license as a System Clearing Member in the form of a general clearing license or a direct clearing license:
  - (a) Institutions based in a member state of the European Union, in Switzerland or Norway provided they have been licensed by the authorities in charge within their countries of incorporation and the license comprises the banking transactions or financial services which are required for participation in clearing and the institutions are also under the supervision of the competent authorities within their countries of incorporation in accordance with the parameters of the directives of the European Union, in case the company is based in Switzerland, of the Swiss Financial Market Supervisory Authority (FINMA), or if the company is based in Norway, of Finanstilsynet.
  - (b) Branch offices and branch establishments within the meaning of section 53, 53 b or 53 c KWG (German Banking Act) provided the branch office and/or the institution fulfil the preconditions as per lit. a and section 2.1.2.
  - (c) Branch establishments within the meaning of Art. 2 para 1 lit. a of the Swiss Federal Law regarding Banks and Savings Associations in conjunction with the Ordinance of

FINMA regarding foreign banks in Switzerland provided the branch establishment fulfils the preconditions as per lit. a and section 2.1.2.

- (d) Other branch offices based in a member state of the European Union (“receiving state“) provided the respective main office (financial institution, securities trading company) with headquarters in a member state of the European Union (“country of origin“) is licensed by its national supervisory authority and is supervised accordingly and provided the license comprises the banking transactions or financial services required for clearing operations, there are no exit barriers for branch establishments for institutions with headquarters in a member state of the European Union in the country of origin, a notification procedure has been carried out in the receiving country and the branch establishment and/or the institution fulfils the preconditions under section 2.1.2.
- (e) Institutions based outside the European Union, Switzerland or Norway provided (i) the applying institution has been licensed by its national supervisory authority and the license comprises banking transactions or financial services required for participation in clearing, (ii) in its country of domicile it is supervised according to standards equivalent to the applicable regulatory standards of the EU as determined by ECC and provided that (iii) the national supervisory authority is a signatory to Appendix A of the IOSCO Multilateral Memorandum of Understanding or has signed an applicable bilateral memorandum of understanding with the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht – “BaFin”).

ECC may require the applicant to provide, at its own expense, a legal opinion from leading counsel approved by ECC that verifies the legal validity and enforceability of the Clearing Conditions in the respective jurisdiction according to standards provided by ECC from time to time.

The main branches of the branch offices or branch establishments specified in lit. b to d have to guarantee in writing that the obligations arising from clearing of their branch offices or branch establishments will be fulfilled to an unrestricted amount upon the first request by ECC. For the purpose of verification of the legal validity of this guarantee ECC shall be entitled to demand all the required information and evidence, including a legal expertise by an expert to be appointed by ECC, from the institution concerned and at its expense.

ECC can permit exceptions to the preconditions of this paragraph 1 in the case of central banks, central counterparties (CCPs) or state-owned development banks with registered offices in a member state of the European Union, another contracting member state of the Agreement on the European Economic Area or Switzerland provided these companies or institutions are not banned from taking part in the ECC clearing procedure according to the legal provisions applicable to them.

- (2) A general clearing license is based on the precondition of liable equity capital on the part of the applicant institution to the amount of at least EUR 30 million or the corresponding equivalent value in the currency of the country in which the applicant institution is based.

A direct clearing license is based on the precondition of liable equity capital on the part of the applicant institution to the amount of at least EUR 7.5 million or the corresponding equivalent value in the currency of the country in which the applicant institution is based.

For System Clearing Members with a general clearing license, which solely possess a license according to Regulation 648/2012 of the European Parliament and the Council of 4<sup>th</sup> July 2012, the same requirements regarding liable capital funds shall apply as for Clearing Members with a direct clearing license.

- (3) The calculation of the liable capital funds shall be effected in accordance with the legal provisions valid in the country of incorporation of the institution concerned. Evidence of the amount of the liable capital funds shall be furnished for ECC upon filing of the application as well as at any other time upon a request to that end after receipt of the system clearing license. For the purpose of verification ECC shall be entitled to commission a final auditor at the expense of the applicant.
- (4) In case the liable equity capital of the applicant institution is not sufficient for granting of a system clearing license, ECC shall be entitled to determine that the missing amount can be balanced by means of bank guarantees or collateral in cash or collateral in securities or loan stock rights subject to the provision contained in section 3.4 ("Collateral Replacing Equity").

The bank guarantee must be issued to the benefit of ECC by a national banking institution within the meaning of section 1 para 1 KWG (German Banking Act) or by a comparable foreign institution. ECC shall be entitled to determine that a guarantee by a national or foreign non-banking institution is deemed sufficient provided the guarantee granted by such is comparable to a bank guarantee. In this case the provisions regarding the bank guarantee shall apply accordingly. The System Clearing Member and the banking institution issuing the guarantee must not be identical in person and shall not be affiliated companies within the meaning of section 15 AktG (German Stock Corporation Act). ECC may permit exceptions to this provision in the case of affiliated companies in individual cases. The bank guarantee has to contain the unconditional and irrevocable guarantee by the guarantor ensuring that the sum guaranteed is provided to an account held by ECC upon the first request to that end in case of insufficient margins by the System Clearing Member. The type, content and form of the bank guarantee shall be specified by ECC.

- (5) Moreover, a System Clearing Member has to furnish evidence of the following:
  - (a) at least a pledged-securities account at Clearstream Banking AG, Frankfurt ("Clearstream Banking AG" or "CBF"), if securities are posted as collateral and if applicable a Cash Pledge Account.
  - (b) a Settlement Account,
  - (c) technical connection to the settlement system of ECC,
  - (d) the utilization of the adequate technological equipment (back office equipment) in order to ensure proper recording, booking and monitoring of all transactions as well as of the margins and the calculation of the required margins towards its clients in accordance

- with the minimum requirements by ECC (clearing obligations); in addition to that, the rules and regulations regarding the technical equipment of ECC shall apply accordingly.
- (e) the employment of at least one sufficiently qualified member of staff for the proper discharge of the clearing obligations at the back office ("Back Office Contact") and naming of a Default Management Contact (functional email address and hotline) under the supervision of a sufficiently qualified member of staff empowered to receive and deliver notifications in the course of the Default Management Auctions according to chapter 3.12 via email or telephone. The Back Office Contract as well as the Default Management Contact must be present as well as available by phone and e-mail at any time during any given Business Day and
  - (f) the contribution to the Default Fund as per section **Fehler! Verweisquelle konnte nicht gefunden werden..**

### 2.1.3 General Preconditions for a DCP Clearing Member

- (1) A DCP Clearing License can only be granted to:
  - (a) companies which were recognised by ECC as Trading Participants in Spot Markets for which ECC provides clearing and whose recognition has not been fully revoked,
  - (b) companies which are based in a state for which ECC approves DCP Clearing Members in principle (in accordance with the publication on the ECC website [www.ecc.de](http://www.ecc.de)),
  - (c) companies which have a liable equity capital of at least 50,000 Euros and
  - (d) which are not System Clearing Members.
- (2) Upon request by ECC, DCP Clearing Members must fill in and submit a "Know-Your-Customer" (KYC) questionnaire and pass the KYC assessment and/or a comparable ECC admission requirement.
- (3) In case the liable equity capital of the applicant institution is not sufficient for the granting of a DCP Clearing License, ECC shall be entitled to determine that the missing amount can be balanced by means of bank guarantees. The bank guarantee must be issued to the benefit of ECC by a national banking institution within the meaning of section 1 para 1 KWG (German Banking Act) or by a comparable foreign institution. ECC shall be entitled to determine that a guarantee by the mother company is deemed sufficient provided the guarantee granted by such is comparable to a bank guarantee. In this case the provisions regarding the bank guarantee shall apply accordingly. The bank guarantee has to contain the unconditional and irrevocable guarantee by the guarantor ensuring that the sum guaranteed is provided to an account held by ECC upon the first request to that end in case of insufficient margins by the System Clearing Member. The type, content and form of the bank guarantee shall be specified by ECC.
- (4) A DCP Clearing Member must furnish proof of the following:



- (a) a Settlement Account or, in the event of a corresponding request by ECC, several settlement accounts at a settlement bank,
  - (b) the conclusion of a Settlement Bank Agreement or the conclusion of an agreement between the DCP Clearing Member and the Settlement Bank regarding keeping of a Settlement Account and, upon a request by ECC, separate pledging of the credit claim of the DCP Clearing Member booked in the Settlement Account and reported to the Settlement Bank to ECC,
  - (c) the authorisation of ECC to dispose of the balance in the Settlement Account at the expense of the DCP Clearing Member in order to fulfil its liabilities towards ECC,
  - (d) the provision of a contribution to the Default Fund in accordance with section **Fehler! Verweisquelle konnte nicht gefunden werden..**
  - (e) the employment of at least one sufficiently qualified member of staff for the proper discharge of the clearing obligations at the back office ("Back Office Contact") that must be present as well as available by phone and e-mail at any time during any given Business Day.
- (5) A DCP Clearing Member must notified the use of systems for trading, in which a computer algorithm determines single order parameters automatically (algorithmic trading) to ECC prior to their launch. ECC may permanently or temporarily, completely or partially forbid using such system in particular if a disturbance of the proper clearing and settlement process is impending.

#### 2.1.4 Product-specific Preconditions on the Part of the Clearing Member

- (1) For clearing of products in EUR System Clearing Members are required to provide a Settlement Account with the central bank of a member state of the European Union, which participates in the TARGET2-System (TARGET2-account). If the System Clearing Member can evidence, that it cannot participate in the TARGET2-System, it may use a Settlement Account with a Correspondence Bank for the Clearing of Products in EUR. In this case the System Clearing Member shall give power of attorney to ECC regarding such Settlement Account to submit payment instructions on its behalf.
- (2) The following shall be required for clearing of products in a foreign currency for System Clearing Members:
  - (a) a Settlement Account at a Correspondent Bank capable of handling foreign currencies,
  - (b) the technical connection to the CreationOnline or S.W.I.F.T system,
  - (c) as well as an authorization of ECC submit payment instructions for the respective Settlement Account of the System Clearing Member.
- (3) For clearing of products in foreign currencies for DCP Clearing Members, a Settlement Account through which funds in foreign currencies can be settled is required.

## 2.1.5 Specific Requirements for US-Clearing Members

For System Clearing Member legally organised and with principle place of business in the United States of America (or any state thereof) ("US-Clearing Member") the following specific requirements apply in addition to the general and product-specific preconditions for the granting of a clearing license laid down in section 2.1.2 and 2.1.4 above.

### 2.1.5.1 Specific Preconditions for US-Clearing Member

- (1) A US-Clearing Member must be a futures commission merchant (as defined in the Commodities Exchange Act) ("**FCM**"), registered with the Commodity Futures Trading Commission.
- (2) ECC can limit the clearing license for US-Clearing Members to specific products.

### 2.1.5.2 Additional continuing Obligations for US-Clearing Members

- (1) Prior to entering into a clearing relationship with a Non-Clearing Member or a client, a US-Clearing Member shall inform the relevant Non-Clearing Member or client that the same level of protection under the EMIR-compliant segregation models of ECC cannot be offered by a US-Clearing Member.

The US-Clearing Member must offer to Non-Clearing Members or clients intending to clear through this US-Clearing Member the availability of EMIR-compliant segregation models through an affiliated Clearing Member or another Clearing Member with its registered seat in the European Union. If – notwithstanding the aforementioned alternatives offered – the relevant Non-Clearing Members or clients chooses to clear through the US-Clearing Member, the US-Clearing Member shall disclose to the relevant Non-Clearing Members or clients any risks which arise from clearing through such US-Clearing Member.

- (2) For US-Clearing Members the following additional continuing obligations shall apply:
  - (i) In addition to the notification requirements stipulated in section 2.1.6 the US-Clearing Member shall inform ECC without undue delay, if it ceases to be in compliance with one of the preconditions in this section 2.1.5.
  - (ii) The US-Clearing Member shall file a copy of its monthly Form 1-FR or, if applicable, of the FOCUS Report (as defined by the U.S. Securities and Exchange Commission) and its annual audited financial report with ECC promptly, but in any event no later than 30 Business Days after such report is available.
  - (iii) The US-Clearing Member shall inform ECC without undue delay of any decline in equivalent regulatory capital of 20% or more from the capital that was shown on its most recent monthly Form 1-FR or, if applicable, FOCUS report.
  - (iv) The US-Clearing Member shall enable ECC at any time to comply with the requirement of Commission Regulation 30.7 to provide technological connectivity to the respective division of the CFTC in respect of the Customer Secured Account of the US-Clearing Member.



## 2.1.6 Notification Requirements and Right to Audit

- (1) Every Clearing Member shall inform ECC forthwith as soon as the general (section 2.1.2) or product-specific (section 2.1.4) preconditions for its participation in clearing on ECC are not fulfilled any longer or in case other circumstances have arisen which might lead to the lapse of these preconditions.
- (2) The Clearing Member shall notify ECC without delay in writing or via E-mail in any of the following events. In addition, ECC has to be informed immediately via phone in the cases as per lit. (a) to (f):
  - (a) any event that has impacted or is likely to significantly impact the Clearing Member's ability to meet the membership criteria;
  - (b) the Clearing Member has been notified that a competent authority or other government agency shall investigate any of its divisions that are material to its performance under the Clearing Conditions;
  - (c) it fails to comply with any applicable financial requirements of any governmental authority, regulatory authority, exchange, clearing organisation or delivery facility;
  - (d) an insolvency affecting itself or any of its parent undertaking or affiliates;
  - (e) of any "early warning" or similar matter required to be notified to a regulatory authority under applicable law, within the time and in the manner specified in applicable law for such notification to such regulatory authority;
  - (f) any event of default of a Non-Clearing Member or Clearing Broker Client which might impose a significant risk for the Clearing Member;
  - (g) a merger, combination or consolidation between the Clearing Member and another entity, a change of the ultimate parent of the Clearing Member, or in relation to any change of control, as soon as it becomes aware of that change or proposed change and it is not prevented from disclosing the change by applicable law;
  - (h) the sale of a significant part of the Clearing Members business or assets to another entity and
  - (i) a material change in its systems, business strategy or operations or a significant finding in the external or internal audit report which may have the potential effect of affecting the clearing operations at ECC;
  - (j) if the auditors of the Clearing Members do not issue an unqualified financial report and
  - (k) moreover, in the case of DCP Clearing Members, any essential change in the information provided to ECC in the framework of the KYC questionnaire.
- (3) Clearing Members are obliged to furnish proof of the required available equity to ECC by submitting a copy of their annual financial statement within a period of six months (System Clearing Members) or nine months (DCP Clearing Members) after the end of every financial year. In as far as there is a legal obligation for auditing of the annual financial statement by an

auditor of annual accounts, a copy of the audited annual financial statement with an audit opinion shall be submitted.

- (4) Upon request of ECC evidence of:
  - (a) the continued existence of the preconditions for granting of a clearing license;
  - (b) the ability of the Clearing Member to perform its obligations under the Clearing Conditions; and
  - (c) the ability of the Clearing Member to manage its risk out of its clearing obligations including credit, operational and compliance risk

shall be furnished to ECC at any time. For the purpose of a further investigation ECC shall be entitled to commission an auditor within the meaning defined in the KWG (German Banking Act) or comparable regulations at the expense of the Clearing Member. Each Clearing Member shall provide information, books and records that are reasonably requested during the audit.
- (5) The System Clearing Member shall give prompt written information upon ECC's request relating to its Non-Clearing Members or Clearing Broker Clients including:
  - (a) the identity and positions of Clearing Broker Clients and the respective ultimate bearer of risk,
  - (b) as far as available to the Clearing Member, the information required according to ECC's Know-Your-Customer questionnaire,
  - (c) any relationship of the Non-Clearing Members or Clearing Broker Client to the Clearing Member potentially resulting in a material increased risk to ECC.

### **2.1.7 Non-transferability**

A clearing license cannot be transferred by means of a legal transaction.

### **2.1.8 Termination and Suspension of the Clearing License**

- (1) Every Clearing Member shall be entitled to terminate its clearing license by means of a written notice without specifying reasons for such termination. Such termination shall only become effective once all those transactions for the clearing of which the Clearing Member concerned is responsible have been closed out or transferred to another Clearing Member and once all outstanding delivery obligations and acceptance of delivery obligations as well as all obligations to effect payments on the part of the Clearing Member concerned and all outstanding delivery obligations and obligations to accept delivery on the part of affiliated Non-Clearing Members have been fulfilled.
- (2) ECC may terminate a clearing license in the following cases:

- (a) the general preconditions for granting of a clearing license were not fulfilled in the first place, in particular if the clearing license was granted on the basis of incorrect or incomplete information furnished by the Clearing Member,
- (b) the general preconditions for granting of a clearing license have subsequently ceased to exist,
- (c) the Clearing Member violates an essential clearing condition and repeatedly transgresses such in spite of a warning being given; in this context, the non-existence of intention or negligence on the part of the Clearing Member shall be irrelevant insofar,
- (d) measures according to section 45 et seqq. KWG (German Banking Act) have been instituted against the Clearing Member or in case an application for insolvency proceedings has been filed. The measures as per section 45 et seqq. KWG (German Banking Act) and the insolvency proceedings shall be equivalent to the corresponding measures and proceedings as per the legislation of the country in which the Clearing Member is based,
- (e) measures according to section 45 et seqq. KWG (German Banking Act) have been instituted against a company which exercises control over the Clearing Member within the meaning of section 17 AktG (German Stock Corporation Act) or of comparable national rules (ultimate parent) or in case an application for insolvency proceedings has been filed. Measures as per section 45 et seqq. KWG (German Banking Act) and the insolvency proceedings shall be equivalent to the corresponding measures and proceedings as per the legislation of the country in which the Clearing Member is based; or
- (f) the Clearing Member objects to an amendment of these Clearing Conditions within the period of time specified under section 7.5.

ECC shall communicate the termination of the clearing license to the Clearing Member concerned in writing via telefax, in an electronic form or via SWIFT message.

- (3) In case of well-founded suspicion that the preconditions for a termination as per paragraph 2 have been fulfilled, ECC can order the suspension of the clearing license for a period of six months at most. For the purpose of examination, ECC shall be entitled to request all the necessary information and records from the Clearing Member concerned at the expense of this party. A suspension of the clearing license can also be ordered for the term of the default or technical default as per section 3.9.1 et seqq. In the case that ECC determines that the Clearing Member poses a significant credit or operational risk to ECC, ECC may impose position limits on the Clearing Member or order the suspension of the clearing license for the duration that such risk is deemed significant.
- (4) In the case of the termination or suspension of a clearing license, ECC is entitled to:
  - (a) request the Clearing Member and its Non-Clearing Members to conclude closing-out transactions or to carry out risk-alleviating position transfers with the approval of ECC within a period established by ECC for the specific case or

- (b) carry out a termination on its own at any time by accordingly applying section 3.10 with the legal consequences described in section 3.11.

In the case of lit. a, the Clearing Member shall inform its Non-Clearing Members forthwith so they are able to make arrangements for the transfer of their trades and positions and, if applicable, collateral to another Clearing Member.

- (5) The termination or suspension of the clearing license shall not affect the rights and obligations arising for the Clearing Member concerned from transactions which have not been fulfilled yet and for the clearing of which it is responsible.

### **2.1.9 Restrictions of the Clearing License**

- (1) ECC shall restrict a clearing license with regard to certain products in case the product-specific preconditions for the respective product are not fulfilled or have ceased to exist.

ECC shall inform the Clearing Member concerned of the restriction of the clearing license in writing, via telefax, in an electronic form or via SWIFT message.

- (2) In case of a restriction of the clearing license, the Clearing Member and its Non-Clearing Members are only entitled to carry out close-out transactions or risk minimizing position transfers regarding the concerned products upon approval by ECC. All transactions in these products which have not been fulfilled yet have to be closed out or transferred to another Clearing Member. The Clearing Member shall inform its Non-Clearing Members of this fact forthwith, so these can take precautions for the transfer to another Clearing Member. ECC shall monitor the close-out transaction and/or the transfer.
- (3) In case the close-out transaction or the transfer are not concluded with a period of time to be specified for the individual case by ECC, ECC can have close-out or transfer effected according to section 3.11.1.
- (4) The restriction of the clearing license shall not affect the rights and obligations arising to the Clearing Member concerned from the transactions in these products which have not been settled yet and for the clearing of which it is responsible.

### **2.1.10 Back-up System Clearing Members**

- (1) System Clearing Members can be appointed as Back-Up System Clearing Members of a Non-Clearing Member or of an Omnibus Account. To this end, the Non-Clearing Member or the respective Omnibus Representative, the Back-Up System Clearing Member and ECC conclude an NCM Agreement or an Omnibus Agreement including the provision that the rights and obligations under this agreement will only arise upon the switch by the Non-Clearing Member to the Back-Up System Clearing Member.
- (2) Upon request by the Non-Clearing Member or by the Omnibus Representative, a Back-Up System Clearing Member can assume clearing for said Non-Clearing Member or Omnibus Account in accordance with the provisions contained in sections 3.1.4 to 3.1.6.

## 2.2 Non-Clearing Member

### 2.2.1 Preconditions for the Participation of a Non-Clearing Member in Clearing of a Product

A license by ECC shall form the precondition for participation in the clearing procedure as a Non-Clearing Member (including the sub-category of the Intermarket Liquidity Provider). The following shall be required for licensing:

- (a) conclusion of a corresponding NCM Agreement with the co-operating System Clearing Member and ECC.
- (b) Moreover, the clearing license of the System Clearing Member of the Non-Clearing Member must comprise the product concerned.
- (c) Completion of a Know-Your-Customer Questionnaire if requested by ECC and passing of the ECC KYC assessment or other comparable access policies of ECC.

### 2.2.2 Termination of the NCM Agreement

- (1) ECC shall be entitled to terminate an NCM Agreement regarding a product in case the preconditions for licensing as a Non-Clearing Member for the product concerned have ceased to be fulfilled. This shall not affect the validity of the NCM Agreement with regard to other products. In case ECC terminates an NCM Agreement, the Non-Clearing Member is not allowed to enter new orders regarding this product any more. Furthermore, the Non-Clearing Member has to delete all outstanding orders regarding this product and it has to close out or transfer to another System Clearing Member all transactions regarding this product which have not been settled yet. The System Clearing Member shall fulfil the obligations arising from the remaining transactions of the Non-Clearing Member.
- (2) ECC shall be entitled to terminate an NCM Agreement in its entirety in case the Non-Clearing Member or the System Clearing Member repeatedly infringe on essential provisions of the Clearing Conditions in spite of a warning being given or objects to an amendment of these Clearing Conditions during the period specified in section 7.5. In case ECC terminates an NCM Agreement, the Non-Clearing Member is not entitled to enter new orders any more. Moreover, it has to delete all outstanding orders and close out all transactions which have not been settled yet or transfer such to another System Clearing Member. The System Clearing Member shall fulfil the obligations arising from the remaining transactions of the Non-Clearing Member.
- (3) ECC can terminate an NCM Agreement at any time if the admission as a Trading Participant is revoked in its entirety.
- (4) A System Clearing Member or ECC shall be entitled to terminate an NCM Agreement in its entirety or with regard to individual products at any time in compliance with a period of notice of one month. Upon the expiry of this period of notice, the Non-Clearing Member shall delete all outstanding orders in the products concerned and close out all transactions regarding these

products which have not been fulfilled yet or transfer such to another System Clearing Member. After that the Non-Clearing Member is not entitled to enter any new orders regarding these products, which would have to be settled by this System Clearing Member, any more. The System Clearing Member shall settle the obligations arising from the remaining transactions of the Non-Clearing Member.

- (5) A Non-Clearing Member shall be entitled to terminate an NCM Agreement in its entirety or with regard to individual products at any time. A termination shall be based on the precondition that it has closed out all of the transactions which have not been fulfilled or that it has transferred such, that it has deleted all orders with regard to these and that it has fulfilled all the obligations arising from these products towards the System Clearing Member and ECC.
- (6) The right to extraordinary termination for cause remains unaffected. In this case the Non-Clearing Member is not entitled to enter any new orders. Furthermore, it shall delete all outstanding orders and close out all transactions which have not been fulfilled yet or transfer such to another System Clearing Member. The System Clearing Member shall settle the obligations arising from the remaining transactions of the Non-Clearing Member.
- (7) A termination of the NCM Agreement shall only become effective once it has been received in writing by the other two parties concerned.

### **2.2.3 Notification Requirements**

- (1) The Non-Clearing Member shall promptly notify ECC in writing or via telefax of any material change of the following:
  - (a) a merger, combination or consolidation between the Non-Clearing Member and another entity,
  - (b) a change of the ultimate parent of the Non-Clearing Member, or in relation to any change of control, as soon as it becomes aware of that change or proposed change and it is not prevented from disclosing the change by applicable law;
  - (c) any information provided to ECC as part of the Know-Your-Customer Questionnaire.
- (2) Upon ECCs request, the Non-Clearing-Member shall provide a completed Know-Your-Customer Questionnaire.

## **2.3 Clients of the System Clearing Member that are not Non-Clearing Members**

### **2.3.1 Omnibus Clients and other clients**

Clients of a System Clearing Member that are not Non-Clearing Members themselves fall into one of the two following categories:

- (a) Omnibus Clients for whom segregation regarding the respective Omnibus Account is effected and to whom the rules in section 2.3.2 apply or

- (b) Other clients. Trades and positions of such other client are kept by the System Clearing Member together with the trades and positions of other of these other clients in a client account of this System Clearing Member, insofar as these clients are not Indirect Clients as referred to in section 2.4 of the Clearing Conditions.

### **2.3.2 Preconditions for keeping trades and positions in an Omnibus Account**

A System Clearing Member can keep trades and positions for clients in an Omnibus Account provided the System Clearing Member presents an Omnibus Agreement regarding such an Omnibus Account to ECC and confirms to ECC that an Omnibus Representative has been appointed. The System Clearing Member using this option is obliged to inform ECC forthwith as soon as the preconditions for keeping of trades and positions in an Omnibus Account cease to apply. As long as the competent System Clearing Member has not provided ECC with such a statement, the Omnibus Agreement is considered to still be in force and the Omnibus Representative is considered to still be appointed in the relationship with ECC.

### **2.3.3 Lapse of the preconditions for keeping trades and positions in an Omnibus Account**

If the preconditions for keeping transactions and positions in an Omnibus Account in accordance with section 2.3.2 are no longer fulfilled, the respective System Clearing Member's authorisation to keep trades and positions in an Omnibus Account for clients ceases to apply. In this case, the System Clearing Member is not allowed to enter new orders for the Omnibus Client concerned. Moreover, the System Clearing Member must delete all outstanding orders for the respective Omnibus Clients and close out all unsettled trades for the respective Omnibus Clients or transfers these to another System Clearing Member. The System Clearing Member has to fulfil its obligations under the remaining transactions for the respective Omnibus Clients concerned.

## **2.4 Indirect Clients**

### **2.4.1 General requirements**

- (1) Indirect clients do not have any direct contractual relationship with ECC and are not known to ECC. Second- or third-tier indirect clients are treated as Indirect Clients.
- (2) Clients of a System Clearing Member that provide indirect clearing services towards Indirect Clients are uniformly referred to as "Indirect Clearing Service Providers" in these Clearing Conditions.

Indirect Clearing Service Providers can either

- (a) be admitted as NCM at ECC or
- (b) be clients of the System Clearing Member that are not admitted to ECC as NCM.



## 2.4.2 Accounts for Indirect Clients

System Clearing Members can set up the following accounts for Indirect Clearing Service Providers:

- (a) separate position and collateral clearing accounts in which only positions or collateral are booked on a net basis and which are allocated to the Indirect Clients by the System Clearing Member (Standard Omnibus Accounts).
- (b) separate position and collateral clearing accounts in which only positions or collateral are booked which are allocated to one Indirect Client by the System Clearing Member (Gross Omnibus Accounts). Only positions which are allocated to an Indirect Client by the System Clearing Member are booked in a separate position account; only collateral which is allocated to the Indirect Clients of an Indirect Clearing Service Provider is booked in the collateral settlement accounts.

## 2.4.3 Obligations of the System Clearing Member

- (1) The System Clearing Member alone is responsible for the correct opening and use of the accounts for Indirect Clients.
- (2) A System Clearing Member keeping accounts according to section 2.4.2 lit. b books Indirect Clients' positions and collateral in the corresponding accounts at ECC in accordance with the contractual agreements with these Indirect Clients.
- (3) All other obligations of the System Clearing Member are based on Article 4 of the Delegated Regulation 2017/2154<sup>1</sup> and cannot be transferred to ECC.

## 2.5 Special Segregated Participants and Non-Segregated Participants

### 2.5.1 Special Segregated Participants

- (1) A Special Segregated Participant is
  - (a) every Special Segregated Non-Clearing Member, i.e. every Non-Clearing Member that has selected "individual segregation" in the Collateral Agreement and
  - (b) every Omnibus Client, i.e. every client of a System Clearing Member who is party to an Omnibus Agreement and whose transactions and positions are kept in an Omnibus Account of the System Clearing Member.
- (2) Collateral which a Special Segregated Participant provides is passed through in accordance with section 3.5.6 et seq. and booked in separate Collateral Clearing Accounts of the System

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<sup>1</sup> Delegated Regulation (EU) 2017/2154 of the Commission of September, 22 2017 amending Regulation (EU) No. 600/2014 of the European Parliament and of the Council with Technical Regulation Standards for Indirect Clearing Agreements.



Clearing Member by ECC in accordance with section 3.6.7 for the purpose of separate calculation and administration of collateral for each (i) Special Segregated Non-Clearing Member and (ii) Omnibus Account. The special provisions contained in section 3.11 et seq. apply with regard to the use of collateral of Special Segregated Participants in the event of a termination.

## 2.5.2 General Segregated Participants

- (1) A General Segregated Participant is
  - (a) every General Segregated Non-Clearing Member, i.e. every Non-Clearing Member that has not concluded a Collateral Agreement with its System Clearing Member and whose collateral is not passed through and
  - (b) every other client, i.e. every client of a System Clearing Member that has not concluded an NCM agreement and an Omnibus Agreement with the System Clearing Member and ECC and that takes part in clearing at ECC via this System Clearing Member.
- (2) A General Segregated Participant is either (a) a General Omnibus Participant or (b) a Simple Omnibus Participant.
- (3) Collateral which a System Clearing Member provides for a General Segregated Participant is booked by ECC according to section 3.6.7 for the purpose of the separate calculation and administration of separate Collateral Clearing Accounts as sub-accounts of the standard Collateral Clearing Account of the System Clearing Member with such collateral being booked (a) in a General Omnibus Collateral Clearing Account, provided such an account has been established, for General Omnibus Participants and (b) in one or several Simple Omnibus Collateral Clearing Accounts for Simple Omnibus Participants.

## 2.6 Trading Participants

### 2.6.1 Precondition for approval as a Trading Participant

- (1) A Trading Participant shall be a company which is approved as a Trading Participant by ECC. Approval by ECC as a Trading Participant regarding one product shall be based on the following preconditions:
  - (a) participation in clearing regarding this product as a Clearing Member or as a Non-Clearing Member,
  - (b) admitted in the approved market on which the product is traded or a comparable access to said market which is recognised by ECC as an equivalent access to such market, as well as
  - (c) evidence of the capability for physical settlement of transactions regarding this product subject to the specifications by ECC.

In the case of Derivatives Market Transactions, proof of the capacity to physically fulfil transactions can be replaced by a statement by the Trading Participant under which the

Trading Participant undertakes to exclude the physical settlement of the transactions in this product by means of closing of open positions in due time as required by ECC. The above requires explicit agreement of ECC and of the Clearing Member.

- (2) ECC shall communicate the approval as a Trading Participant for the respective product to the respective market and the Trading Participant as well as, if applicable, to the Clearing Member co-operating with the Trading Participant. If the Trading Participant is not a participant in the respective market itself, ECC will only inform the Trading Participant and its respective Clearing Member.

## 2.6.2 Revocation of an approval

- (1) ECC shall revoke approval as a Trading Participant regarding one product in case the pre-conditions for said approval have ceased to exist or in case the Trading Participants repeatedly violates other provisions of these Clearing Conditions or its obligations resulting from the Trading Participant forms. ECC shall revoke approval as a Trading Participant for a quality-specific gas product, if it is demanded by the responsible Balancing Group Network Operator. ECC shall inform the respective market and the Trading Participant as well as, if applicable, the Clearing Member of the revocation in writing by specifying the reasons for such measure.

ECC can also revoke approval as a Trading Participant in its entirety if the existence or performance of the Agreement with this Trading Participant violates existing export controls, trade or economic sanctions, embargoes, boycotts or similar laws, ordinances, provisions, licenses, orders or other requirements by the EU or the UN (jointly referred to as “sanctions”) or if such expose ECC to penalties or sanctions. The same shall also apply to US or other sanctions in as far as ECC might be exposed to the risk of sanctions or penalties as a result according to ECCs own assessment. The recognition as a Trading Participant can also be revoked if ECC has doubts with regard to the question of whether a continuation of the business relationship with this Trading Participant violates sanctions or exposes ECC to penalties or punitive measures.

ECC shall inform the respective market, the Trading Participants and, if applicable, its System Clearing Member of such revocation in writing, via telefax or in an electronic form. Reasons for such revocation shall be given within one month.

- (2) In case of a revocation of said approval, the Trading Participant shall only be entitled to conclude close-out transactions or risk minimising position transfers upon approval by ECC regarding these products as of that time. All transactions regarding these products which have not been settled yet shall be closed out or transferred to another System Clearing Member. ECC shall monitor those close-outs or transfers.
- (3) In case close-out or transfer is not concluded within a period of time specified for each individual case by ECC, ECC can have closing out or transfer effected.
- (4) If ECC revokes the recognition as a Trading Participant in accordance with para. 1 sub-para. 2, the Trading Participant concerned cannot invoke force majeure or impossibility with regard to the underlying Agreement. In this case, ECC shall be entitled to take all required measures.

It shall, in particular, be entitled to use the collateral provided by the Clearing Member in order to cover losses arising from such closing or transfer. The System Clearing Member of the Trading Participant shall also be entitled to use the collateral provided by the Trading Participant provided losses incur as a result of measures in connection with the implementation of sanctions.

- (5) The revocation of the approval shall not affect the rights and obligations of the Trading Participant arising from transactions regarding these products which have not been fulfilled yet.

### **2.6.3 Suspension of approval as a Trading Participant**

- (1) If the preconditions according to section 2.6.2 para. 1 are fulfilled or if there are clear grounds to assume that the preconditions for a revocation of the approval as a Trading Participant are fulfilled, ECC can order the suspension of the approval as a Trading Participant in its entirety or in part for a period of, at a maximum, six months.
- (2) The legal consequences specified in section 2.6.2 paras 2 to 5 shall apply throughout the term of such suspension.
- (3) Upon a request by the Trading Participant, ECC can order the suspension of the approval as a Trading Participant at its own discretion. The term of such suspension should not exceed a period of one year. During the term of the suspension, the Trading Participant shall not incur any annual fees and technical fees shall only be incurred if corresponding connections are preserved. Section 2.6.2 para 2 shall apply accordingly. Upon a request as per section 2.6.2, ECC shall revoke the suspension of the approval as Trading Participant before the end of the period ordered according to sentence 1 if the conditions for an approval are fulfilled.

## **2.7 Market Coupling Counterparty**

Participation in clearing as a Market Coupling Counterparty is based on the requirement of admission as a Non-Clearing Member by ECC according to section 2.2. The following is required for admission:

For the purposes of this NCM Agreement, the Market Coupling Clearing Transactions are considered as matching of orders which the Market Coupling Counterparty enters into the ECC system as well as into the trading systems of the markets by using Market Coupling Contracts.

In addition, the Market Coupling counterparties conclude bilateral and separate agreements with ECC. The rules regarding Non-Clearing Members and Trading Participants contained in these Clearing Conditions shall apply with regard to the Market Coupling Counterparty unless a different provision is made on the basis of a separate agreement between ECC and the Market Coupling Counterparty as well as in the respective Market Coupling provisions of these Clearing Conditions.

## 2.8 Cooperation with Clearing Entities for Spot Market Transactions

### 2.8.1 Scope of the Cooperation

- (1) ECC cooperates with clearing houses for Spot Market Transactions ("Clearing Entities"). These Clearing Entities only settle energy deliveries from Spot Market Transactions
  - in border-crossing trading (market coupling) or
  - on markets for which ECC has assumed physical and/or financial settlement but on which it is not the central counterparty.
- (2) The rights and obligations in connection with the cooperation are laid down in separate agreements between ECC and the respective Clearing Entities. As regards the Margin Requirements and the collateral furnished, the rules laid down in these Clearing Conditions for a Clearing Member (section 3.5) apply subject to the condition that the Clearing Entities can also provide collateral in the form of guarantees. Clearing Entities are exempt from the requirement to make contributions to the ECC Default Fund.
- (3) EnCC Energy Clearing Counterparty a.s. is a clearing entity currently cooperating with ECC.

### 2.8.2 ECC's Duty to assume Liability/Default of the Clearing House

The duty to assume liability on the part of ECC or the respective Settlement Entity is restricted towards the Trading Participants as follows in the case of transactions as per section 2.8.1 para 1: In the event of the default of a clearing house, ECC shall utilise the collateral provided by it in accordance with the provisions in section 3.11 of these Clearing Conditions. If the collateral furnished is not sufficient to cover the financial consequences of a default, ECC shall proportionately reduce its payments to the Trading Participants in the corresponding markets until the financial consequences of the default are covered; any further liability on the part of ECC or the respective Settlement Entity shall be excluded.

## 2.9 Inclusion of Products

- (1) ECC shall take the decision regarding the inclusion of products for clearing. If an ECC advisory board in charge of this has been established, it shall be heard by ECC in advance.
- (2) The following shall be preconditions for the inclusion of products:
  - (a) The product is traded on a market in which proper trading, proper market supervision and the proper establishment of the prices as well as of the daily settlement prices are ensured.
  - (b) ECC has concluded an agreement regarding the provision of clearing services for this product with the operator of the market which governs the co-ordination of the systems and processes between the market and ECC, co-ordinates the minimum requirements for licensing of participants for the markets and for clearing and ensures the required

rights and authorisations of ECC towards the Trading Participants and the market subject to the provisions of these conditions.

- (c) Secured settlement for the product is possible and adequate methods for risk assessment are available.
- (d) Provisions have been made in these Clearing Conditions with regard to the settlement and securitisation of transactions regarding this product.

### 3. General Provisions

#### 3.1 Legal relationships of the parties involved in clearing

##### 3.1.1 Rights and obligations of the Clearing Member

- (1) System Clearing Members with a General Clearing Member License according to section 2.1.1 para 2 are obliged to conclude a corresponding NCM Agreement with Non-Clearing Members which fulfil the preconditions for a license to trade on a market.
- (2) A System Clearing Member shall be obliged to fulfil all payment obligations arising from all transactions by Non-Clearing Members which take part in clearing on ECC via this System Clearing Member in accordance with the more detailed provisions in these Clearing Conditions on the basis of its own obligation or as the paying agent.

In as far as a Settlement Entity is a creditor of accounts receivable from a Clearing Member according to these Clearing Conditions, the Clearing Member is obliged towards the Settlement Entity to fulfil the respective delivery obligation or the respective acceptance and payment obligation in accordance with these Clearing Conditions. If such accounts receivable and, if applicable, rights used to collateralise these have been assigned to ECC, the Clearing Member is obliged to effect performance towards ECC.

- (3) Upon a request by their System Clearing Member to ECC, a Non-Clearing Member can be excluded from trading on the markets in their entirety or in part for the duration of any non-performance. This right can arise from bilateral agreements between the Non-Clearing Member and the System Clearing Member and, in addition, in accordance with these provisions, in particular in case:
  - (a) the Non-Clearing Member does not provide the margins specified by its System Clearing Member, the daily settlement payments, in case it does not fulfil any delivery obligations and/or acceptance of delivery obligations or obligations to effect payments, premiums or fees which are due or in case it does not provide or fulfil such when due or
  - (b) the Non-Clearing Member exceeds a Stop Limit specified by the System Clearing Member or
  - (c) the Non-Clearing Member has failed to fulfilled any other obligation which might exist towards the System Clearing Member even though a warning has been given by the System Clearing Member or
  - (d) of the insolvency of the Non-Clearing Member. A “case of insolvency” applies if bankruptcy proceedings or other insolvency proceedings are instituted regarding the assets of the Non-Clearing Member or if the said member has either submitted such an application, is bankrupt or otherwise in a situation which justifies such proceedings to be opened. The case of insolvency also applies if a competent supervisory authority has applied for bankruptcy or other insolvency proceedings to be opened with regard to the Non-Clearing Member or if it takes a measure which will probably prevent the Non-

Clearing Member from carrying out its payment obligations on the basis of bankruptcy or insolvency legislation or of similar, other supervisory or similar provisions which are relevant for the Non-Clearing Member's business activities; the insolvency of a company which can exercise dominating influence as defined in Art. 17 AktG (German Stock Cooperation Act) or similar national provisions (parent company) on the Non-Clearing Member shall correspond to an insolvency regarding a Non-Clearing Member.

A request by phone shall be confirmed in writing forthwith.

- (4) A System Clearing Member can submit an application for the temporary exclusion of one of its Non-Clearing Members from trading on some or all of its markets for, at a maximum, five days by means of corresponding entries in the clearing systems (Eurex Clearing or ECC Self-Service Limit Maintenance of ECC) (Emergency Member Stop).

The Emergency Member Stop may only be used if the System Clearing Member has previously concluded an agreement regarding the admissibility and tolerance of this measure with the Non-Clearing Member. In this context, ECC does not check whether an agreement regarding the acceptance of the Emergency Member Stop has been concluded between the System Clearing Member and the Non-Clearing Member or whether the agreed or declared preconditions were fulfilled. Concurrently with the activation of the Emergency Member Stop, the Clearing Member also declares that, for the time being, it is no longer willing to settle further transactions of this Non-Clearing Member which are concluded on the markets.

The Emergency Member Stop has to be activated in accordance with the provisions on the Emergency Member Stop in the ECC Risk Management Service Manual in its respectively valid version. It can be carried out as follows within the system:

- (a) Use of the Stop Button within the Eurex clearing system

The Stop Button within the Eurex clearing system can only be used during the ECC business hours and for Non-Clearing Members that are admitted to, at least, one Derivatives Market. The suspension from the EEX markets (except primary market auctions) is requested and carried out technically right away by using the Stop Button. ECC reserves the right to reject Derivatives Market transactions in their entirety or in part in which Non-Clearing Members affected by the Emergency Member Stop but also Non-Clearing Members not affected are involved as counterparties and which are to be imported into the ECC clearing system as early as after the activation of the Stop Button and under consideration of the overall risk for ECC. It will inform the affected markets of this fact forthwith. Furthermore, following the activation of the Stop Button, so-called Stop Requests will be sent to all other markets on which the Non-Clearing Member is admitted as a trading participant. As a result of the Stop Requests, the suspension of the Non-Clearing Member is also requested for these markets.

- (b) Manual activation of Stop Requests in the ECC Self-Service Limit Maintenance.

Stop Requests can be entered at any time; however, these entries have to be made separately for every market. The suspension of the Non-Clearing Member is requested separately for every market by means of the entry of the Stop Request.



Every activation of the Emergency Member Stop according to lit. a or lit. b above has to be confirmed by the activating System Clearing Member towards ECC via phone forthwith.

Irrespective of a subsequent written confirmation of the suspension by the respective market, the Non-Clearing Member is already excluded from trading on the respective market as of the time at which the technical access to the trading system was interrupted. Following the executed exclusion from trading, the respective market will send a confirmation regarding the exclusion of the Non-Clearing Member from trading to the Clearing Member via the ECC Self-Service Limit Maintenance. In order to ensure correct and prompt processing of Stop Requests, the System Clearing Member will monitor receipt of the confirmations of suspensions within the ECC Spot Market Settlement System under its own responsibility and, if applicable, it will approach the markets which have failed to send a corresponding confirmation within an adequate period of time – if required, with the support of ECC.

The System Clearing Member that has activated the Emergency Member Stop process is obliged to submit all statements required for the resumption of trading within the systems of the markets forthwith by making the corresponding entries in the ECC clearing system once the preconditions for the activation of the Emergency Member Stop have ceased to apply (deactivation of the Stop Button or Stop Request). If the exclusion of a Non-Clearing Member is likely to last more than five (5) calendar days, a request according to para. 3 has to be filed.

Rules regarding the exclusion of the Non-Clearing Member from trading, the reverse transactions of trades and the liability of the markets are contained in the respective Trading Conditions of the markets.

The System Clearing Member is responsible for its entries and for reviewing the implementation of its entries. Regardless of the further rules contained in section 3.3.12, ECC, in particular, is not liable for forwarding of the requests in due time or for any delays in the exclusion of a Non-Clearing Member from trading whether on account of technical malfunctions, incorrect or incomplete entries or measures not taken by the markets or not taken in due time. Furthermore, any liability of ECC for legal consequences arising from the rejection of Derivatives Market transactions concluded on the markets as described above under lit. a is excluded.

- (5) If a Non-Clearing Member is excluded from trading, its System Clearing Members shall have the right in respect to any transaction concluded or registered by such Non-Clearing Member, to exercise any options itself or close or transfer transactions on behalf of the Non-Clearing Member which have not yet been fulfilled to itself or another System Clearing Member. If the System Clearing Member is not able to exercise options or to close out or to transfer transactions due to technical reasons (e.g. missing approval as Trading Participant at a market), ECC may at its own discretion - exercise – without acknowledgement of any obligation on written and irrevocable request of the System Clearing Member and subject to the technical and operational feasibility – options and transfer transactions which have not yet been fulfilled on behalf of the System Clearing Member to another System Clearing Member. ECC will assign close out transactions concluded by the System Clearing Member using a third party (e.g. broker) by using trade transfers according to section 3.6.5 para 7 to the Non-Clearing Member.



- (6) In case a System Clearing Member or its Non-Clearing Member does not effect delivery and/or acceptance of delivery and payment which has fallen due towards ECC or the respective Settlement Entity, the System Clearing Member as well as its Non-Clearing Members can be excluded from trading on the markets upon a request by ECC for the duration of the default. Moreover, the transactions on all accounts which have not been fulfilled and for whose clearing the System Clearing Member is responsible can be closed out or transferred to another System Clearing Member. ECC shall not be liable for any losses which a Non-Clearing Member incurs in the case of the exclusion of its System Clearing Member.
- (7) ECC shall inform the System Clearing Member of all measures taken towards one of its Non-Clearing Members in as far as these might have an impact on the legal position of the System Clearing Member or the risk evaluation of said party.

### **3.1.2 Trading Limits and other special agreements**

- (1) System Clearing Members can conclude special agreements with their Non-Clearing Members and ECC can conclude special agreements with its Clearing Members with regard to the settlement of transactions on the markets included in clearing by ECC. They are, in particular, entitled to agree technically supported order limits (Trading Limits) and other limits ("Clearing Limits") as well as the consequences in case of a non-compliance with these limits. This includes, in particular, the obligation to tolerate procedures supported by the system regarding the temporary exclusion from trading (e.g. Stop Button or Stop Request), the temporary inadmissibility or technically supported inadmissibility of entering further orders (Trading Halt), the limitation of the frequency with which orders can be entered for each product and the deletion of orders which have already been entered. The consequences of any non-compliance with the Trading Limits are described the rules and regulations of the markets.
- (2) The Non-Clearing Members are obliged to establish agreements regarding Trading or Clearing Limits, upon a request by its System Clearing Members. In this case and depending on the respective limit, the System Clearing Members can store the Trading and Clearing Limits agreed on with their Non-Clearing Members in the system of ECC or in the trading systems of the respective markets depending on their technical implementation. In case Non-Clearing Members enter further restricting Trading Limits, these limits entered are considered Trading Limits of the System Clearing Member in the relationship with ECC. More detailed provisions on the functionality of the supporting limits and on the liability of the Market operators with respect to the Trading Limits are specified in the trading conditions of the respective markets. ECC is not liable for the correct functioning of those limits. The rules contained in this subsection (2) apply accordingly to the legal relationship between ECC and a System Clearing Member.
- (3) ECC supports the Clearing Members and Non-Clearing Members in submitting Trading Limits in the trading systems of the respective markets by forwarding the information on the Trading Limits provided by them to the Markets and coordinating the first transfer as well as the regular reconciliation of the Trading Limits with the respective markets at the times supported by the

Market. Trading Limits provided on ECC business days until 15:00 are forwarded to the Markets on the same day. The Markets confirm to ECC that the Trading Limits have been provided in the trading system. ECC forwards this confirmation to the Clearing Members or the Non-Clearing Members. The Clearing Members and Non-Clearing Members are obliged to check the Trading Limits confirmed by the Markets for completeness and correctness and to correct errors by re-submitting the information. If the Clearing Member or Non-Clearing Member does not receive any confirmation that a Trading Limit has been deposited, it is obliged to contact ECC and obtain information on the status of depositing of the Trading Limit. More detailed provisions on the administration of Trading Limits are laid down in the ECC Technical Implementation Regulations on Trading Limits (see ECC Risk Management Services Manual at [www.ecc.de](http://www.ecc.de)).

- (4) In order to limit risks for ECC resulting from Spot Market transactions of DCP Clearing Members, participation in clearing is only possible in the framework of Trading Limits for DCP Clearing Members. In this context, ECC has the right to unilaterally determine the amounts of the Trading Limits acceptable for it in consideration of the collateral furnished by the DCP Clearing Members, the ECC credit assessment regarding the DCP Clearing Member – which e.g. considers the equity of the DCP Clearing Member - and in consideration of further parameters and haircuts used by ECC as well as by including the amount and allocation to specific markets requested by the DCP Clearing Member.

### **3.1.3 Rights and obligations of the Non-Clearing Member**

- (1) A Non-Clearing Member can conclude an NCM Agreement with a System Clearing Member with a general clearing license or an NCM Agreement with a System Clearing Member with a direct clearing license and can also submit said agreement to ECC for signing.
- (2) A Non-Clearing Member can select the version “individual segregation” in the Collateral Agreement; this has the consequence that the collateral which it has provided is passed through in accordance with section 3.5.6 et seq. and that the legal consequences connected with this in these Clearing Conditions materialise. If such an option is chosen, the Non-Clearing Member becomes a Segregated Non-Clearing Member.
- (3) A Non-Clearing Member has to settle its transactions in a market through a specific System Clearing Member. In duly substantiated cases and upon approval of ECC a Non-Clearing Member may settle its transaction in a market through more than one System Clearing Member. Regardless of sentence 1, a Non-Clearing Member shall have the right to appoint a Back-Up Clearing Member in accordance with section 2.1.10. In the event of a change of the Clearing Member with an accelerated position transfer, transactions can be settled through two System Clearing Members by way of exception until final completion of the change of the Clearing Member.

### 3.1.4 Change of System Clearing Member and position transfer

- (1) A Non-Clearing Member or an Omnibus Representative can apply for a change of its System Clearing Member at any time at ECC. Subject to an approval of ECC the change of System Clearing Member is effected by appointing a new System Clearing Member and by transferring the positions of the Non-Clearing Member or of the Omnibus Account which have not yet been fully settled to the new System Clearing Member whereby the corresponding positions which have not yet been fully settled in the relationship between the transferring System Clearing Member and ECC cease to exist and, at the same time, they are re-established in the relationship between the receiving System Clearing Member and ECC (jointly referred to as the "Position Transfer"). The Position Transfer does not affect the rights and obligations of the Non-Clearing Member or of all Omnibus Clients concerned under the transferred positions. ECC may withdraw its approval until the day before the Transfer Day due to operational reasons and risk considerations.
- (2) ECC usually carries out the position transfer with a lead time of three Business Days if the transferring System Clearing Member and the receiving System Clearing Member approve of the transfer and if there is a valid NCM Agreement or Omnibus Agreement between ECC, the Non-Clearing Member or all respective Omnibus Clients and the receiving System Clearing Member.
- (3) The transfer is limited to positions which have not yet been fully settled and which are kept in the Eurex System of ECC ("Transfer Positions"). Any other transactions or positions (such as for example Spot Market Transactions and delivery, settlement and payment instructions from Derivatives Market positions which have fully or partly fallen due remain with the transferring System Clearing Member until they are fully settled.
- (4) The transfer occurs on the day determined for the change of Clearing Member ("Transfer Day") at 00:00. As of this moment the Transfer Positions are not considered positions with regard to the NCM Agreement or the Omnibus Agreement between the Non-Clearing Member or regarding all respective Omnibus Clients and the receiving System Clearing Member and these are no longer considered positions with regard to the NCM Agreement or the Omnibus Agreement between the Non-Clearing Member or regarding all respective Omnibus Clients and the transferring System Clearing Member. All Position Transfers are effected at the settlement price of the Business Day before the Transfer Day.
- (5) To ensure full collateralisation of the Transfer Positions, ECC is entitled to request a supplementary margin from the receiving System Clearing Member according to section 3.5.3 para 1 on the day before the Transfer Day. The receiving System-Clearing Member is entitled to also request a supplementary margin according to section 3.5.3 para 2 from the Non-Clearing Member, in respect of the Transfer Positions.
- (6) Further provisions regarding the administration of Trading Limits in the course of the Change of a System Clearing Member are stipulated in the ECC implementing provisions for Trading Limits (see ECC Risk Management Services Manual at [www.ecc.de](http://www.ecc.de)).

### 3.1.5 Change of clearer with accelerated position transfer

- (1) Regardless of the provision contained in section 3.1.4 ECC shall carry out the position transfer to a System Clearing Member specified by the Non-Clearing Member or the Omnibus Representative on the same Business Day upon a request to this end by the Non-Clearing Member or the Omnibus Representative subject to its technical and operational feasibility provided the application is received at ECC on a given Business Day by 2:00 pm at the latest and provided the following preconditions are cumulatively fulfilled at this time:
- in as far as a Non-Clearing Member is concerned; there is an NCM Agreement between the System Clearing Member accepting the transfer and the Non-Clearing Member,
  - if the request was submitted by an Omnibus Representative, there is an Omnibus Agreement between the System Clearing Member accepting the transfer and the Omnibus Representative, the Omnibus Clients and the ECC,
  - the System Clearing Member accepting the transfer is technically set up within the ECC system,
  - ECC has received the approval of the System Clearing Member accepting the transfer and
  - the risk situation of the System Clearing Member accepting the transfer permits the assumption of the position in the assessment of ECC.

In the event of an accelerated position transfer, the approval of the transferring System Clearing Member of the transfer of all positions of the Non-Clearing Member or the Omnibus Account which have not been fully fulfilled to the accepting System Clearing Member is considered granted according to sentence 1. In this case, ECC is authorised to carry out the Position Transfer for the Non-Clearing Member or the Omnibus Account without an examination of further preconditions in accordance with sentence 1.

- (2) If the preconditions referred to in paragraph 1 cannot be fulfilled in due time or in case the technical and operational feasibility of the change of the System Clearing Member on the part of ECC is not ensured on the Business Day concerned, the position transfer will only be carried out on the Business Day on which all preconditions have been fulfilled at the latest at 2:00 p.m. or on which the technical or operational feasibility of the change of the clearer on the part of ECC is ensured.

### 3.1.6 Transfer of collateral upon the change of the clearer

- (1) The application by the Non-Clearing Member or the Omnibus Representative for a position transfer according to section 3.1.4 or 3.1.5 does not directly affect the collateral furnished by the Non-Clearing Member or by the Omnibus Clients represented by the Omnibus Representative. In this respect, the general provisions contained in these Clearing Conditions shall apply.

- (2) If there is a separate collateral account to the benefit of a Non-Clearing Member or the Omnibus Representative according to section 3.6.7, the Non-Clearing Member or the Omnibus Representative can submit an application for the transfer of the collateral provided by its System Clearing Member on the Cash Pledge Account and the CBF pledged-securities account to the Non-Clearing Member or the Omnibus Representative together with the application for the transfer of the positions. The collateral is transferred at the instance of ECC and with the approval of the transferring System Clearing Member; this approval can also be granted in advance.
- (3) If the approval was granted in advance the transferring System Clearing Member commissions and authorises ECC to transfer the transferable collateral (as defined below), which is posted in the CBF Pledged Securities Deposit and the Pledged Cash Account, to accepting System Clearing Member upon an instruction to this end by this Non-Clearing Member or by the Omnibus Representative in accordance with the following provisions if and in as far as the following preconditions are fulfilled:
  - (a) The Non-Clearing Member concerned or the Omnibus Representative has filed a request for a clearer change with an accelerated position transfer within the meaning of section 3.1.5 with regard to which the preconditions specified under section 3.1.5 para 1 are fulfilled.
  - (b) The complete transfer of all positions which have not been fully fulfilled within the meaning of section 3.1.4 para 1 of the position held by the transferring System Clearing Member for the Non-Clearing Member or the Omnibus Account to the System Clearing Member accepting the transfer has taken place.

"Transferable collateral" within the meaning of sentence 1 comprises all the securities collateral posted in the CBF Pledged Securities Deposit and all the cash collateral posted in the Pledged Cash Account with the exception of:

  - (i) Collateral for trades and instructions within the meaning of section 3.1.4 para 2 sentence 1 which are still settled towards the transferring System Clearing Member (i.e. whose transfer is effected subsequently as soon as the security claim on which the order is based ceases to apply); and
  - (ii) Collateral for claims which the transferring System Clearing Member might still have from the Non-Clearing Member concerned or from the Omnibus Account at the time of the transfer. As regards the provision of substitute collateral for this collateral, the version which has been separately agreed between the Non-Clearing Member or the Omnibus Representative and the transferring System Clearing Member shall apply.
- (4) If the preconditions specified in paragraph 3 have been fulfilled, ECC commissions the transfer of collateral which is no longer needed to an account to be specified by the Non-Clearing Member or an Omnibus Representative, if possible, on the same Business Day on which the position transfer is effected. Such a transfer leads to a transfer of collateral to the Non-Clearing Member or the Omnibus Representative according to paragraph 2 and, at the same time, to the re-establishment of collateral to the benefit of the accepting System Clearing Member.

### 3.1.7 Rights and obligations of the Trading Participant

- (1) Only a Trading Participant can conclude, register, accept or submit transactions regarding the licensed products or exercise options on own account or on third-party account (position keeping). A direct market access according to the rules and regulations of the respective Market is not required, if the respective Clearing Member operating as a Clearing Broker confirms to enable its Clearing Broker Clients to access the respective Market.

A Clearing Member can only conclude, register, accept or submit transactions regarding those products or exercise options on own account or on third-party account if it is also a Trading Participant for this product at the same time. A Clearing Member which possesses an approval as a Trading Participant can perform trading and position keeping on third party accounts for its Clearing Broker Clients. Direct market access in accordance with the rules of the Market concerned is not required for DCP Clearing Members provided another Trading Participant confirms that it provides access to the Market concerned for the DCP Clearing Member and provided ECC agrees to the agreement.

- (2) In as far as a Settlement Entity is the creditor of accounts receivable from a Trading Participant according to these Clearing Conditions, the Trading Participant shall be obliged towards the respective Settlement Entity to fulfil the respective delivery obligations and/or acceptance of delivery and payment obligations in accordance with these Clearing Conditions. If such accounts receivable and, if applicable, rights used to collateralise these have been assigned to ECC, the Trading Participant is obliged towards ECC to effect performance in each case.

## 3.2 Clearing of Registered Transactions

- (1) In addition to clearing of the transactions in order book trading concluded on the markets, ECC also carries out clearing of transactions registered at the Markets (Registered Transactions) provided these transactions correspond to products admitted by ECC and have been registered in the respective markets in an admissible manner subject to the provisions of the corresponding rules and regulations of this market. The confirmation of an entry for the registration on a Market is governed by the rules of the respective Market, which – in this respect – prevails over these Clearing Conditions.

Trades which are concluded on account of Default Management Auctions (section 3.12.6) form Registered Trades within the meaning of this provision. Registered trades take part in the ECC clearing procedure in the same form as trades concluded in order book trading.

- (2) Trades which are initially registered at a market by a Trading Participant on its own behalf for the account of a third party can be forwarded to the agent or proprietary position accounts assigned to their clients after submission to clearing via a trade transfer (section 3.6.5 para 7).
- (3) The registration of trades at the markets, the submission for clearing and, if applicable, subsequent trade transfers (section 3.6.5 para 7) can be carried out by using straight-through processing systems (STP systems) in accordance with their functionalities. The STP systems



accepted by ECC (at present: EFETnet eXRP and Trayport® Hosted Clearing Link<sup>SM</sup>, the Trigonal Trade Manager and KB Tech Ltd.) are offered and operated by external STP system providers.

- (4) The STP systems have the following uniform default standard configuration<sup>2</sup>:

The confirmation of entries for the registration of transactions at the markets and take-ups of transactions at the level of position accounts of ECC is effected automatically ("Auto-Confirmation Function"). This Auto-Confirmation Function includes trades, which are marked as automatically matched as well as trades, which have been entered into the STP system manually for the respective Trading Participant.

The Trading Participants can change the standard configuration referred to above using form T08 provided by ECC within the framework of the possibilities specified therein and, hence, object to the application of the said standard configuration specified above. Form T08 must be submitted to ECC. The change in the configuration becomes effective upon an announcement in text form, § 126b BGB (German Civil Code) by ECC of the switch effected. The standard configuration can also be unilaterally changed by ECC by way of an announcement in text form. If such change of configuration requires manual confirmations or take-ups respectively, these must be effected within the periods of time specified by the system. If the manual confirmation is not effected, the trade will not be registered at the respective Market. If the manual take up is not effected, the position remains in the current agent or proprietary position account.

- (5) Trading Participants are obliged to validate a registration at a market effected by using STP systems, the submission for clearing and the subsequent trade transfer without undue delay, however, at the latest until the beginning of the next Business Day. In deviation from the above the following shall apply:

If the contract expires after 12:00 a.m. on the Business Day of the registration, Trading Participants are obliged to conduct this validation without undue delay, however, at the latest four hours before expiry.

If the contract expires until 12:00 a.m. of the Business Day following the registration, Trading Participants are obliged to conduct this validation without undue delay, however, at the latest until the end of the Business Day of registration.

Objections against the registration at a market have to be directed to the respective market in accordance with its rules and regulations.

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<sup>2</sup> This standard configuration will become effective with a separate information in text form (§ 126b German Civil Code – BGB). Until then the current standard configuration will remain in place (document version 25a of the Clearing Conditions).



### 3.3 General Clearing Conditions

#### 3.3.1 Conclusion of transactions

- (1) According to the further definition in this paragraph, Derivatives Market Transactions on the markets are concluded between ECC and a System Clearing Member. In case a Trading Participant is not entitled to carry out clearing itself (Non-Clearing Member), transactions on the Derivatives Market are only concluded via the Clearing Member by means of whom the Trading Participant as a Non-Clearing Member concludes its transactions:
  - (a) In case an order entered into the system by a Clearing Member of ECC is matched with another order or in case a Transaction which has been entered into of the market, a transaction is concluded between said Clearing Member and ECC.
  - (b) In case an order entered into the system on a market by a Non-Clearing Member of ECC is matched with another order or in case a Transaction which has been entered into the system of the market, a transaction is concluded between this Non-Clearing Member and its System Clearing Member and, at the same time, a corresponding transaction is concluded between this System Clearing Member and ECC.

Due to the diverging business hours of ECC and Cleartrade Exchange Pte Ltd (CLTX), Derivatives Market Transactions at CLTX are concluded under the condition precedent of acceptance by the Eurex Clearing System.

- (2) According to the more detailed definition provided in section 3.3.3 subsections 1 and 2, all Spot Market Transactions where ECC acts as Central Counterparty are concluded
  - between ECC and the Trading Participant in all Spot Market Transactions in Emission Rights; or
  - between ECC and the respective Settlement Entity and between the respective Settlement Entity and the Trading Participant at the same time in any other Spot Market Transactions.

ECC does not act as Central Counterparty for PXE Spot Market Transactions. These transactions are concluded between the Trading Participants and Energy Clearing Company a.s. – (EnCC) commissioned by PXE only. EnCC is a Clearing Entity according to section 2.8.

- (3) In deviation from para 2 above, Market Coupling Clearing Transactions and transactions in Market Coupling Contracts are concluded between ECC and the Market Coupling Counterparty in accordance with the more detailed provision in section 3.3.3 subsection 4.

#### 3.3.2 Contract obligations arising from Derivatives Market Transactions

- (1) System Clearing Members are obliged to settle all obligations arising from matching of orders or from Registered Transactions which have been entered into the system of a market by them or by their Non-Clearing Members.

- (2) According to the more detailed provisions contained in paragraph 1 and section 3.3.5 paras 2 to 3, a System Clearing Member shall also be obliged to settle all obligations resulting from the transactions which have been transferred to the Clearing Member in the framework of a trade or position transfer from another Trading Participant for the further settlement in his agent and proprietary position accounts.
- (3) The Clearing fees of the Non-Clearing Member shall be exempt from the obligations referred to in the paragraphs herein above.

### **3.3.3 Contract obligations arising from Spot Market Transactions**

- (1) Clearing Members are obliged to settle all obligations arising from matching of orders or Registered Transactions which they have entered into the system on a market.
- (2) The System Clearing Member shall be liable as a guarantor for the Non-Clearing Member supported by it towards the respective Settlement Entity for all financial liabilities arising from matching of orders or Registered Transactions which are entered into the system of a market by its Non-Clearing Members. Irrespective of the right to deliver or to take delivery, the guarantee regarding this obligation shall only cover money in as far as the respective Settlement Entity can demand the payment of money instead of the delivery or the acceptance of such from the System Clearing Member – in particular in case of a failure of the delivery. Financial settlement after the execution of the deliveries is effected via the System Clearing Member as the payment agent.
- (3) In Spot Market Transactions in Emission Rights the System Clearing Member shall be liable as a guarantor for the Non-Clearing Member supported by it towards ECC for all financial liabilities arising from matching of orders or Registered Transactions which are entered into the system of a market by its Non-Clearing Members. Irrespective of the right to deliver or to take delivery, the guarantee regarding this obligation shall only cover money in as far as ECC can demand the payment of money instead of the delivery or the acceptance of such from the Clearing Member – in particular in case of a failure of the delivery. Financial settlement after the execution of the deliveries is effected via the Clearing Member as the payment agent.
- (4) The System Clearing Member of the Market Coupling Counterparty shall be liable towards ECC as a guarantor for all financial liabilities resulting from the settlement of the Market Coupling Clearing Transactions and the Market Coupling Contracts between ECC and the Market Coupling Counterparty. Irrespective of the right to delivery or acceptance of delivery, the guarantee regarding these obligations shall only over a financial obligation of the System Clearing Member in as far as ECC can only demand the payment of money from the System Clearing Member instead of delivery or acceptance of delivery – in particular, in the event of a failure of delivery. Financial settlement after the execution of deliveries shall by effected via the System Clearing Member as the payment agent.
- (5) The Clearing fees of the Non-Clearing Member shall be exempt from the obligations referred to in the paragraphs herein above.

### 3.3.4 Financial Settlement of PXE Spot Market Transactions

- (1) For PXE Spot Market Transactions ECC will solely provide services in connection with the financial settlement of transactions (collection and crediting of the values of the commodities, incl. the value-added tax charged by PXE or by the counterparty commissioned by PXE).
- (2) Clearing Members are obliged to settle all obligations arising from matching of orders or Registered Transactions which they have entered into the system on a market.
- (3) The System Clearing Member shall be liable as a guarantor for the Non-Clearing Member supported by it towards ECC Lux for all financial liabilities arising from matching of orders or Registered Transactions which are entered into the system of a market by its Non-Clearing Members. Financial settlement after the execution of the deliveries is effected via the System Clearing Member as the paying agent through which the Non-Clearing Member settles its transactions.

### 3.3.5 Physical settlement of transactions - central delivery point

- (1) Settlement of transactions with regard to which ECC has assumed clearing and which are physically settled according to the respective contract specifications of the Market is exclusively provided through a Settlement Entity with the effect that Trading Participants exclusively settle their delivery or acceptance of delivery obligations arising from Derivatives Market Transactions and Spot Market Transactions towards the respective Settlement Entity. ECC guarantees the Trading Participants the fulfilment of these transactions by the respective Settlement Entity in accordance with the contract. The rules contained in sentences 1 and 2 do not apply with regard to Market Coupling Transactions and transactions in Market Coupling Contracts. These are exclusively fulfilled towards ECC.
- (2) In the case of Derivatives Market Transactions by Trading Participants holding a license as Clearing Member, the legal relationships described in section 3.3.1 para 1 are modified as follows upon the expiry of a future at the time at which the delivery obligations and/or acceptance of delivery and payment obligations arise from these transactions:
  - a) The respective Settlement Entity accedes to the contractual relationship as a new contractual partner by ECC assigning the claims to delivery and/or claims to acceptance of delivery and payment which it holds towards the Clearing Member to the respective Settlement Entity; at the same time, corresponding delivery obligations and/or acceptance of delivery and payment obligations towards ECC arise on the part of the respective Settlement Entity. At the same time, the Clearing Member assigns the claims to delivery and/or the claims to accept delivery and payment which it has towards ECC to the respective Settlement Entity, while at the same time, corresponding delivery obligations and/or acceptance of delivery and payment obligations towards the Clearing Member arise on the part of the respective Settlement Entity. As a result of this, the Clearing Member is obliged towards the respective Settlement Entity to

deliver or accept delivery the commodity on which the future is based and the respective Settlement Entity, in turn, is obliged towards ECC to deliver and/or accept delivery of said commodity.

- b) In case of Derivatives Market Transactions in Emission Rights claims to delivery and/or claims to acceptance of delivery and payment arise directly towards ECC as the Settlement Entity.

(3) In the case of Derivatives Market Transactions by Trading Participants without a license as System Clearing Member (Non-Clearing Members), the legal relationships described in section 3.3.1 para 1 are modified as follows upon the expiry of a future at the time at which the delivery obligations and/or acceptance of delivery and payment obligations arise from these transactions:

- (a) The respective Settlement Entity accedes to the contractual relationship as a new contractual partner by ECC assigning the claims to delivery and/or claims to accept delivery and payment which it holds towards the System Clearing Member supporting the Non-Clearing Member to the respective Settlement Entity; at the same time, corresponding delivery obligations and/or acceptance of delivery and payment obligations towards ECC arise on the part of the respective Settlement Entity. At the same time, the System Clearing Member assigns the claims to deliver and/or the claims to accept delivery and payment which it has towards ECC to the respective Settlement Entity, while at the same time, the corresponding delivery obligations and/or acceptance of delivery and payment obligations towards the System Clearing Member arise on the part of the respective Settlement Entity. As a result of this, the System Clearing Member is obliged towards the respective Settlement Entity to deliver or accept delivery the commodity on which the future is based and the respective Settlement Entity, in turn, is obliged towards ECC to deliver and/or accept delivery of said commodity.
- (b) The System Clearing Member then assigns the claims to delivery and/or claims to acceptance of delivery and payment which it holds towards the Non-Clearing Member to the respective Settlement Entity and the respective Settlement Entity accedes to the corresponding delivery obligations and/or acceptance of delivery and payment obligations of the System Clearing Member towards the Non-Clearing Member in place of the Clearing Member. As a result of this, the Non-Clearing Member is directly obliged towards the respective Settlement Entity to deliver and/or accept delivery the commodity on which the future is based and the respective Settlement Entity, in turn, is obliged towards ECC with regard to this.
- (c) Regardless of the right to deliver or accept of delivery, the System Clearing Member supporting the Non-Clearing Member shall only have pecuniary liability as a guarantor towards the respective Settlement Entity with regard to these obligations in as far as ECC or the respective Settlement Entity can request the payment of money instead of the delivery or acceptance of delivery from the System Clearing Member – in particular,

in the event of a failure of delivery. Financial settlement is effected by the System Clearing Member through which the Non-Clearing Member settles its transactions as the paying agent.

- (d) In case of Derivatives Market Transactions in Emission Rights claims to delivery and/or claims to acceptance of delivery and payment arise directly towards ECC as the Settlement Entity.
- (e) ECC may take all measures to secure the fulfilment of the delivery obligations or the acceptance of delivery or payment obligations of the Trading Participant respectively. In particular, ECC may conclude replacement transactions or request adequate collateral from the Trading Participant.

### **3.3.6 Formation of net receivable and/or payable and compression**

- (1) Unless otherwise specified in these Clearing Conditions, ECC aggregates all receivables and liabilities of ECC which fall due towards a Clearing Member in the same currency under or in connection with clearing into a net account in the respective currency concerned in batch processing at the end of every business day. As a result of such aggregation, no party is obliged to fulfil its original liabilities which are included in the aggregation any longer. The receivables and liabilities are replaced by the respective net accounts formed in the aggregation. In this context, the aggregation is effected in principle regardless of whether transactions on which these receivables and liabilities are based are recorded on client position accounts or proprietary position accounts of the Clearing Member. Any Clearing Member can notify ECC of the fact that – with the exception of one of the legal consequences described in section 3.11 – individual or all of the client position accounts kept for it are to be exempt from the aggregation. ECC will decide on this at its own discretion.
- (2) Unless otherwise specified in these Clearing Conditions, the Settlement Entity aggregates all receivables and liabilities of the Settlement Entity towards a trading participant or ECC in connection with clearing into net accounts as follows in batch processing at the end of every business day:
  - (a) All receivables and liabilities in money in the same currency are aggregated into a net account in the respective currency concerned.
  - (b) All receivables and liabilities regarding the same physical delivery item are aggregated into one net account.

As a result of such an aggregation, no party is obliged any longer to fulfil its liabilities which are now included in the aggregation. The receivables and liabilities are replaced by the net accounts formed as a result of the aggregation.

In as far as the net accounts concern a payment, in the relationship to trading participants each of the net accounts is settled by ECC as the paying agent of the Settlement Entity so that the trading participants are obliged to make payments to ECC as the paying agent of the Settlement Entity or receive a payment from ECC as the paying agent of the Settlement Entity.

Every Clearing Member and the respective Settlement Entity authorise ECC (i) to summarise a payment to be provided by the Clearing Member to ECC as the paying agent of the Settlement Entity with a payment owed by the Clearing Member to ECC in the same currency and (ii) a payment to be provided by ECC as the paying agent of the Settlement Entity to the Clearing Member with a payment in the same currency owed by ECC to the Clearing Member. If there is such a possibility for an aggregation, ECC will carry out the aggregation regardless of whether the transactions on which the payments are based are recorded on client or proprietary position accounts of the Clearing Member. A Clearing Member can report to ECC that an aggregation is to be dispensed with as regards payments under transactions which are recorded on individual or all of the client position accounts kept for it. ECC shall decide on this at its own discretion.

- (3) With regard to all futures transactions which are concluded on one business day and refer to the same contract, a compression is carried out at the time of batch processing at the end of every business day so that all of these futures transactions lapse and are replaced by a uniform new futures transactions whose payment and delivery obligations correspond to the balance of all payment and delivery obligations of the replaced futures transactions. In this context, such a compression is effected between ECC and a Clearing Member (a) for all futures transactions recorded in a proprietary position account in each case and (b) separately for all futures transactions which are recorded in client position accounts in each case.
- (4) With regard to all futures transactions which are concluded by an Intermarket Liquidity Provider and refer to contracts of an Intermarket Spread Product the compression is effected between ECC and the Clearing Member of the Intermarket Liquidity Provider in such a way that all of these futures transactions lapse immediately after the conclusion of the futures transactions concerned and are replaced by a uniform new futures market transaction whose payment and delivery obligations correspond to the balance of all payment and delivery obligations of the futures transactions replaced. Other rights than payment and delivery obligations resulting from the replaced transactions lapse without replacement.
- (5) A compression in accordance with sub-sections 3 and 4 is also carried out between a Clearing Member and a Non-Clearing Member.

### **3.3.7 Business Days, Trading Days, business hours and time specifications**

- (1) On Business Days transactions concluded or registered on a market are settled financially and/or physically.
- (2) All specifications regarding business days, trading days, business hours or other time specifications in these Clearing Conditions refer to the time applicable at ECC's registered office (CET).

### **3.3.8 Objections**

- (1) Objections against daily trade confirmations (reports) by ECC, including the items of the respective national central bank belonging to the euro system), the Swiss National Bank (SNB),



the Settlement Bank, the System Clearing Member, Clearstream Banking AG and the Correspondent Bank have to be raised towards ECC, the Settlement Bank or the System Clearing Member with whom the transaction was concluded in writing or via fax immediately after receipt and at the latest by 12:00 pm on the next Business Day. Otherwise, the trade confirmations shall be considered as approved.

- (2) Objections against invoices or credit notes by ECC or the respective Settlement Entity have to be raised by specifying reasons in writing or via e-mail to ECC forthwith, however, at the latest within a period of ten (10) ECC Business Days after receipt of such. Otherwise, an invoice by ECC or the respective Settlement Entity is considered approved.
- (3) Objections against position transfers from an agent or proprietary position account to another agent or proprietary position account (section 3.6.5 para 7) which are effected by using STP systems have to be raised in writing or by sending a telefax to ECC forthwith, however, at the latest until 12:00 am of the next ECC Business Day. Otherwise, the position transfer is finally effective.

### 3.3.9 Assignment

An assignment of the rights arising from or on the basis of the Clearing Conditions by a Clearing Member or a Non-Clearing Member can only be effected with the approval by ECC or subject to the conditions of these Clearing Conditions. This also applies to Shares in Collective Holdings booked currently or in the future within internal inventory accounts (section 3.6.8) and all related rights (especially the current or future right against ECC Lux or ECC respectively to deliver the Trading Participants' Registry held Products to another registry account). The provisions contained in § 354a HGB (German Commercial Code) shall not be affected. ECC Lux or ECC respectively is entitled to assign its rights arising under or on the basis of these Clearing Conditions to ECC.

### 3.3.10 Fulfilment of payment obligations

- (1) Every Clearing Member and every party participating in clearing that uses a TARGET2 account as Settlement Account for its payment obligations to ECC in EUR shall be released from its payment obligation solely by making and crediting such payment to the TARGET2 account of ECC. If ECC is obliged to make a payment in EUR to such Clearing Member or party participating in Clearing, it shall be released from its payment obligation by making and crediting such payment to the TARGET2 Settlement Account of such Clearing Member or party participating in Clearing.
- (2) Every Clearing Member and every party participating in clearing that uses an account at a Correspondence Bank or a CBF 6 series account as Settlement Account for their payment obligations in EUR shall solely be released from its payment obligation by making and crediting such payment to the TARGET2 account of ECC.

Every Clearing Member and every party participating in clearing that uses either an account with a Correspondent Bank or a CBF 6 Series account to fulfil its payment obligations in a



foreign currency shall be released from its payment obligation solely by making and crediting such payment to the Settlement Account of ECC with the Payment Bank of ECC or the CBF 6 Series account of ECC. For each product, ECC determines the Payment Bank with which its Settlement Account is maintained and publishes this on its website.

If, in the two cases referred to in this paragraph 2, ECC is obliged to make a payment to a Clearing Member or to a party participating in clearing, it shall be released from its payment obligation if it has instructed the Payment Bank or the Target2-system to credit an amount covering the payment obligation from its Settlement Account with the Payment Bank or its CBF 6 Series account to the Settlement Account designated by the Clearing Member or the party participating in clearing.

- (3) If a Clearing Member or a party participating in clearing defaults on payments in a foreign currency, ECC may – if it does not have the foreign currency amounts required to meet its payment obligations at that time – meet its payment obligations in another currency. ECC will make payments only in EUR, GBP or USD and apply a market exchange rate for the payment. The Clearing-Member or every party participating in clearing accepts this payment in lieu of performance (§ 364 BGB). ECC will inform the effected Clearing Member or party participating in clearing about the fulfilment of the payment obligation in another currency without undue delay.

### **3.3.11 Emergency measures**

In case proper clearing is obstructed on the side of a Clearing Member, in particular on account of technical delays, this Clearing Member has to inform ECC of this fact forthwith. Emergency measures by ECC shall be binding for all parties to the contract; in this case any liability on the part of ECC shall be excluded.

### **3.3.12 Liability**

- (1) ECC and the respective Settlement Entity shall be entitled to take recourse to a Clearing Member with regard to cases of damage which they or other Clearing Members or Non-Clearing Members might have suffered on account of a default or technical default caused by the Clearing Member concerned. The right to assert a further damage both on the part of ECC as well as the respective Settlement Entity and on the part of a third party shall not be affected. ECC and the respective Settlement Entity may assign any claim for damages which they have towards the Clearing Member in default or in technical default to third parties.
- (2) ECC and the respective Settlement Entity shall not be liable for cases of damage which are caused by an interruption of its operations as a result of an event of force majeure, insurrection, acts of war and acts of god or as a result of other events which do not fall within its sphere of responsibility (e.g. industrial action, lock-outs, disruption of traffic, interruption of the supply chain) or by acts of authorities both from within the country and from abroad. In cases of damage which a Clearing Member or a Non-Clearing Member suffers as a result of technical problems or as a consequence of a partial or complete impossibility of using the EDP devices

or EDP systems of a market or of ECC or of the respective Settlement Entity used by them or in case of interruptions in the data transfer as well as in case of trading outside the system of a market or of ECC or of the respective Settlement Entity or as a result of errors made during entering of data in the framework of settlement and the administration of margins for Clearing Members ECC or the respective Settlement Entity shall only be liable in case of premeditation and gross negligence unless the case of damage is caused by a culpable breach of essential obligations. However, in case of a slightly negligent violation of essential obligations, the liability of ECC and of the respective Settlement Entity shall be restricted in terms of the amount of the damage which is typical of a contract of this type and was foreseeable at the time of granting of the clearing license to a Clearing Member or of admission as a Non-Clearing Member. ECC and the respective Settlement Entity shall commission the devices and systems in its sphere of responsibility including the application and communications software, in a manner sufficiently tested and shall maintain these; ECC and/or the respective Settlement Entity shall not be responsible for the technical equipment and systems of the markets.

- (3) ECC and the respective Settlement Entity shall be entitled to commission third parties to discharge the tasks with which they are entrusted in their entirety or in part in their own name in as far as this is permitted according to the applicable law. In case ECC or the respective Settlement Entity utilizes this right, their responsibility shall be restricted to the careful selection and instruction of the third party commissioned by them (section 664 para 1 BGB (German Civil Code)). However, ECC and/or the respective Settlement Entity shall be obliged to assign any claims which might exist towards the third party upon a request to that end.
- (4) ECC and the respective Settlement Entity shall only be held liable for losses or cases of damage towards Clearing Members or Non-Clearing Members in the event of premeditation and gross negligence unless such damage results from a culpable breach of essential obligations. In the event of a slightly negligent violation of essential obligations under these Clearing Conditions, the liability of ECC and the respective Settlement Entity shall be restricted to the amount of the damage which is typical of a contract of this type and was foreseeable at the time of granting of the clearing license or of admission as a Non-Clearing Member. Any liability for consequential damage and loss of profit shall be excluded.
- (5) If ECC uses its rights under this section 3.9 of these Clearing Conditions or if it initiates emergency measures in case of technical defaults, it shall not accept any liability towards Clearing Members or Non-Clearing Members or third parties for any cases of damage which might have occurred, for consequential damage, losses or lost profits.
- (6) ECC and the respective Settlement Entity do not assume any liability towards Non-Clearing Members or third parties for any cases of damage, consequential damage or lost profits which might be caused if ECC complies with the request of a Clearing Member to exclude a Non-Clearing Member from trading on the markets in accordance with section 3.1.1 para 3 and 4.
- (7) In as far as these Clearing Conditions do not expressly provide for a different regulation, ECC and the respective Settlement Entity shall not be liable towards third parties who are not par-

ticipants in market themselves, with regard to losses which might be incurred, cases of damage, consequential damage or lost profits which have been incurred in connection with transactions concluded on the market or registered there in any case.

- (8) Any liability of ECC and the respective Settlement Entity in connection with the execution of the delivery and/or acceptance of delivery of power or natural gas shall be excluded in the event of defects or breakdowns which prevent feeding-in or the withdrawal of power or natural gas in the transmission system of the transmission system operator or on the hub of a hub operator or on the grid connectors or in case scheduling or nomination is impossible because of other reasons which do not lie within its responsibility. In case a third party is involved in the scheduling or nomination process of a control area or on a hub, respectively, due to statutory or regulatory requirements for a market area, neither ECC nor the respective Settlement Entity shall be liable for errors or disturbances of the scheduling or nomination caused by that third party. ECC and the respective Settlement Entity shall not be liable in case scheduling or nomination is impossible due to that third party.

Any liability of ECC and of the respective Settlement Entity for damages outside the responsibility of ECC or the Settlement Entity in connection with the performance of the European Market Coupling for example due to errors

- within the market coupling systems of the Nominated Electricity Market Operator („NEMO“) and/or the Transmission System Operators („TSO“),
- of other NEMOs or their respective central counterparty, or
- of TSOs, interconnectors or other shipping agents or shippers

is limited to the extent of the damages received by ECC or the Settlement Entity from the third party responsible for the respective damage or to the assignment of the claims of ECC or the Settlement Entity towards such third party.

- (9) ECC does not assume any liability for the correctness, completeness and validity of the transactions and declarations transmitted via the STP systems. ECC, in particular, does not assume any liability for the correctness of the transactions registered via the STP systems in accordance with the rules and regulations of the respective market and of the give-ups initiated via the STP systems and the subsequent take-ups. The external system providers are responsible for the functionality of the STP systems. As a result, ECC is not liable for any loss of functionalities of the STP systems.
- (10) Regardless of the provisions on liability contained herein above, the liability of ECC for cases of damage which arise in one calendar year in connection with the settlement of a parallel debt as a representative of the Known Participants with section 3.5.1 para 5 shall be limited to six times the actual annual remuneration for this services (maximum limit). The total of all remuneration payments which Known Participants of ECC owed or would have owed for this service in the respective calendar year according to the contract constitutes the annual remuneration. The calendar year during which the breach of duty took place shall be decisive. As long as the annual remuneration for a calendar year has not been determined, settlement shall be effected provisionally based on the annual remuneration for the previous year. Cases

of damage which are caused by ECC in the context of this service in an, at least, grossly negligent manner, are also compensated to the full extent.

### **3.4 Deviations in the physical settlement of grid-bound products**

#### **3.4.1 Deviations, ECC measures and Trading Participants' duties to cooperate**

- (1) A deviation is defined as a volume difference between physical settlement by forwarding schedule nominations to the hub operator or transmission system operator ("nomination") and the contractual delivery volume established in the trade confirmation ("deviation"). It can arise, in particular, as a result of the following circumstances:
  - (a) Measures by the transmission system operator or the hub operator (in the following both referred to as "transmission system operator"): In accordance with its conditions, a transmission system operator can take measures, such as, in particular, adjustments of schedules, to maintain the security of the grid in the framework of its congestion management, of the force majeure or comparable rules applying to it or of insufficient security of a trading participant towards the transmission system operator having an impact on schedule nomination and deliveries within the scope of application of these Clearing Conditions.
  - (b) Measures by the transmission system operator in the framework of market coupling: Transmission system operators can take measures on the basis and in the framework of the border-crossing delivery of power by using capacity rights (Physical Transmission Rights) between different market areas which lead to a reduction of Physical Transmission Rights at ECC and which, as a result, usually have effects on schedule nominations in the coupled market areas.
  - (c) In connection with European market coupling (such as shipping) for example due to errors
    - within the market coupling systems of the Nominated Electricity Market Operator („NEMO“) and/or the Transmission System Operators („TSO“),
    - of other NEMOs or their respective central counterparty, or
    - of TSOs, interconnectors or other shipping agents or shippers.
  - (d) An incorrect nomination of the Trading Participant: If ECC does not have any priority nomination rights (e.g. no single-sided nomination, no priority right and no on-behalf nomination) in a market area, a missing or incorrect counter-nomination of the Trading Participant can lead to a deviation, in particular, on account of the specific nomination rules of the respective transmission system operator (e.g. last matched status, lesser rule).
  - (e) A deviation having an impact on other trading participants: In the event of the incorrect nomination of a Trading Participant, deliveries by EEX to other Trading Participants can

also be affected. A transmission system operator can e.g. reduce or refuse further nominations by ECC with third-party trading participants in the event of insufficient collateralisation of ECC in the event of unbalanced nominations. In order to prevent this measure by the TSO, ECC will take precautions to a commercially reasonable extent, e.g. by providing collateral.

- (f) Technical errors: Deviations can arise in the nomination of transactions as a result of technical problems at ECC, the exchanges, the transmission system operators or telecommunications service providers.
- (g) Incorrect nomination by ECC: Deviations can also be caused by incorrect ECC nominations.

Deviations arising on account of other circumstances than those listed under lit. (a) to (f) are also treated in accordance with the provisions of this section 3.4.

- (2) ECC informs the Trading Participants concerned of the existence of and the reasons for a deviation in as far as information with regard to this is available to it. ECC is, in particular, entitled to communicate the result of its own examinations regarding the responsibility of one or several trading participants and the settlement amounts connected with the event to the trading participants in an aggregated and anonymised form.
- (3) If, in the framework of such a measure by the involved transmission system operator/s, the transmission rights are reduced towards ECC, it can pass on these reductions to the Trading Participants in the framework of power deliveries within the market areas concerned. In the event that the trading relationships connected with this reduction cannot be identified without doubt, ECC can effect a proportionate reduction of the deliveries of all Trading Participants within the concerned spot and intra-day markets.
- (4) The Trading Participants concerned are obliged to carry out any cooperation activities which might be required, such as e.g. scheduled re-nominations. They have to accept the measures of the transmission system operator as well as the measures of ECC based on it. ECC can instruct the trading participant to use the ECC values as the basis for its nomination and to re-nominate.
- (5) In the event that a deviation is attributable to the Trading Participant, ECC may withhold payments to the trading participant until the deviation has been rectified or possible payment obligations of the Trading Participant vis-à-vis ECC pursuant to sections 3.4.2 and 3.4.3 have been effected.
- (6) Measures by the transmission system operator are not attributed to ECC or the Trading Participant; any liability of ECC or of the respective Settlement Entity for measures taken by the transmission system operator or for own measures based on such is excluded for this reason. This applies, in particular, to such measures which ECC adopts in order to pass on own balance deviations to the Trading Participants.

### 3.4.2 Settlement principles in the event of deviations

- (1) If a deviation in the context of the locally applicable market rules cannot be remedied in due time, the following shall apply:
  - (a) The settlement is initially based on the delivery volumes established and on the basis of the trade confirmations of the markets, and prices plus the applicable statutory taxes.
  - (b) Deviations are settled separately in accordance with the provisions contained in the following rules.
  - (c) Unless agreed otherwise below, the price for the calculation of deviations corresponds to the price of balancing energy ("settlement price") for the respective aggrieved party as published by the transmission system operator, each calculated on the basis of the smallest nominated volume unit (1/4 hour, hour, day). If a balancing energy price is not established by the end of the delivery day of the deviation, ECC can determine the settlement price itself. This is usually effected on the basis of the provisional balancing energy price or of the market prices within the respective market area. If several companies are involved in a deviation and if there is no clearly identifiable party that has caused the deviation and if there is no uniform settlement price for deviations for these, the applicable settlement price is the mean value of all applicable settlement prices.
  - (d) The deviation is settled, at the latest, 14 days after the establishment of the settlement price. The settlement amount is due immediately without deduction. ECC can correct invoices which have already been prepared for deviations if it has received corresponding invoices for balancing energy from the transmission system operator.
- (2) The trading participants' right to assert claims to damages is excluded – subject to the provisions contained in section 3.4.4.

### 3.4.3 Allocation of remaining damages and remaining revenues

- (1) In as far as differences remain after the settlement at ECC ("remaining damage" or "remaining revenue"), these are balanced as follows in a second invoice within a period of one month after the settlement of the deviations:
  - (a) In as far as ECC is not responsible for the deviation, any damage of ECC which remains in addition to the deviations in section 3.4.2 is settled with the Trading Participants. The settlement is effected on a proportionate basis for all Trading Participants in accordance with the amount of the volumes delivered or accepted in the respective market area and during the respective delivery period regardless of whether or not the Trading Participants themselves were affected by the deviations.
  - (b) In as far as, at least, one Trading Participant is responsible for a deviation, only that party shall be invoiced for the remaining damage of ECC in proportion with the deviation for which it is responsible in deviation from the provision in para 2 lit. a.



- (c) If ECC is responsible for the deviation, ECC shall compensate the damage caused for the Trading Participants affected by the deviation at the settlement price for balancing energy within the scope of liability as stipulated in section 3.3.12.
  - (d) In as far as ECC obtains remaining revenues, these are credited to the Trading Participants affected by a deviation on a proportionate basis.
- (2) Remaining damage with the meaning of para 1 above means all types of damage and expenses which ECC incurs in connection with the settlement of deviations. Remaining damages also means such damages which ECC or the Settlement Entity incurs in connection with the performance of the European market coupling (such as shipping) for example the following damages due to errors
- within the market coupling systems of the Nominated Electricity Market Operator („NEMO“) and/or the Transmission System Operators („TSO“),
  - of other NEMOs or their respective central counterparty, or
  - of TSOs, interconnectors or other shipping agents or shippers.

#### **3.4.4 Special provisions regarding delivery at the Zeebrügge Beach delivery point**

- (1) In deviation from section 3.4.2 para. 1 lit. c, the settlement price is calculated on the basis of the deviations from the PEGAS Spot DAP ZTP index multiplied by the difference from the original order volume and the actual delivery volume.
- (2) In order to reduce the number of Trading Participants affected by an incorrect nomination, ECC can modify the reductions of nominations implemented by the hub operator towards the Trading Participants for the purpose of settlement.
- (3) If a Trading Participant is responsible for the deviation, this Trading Participant is obliged to make a payment to ECC of 50% of the PEGAS Spot DAP ZTP index multiplied by the difference between the original contract volume and the actual delivery volume. The amounts so collected are credited to the Trading Participants on a proportionate basis in as far as these are not responsible for such deviation.
- (4) If ECC is responsible for the deviation, if the party that has caused the deviation is not known or if the deviations are due to measures by the transmission system operator according to section 3.4.1 para. 1, the provision contained in para 3 does not apply.

### **3.5 Margins and Collateral**

#### **3.5.1 Obligation to furnish collateral and parallel debt**

- (1) In order to secure all obligations which a System Clearing Member has towards ECC or in connection with its participation in clearing at ECC every Clearing Member has to furnish collateral at least in the amount determined by ECC and in the form of the collateral designated



under sections 3.5.4 and 3.5.5 in cash, securities and/or book-entry securities. Shares in Collective Holdings are not considered as securities or book-entry security securities in this sense.

In order to collateralise all obligations of a DCP Clearing Member towards ECC under or in connection with its participation in ECC clearing, every DCP Clearing Member shall furnish collateral, at least, in the amount determined by ECC in cash or in the form of Trading Participant Collateral in accordance with section 3.5.10 with the exception of collateral regarding Emission Rights. This Trading Participant Collateral is taken into account with regard to the margin requirements regarding the Initial Margin Spot Market according to section 5.1.2.

- (2) ECC will establish the level of the collateral requirement (Margin Requirement) for the Clearing Members on each ECC Business Day. The collateral must be furnished by every Clearing Member until 8:00 of the following Business Day.
- (3) In order to secure the settlement of all Spot Market transactions, collateral for Spot Market transactions shall be provided from the time of recognition as a Trading Participant on the Spot Market to, at least, until the fifth day after the termination of recognition as a Trading Participant on the Spot Market.
- (4) If the amount of the collateral is not credited to ECC account in due time, ECC can take measures in accordance with sections 3.9 or 3.10 et seq.
- (5) In addition to the claim to the provision of collateral on the part of ECC specified in paragraph 1, every System Clearing Member grants ECC a separate and independent claim ("parallel debt") to the benefit of the General Segregated Non-Clearing Members and of the Special Segregated Participants ("Known Participants" within the meaning of article 48 para 7 European Market Infrastructure Regulation (EMIR)). It authorises ECC to request performance of all obligations which the System Clearing Member has towards the Known Participants from the System Clearing Member by way of an unconditional promise to pay. "Collateral obligations" of a System Clearing Member comprise all the obligations which a System Clearing Member has towards the Known Participants from the provision of collateral which these Known Participants have provided in connection with the clearing of transactions by ECC, i.e. with regard to
  - Retransfer and repayment, or
  - Payment of an amount if the value of the collateral provided was offset on account of a qualified close-out netting agreement and if a surplus amount has resulted for the benefit of the respective Known Participant.

A qualified close-out netting agreement is a close-out netting agreement between a System Clearing Member and a Known Participant which solely covers transactions which are subject to clearing at ECC.

Obligations of the System Clearing Member with regard to collateral of Special Segregated Participants which have been passed through in accordance with section 3.5.6 shall be exempt from the collateral obligations in the meaning specified above. Securities which have

been pledged by the Known Participant to its System Clearing Member as collateral are also exempted from the collateral obligation.

The System Clearing Member's collateral obligations towards the Known Participants shall not be affected. The parallel debt can be enforced by ECC regardless of the collateral obligations which the System Clearing Member has towards the Known Participants.

If performance is effected with regard to the collateral obligations regarding a Known Participant, the scope of the parallel debt shall be reduced accordingly. If performance is effected with regard to the parallel debt in accordance with the procedure outlined in section 3.11.1 no. 1 para 3 and 3.11.2 lit. b (ii)-(iv), the scope of the collateral obligations shall be reduced accordingly.

### 3.5.2 Margin Requirement

- (1) The method for the calculation of the different Margin Requirements shall be established by ECC. The bases for the determination of the margins are laid down (i) for System Clearing Members for Derivatives Market Transactions in section 4.1 and (ii) for DCP Clearing Members for Spot Market Transactions in section 5.1. The Margin Requirement will be calculated separately for the following accounts and transactions:

- the combined proprietary and market maker position accounts (P and M accounts) of a Clearing Member;
- every agent position account (A-account) of the Clearing Member;
- the Spot Market Transactions of the Clearing-Member;
- the combined proprietary and market maker position accounts (P and M accounts) of each Non-Clearing Member or of the Omnibus Account;
- every agent position account (A-account) of each Non-Clearing Member;
- the Spot Market Transactions of each Non-Clearing Member or regarding the Omnibus Account.

The Margin Requirement of a Clearing Member is the result of the sum of the separately determined Margin Requirements as stipulated in paragraph 1. Margin credits, e. g. stemming from Premium Margin in one account, will not be considered over all accounts.

- (2) In the calculation of the amount of the Margin Requirements collateral provided by the Trading Participants can be taken into account at the respective collateral value determined by ECC in the respective case; ECC shall decide on this at its discretion upon a request by the Trading Participant. A Non-Clearing Member's request requires approval by its System Clearing Member that is assigned to the internal inventory account within the meaning of section 3.6.8 para 1 and section 3.6.9 para 1. Trading Participant Collateral can be taken into account with regard to collateral requirements for the Initial Margin Spot Market according to 5.1.1. Trading Participant Collateral of DCP Clearing Members are always taken into account with regard to the collateral requirements for the Initial Margin Spot Market according to section 5.1.2.

- (3) System Clearing Members are under the obligation to request collateral at least to the amount established on the basis of the calculation method of ECC from their Non-Clearing Members or Omnibus Clients. Upon a request, the System Clearing Member has to disclose its calculation method to ECC and its Non-Clearing Members or Omnibus Clients.

### **3.5.3 Supplementary margins to be furnished**

- (1) ECC reserves the right to demand supplementary margin collateral from a Clearing Member at any time on account of the risk assessment which it carries out in the course of the Business Day. Supplementary margins in cash have to be furnished by a System Clearing Member immediately in the corresponding currency to the settlement account of ECC or to the Cash Pledge Account. Supplementary margins securities or book-entry security must be furnished immediately to the pledged securities deposits at CBF.
- (2) A System Clearing Member shall have the right to request supplementary margins from its Non-Clearing Member immediately at any time, if required according to the risk assessment undertaken at any time during a Business Day. Every System Clearing Member is obliged to ensure for every Omnibus Account that it is given the right to immediately request a supplementary margin from the Omnibus Clients as a result of its risk assessment made during the day at any time.

### **3.5.4 Collateral in cash**

- (1) ECC shall specify in which currencies collateral can be deposited in cash. ECC may establish concentration limits or other criteria for the limitation of foreign currencies furnished as collateral. These limitations will be published on ECC's website under [www.ecc.de](http://www.ecc.de). The provisions contained in section 3.5.7 apply to collateral which is passed through by a System Clearing Member in accordance with section 3.5.6.
- (2) Margins are furnished in EUR by the System Clearing Member ensuring that the debit entries received from ECC to the debit of its settlement account can be cashed and that the respective amounts can be credited to the settlement account held by ECC. ECC shall credit the sum received in its settlement account to the securities Clearing Account (section 3.6.7) of the System Clearing Member forthwith.

For the furnishing of margins in foreign currencies the System Clearing Member must ensure that direct debits submitted to CBF or the Correspondent Bank by ECC are charged to the debit of the respective Settlement Account of the System Clearing Member and honoured and the respective amounts credited or paid into the Settlement Account of ECC at CBF or the Payment Bank by means of the payment of the respective sum by the System Clearing Member concerned into the account of ECC. After the Payment Bank concerned has confirmed the payment to ECC, the amount in question is credited to the margin account (section 3.6.7) of the System Clearing Member forthwith and the amount deposited is taken into account with regard to the margin call for the next Business Day, provided the confirmation is received at ECC by a time specified by ECC at the latest.

- (3) System Clearing Members can request the release of cash collateral from ECC on every Business Day. The request for such a release is processed by ECC on the same Business Day provided the request is received until a time determined by ECC and communicated to the System Clearing Member. The release is effected by means of booking within the Collateral Clearing Account of the System Clearing Member (section 3.6.7) and the immediate payment to the System Clearing Member's Settlement Account or, in the case of collateral in other currencies than those approved by ECC according to paragraph 2, to the account of the System Clearing Member established to this end. If a request for the release of collateral is precluded by a deficient cover of the Margin Requirement from the System Clearing Member, booking within the Collateral Clearing Account shall only be effected if the deficit has been compensated by the time determined by ECC.
- (4) The collateral provided in cash shall become part of the assets of ECC. The provision of collateral shall establish a conditional payment claim towards ECC in accordance with these System Clearing Conditions. With the exception of the collateral passed through in accordance with section 3.5.6, the System Clearing Member pledges this conditional payment claim to ECC to secure all current and future liabilities of the System Clearing Member towards ECC. ECC accepts such pledge.

ECC shall be entitled to use the margins furnished in cash at its own discretion within the framework of its business activities in order to safeguard its own working order as a clearing house and for investment purposes.
- (5) In the event of a termination in accordance with section 3.10, ECC is entitled to utilise the cash collateral furnished. The utilisation by means of offsetting with accounts receivable of ECC shall be effected in accordance with the rules in section 3.11. In as far as the total collateral furnished by the System Clearing Member exceeds the accounts receivable of ECC, ECC shall be entitled towards the System Clearing Member to proceed with any surplus amount as described in more detail in section 3.11.
- (6) The System Clearing Member and ECC agree that the cash collateral also serves to collateralise the parallel debt referred to in section 3.5.1 para 5, which ECC has towards the System Clearing Member. The System Clearing Member and ECC agree that
  - (a) the cash collateral should primarily be used to cover the claims which ECC has towards the System Clearing Member (except for ECC's parallel debt specified in section 3.5.1 para 5) and that
  - (b) the cash collateral should only be used to cover ECC's parallel debt specified in section 3.5.1 para 5 in the manner described in section 3.11.1 no. 1 subsection 1 and 3.11.2 in as far as the total collateral furnished by the System Clearing Member exceeds the claims of ECC referred to herein above.

### 3.5.5 Collateral in securities and book-entry security

- (1) Margins in securities and in book-entry security shall be deposited by each System Clearing Member in a pledged-securities deposit account to be established by said member at Clearstream Banking AG.
- (2) ECC shall stipulate the securities and book-entry security accepted by it as margins as well as their respective collateral value. Bonds with a residual term of 15 calendar days or less shall not be accepted as margins. The accepted securities and book-entry securities are published on the ECC website at [www.ecc.de](http://www.ecc.de). ECC can determine concentration limits for determining the share of accepted issuers, certain countries or other criteria in relation to the total value of the securities and book-entry securities submitted by a System Clearing Member. The System Clearing Member shall be in charge of administration of the securities and of the book-entry security. Any security which is not accepted or not accepted anymore as collateral by ECC or any such stock loan security shall not be taken into account in the calculation of the required margins.
- (3) The System Clearing Member and ECC agree that ECC acquires a pledge in all securities which are in the CBF Pledged Securities Deposit of the System Clearing Member at Clearstream Banking AG established exclusively for ECC at present or will be posted in these in the future. For the purpose of pledging, the System Clearing Member assigns its claims towards Clearstream Banking AG with regard to the surrender of these securities to ECC. The System Clearing Member shall inform Clearstream Banking AG of the conclusion of the pledge agreement forthwith. If book-entry securities are posted to the CBF Pledged Securities Deposit at Clearstream Banking AG, these are assigned to ECC by way of fiduciary assignment; the foregoing provision shall apply mutatis mutandis. The System Clearing Member assures that it is the owner of the pledged securities or the proprietor of the assigned book-entry securities or that it is otherwise entitled to pledge the securities or to assign the book-entry securities by way of security and that these are not encumbered with any third-party rights having the same or a higher priority unless otherwise specified in these Clearing Conditions. For the term of the pledge/the assignment by way of security the System Clearing Member shall not permit such claims to arise without the approval of ECC.
- (4) In the event of a termination according to section 3.10, ECC shall be entitled to carry out the sale of the pledged securities without any prior warning in the open market at the current price or to have such sale carried out by third parties or to liquidate the book-entry securities assigned by way of security without any special utilisation procedure. The System Clearing Member grants ECC the authority to request the removal of the registered shares assigned by way of security from the respective share register at Clearstream Banking AG in the event of an utilisation on its behalf.
- (5) The System Clearing Member and ECC agree that the pledge and the assignment by way of security according to para 3 also serve the purpose of collateralising the parallel debt of ECC towards the System Clearing Member referred to in section 3.5.1 para 5. The System Clearing Member and ECC agree

- (a) that any revenue from the utilisation of the securities deposited in the CBF Pledged Securities Deposit and from the utilisation of the book-entry securities assigned by way of security is to be used primarily to cover the claims which ECC has towards the System Clearing Member (with the exception of the parallel debt of ECC referred to under section 3.5.1 para 5) and that
  - (b) such revenue should only be used to cover the parallel debt of ECC specified in section 3.5.1 para 5 in the manner described in sections 3.11.1 no. 1 subsection 1 und 3.11.2 lit. b (ii) – (iv) in as far as total collateral furnished by the System Clearing Member exceeds the claims of ECC referred to above.
- (6) The transfer of securities and of book-entry securities to the CBF Pledged Securities Deposit according to paragraph 3 shall be carried out by means of a timely instruction by the System Clearing Member to Clearstream Banking AG to transfer the securities or the book-entry securities to the CBF Pledged Securities Deposit of the Clearing Member concerned held at Clearstream Banking AG. Clearstream Banking AG shall inform ECC of such transfer. After that, ECC shall credit the corresponding value or the quantity to the Collateral Clearing Account (section 3.6.7) of the System Clearing Member and shall, moreover, take the amount into consideration with regard to the margin call for the next margin calculation, provided the notification by Clearstream Banking AG is issued until a time specified by ECC and communicated to the System Clearing Member at the latest. In case the securities or book-entry securities which are not accepted as margins are transferred to the pledge deposit, ECC shall arrange for a refund.
- (7) System Clearing Members can request the release of the pledged securities or of book-entry security which have been submitted to fiduciary assignment from ECC on each Business Day. ECC shall process such requests for the release of such securities or book-entry security on that same Business Day if ECC has received the request until a time as specified by ECC and communicated to the System Clearing Member. ECC shall carry out the release of the pledged securities or of book-entry security by means of a corresponding booking on the collateral clearing account of the System Clearing Member (section 3.6.7) and shall grant its approval to Clearstream Banking AG. If such a request is precluded by a margin requirement, ECC will only book on the Collateral Clearing Account and notify Clearstream Banking AG that it approves such release if the required collateral has been provided by the time specified by ECC.

### **3.5.6 Passing-through of collateral**

- (1) If the version “passing-through of collateral” was selected in an NCM Agreement or if an Omnibus Agreement has been concluded, the following rules apply with regard to the collateral which a Special Segregated Participant has to provide to the System Clearing Member on the basis of the agreement under section 3.5.2 para 2 and to collateral for clearing of the Special Segregated Participant on ECC exceeding this obligation.
- (2) In fulfilling the obligation as per section 3.5.2 para 2, the Special Segregated Participant shall furnish collateral to the System Clearing Member in accordance with the following provisions. The collateral is used to collateralise all existing and future claims which the System Clearing



Member has towards the Special Segregated Participant under the NCM-Agreement concerned or under the Omnibus Agreement. The collateral is furnished by a transfer of securities collateral to the System Clearing Member's CBF Pledged Securities Deposit at Clearstream Banking AG, which is exclusively set up for pledged securities collateral with regard to transactions of the Special Segregated Participant ("CBF Pledged Securities Deposit") and/or cash collateral to the System Clearing Member's pledged account at ECC which is exclusively set up for cash collateral with regard to transactions by the Special Segregated Participant ("Pledged Cash Account"). The Special Segregated Participant can choose between the transfer of securities collateral and cash collateral.

- (3) In the case of securities collateral, the collateral furnished on the basis of para 2 is transferred to the System Clearing Members property upon the transfer and in the case of cash collateral, the collateral is transferred to the System Clearing Member's assets. If the securities collateral comprises securities held abroad, the legal position to which the Special Segregated Participant as the party depositing the securities is entitled towards the depositary shall be transferred instead of the property as such. The System Clearing Member is entitled to dispose of the collateral without any restrictions in accordance with these Clearing Conditions.
- (4) The System Clearing Member is obliged not to establish any security rights in the collateral to the benefit of third parties with the exception of a) the pledge to the benefit of ECC according to section 3.5.9 para 1 and b) the pledge to the benefit of the Segregated Non-Clearing Members and Omnibus Representatives according to section 3.5.9 para 8.
- (5) The System Clearing Member is obliged to have all the collateral furnished by the Special Segregated Participants for Clearing on ECC (including any collateral which might exceed the amount of the Margin Requirements determined by ECC) credited to the Collateral Clearing Account of the Special Segregated Participants. The System Clearing Member shall arrange for the amount to be credited by transmitting a corresponding order for a retransfer to ECC or by transferring the said collateral to the CBF Pledged Securities Deposit which is kept for the Special Segregated Participant.
- (6) If the amount of the collateral passed through by the Special Segregated Participants exceeds the amount of the collateral to be furnished by the Special Segregated Participant on account of section 3.5.2 on any given Business Day, the Special Segregated Participant shall, at its choice, be entitled to the retransfer of sums of money or securities which have been passed through and which are similar to the cash or securities collateral furnished by it and whose value does not exceed the amount of the over-coverage from its System Clearing Member – unless this is precluded by deviating agreements between the System Clearing Member and the Special Segregated Participants. In the case of securities collateral, securities of the same category of securities are classified as being similar to it.
- (7) If ECC uses collateral which the System Clearing Member has pledged to ECC on the basis of the provisions in section 3.11 or if the System Clearing Member utilises collateral which was provided by a Special Segregated Participant on account of a termination of the close-out netting agreement between the System Clearing Member and the Special Segregated Participant, the following provisions shall apply:



- (a) the claim to performance which the System Clearing Member has towards the Special Segregated Participant from transactions which are settled on ECC via the Clearing Member expires to the corresponding amount and
  - (b) the claim to transfer which the Special Segregated Participant has towards the System Clearing Member as per paragraph 5
    - (i) is exclusively aimed at the transfer of sums of money up to an amount corresponding to the utilisation proceeds and
    - (ii) the amount of such claim is reduced by the amount of the account receivable for which ECC or the System Clearing Member has utilised this collateral.
  - (c) in as far as the claim to performance which the System Clearing Member has towards the Special Segregated Participant under transactions which are settled on ECC via the System Clearing Member has already ceased to apply before the utilisation as a result of performance or with the effect of performance, the amount of the Special Segregated Participant's claim to transfer remains unaffected contrary to lit. b (ii) in accordance with paragraph 5. Apart from this lit. b (i) shall apply.
- (8) In the event of a termination of the close-out netting agreement between the System Clearing Member and the Special Segregated Participant, the party entitled for compensation under the close-out netting agreement will forthwith assess all collateral which was furnished on the basis of these Clearing Conditions and for which the System Clearing Member has not yet transferred any assets of the same kind to the Special Segregated Participant in accordance with paragraph 6. The corresponding amounts are included in the uniform compensation claim to be established like outstanding payments of the System Clearing Member in accordance with the close-out netting agreement in conjunction with section 9 para 1 of the Master Agreement for financial derivatives transactions. At the same time, all claims between the Special Segregated Participant and the System Clearing Member with regard to the transfer of sums of money or securities according to paragraph 2 or paragraph 6 cease to apply.
- (9) Cash collateral is assessed at the nominal amount plus any interest accrued until the termination of the close-out netting agreement. Securities collateral is assessed at the revenue generated by the System Clearing Member in selling securities of the same kind. At the choice of the party entitled to compensation under the close-out netting agreement, the actual revenue achieved shall be replaced by the amount which the System Clearing Member could have received in such a sale observing the interests of the Special Segregated Participant immediately after the termination of the close-out netting agreement. In as far as the amounts specified above are not denominated in Euro, the party entitled to compensation under the close-out netting agreement shall convert such amounts into Euro at the ask price. In this case, the "ask price" is the price quoted by leading market participants for the sale of a currency.
- (10) If money is paid out to the holder of the said security collateral by the issuer with regard to a certain security collateral, the System Clearing Member pays an amount in the currency and in the amount of such payment for the holders of the collateral on account of the distribution to the Special Segregated Participant on the day of such distribution. If such a distribution is

subject to a withholding tax or if it leads to a tax credit, the System Clearing Member owes the amount which would accrue to the Special Segregated Participant under consideration of the amount of its claims to reimbursement or offsetting which were previously communicated to the System Clearing Member if the said client were the owner of the respective security collateral including

- (a) the withholding tax in as far as the Special Segregated Participant could claim an exemption from this tax or its reimbursement and
  - (b) any tax credit to which the Special Segregated Participant would be entitled under these circumstances according to sentence 1. The System Clearing Member is not obliged to make payments of these amounts in accordance with the provisions herein above in as far as such a payment would cause a deficient cover. Amounts not paid by the System Clearing Member accordingly have to be considered as cash collateral in the determination of a potential insufficient or excess cover.
- (11) In the event of passing-through of collateral, ECC shall keep a separate agent position account and a separate Collateral Clearing Account for every Special Segregated Participant in accordance with the more detailed provisions of these Clearing Conditions for the purpose of the separate calculation and administration of margins.
- (12) The System Clearing Members are obliged to conclude Close-Out Netting Agreements with their Special Segregated Participants.

### **3.5.7 Collateral in cash in passing-through of Collateral**

- (1) In the event of passing-through of collateral, cash collateral can also be provided by a System Clearing Member by means of a payment into the Cash Pledge Account of the System Clearing Member in deviation from the provisions in section 3.5.4. The provision of cash collateral is only admissible in EUR.
- (2) ECC immediately credits the amount received on the Pledged Cash Account to the separate Collateral Clearing Account (section 3.6.7 para 2) of the Segregated Non-Clearing Member or the Omnibus Account.
- (3) Upon a request by the System Clearing Member, ECC shall release collateral which is booked in the Cash Pledge Account. With regard to the release, section 3.5.4 para 3 shall apply accordingly with the supplementary requirement that the System Clearing Member shall enclose the release declaration of the Segregated Non-Clearing Member or Omnibus Representative with the request. If the application for a release is precluded by a deficient cover of a collateral requirement from the System Clearing Member on account of the Segregated Non-Clearing Member or the Omnibus Account, such release shall only be effected if the deficit has been settled by the time specified by ECC.

### 3.5.8 Collateral in securities in passing-through of collateral

- (1) In the case of passing-through of collateral, collateral in securities can be deposited in the respective CBF Pledged Securities Deposit in accordance with section 3.5.5. Only securities which fulfil the requirements in section 3.5.5 para 2 and ownership of which has been transferred to the System Clearing Member by the Special Segregated Participants in accordance with the provisions of in section 3.5.6 para 3 may be kept in the CBF pledged-securities account.
- (2) ECC shall credit the corresponding value of the securities to the CBF pledged-securities deposit of the System Clearing Member and to the separate Collateral Clearing Account of the Segregated Non-Clearing Member or the Omnibus Account and shall consider such amount credited in the next calculation of the collateral requirement for the System Clearing Member in accordance with the more detailed provision in section 3.5.1.
- (3) With regard to the release section 3.5.5 para 7 shall apply accordingly with the supplementary provision that the System Clearing Member shall ensure a release of the pledge of the Segregated Non-Clearing Member or Omnibus Representative which might be required at the same time. If the application for a release is precluded by a deficient cover of a Margin Requirement from the System Clearing Member on account of the Segregated Non-Clearing Member or of the Omnibus Account, such release shall only be effected if the deficit has been settled by the time specified by ECC.

### 3.5.9 Pledges in connection with passing-through of collateral

- (1) For the security purpose specified in paragraph 3 the System Clearing Member pledges the following to ECC:
  - (a) all securities (except for securities based abroad) which are recorded in the CBF Pledged Securities Account specified in more detail in the Collateral Agreement or the Omnibus Agreement at present or which will be recorded in such in the future. ECC accepts the pledge. The System Clearing Member assigns its claims regarding these securities towards Clearstream Banking AG to ECC for the purpose of pledging. ECC accepts the pledge.
  - (b) its claims – primarily claims to delivery and restitution – to which the System Clearing Member is entitled at present and to which it will be entitled in the future with regard to the securities recorded in the CBF Pledged Securities Deposit specified in more detailed in the Collateral Agreement or the Omnibus Agreement at present or in the future. ECC accepts the pledge.
  - (c) all claims which the System Clearing Member has against ECC with regard to the Pledged Cash Account specified in the Collateral Agreement or the Omnibus Agreement at present or which it will have in the future.
- (2) The System Clearing Member shall inform Clearstream Banking AG, of the pending pledges with regard to the CBF Pledged Securities Deposit forthwith.

- (3) The pledges granted in paragraph 1 lit. a to c are used as collateral for the performance of all obligations of a System Clearing Member towards ECC resulting from trades of the Special Segregated Participants.
- (4) In the relationship with ECC, the System Clearing Member is entitled to all interest payments made with regard to cash collateral and all distributions of payments, material assets and ancillary rights (including subscription rights, bonus shares and similar rights) with regard to securities collateral.
- (5) The System Clearing Member shall establish a further pledge with regard to the collateral according to paragraph 8 lit. a to c for the Non-Clearing Member or for the Omnibus Representative. The System Clearing Member shall not establish any further third-party rights which can arise on account of contractual agreements throughout the term of the pledge without ECC's approval.
- (6) In the event of a termination according to section 3.10, ECC can effect the sale of the pledged securities on the free market without any prior warning.
- (7) In the event of utilisation, the System Clearing Member grants ECC the authority to request the removal of the registered securities assigned by way of security from the respective share registers at Clearstream Banking AG, in its name.
- (8) With regard to the purpose of security specified in paragraph 10, the System Clearing Member pledges the following to the Segregated Non-Clearing Member or to the Omnibus Representative:
  - (a) All securities which are recorded in the CBF pledged securities deposit at present or which will be recorded in the said deposit in the future with the exception of securities held abroad. The Segregated Non-Clearing Member hereby accepts the pledge. For the purposes of pledging, the System Clearing Member assigns its claims towards ECC with regard to the return of the securities specified above after the expiry of the first-rank lien established with regard to these securities to the benefit of ECC to the Segregated Non-Clearing Member or Omnibus Representative in accordance with section 1223 BGB (German Civil Code). The Segregated Non-Clearing Member accepts the assignment.
  - (b) Its claims – primarily claims to delivery and surrender – to which the System Clearing Member is entitled at present and to which it will be entitled in the future with regard to the securities held abroad which are recorded in the CBF Pledged Securities Deposit at present or will be recorded therein in the future. The Segregated Non-Clearing Member accepts the pledge.
  - (c) All claims which the System Clearing Member has against ECC with regard to the Pledged Cash Account and which it will have in the future. The Segregated Non-Clearing Member accepts the pledge.
  - (d) With regard to the Omnibus Accounts the corresponding declarations pursuant to lit. a to c are made by the Omnibus Representative instead of by the Non-Clearing Member and they are made in the Omnibus Agreement.

- (9) The System Clearing Member shall notify Clearstream Banking AG, of the pending pledges with regard to the securities collateral forthwith.
- (10) The pledges created in paragraph 8 lit. a to c are used to collateralise all claims which the Segregated Non-Clearing Member or the Omnibus Clients has/have against the System Clearing Member (a) under the NCM Agreement or the Omnibus Agreement and (b) under the respective close-out netting agreement.
- (11) In as far as the collateral has an exchange or market price, the Segregated Non-Clearing Member or the Omnibus Representative attains ownership or legal ownership of the receivables without prior warning in accordance with section 1259 sentence 1 BGB (German Civil code)
  - (a) upon a termination in accordance with section 3.10.2 with regard to the System Clearing Member upon the settlement of its obligations under the NCM Agreement or the Omnibus Agreement or, if such time occurs earlier,
  - (b) upon the maturity of the receivable to which the Segregated Non-Clearing Member or Omnibus Client is entitled from the System Clearing Member on the basis of the respective close-out netting agreement.
- (12) The following provisions apply in the relationship between ECC, the System Clearing Member and the Segregated Non-Clearing Member or the Omnibus Representative:
  - (a) Subject to the provision in the sentence 2 of this subparagraph, ECC may exclusively arrange the utilisation of the assets pledged by the System Clearing Member in accordance with paragraph 1 and 8. With ECC's approval, the Segregated Non-Clearing Member or the Omnibus Representative can take over the utilisation of the pledged assets in their entirety or in part.
  - (b) Proceeds from the utilisation of the assets pledged by the System Clearing Member in accordance with paragraph 1 and 8 will first be used to satisfy ECC's claims arising from the obligations of a System Clearing Member to ECC from or in connection with its participation in clearing. Any remaining surplus will be used to satisfy all claims which the Segregated Non-Clearing Member or the Omnibus Clients has/have against the System Clearing Member (a) from the NCM Agreement or the Omnibus Agreement and (b) from the respective close-out netting agreement.
  - (c) The Segregated Non-Clearing Member is and the Omnibus Clients are only entitled to an assignment of the receivables from the System Clearing Member which are collateralised by the pledge in as far as the distribution rule described under b) herein above does not affect the relationship between ECC and the Segregated Non-Clearing Member or the Omnibus Clients.

### 3.5.10 Trading Participant Collateral

- (1) Every Trading Participant pledges to ECC all rights which are connected with Shares in Collective Holdings and Trading Participant Cash Collateral booked within the internal inventory

accounts at present or in the future (sections 3.6.8 and 3.6.9) and, in particular, the right towards ECC Lux or ECC respectively regarding the delivery of the Registry Based Products to another registry account and the claim towards ECC regarding the repayment of the Trading Participant Cash Collateral. ECC accepts the pledge. The pledge in favour of ECC secures all existing and future claims against the Trading Participant which ECC is entitled to from the Trading Participant in accordance with these Clearing Conditions. In case the Trading Participant is a Non-Clearing Member, the pledge also secures claims that ECC is entitled to (by own or assigned right) against its System Clearing Member as a contracting party or guarantor for the transactions of said Trading Participant.

- (2) If the Trading Participant is a Non-Clearing Member, it also pledges all rights which are connected with the Shares in Collective Holdings or Trading Participant Cash Collateral booked within its internal inventory accounts (sections 3.6.8 and 3.6.9) at present or in the future and, in particular, the claim towards ECC Lux or ECC respectively regarding the delivery of the Registry Based Products to another registry account and the claim towards ECC regarding the repayment of the Trading Participant Cash Collateral to its System Clearing Member or its System Clearing Members, in addition. The System Clearing Members accept the pledge. The pledge in favour of the System Clearing Member secures all existing and future claims against the pledging Trading Participant resulting from the utilisation of these System Clearing Members as guarantors or contracting parties of ECC with regard to the pledging Trading Participant's transactions. The following provisions apply in the relationship between the System Clearing Members and ECC:
  - (a) Subject to the provision in the following sentence, ECC alone may arrange the utilisation of the rights pledged by a Non-Clearing Member. With the approval by ECC, a System Clearing Member can also take over the utilisation of the pledged assets in their entirety or in part.
  - (b) Any proceeds from the utilisation of rights pledged by a Trading Participant shall initially be used to satisfy the claims to which ECC is entitled from the Trading Participant in connection with these Clearing Conditions. Any remaining surplus shall be used to satisfy the rights of recourse or other rights of the System Clearing Members from the pledging Trading Participants as a result of recourse to these System Clearing Members as guarantors or contracting partners of ECC for the transactions of the pledging Trading Participant.
  - (c) The System Clearing Members are only entitled to assign their claims which are collateralised by the pledge in as far as the distribution rule described above under (b) in the relationship between the System Clearing Members and ECC is not affected.
- (3) The Trading Participant herewith notifies ECC in its capacity as the authorised receiving agent of ECC Lux and in its own capacity about the pledges in accordance with section 3.5.9 para 1 and para 2.
- (4) Up to a default or a termination in the relationship between the System Clearing Member and a Non-Clearing Member or in the relationship between ECC and a System Clearing Member,



(a) ECC Lux or ECC respectively is authorised and obliged to execute the Trading Participants' sell orders regarding the Registry Based Products and (b) ECC is authorised and obliged to pay out the Trading Participant Cash Collateral to the Trading Participant via its Clearing Member. In this respect, ECC and the System Clearing Member release the assets pledged pursuant to section 3.5.10 para 1 and 2 subject to the following condition: If the collateral values of Shares in Collective Holdings have been considered in calculating the amount of the Margin Requirement of ECC from the Clearing Member (section 3.5.2 para 1), the Trading Participant is only entitled to delivery dispositions regarding Registry Based Products or to repayments of Trading Participant Cash Collateral to it if new Margin Requirements to be established on the basis of such dispositions and open liabilities of the Clearing Member towards ECC and ECC Lux or the Settlement Entity respectively are covered by the remaining collateral.

In the case of Trading Participant Collateral with regard to Registry Based Products, the System Clearing Member can request ECC to suspend deliveries in accordance with section 3.6.9 para 3 if this is required for the System Clearing Member to secure as yet unfulfilled liabilities of the Trading Participant.

- (5) If the Trading Participant or one of its System Clearing Members defaults towards ECC or a Settlement Entity with regard to collateralised liabilities, ECC or, with the approval of ECC, a System Clearing Member may, without prior warning, sell the Registry Based Products or satisfy the claims through the appropriation of such in accordance with section 1259 BGB and collect the claims towards ECC regarding the repayment of the Trading Participant Cash Collateral. Sections 3.10 and 3.11 shall not be affected.

If a Non-Clearing Member has defaulted on its collateralised liabilities towards its System Clearing Member, the System Clearing Member may, with the approval of ECC, sell the Registry Based Products without prior warning or it may satisfy its claims through the appropriation of such in accordance with section 1259 BGB and collect the claim towards ECC regarding the repayment of the Trading Participant Cash Collateral.

- (6) Any proceeds from the utilisation of pledges regarding Registry Based Products shall be distributed in such a way that the pledges specified above have a lower rank than the pledges which are provided for in section 5.3.5 para 2.
- (7) The provisions made in this section do not apply to Allowances booked in the internal inventory accounts assigned to a Member State represented by its relevant Auctioneer at present or in the future.
- (8) Trading Participant Cash Collateral is provided by a DCP Clearing Member by ECC as the authorised representative of the DCP Clearing Member disposing of the account balances of the Settlement Account of this DCP Clearing Member for the benefit of its Settlement Account. ECC shall forthwith credit the amount received in its Settlement Account to the DCP Clearing Member's cash collateral account. A DCP Clearing Member is obliged to ensure a balance in the Settlement Account the amount of which is sufficient to fulfil its obligations towards ECC at all times.

Trading Participant Cash Collateral becomes part of the assets of ECC and establishes a conditional payment claim of the Trading Participant towards ECC with regard to the repayment of such. ECC is entitled to use the Trading Participant Cash Collateral at its own discretion in the framework of its business operations for investment purposes.

- (9) DCP Clearing Members and Non-Clearing Members can only use Trading Participant Bank Guarantees for consideration with regard to the collateral requirements towards the Clearing Member regarding the Initial Margin Spot Market (section 5.1.1 and section 5.1.2). The Trading Participant Bank Guarantee must be recognised by ECC as Trading Participant Collateral in each specific case. Recognition of the Trading Participant Bank Guarantee as Trading Participant Collateral shall require the approval of its System Clearing Member in the case of Non-Clearing Members. Such recognition can be revoked by the System Clearing Member with a period of one month as of receipt of the revocation at ECC as well as the Non-Clearing Member.
- (10) ECC determines the collateral value of the Trading Participant Bank Guarantee as Trading Participant Collateral and it can specify that the Trading Participant Bank Guarantee is only considered to a certain extent with regard to the collateral requirements towards the Clearing Member regarding the Initial Margin Spot Market (section 5.1.1 and section 5.1.2). During the ten business days preceding the expiry of a Trading Participant Bank Guarantee or the recognition of Trading Participant Bank Guarantee as Trading Participant Collateral, the Trading Participant Bank Guarantee has a collateral value of zero.

The Trading Participant Bank Guarantee collateralises all current and future liabilities of the Trading Participant towards ECC arising from or in connection with its participation in clearing of Spot Market transactions by ECC.

Upon a request to this end by a DCP Clearing Member or Non-Clearing Member, ECC releases a Trading Participant Bank Guarantee submitted as soon as the collateral requirements covered by it are covered otherwise. If a Non-Clearing Member submits such an application, its System Clearing Member must approve the release. The System Clearing Member can only refuse approval for a period of six calendar weeks following the submission of the request if the System Clearing Member has fulfilled payment obligations for the Non-Clearing Member in the capacity of its paying office and the Non-Clearing Member has not yet settled the recourse claims resulting from this. If the System Clearing Member has defaulted according to section 3.9, the provisions contained in these Clearing Conditions (section 3.10 to 3.11) with regard to this shall be applicable as a matter of priority.

## 3.6 Accounts

### 3.6.1 Types of position accounts

- (1) Within the system of ECC the transactions of Clearing Members and the transactions of clients of System Clearing Members, including Omnibus Clients as well as the transactions of Non-Clearing Members are recorded in proprietary, agent and, if applicable, market maker position

accounts of the respective Clearing Member. Transactions of System Clearing Members' Indirect Clients are recorded in so-called Standard and/or Gross Omnibus Accounts which are kept as Client Position Accounts of the System Clearing Member or of the Non-Clearing Member.

- (2) With regard to each System Clearing Member two proprietary position accounts, and, in as far as required, two Market Maker position accounts and, upon request, further agent position accounts are kept. Equal accounts are kept for the Non-Clearing Members and, if applicable, for Omnibus Clients of the System Clearing Member.

### **3.6.2 Proprietary position accounts**

- (1) Only the transactions on own account transacted by the Clearing Member are recorded on the two proprietary positions accounts.
- (2) Adjustments of opening and closing trades (open/close adjustments) for transactions recorded in a proprietary position account as well as closing position adjustments which are effected for closing out of two opposite positions can be effected subject to the provisions in section 3.6.5.
- (3) In case a transaction is referred to as a closing trade and in case sufficient positions are not available in the proprietary position account, a position is opened automatically in the proprietary position account which corresponds to the number of the contracts which could not be closed out.
- (4) Transactions which have been concluded can be divided into several trades in the respective proprietary position account (trade separation).

### **3.6.3 Agent position accounts**

- (1) Only the transactions of the clients (including Omnibus Clients and Indirect Clients) and Non-Clearing Members of the System Clearing Members and Non-Clearing Members of the System Clearing Member using this System Clearing Member as a Clearing Broker are recorded on the agent position accounts of said System Clearing Member. In the event of passing-through of collateral (section 3.5.6), a separate agent position account of a System Clearing Member is kept for every Segregated Non-Clearing Member or for every Omnibus Account for the purpose of the separate calculation and administration of collateral. Apart from this, this sub-position account is treated as a part of the agent position account. For Indirect Clients, the Standard and/or Gross Omnibus Accounts are also kept as Client Position Accounts of the System Clearing Member; however, they are treated as a part of the Client Position Account.
- (2) Trade adjustments which change the assignment of a trade from agent to proprietary position or from proprietary position to agent position accounts (trade transfer) as well as corresponding position transfer are only admissible for correct recording of the transactions on the agent position accounts subject to the provisions contained in section 3.6.5.

- (3) A short position of a client or of a Non-Clearing Member has to be kept separately from a long position of another client or a Non-Clearing Member in the same option series or in the same futures contract in the agent position accounts. A Clearing Member must not close a position of a client or a Non-Clearing Member with another position of the same customer or a Non-Clearing Member. Adjustments of opening and closing trades on the agent position accounts are only permissible for compliance with this account keeping or following an instruction by the client or Non-Clearing Member to that end in accordance with the provisions contained in section 3.6.5.
- (4) Closing position adjustments in the agent position account shall only be permissible for closing out of two opposite positions which are held by the same client subject to the provisions in section 3.6.5.
- (5) In case a transaction is referred to as a closing trade and in case sufficient positions are not available in the respective agent position account, a position shall be opened automatically in that agent position account which corresponds to the number of the contracts which could not be closed out.
- (6) Concluded trades can be divided into several trades in the respective agent position account (trade separation).

#### **3.6.4 Market maker position accounts**

- (1) The transactions arising from quotes entered in accordance with the Trading Conditions of the respective markets are recorded on the market maker position accounts. Transactions from own orders can be recorded in a market maker position account if such are labelled correspondingly.
- (2) Trade adjustments which change the assignment of a transaction from market maker position accounts to agent or proprietary position accounts (trade transfer) as well as position transfers between the position accounts are only permissible for correct recording of the transactions on the market maker position accounts subject to the provisions contained under section 3.6.5.

#### **3.6.5 Account keeping**

- (1) Positions in agent position accounts and in the proprietary position accounts of a Clearing Member are kept in gross terms, i.e. long and short positions can exist at the same time. Positions in the market maker position accounts are kept in net terms, i.e. there can only be either a long position or a short position at any given time.
- (2) ECC monitors the position accounts of its Clearing Members. ECC provides the balance as well as the details regarding the transactions for every individual position account to its Clearing Members within its system.
- (3) All positions in options series are deleted automatically on the respective position accounts of a Clearing Member during batch processing on the last day of trading of the respective option contract. All short positions which have been assigned and all long positions which have been

exercised shall be deleted on the position accounts of a given Clearing Member once delivery for the exercises and for the assignments in connection with these positions has been effected.

- (4) Positions in futures contracts are deleted in the respective position accounts of the Clearing Members once the delivery and/or the acceptance of delivery and payment or the cash settlement or cascading has been effected in connection with these positions.

- (5) Trade adjustments can be entered either before, during or after trading on any given Business Day - depending on the functionalities of the system of ECC. These are permissible for the transactions of the respective current Business Day and of two subsequent Business Days.

Depending on the functionalities of the system of ECC, closing position adjustments can be entered before, during or after trading on any given Business Day.

Position transfers between position accounts of the same Non-Clearing Member and/or Clearing Member can be entered before, during or after trading on any Business Day.

- (6) Position transfers between various Non-Clearing Members and/or Clearing Members from or to market maker position accounts are not permissible.

Position transfers without any transfer of money or position transfers with transfer of money between various Clearing Members (member position transfer) must only be carried out by a Clearing Member in case the entry of the transfer is confirmed as binding by all Non-Clearing Members and Clearing Members involved. Position transfers from or to an agent position account must only be effected in case the client demands this.

A use of the functionality "Position transfer with transfer of money" shall only be possible in case the amount to be transferred displays a clear connection with one or several of the transactions recorded on a position account of the Clearing Member on account of a reference to be entered into the system of ECC.

On principle, the system of ECC transfers the positions during batch processing; if a Real Time Position Transfer is entered, it also transfers this during the day. On principle, the payments of money or the credit notes to be effected in accordance with the functionality "Position transfer with transfer of money" shall be effected one Business Day after the use of this functionality. However, in the case of this functionality, the corresponding amount will only be transferred to the Clearing Member entitled once the Clearing Member liable to pay has furnished this contribution. There shall be no own obligation to perform for ECC and/or the markets involved towards the entitled Trading Participants in the framework of this transfer of money.

- (7) Trade transfers from an agent or proprietary position account to another agent and proprietary position account can be initiated by a Clearing Member or its Non-Clearing Member as a representative of the Clearing Member on the day of the conclusion of the transaction and on the two subsequent Business Days following said day (give-up) provided:

- (a) the transaction to be transmitted is an opening trade,

- (b) the transaction to be transmitted was indicated as a give-up trade and
  - (c) the person for whose account the transaction was originally concluded remains identical after such transfer.
- (8) If the trade transfer is instructed by a Non-Clearing Member or by several Non-Clearing Members, the transfer of the trade shall require the approval of their Clearing Members.
- (9) The trade transfer commissioned via a give-up is concluded if the accepting Clearing Member or – if this is the case – the Non-Clearing Member affected by the take-up has confirmed the take-up of the transactions in its capacity as the representative of this Clearing Member.
- (10) Clearing Members and Non-Clearing Members are only allowed to perform position transfers and trade transfers (give-ups) if the resulting positions correspond to products and maturities tradable on the respective markets. The respective positions transfer or trade transfer must be revoked if the above requirement is not fulfilled. If such revocation does not occur within the timeframe determined by ECC, ECC will itself perform the revocation of the transfer.

### 3.6.6 Clearing Accounts

- (1) ECC shall keep an internal Clearing Account in EUR for every Clearing Member, in which the net accounts receivable or payable established in EUR in accordance with section 3.3.6 in each case are booked in EUR:
- (a) With regard to a System Clearing Member, the daily balance of this Clearing Account shall usually be debited from the settlement account of the Clearing Member or credited to said account at around 8:00 in case ECC does not claim an amount of money on such account as a margin.
  - (b) With regard to a DCP Clearing Member, the daily balance of such internal Clearing Account which is established during batch processing for a given Business Day is determined starting at 17:00 of every Business Day and communicated to the DCP Clearing Member. Unless the DCP Clearing Member establishes a different provision within a period of 30 minutes after the determination of the balance, ECC is entitled to effect a disposition to the benefit or at the expense of the Settlement Account of the DCP Clearing Member with effect before 8:00 am on the following Business Day by exercising the power of attorney granted to it by the DCP Clearing Member. ECC shall dispense with such disposition to the benefit of the DCP Clearing Member's settlement account if it claims a balance as collateral.
  - (c) All Clearing Members shall ensure their financial solvency on the respective Business Day by means of a corresponding balance on their Settlement Account.
- (2) In addition, ECC shall keep for each foreign currency one internal Clearing Account for every Clearing Member on which the net accounts receivable or payable formed in a foreign currency are settled in each case in accordance with section 3.3.6. The daily balances of these internal Clearing Accounts, which are established on the basis of batch processing for a Business Day, shall be debited from the respective Settlement Account of the System Clearing



Member at the respective Correspondent Bank or the DCP Clearing Member's Settlement Account kept in the respective foreign currency at the Settlement Bank or credited to said account unless ECC claims a balance as collateral on the following Business Day (USD around 8:00 am, GBP around 9:00 am). All Clearing Members shall ensure their financial solvency on the respective Business Day by means of a corresponding balance on the CBF 6 Series account of ECC or the Settlement Account of ECC at the Payment Bank or the Settlement Account at the Settlement Bank.

- (3) The amount credited to or debited from System Clearing Member's Settlement Account in accordance with para 1 lit. (a) and para 2 shall be credited to or debited to the respective Non-Clearing Members by the System Clearing Member or – separately with regard to every Non-Clearing Member – offset against other accounts receivable and payable unless the System Clearing Member claims a balance as collateral.

### **3.6.7 Collateral Clearing Account**

- (1) For every System Clearing Member, ECC shall keep an internal Collateral Clearing Account (Standard Collateral Clearing Account) in which
  - (a) payments and repayments of cash collateral as per section 3.5.4,
  - (b) additions and disposals of the securities collateral deposited in the pledged securities deposit at Clearstream Banking AG,
  - (c) if applicable, revenue from the utilisation of collateral and
  - (d) the amounts which might be credited to the separate Collateral Clearing Account of this System Clearing Member according to paragraph 3, if applicable,
 are considered.
- (2) With regard to every standard Collateral Clearing Account for every System Clearing Member ECC shall keep the following separate Collateral Clearing Accounts as sub-accounts of the standard Collateral Clearing Accounts for the purpose of the separate calculation and administration of collateral in accordance with the following provisions:
  - (a) with regard to Special Segregated Participants separate Collateral Clearing Accounts for every (i) Segregated Non-Clearing Member and (ii) Omnibus Account in accordance with paras 3 and 4;
  - (b) with regard to General Omnibus Participants a separate Collateral Clearing Account ("General Omnibus Collateral Clearing Account") in accordance with paras 5 to 7 in as far as this was requested by the System Clearing Member and
  - (c) with regard to Simple Omnibus Participants one or several separate Collateral Clearing Accounts ("Simple Omnibus Clearing Accounts") in accordance with paras 5 to 7 in as far as this was requested by the System Clearing Member.

- (3) In the event of passing-through of collateral (section 3.5.6 et seq.), a separate Collateral Clearing Account is kept as a sub-account of the Standard Collateral Clearing Account of the System Clearing Member for every Segregated Non-Clearing Member or Omnibus Account for the purpose of the separate calculation and administration of collateral. Apart from this, the separate Collateral Clearing Accounts are treated as a part of the Collateral Clearing Account of the Clearing Member
  - (a) The respective amount credited to the Pledged Cash Account of the respective Non-Clearing Member or to the Omnibus Account
  - (b) the value of the securities transferred to the CBF pledged securities deposit for the Non-Clearing Member or for the Omnibus Account and
  - (c) if applicable, revenue from the utilisation of collateral
 shall be taken into account in such a separate Collateral Clearing Account. Apart from this, the separate Collateral Clearing Accounts are treated as a part of the collateral Clearing Account of the System Clearing Member.
- (4) The value of the collateral entered in the separate Collateral Clearing Account of a Segregated Non-Clearing Member or Omnibus Account is only taken into account with regard to the collateral requirements of ECC towards the System Clearing Member with regard to this Segregated Non-Clearing Member or Omnibus Account.
- (5) A System Clearing Member can request that for the separate calculation and administration of collateral for Non-Clearing-Members and Clients
  - (a) a separate collateral clearing account ("General Omnibus Collateral Clearing Account"), or
  - (b) one or more separate collateral clearing accounts ("Simple Omnibus Collateral Clearing Account")
 are kept as a sub-account of the Standard Collateral Clearing Account for the purpose of the separate calculation and administration of collateral for Non-Clearing Members and clients.
  - (a) The amounts credited to the respective Pledged Cash Account and
  - (b) the value of the securities transferred to the CBF Pledged Securities Deposit for the corresponding securities Clearing Account and
  - (c) if applicable, revenue from the utilisation of collateral
 shall be considered in these separate collateral clearing accounts. Otherwise these collateral clearing accounts shall be treated as part of the System Clearing Member's Standard Collateral Clearing Account.
- (6) Sums of an amount which also offset any potential shortfalls in the separate collateral Clearing Accounts of the Segregated Accounts and Simple Omnibus Collateral Clearing Accounts must be booked within the Standard Collateral Clearing Account or the General Omnibus Collateral

Clearing Account – without consideration of the sums in the separate collateral Clearing Accounts of the Special Segregated Participants and the Simple Omnibus Collateral Clearing Accounts. The amounts which are not recorded in separate Collateral Clearing Accounts are liable for all shortfalls. The amounts booked within the General Omnibus Collateral Clearing Account are liable for the General Omnibus Participants and any possible shortfalls in the Margin Requirement of Special Segregated Participants and Simple Omnibus Participants.

- (7) The requirements of Article 39 in conjunction with Article 48 EMIR are complied with as follows:
- (a) The assets corresponding to positions of the Special Segregated Participants consist of:
    - the sum of the amounts booked on the separate Collateral Clearing Accounts for the Special Segregated Participants,
    - Trading Participant Collateral of a Non-Clearing Member which were pledged according to section 3.5.10 or section 5.3.5 para 2,
    - the share of the amounts booked in the General Omnibus Collateral Clearing Account which corresponds to the insufficient cover of the Margin Requirement through the separate Collateral Clearing Account of this Special Segregated Participant with insufficient coverage of the General Omnibus Collateral Clearing Account being distributed proportionately to agent position accounts and the accounts of the Non-Clearing Members in accordance with the Margin Requirements,
    - the share of the amounts booked on the Standard Collateral Clearing Account which corresponds to the Margin Requirement from the separate Collateral Clearing Account of this Special Segregated Participant in as far as no General Omnibus Collateral Clearing Account with an insufficient cover of the Standard Collateral Clearing Accounts first having an effect on agent position accounts and accounts of the Non-Clearing Members (without making the share negative as a result) and then being distributed proportionately to agent position accounts and accounts of the Non-Clearing Members in accordance with the Margin Requirements.
  - (b) The assets corresponding to positions of the Simple Omnibus Participants consist of:
    - a Non-Clearing Member's Trading Participant Collateral pledged according to section 3.5.10 or section 5.3.5 para 2 and
    - the share of the amounts recorded in the Simple Omnibus Collateral Clearing Account which correspond to the ratio of the Margin Requirement of a single agent position account or Non-Clearing Member to the sum of the Margin Requirements of all agent positions accounts or Non-Clearing Member which are allocated to the Simple Omnibus;
    - the share of the amounts recorded in the General Omnibus Collateral Clearing Account, which corresponds to the shortfall of the Margin Requirement by the separate collateral Clearing Account of this Simple Omnibus Participant, whereas shortfalls

in the General Omnibus Collateral Clearing Account are distributed proportionally to the respective Margin Requirements to the agent position accounts and the accounts of the Non-Clearing Members.

- If no General Omnibus Collateral Clearing Account is established, the share of the amounts booked in the Standard Collateral Clearing Account which corresponds to the shortfall in the Margin Requirement from the separate Collateral Clearing Account of this Simple Omnibus Participant with an insufficient cover of the Standard Collateral Clearing Accounts, whereas shortfalls of the Standard Collateral Clearing Account first having an effect on agent position accounts and accounts of the Non-Clearing Members (without making the share negative as a result) and then being distributed proportionately to agent position accounts and accounts of the Non-Clearing Members in accordance with the Margin Requirements.
- (c) The assets, which are assigned to the respective position accounts of the General Omnibus Participants, consist of:
- a Non-Clearing Member's Trading Participant Collateral pledged according to section 3.5.10 or section 5.3.5 para 2 and
  - the share of the General Omnibus Collateral Clearing Account which corresponds to the Margin Requirement of the General Omnibus Participant with the insufficient cover of the General Omnibus Collateral Clearing Account being distributed proportionately to agent position accounts and to Non-Clearing Members in accordance with the Margin Requirement.
  - In as far as a General Omnibus Collateral Clearing Account has not been established, the assets consist of the share of the Standard Collateral Clearing Account which corresponds to the Margin Requirements of the General Omnibus Participants with insufficient coverage first having an effect on agent position accounts and accounts of Non-Clearing Members (without making their share negative as a result) and being distributed proportionately to agent position accounts and accounts of Non-Clearing Members in accordance with the Margin Requirements.
- (d) In the event that a General Omnibus Collateral Clearing Account has been established, the assets which correspond to positions of the proprietary position accounts of the System Clearing Members consist of the value of the Standard Collateral Clearing Account without consideration of the sums in the separate sub-accounts of the Special Segregated Participants, of the General Omnibus and the Simple Omnibus Collateral Clearing Account; in the event that a General Omnibus Collateral Clearing Account has not been established, they consist of the share of the Standard Collateral Clearing Account corresponding to the Margin Requirement of the proprietary position accounts with insufficient coverage of the Standard Collateral Clearing Account having an effect on agent position accounts and accounts of Non-Clearing Members first (without making the share negative as a result). Furthermore, if the System Clearing Member is a Trading

Participant, the Trading Participant Collateral is assigned to its proprietary position account.

- (8) The Standard and Gross Omnibus Accounts are kept as separate collateral clearing accounts of the System Clearing Member for Indirect Clients, while they are treated as part of the collateral clearing account in which the collateral of the Indirect Clearing Service Provider is booked.

### **3.6.8 Cash Collateral Account for Trading Participant Cash Collateral**

- (1) Upon a request by a Trading Participant, ECC keeps internal inventory accounts for a Trading Participant as Cash Collateral Accounts of the Trading Participant in which Trading Participant Cash Collateral can be kept separately for each currency. Every internal inventory account of a Non-Clearing Member is connected to a System Clearing Member and is exclusively used for transactions which the Non-Clearing Member settles via this System Clearing Member. The recognition of the cash collateral kept in such an internal inventory account as Trading Participant Collateral requires the approval of this System Clearing Member. Such approval can be revoked within a period of one month as of receipt of the revocation at ECC and the Trading Participant.
- (2) The Trading Participant shall communicate its request for an increase or a reduction of the amount which is credited to its Cash Collateral Account as Trading Participant Cash Collateral by 12:00 on an ECC business day, at the latest.

If the Trading Participant is a Non-Clearing Member, ECC shall then automatically collect the resulting amount from the Settlement Account of the System Clearing Member as the paying office of the Trading Participant or credit such amount to it. Once the amount has been successfully collected from the Settlement Account of the System Clearing Member or credited to it, ECC shall concurrently effect an inventory change in the corresponding amount on a Cash Collateral Account of the Trading Participant.

If the Trading Participant is a DCP Clearing Member, ECC shall effect a disposition to the benefit or at the expense of the DCP Clearing Member's Settlement Account with regard to the resulting amount by exercising the power of attorney granted to it by the DCP Clearing Member. Once crediting to the Settlement Account of the DCP Clearing Member has been completed successfully, ECC shall concurrently effect an inventory change in the corresponding amount in the cash collateral account of the DCP Clearing Member.

### **3.6.9 Internal inventory accounts for Registry Based Products**

- (1) ECC keeps an internal inventory account regarding Registry Based Products which are booked on the respective registry accounts of ECC Lux or ECC respectively for every Trading Participant. Every internal inventory account of a Non-Clearing Member is connected to its System Clearing Member and is exclusively used for transactions which the Non-Clearing Member carries out via this System Clearing Member. Disposals and additions by means of sales and purchases and/or by means of the surrender and return on the registry account are

exclusively booked on said internal inventory accounts. The Registry Based Products booked in an internal inventory account substantiate the claim to the proportionate delivery which the Trading Participant has towards ECC Lux or ECC respectively with regard to the total stock kept in the respective fiduciary registry account.

- (2) The proportional share of each Trading Participant in the total stock or parts of it can be delivered to another registry account as soon as a booking to the internal inventory account is executed and as section 3.5.10 para 4 does not apply.
- (3) Upon a written request or a request via telefax to ECC by the System Clearing Member to which the respective internal inventory account is assigned according to section 3.5.10 para 1 sentence 2, the delivery of Registry Based Products to another registry account can be suspended temporarily. The request for the System Clearing Member's suspension is only possible within the period bindingly communicated to the System Clearing Member by ECC in advance and shall also apply to subsequent requests by the Non-Clearing Member with regard to the delivery of Registry Based Products until the suspension is revoked by the System Clearing Member. The System Clearing Member shall only demand such a suspension if this is necessary to secure unsettled claims against a Non-Clearing Member or a System Clearing Member; ECC will not verify this precondition.

### **3.7 Fees and price list**

With regard to the use of the systems of ECC and for services in connection with clearing of transactions ECC and the respective Settlement Entity charge fees to the Trading Participants and the Clearing Members in accordance with the more detailed definition of the respectively valid price list of ECC.

### **3.8 Default Fund**

#### **3.8.1 Default Fund**

- (1) In accordance with the provisions specified herein below ECC shall administrate a Default Fund. The Default Fund consists of funds by the Clearing Members (System-Clearing Members and DCP-Clearing Members) which ECC can utilise in the event of a default of the Clearing Member or in the event of termination and close-out netting according section 3.10 with regard to this Clearing Member (default).
- (2) Regardless of other collateral requirements by ECC, every Clearing Member shall be obliged to furnish a contribution to the Default Fund. The amount of the contribution to be furnished in each case shall be established by ECC for each Clearing Member in accordance with the published calculation method (Default Fund Contribution). ECC will from time to time adjust the Default Fund Contribution. If the Clearing Member uses the possibility of passing through collateral in accordance with section 3.5.6 et seq., ECC is entitled to demand an additional contribution to the Default Fund to the amount specified by ECC.



- (3) The respective amount shall be furnished in accepted collateral according to the provisions contained in section 3.5.

### 3.8.2 Pre-Funded Financial Resources of ECC

ECC identifies own funds ("Pre-Funded Financial Resources") which are used in the event of the default of a Clearing Member before the contributions by non-defaulting Clearing Members to the Default Fund. The amount of these Pre-Funded Financial Resources takes account of the requirements under supervisory legislation; the respective current amount is published on the ECC webpage ([www.ecc.de](http://www.ecc.de)).

### 3.8.3 Utilisation of the Default Fund

- (1) The Default Fund Contribution of a Clearing Member as requested in accordance with para **Fehler! Verweisquelle konnte nicht gefunden werden.** para 2 can be used to remedy all damage caused by the default of this or other Clearing Members ("Default Damage"). Consequential damages and loss of profit are not considered as Default Damage and the Default Fund Contribution of a Clearing Member shall not be used for such damages. The contributions to the Default Fund by the non-defaulted Clearing Members are used by ECC if, in the event of the default of a Clearing Member, the utilisation of the collateral provided by it, the collateral replacing equity and a contribution to the Default Fund, on the one hand, and the amount of the Pre-Funded Financial Resources by ECC, on the other hand, are not sufficient to cover the Default Damage. With regard to the utilisation, ECC distinguishes between contributions to the Default Fund of System Clearing Members and DCP Clearing Members.
- (2) Upon a default of a System Clearing Member, ECC shall utilise the margins, Pre-Funded Financial Resources and Default Fund Contributions in the order specified herein below:
1. Other margins as provided in accordance with section **Fehler! Verweisquelle konnte nicht gefunden werden.** et seq of the Clearing Member in default.
  2. Default Fund Contribution by the System Clearing Member which has defaulted.
  3. Pre-Funded Financial Resources of ECC to the current amount.
  4. Default Fund Contributions by all System Clearing Members; in this context, the contributions shall be utilised to the same proportionate shares.
  5. Default Fund Contributions by DCP Clearing Members whereby contributions shall be utilised to the same proportionate shares;
  6. Additional contributions to the Default Fund in accordance with para 5 as well as additional ECC contributions to the Pre-Funded Financial Contributions according to para 7.
- (3) In case of a default of a DCP Clearing Member, ECC shall use the margins and contributions to the Default Fund according to the provisions in para 2 with regard to no. 4 and 5 in such way that the contributions of the DCP Clearing Members will be utilised before the contributions of the System Clearing Members.

- (4) If a Clearing Member in default provides the payments due after the other Clearing Members' contributions to the Default Fund have already been used in their entirety or in part, ECC shall restock the contribution in reverse order as outlined in section 2; in particular, the Additional Contributions and contributions to the Default Fund by the other Clearing Members shall be restocked with a corresponding share, however, at maximum, up to the amount to which the contributions to the Default Fund have been used.
- (5) In the event that the margins and Default Fund Contributions listed in para. 2 no. 1 to 5 have been used and are not sufficient to cover the Default Damage, ECC can request the Clearing Members that have not defaulted (Request for Additional Contribution) to cover a part of the remaining Default Damage through an additional contribution to the Default Fund (Additional Contribution).
- (6) The Clearing Members shall furnish the Additional Contribution by the next business day in the form of cash collateral in accordance with para. 3.5.4 in the amount indicated in the Request for Additional Contribution. For every Clearing Member in default ECC can only issue one Request for Additional Contribution. The obligation to provide an Additional Contribution exists for each default event occurring before the date of termination of a clearing license according to section 2.1.8.
- (7) Within a period of one Business Day after the Request for Additional Contribution, ECC shall also furnish an Additional Contribution to the Pre-Funded Financial Resources according to section 3.8.2. The Additional Contribution corresponds to the product of the remaining Default Damage and the proportion of the pre-funded financial resources of ECC to the sum of the Default Fund contributions according to section **Fehler! Verweisquelle konnte nicht gefunden werden.** of the non-defaulting Clearing Members.
- (8) The calculation of the Additional Contribution is effected on the basis of data on the Business Day before the default. The amount of a single Additional Contribution shall be limited to the respective Default Fund Contribution of the System Clearing Member at the ECC business day before the default. In case of multiple requests for Additional Contributions within a period of 90 calendar days, the sum of Additional Contributions of a single Clearing Member is limited to its Default Fund Contribution at the day of the first request for Additional Contribution.
- (9) In the event of a default of a System Clearing Member, the amount of the Additional Contribution of any other System Clearing Member corresponds to the product of the remaining Default Damages according to para 3.8.3 para 5 less the additional contribution of ECC and the share of the single System Clearing Member's contribution on all Default Fund contributions of the System Clearing Members not in default.
- (10) In as far as Default Damage remains after the utilization of the Additional Contributions of ECC and the remaining System Clearing Members, ECC shall request Additional Contributions from the DCP Clearing Members. The amount of the Additional Contribution of any DCP Clearing Member corresponds to the product from the remaining Default Damages according to para 3.8.3 para 5, less the additional contribution of ECC, less the additional contributions of the System Clearing Members according to para 3.8.3 para 9 and the share of each DCP

Clearing Member on all Default Fund contributions of the DCP-Clearing Members not in default.

- (11) In the event of the default of a DCP Clearing Member, the Additional Contributions shall be calculated in accordance with the provisions in para 8 to 10, however, with the exception that the Additional Contributions of the DCP Clearing Members shall be used before the Additional Contributions of the System Clearing Members.

### 3.8.4 Replenishment of the contributions to the Default Fund

After the utilisation of the Default Fund according to section 3.8.3, ECC shall re-calculate the amounts of the Clearing Members in accordance with section **Fehler! Verweisquelle konnte nicht gefunden werden.** para 2. Amounts remaining taking into account available Default Fund Contributions and where applicable, unused Additional Contributions shall be furnished by the Clearing Members within a period of ten (10) Business Days. This obligation of replenishment exists for any default event occurring before the date of termination of a clearing license according to section 2.1.8.

### 3.8.5 Release of the contributions to the Default Fund

- (1) In case ECC or a Clearing Member terminate the clearing license, ECC shall release the contribution to the respective Default Fund by the Clearing Member concerned after a period of one month after the notice regarding the termination; however, it shall release said contribution at the earliest one month after the day on which all transactions have been settled whose clearing the respective Clearing Member is in charge of.
- (2) In case another Clearing Member is in default at the time of the termination of the clearing license according para. 1 or in case another Clearing Member defaults before such date on which a contribution to the Default Fund in question has to be released, such release shall only take place after utilization of contributions according to section 3.8.3 is completed.

## 3.9 Default

### 3.9.1 Occurrence of default

- (1) A Clearing Member shall be in default even without a warning in case:
  - (a) the Clearing Member does not furnish the margin demanded by ECC on every Business Day, the daily settlement payments, premiums or fees in due time or
  - (b) the Clearing Member has omitted to perform other obligations to be fulfilled towards ECC or the respective Settlement Entity in accordance with these Clearing Conditions.
- (2) Clearing Members shall inform ECC right away in case they cannot perform an obligation arising from the transactions on the markets, in particular an obligation regarding the provision of margins as well as the daily settlement payments.

- (3) ECC and the respective Settlement Entity shall be entitled to have recourse to a Clearing Member for cases of damage which they, other Clearing Members or Non-Clearing Members sustain on account of a default caused by such Clearing Member. Regardless of the occurrence of a case of damage at ECC or the respective Settlement Entity, the Clearing Member which has defaulted shall be obliged to pay liquidated damages to the amount of 0.5 per cent of the outstanding sum, and at least to the amount of EUR 500.00 per calendar day, however, plus an adequate interest rate on the outstanding sum to the amount of 5 per cent above the respectively valid base interest rate.

ECC and the respective Settlement Entity also reserve the right to impose liquidated damages in case it does not expressly state this reservation upon acceptance of the delayed payment. The assertion of a further damage shall not be affected by this.

### **3.9.2 Technical default**

- (1) In case a Clearing Member furnishes evidence substantiating that one of the failures specified under section 3.9.1 para 1 lit a is not based on insolvency and that the Clearing Member in question will fulfil his obligations forthwith, ECC shall be entitled to dispense with the application of the provisions designed for a case of a default specified in 3.9.1 and in sections 3.10 and 3.11. In this case, ECC shall only put the Clearing Member in technical default.
- (2) The Clearing Member concerned shall submit a written statement regarding the causes of its default to ECC immediately upon the occurrence of the technical default.
- (3) The Clearing Member affected by such technical default shall remove the causes of such default immediately.
- (4) In case there is a technical default according to paragraph 1 regarding a payment in a foreign currency, ECC shall be entitled to demand the immediate payment of the equivalent of the amount in a foreign currency which was not received within the period specified in EUR into the settlement account of ECC from the Clearing Member put in technical default. The amount in EUR shall be refunded without interest after receipt of the payment in the foreign currency. ECC is entitled to exchange the required amount in the respective foreign currency at its own discretion and to use it for foreign currency settlement. Paragraph 5 shall not be affected.
- (5) ECC can have recourse to a Clearing Member for cases of damage which have been caused to it or to other Clearing Members by a technical default caused by such Clearing Member. Regardless of the occurrence of a case of damage at ECC, the Clearing Member which is in technical default shall be obliged to pay liquidated damages in accordance with section 3.9.1 para 3.

### **3.9.3 Other measures in case of default**

- (1) In case of a default, ECC can apply for the initiation of measures against the Clearing Member on the market concerned in accordance with the provisions of the applicable laws, rules and regulations as well as Trading Conditions of the respective market. Before the execution of

each measure which has been applied for, ECC or the market shall hear the Clearing Member. Such hearing can be dispensed in case it is not required in consideration of the circumstances regarding the specific individual case.

- (2) In the selection of measures ECC shall take the interests of the Clearing Member concerned and of its Non-Clearing Members into account under consideration of the own interests of the Clearing Member and of the (general) interest in safeguarding proper trading on the exchange and of proper settlement of transactions.
- (3) In case of a default or a termination according to section 3.10, ECC can use, in particular, the Emergency Member Stop process as outlined in section 3.1.1 para. 4 towards the Clearing Member concerned as well as towards all Non-Clearing Members of this Clearing Member as a measure according to para. 1. As a result of the use of the Stop Button, the suspension of the concerned Clearing Member as well as of all Non-Clearing Members of this Clearing Member from the EEX markets (except primary market auctions) is requested and carried out technically right away. ECC reserves the right to fully or partially reject Derivatives Market trades which involve the Clearing Member concerned and its Non-Clearing Members as a counterparty and are to be imported into the ECC Clearing System from the activation of the Stop Button onwards and under consideration of the overall risk for ECC. It will inform the markets concerned of this fact forthwith. Furthermore, after the activation of the Stop Button, so-called Stop Requests will be sent to all other markets to which the Non-Clearing Member is admitted as a trading participant. The suspension of the Non-Clearing Members is also requested for these markets via the Stop Requests. With the activation of the Stop Button, ECC also confirms at the same time that, for the time being, it is no longer willing to settle further trades of this Clearing Member and of all Non-Clearing Members of this Clearing Member which are concluded on the markets.
- (4) A default can result in a termination according to section 3.10 as determined by ECC.

### **3.10 Termination and close-out netting provisions**

#### **3.10.1 Termination in the relationship between a Clearing Member and ECC**

- (1) In the event that
  - (a) a default as per section 3.9.1 (except for a technical default as per section 3.9.2) or (ii) a case of insolvency (as defined below) or (iii) any other circumstance arises giving ECC the right to terminate the Clearing Agreement with this Clearing Member for cause or
  - (b) a case of insolvency arises with regard to ECC or
  - (c) if ECC fails to comply with an undisputed obligation to pay money or deliver securities to a Clearing Member for a period of 30 Business Days and the Clearing Member has sent a written reminder announcing the termination of Derivatives Market Transactions according to this section 3.10.2 to ECC at least ten (10) Business Day prior to such termination,

the following shall apply: The rules in clause 7 sub-clause 1 sentence 1 and 4 (right to terminate for a material reason and exclusion of the right to a partial termination),<sup>3</sup> clause 7 sub-clause 2 and 3 (event of an insolvency, compensation claims),<sup>4</sup> clause 8 (claims to damages and compensation for benefits received)<sup>5</sup> and clause 9 sub-clause 1 (unpaid amounts)<sup>6</sup> of the template text of the Master Agreement for Financial Derivatives Transactions (2001 version), in the version in which it was published by Bundesverband deutscher Banken e.V. [Federal Association of German Banks, registered association] ("Master Agreement"), shall apply subject to the following conditions:

- References to the "Contract" in the rules of the Master Agreement referred to above (1) shall be read as references to the Clearing Agreement with the Clearing Member concerned and to transactions covered by it, while references to a "Party" (2) shall be read as references to the Clearing Member concerned or to ECC.
- For the purposes of the provisions of the Master Agreement referred to herein above every Derivatives Market Transaction, every open delivery or acceptance obligation from Derivatives Market Transactions which have not been fully settled yet and from every Spot Market Transaction which has not yet been fully fulfilled by ECC is considered a separate transaction within the meaning of the Master Agreement.

<sup>3</sup> Clause 7 sub-clause 1 sentence 1 and 4 of the Master Agreement has the following wording: "Where transactions have been entered into and not yet fully settled, the Agreement can only be terminated by either party for material reason. (...) A partial termination, in particular, a termination of some and not all transactions is excluded."

<sup>4</sup> Clause 7 sub-clause 2 and 3 of the Master Agreement has the following wording: "(2) The Agreement shall terminate, without notice, in the event of an insolvency. An insolvency shall be given if an application is filed for the commencement of bankruptcy or other insolvency proceedings against the assets of either party and such party either has filed the application itself or is generally unable to pay its debts as they become due or is in any other situation which justifies the commencement of such proceedings. (3) In the event of termination upon notice or upon insolvency (hereinafter called "Termination"), neither party shall be obliged to make any further payment or perform any other obligation under Clause 3 Sub-clause (1) which would have become due on the same day or later; the relevant obligations shall be replaced by compensation claims in accordance with Clauses 8 and 9."

<sup>5</sup> Clause 8 of the Master Agreement has the following wording: "(1) In the event of Termination, the party giving notice or the solvent party, as the case may be, (herein after called "Party Entitled to Damages") shall be entitled claim damages. Damages shall be determined on the basis of replacement transactions, to be effected without undue delay, which provide the Party Entitled to Damages with all payments and the performance of all other obligations to which it would have been entitled had the Agreement been properly performed. Such party shall be entitled to enter into contracts which, in its opinion, are suitable for this purpose. If it refrains from entering into such substitute transactions, it may base the calculation of damages on the amount which it would have needed to pay for such replacement transactions on the basis of interest rates, forward rates, exchange rates, market prices, indices and any other calculation bases as well as costs and expenses at the time of giving notice or upon becoming aware of the insolvency, as the case may be. Damages may be calculated by taking into account all Transactions; any financial benefit arising from the Termination Transactions (including those in respect of which the Party Entitled to Damages has already received all payments and performance of all other obligations by the other party) shall be taken into account as a reduction of damages otherwise determined. (2) If the Party Entitled to Damages obtains an overall financial benefit from the Termination of Transactions, it shall owe the other party, subject to Clause 9 Sub-Clause (4) or, where agreed, Clause 12 Sub-clause (4) a sum corresponding to the amount of such benefit, but not exceeding the amount of damages incurred by the other party. When calculating such financial benefit, the principles of Sub-clause (1) as to the calculation of damages shall apply mutatis mutandis."

<sup>6</sup> Clause 9 Sub-clause 1 of the master agreement has the following wording: "Unpaid amounts and any other unperformed obligations and the damages which are payable shall be combined by the Party Entitled to Damages into a single compensation claim denominated in Euro, for which purpose a money equivalent in Euro shall be determined, in accordance with the principles set forth in Clause 8 Sub-clause (1) Sentences 2 to 4, in respect of claims to the performance of such other overdue obligations."



- The term “event of insolvency” as used herein has the meaning defined in clause 7 sub-clause 2 of the Master Agreement. clause 7 sub-clause 2 of the Master Agreement is supplemented with the following sentence in this respect: “The event of insolvency shall also be given if a competent supervisory authority applies for bankruptcy or other insolvency proceedings to be initiated with regard to a party or if such authority takes a measure which is likely to prevent the party from performing its payment obligations under transactions on account of provisions under bankruptcy or insolvency law or similar provisions which are material for the Party’s business operations; the insolvency of a company which can exercise control over a party within the meaning of Art. 17 AktG [German Companies Act] or of comparable national rules (ultimate parent) shall correspond to an event of insolvency regarding a Clearing Member.” For US-Clearing Members clause 7 sub-clause 2 of the Master Agreement in respect of the definition of event of insolvency is supplemented with the following sentence: “An event of insolvency shall also be constituted, if insolvency proceedings are involuntarily commenced against a US-Clearing Member (i.e. by a creditor or regulator) but not dismissed within 30 days, or if a receiver is appointed for all or a substantial portion of a US-Clearing Members assets; or if an assignment occurs for the benefit of a US-Clearing Members’ creditors.”
  - In clause 8 para 1 sentence 2 of the Master Agreement, the phrase "without undue delay" shall be replaced by the phrase “in accordance with the procedures applied by ECC” in the cases as per 3.10.1 para 1 lit. a) and with the phrase “without undue delay; however, at the latest on the fifth Business Day after the opening of the insolvency proceedings” in the cases as per section 3.10.1 para 1 lit. b) and c).
  - If ECC is the party giving notice or the solvent party, replacement transactions shall be concluded pursuant to clause 8 of the Master Agreement in as far as this is provided for in section 3.11.
  - A termination without notice according to clause 7 sub-clause 2 sentence 1 of the Master Agreement shall not apply to US-Clearing Members.
  - For US-Clearing Members unpaid amounts and any other unperformed obligations and the damages which are payable (“Payable Amount”) shall be combined and determined in USD in deviation to clause 9 para 1 of the Master Agreement. ECC shall use fair market conditions to determine the exchange rate for the conversion of the Payable Amount.
- (2) Regardless of the termination of the Clearing Agreement with a Clearing Member according to paragraph 1, the rights and obligations of this Clearing Member, of Non-Clearing Members, of ECC and the respective Settlement Entity shall continue to apply according to Section 3.3.5 para 3.

### 3.10.2 Termination in the relationship between the Non-Clearing Member and the System Clearing Member

- (1) Subject to the provisions below and to the provisions in section 3.5.6 para 12 the System Clearing Members and the Non-Clearing Members are free to conclude close-out netting agreements with each other which govern the legal consequences in the relationship between the System Clearing Member and a Non-Clearing Member if a circumstance which gives one party the right to terminate the NCM Agreement for cause arises with regard to the System Clearing Member or the Non-Clearing Member or if a case of insolvency arises with regard to one party. If ECC has approved a close-out netting agreement between a System Clearing Member and a Non-Clearing Member, the rules of such close-out netting agreement take precedence over these Clearing Conditions.
- (2) If no close-out netting agreement between a System Clearing Member and a Non-Clearing Member has been concluded all corresponding transactions of the System Clearing Member with the Non-Clearing Members that settle their transactions via this System Clearing Member shall be terminated at the same time in the event of the termination of the clearing agreement as per section 3.10.1 para 1 lit. a. These obligations shall be replaced by a uniform compensation claim between the respective Non-Clearing Member and the System Clearing Member, the amount of which shall be calculated by ECC pursuant to section 3.10.1 para 1 on the basis of the calculation as per section 3.11 and communicated by ECC to the Non-Clearing Member and the System Clearing Member.
- (3) If a close-out netting agreement between the System Clearing Member and a Non-Clearing Member has not been approved by ECC, the rights of ECC under these Clearing Conditions shall remain unaffected by this close-out-netting-agreement.
- (4) In the event of the termination of the Clearing Agreement according to section 3.10.1 para 1 lit. b or c, all corresponding transactions between the System Clearing Member and the Non-Clearing Members who settle transactions via this System Clearing Member shall terminate at the same time. These obligations under these transactions shall be replaced by a uniform compensation claim between the Non-Clearing Member and the System Clearing Member, the amount of which shall be calculated by the System Clearing Member on the basis of the settlement with ECC.

If a close-out netting agreement has been concluded between a System Clearing Member and a Non-Clearing Member or a Client, the termination of the Clearing Agreement pursuant to section 3.10.1 para 1 lit. b or c shall constitute a cause for termination within the meaning of this close-out netting agreement between a System Clearing Member and a Non-Clearing Member or customer. The uniform compensation claim between the System Clearing Member and the Non-Clearing Member or client shall be calculated by the System Clearing Member on the basis of this close-out netting agreement in this case.

### 3.11 Legal consequences upon termination

#### 3.11.1 Transfers of positions and collateral, closing-out and utilisation of collateral

If ECC is the terminating or solvent party in one of the events described under section 3.10.1, ECC shall take the measures outlined herein below in the sequence specified below, in particular, in order to safeguard the fulfilment of the requirements under Article 48 EMIR – if necessary by including the respective markets:

1. Transfer of all or of individual positions from Known Participants to other Clearing Members – in as far as the Known Participants request this - at the discretion of ECC and under consideration of the overall risk for ECC. To this end, ECC will request all Known Participants to appoint a new Clearing Member that has approved of the transfer within a period set by ECC. Open positions of Known Participants which a Back-up Clearing Member has specified according to section 2.1.10 are also transferred to the Back-up Clearing Member without an application in accordance with sections 3.1.4 and 3.1.5 provided the Back-up Clearing Member has approved of this.

In as far as the positions of Special Segregated Participants have been transferred according to section 3.11.1 sub-para 1, ECC shall initiate the transfer of the assets of these Special Segregated Participants which are not allocated to ECC for the fulfilment of the claims to an account at the new Clearing Member specified by the respective Special Segregated Participant in accordance with section 3.11.2 lit. a upon a request by these participants. In this context, the transfers of assets only refer to those assets which are allocated to the corresponding separate Collateral Clearing Accounts.

In as far as all position in a Simple Omnibus or in the General Omnibus have been transferred to the same new Clearing Member or in as far as positions of Special Segregated Participants have been transferred, ECC shall initiate the transfer of assets which are not needed for the fulfilment of own claims to the new Clearing Member by transferring cash collateral and proceeds of the utilisation of security collateral upon a joint request by all clients and Non-Clearing Members concerned to an account specified by these at the new Clearing Member in accordance with the procedure outlined in section 3.11.2 lit. b (ii) – (iv) settling the parallel debt referred to in section 3.5.1 para 5. Trading Participant Collateral as well as Registry based Products shall not be affected by the transfer.

2. Aggregating of the accounts receivable or payable from the position transfer according to no. 1 which might exist and of all other accounts receivable and payable which have fallen due into one net account receivable or payable in accordance with section 3.3.6 paras 1 and 2 subject to the condition that such summary is effected across currencies.
3. Netting out of the positions not transferred according to no. 1 into a net position regardless of whether the underlying derivatives market transactions are booked on agent po-

sition accounts or proprietary position accounts. Afterwards, closing-out of this net position by ECC, the Market or by a Trading Participant determined by ECC and aggregating of the amount resulting from closing-out with the net account receivable or net account payable into a balancing claim according to section 3.10.1.

4. If the Clearing Member has a net account receivable from ECC, the surplus shall be refunded to the Clearing Member.
5. Use of the collateral provided by the Clearing Member (including the collateral provided according to section 3.5.9) and of the collateral provided by the Non-Clearing Members in Trading Participant Collateral according to section 3.5.10 and section 5.3.5 para 2 if ECC has a net account receivable from the Clearing Member. Such use of collateral by ECC shall be effected in accordance with the method described in section 3.11.2.

In as far as necessary, the contributions by the Clearing Member to the Default Fund according to section 3.8.3 and collateral replacing equity (section 2.1.1 para 4) which might also have been provided are used in addition. Collateral or guarantees used are utilised by ECC or by an office designated by ECC at ECC's reasonable discretion.

6. Refunding of collateral to the respective beneficiaries according to 3.11.2 in as far as the collateral has not been used.

### 3.11.2 Utilisation of collateral

In as far as ECC has a net account receivable from the Clearing Member, ECC shall allocate it to the:

- (a) combined proprietary and market maker position accounts of the Clearing Member,
- (b) agent position accounts of the Clearing Member,
- (c) combined accounts of a Non-Segregated Non-Clearing Member,
- (d) combined accounts of a Segregated Non-Clearing Member and
- (e) combined Omnibus accounts each individually

by proportionally allocating, at maximum, an amount which would result if transferring, netting-out and closing-out were exclusively effected with regard to this account according to section 3.11.1 no. 1 to 3 to these accounts.

- (a) The assets allocated to this account according to section 3.6.7 para 6 are used as collateral, at a maximum, for the proportionate fulfilment of the net account receivable which ECC has from this Clearing Member. The time of the allocation corresponds to the time of the termination according to section 3.10.2.
- (b) In as far as the amount allocated to an account is not covered by the allocated assets according to section 3.6.7 para 6, the assets allocated to the Clearing Member's proprietary position account according to section 3.6.7 para 6 can be used as collateral.
- (c) In as far as, in the case of position accounts of Simple or General Omnibus Participants, the amount allocated to the agent position account or the accounts of a Non-Segregated

Non-Clearing Member is not covered by the assets allocated to the account according to section 3.6.7 para 6, assets (except Trading Participant Collateral of the Non-Clearing Members) allocated to other agent position accounts of the same Simple or General Omnibus according to section 3.6.7 para 6 can also be used as collateral.

- (d) If the amount allocated to a position account is not covered by the assets allocated to the account according section 3.6.7 para 6 and if this position account is not allocated to a General Omnibus Participant, assets booked within the Standard Collateral Clearing Account or the General Omnibus Collateral Clearing Account (except for Trading Participant Collateral of the Non-Clearing Members) which are allocated to other agent position accounts or accounts of Non-Segregated Non-Clearing Members according to section 3.6.7 para 6 can be used as collateral. In this context, assets which are booked in the separate Collateral Clearing Accounts of the Special Segregated Participants and the Simple Omnibus Collateral Clearing Accounts are taken into account.

### 3.11.3 Transfer/distribution and return of collateral not needed

For the purpose of the fulfilment of its obligations under article 48 para 7 EMIR, ECC shall effect the distribution of assets allocated according to section 3.6.7 para 6 which were not needed to satisfy claims (except for the claim according to section 3.5.1 para 4) of ECC as follows:

- (a) With regard to assets on separate Collateral Clearing Accounts of a Special Segregated Participant ECC shall initiate the return to the Segregated Non-Clearing Member or the Clearing Member or the Omnibus Representative by ECC releasing the collateral pledged to it according to section 3.5.9 para 1 and informing CBF of the release granted by ECC in the case of securities collateral.
- (b) Assets in the Standard Collateral Clearing Account according to section 3.6.7 para 1 or the General and Simple Omnibus Collateral Clearing Account which were not needed to satisfy the claims of ECC (with the exception of the parallel debt according to section 3.5.1 para 5) are used in the following manner:
  - (i) Assets which are allocated to positions of Clients according to section 3.6.7 are transferred back to the Clearing Member. If obligations of the Clearing Member towards its Clients exist with regard to these assets, the re-transfers shall be effected for the account of the Clients. These accounts receivable are not checked by ECC.
  - (ii) With regard to assets which are allocated to positions of Known Participants (except for collateral passed through pursuant to section 3.5.6 et seq.) ECC shall request the representative of the Clearing Member on behalf of the Known Participants to confirm within a period set by ECC that it will use these assets in order to fulfil the collateral obligation of the Clearing Member towards the Known Participant according to section 3.5.1 para 5 without undue delay without these assets becoming part of the bankruptcy estate. If a corresponding confirmation is provided by the representative of the Clearing Member, ECC shall return the assets which have not been

used according to section 3.11.1 or which have not been returned according to section 3.11.2 lit. a to the representative of the Clearing Member upon the express request by the Known Participant for its account. The parallel debt shall expire upon the return to the Clearing Member, while any obligations of the Clearing Member to the Known Participant which might exceed section 3.5.1 para 5 shall remain unaffected. If there is no administrator or if an administrator has not been appointed yet, ECC shall act directly towards the Clearing Member pursuant to this paragraph.

(iii) If a Known Participant does not wish the fulfilment of the collateral obligations of its Clearing Member via the representative of the Clearing Member (e.g. because the representative of the Clearing Member has not submitted the confirmation according to section 3.11.1 lit b (ii) within the period specified by ECC), ECC will – in order to settle the parallel debt as referred to in section 3.5.1 para 5 – use the collateral furnished by the Clearing Member, in as far as a utilisation has not been taken place according to section 3.6.7 or a distribution of assets according to section 3.11.2 lit. b (i) has not taken place. Proceeds of the utilisation of collateral will be distributed to the Know Participants subject to the conditions outlined below:

- In order to determine the amount of the parallel debt according to section 3.5.1 para 5, ECC shall request the Known Participants of the Clearing Member concerned to furnish proof of the collateral obligations which the Clearing Member has towards it and of the amount of these obligations and to inform ECC of the corresponding account receivable by submitting a confirmation by the Clearing Member's representative within a period set by ECC in the respective individual case.
- If such a confirmation by the representative cannot be provided during the period specified, ECC shall request the respective Known Participants to furnish proof of the amount and scope of the respective account receivable within a further period set by ECC for the individual case by forwarding a confirmation by an auditor. To this end, ECC shall provide a list of approved auditors. Proof shall be provided in the form of an unqualified confirmation which the auditor shall grant based on a process coordinated with ECC in advance.  
In the event that claims are asserted against ECC, the benefitting Known Participant shall be liable for the correctness of the account receivable communicated to ECC to the amount of the assets allocated to it in accordance with the following provisions plus any interest or other costs.
- ECC shall consider the Clearing Member's unfulfilled collateral obligations which are furnished to it and which are proved and reported to it during the respective period concerned.
- In this context, collateral obligations shall be considered at maximum in the amount of the assets which ECC allocates to the respective account according to section 3.6.7 para 6.
- ECC shall allocate assets of the Standard Collateral Clearing Account or of the General Omnibus Collateral Clearing Account or the Simple Omnibus Collateral



Clearing Account (without considering the assets in the separate Collateral Clearing Accounts of the Special Segregated Participants and in the Simple Omnibus Collateral Clearing Accounts) which have not been used according to section 3.6.7 or which have not been (i) distributed according to section 3.11.2 lit. b which are allocated to accounts of Known Participants according to section 3.6.7 para 6 to the collateral obligations of the Clearing Member which are taken into account by ECC in accordance with the amount determined and recognised by ECC on a proportionate basis, however, at maximum in the amount of the existing liability. ECC shall distribute the utilisation proceeds corresponding to the proportionate allocation to the Known Participants. The utilisation of security collateral pledged by the Clearing Members to ECC shall take place immediately prior to the payment. Upon the payment by ECC the Clearing Member's collateral obligations towards the Known Participants shall cease to exist up to the value of the payment amount. The Known Participants accept the payment by ECC as performance in lieu of performance of the contract (Annahme an Erfüllung statt, section 364 para 1 BGB (German Civil Code)).

- After such payment, the parallel debt under section 3.5.1 para 5 shall also be considered fulfilled.

- (iv) ECC shall re-transfer any residual amount or residual collateral which might remain from assets allocated to the Known Participants (section 3.6.7 para 6) (with the exception of Trading Participant Collateral of a Non-Clearing Member which were pledged according to section 3.5.10 and section 5.3.5 para 2). In as far as there are liabilities which the Clearing Member has towards these Known participants under these Clearing Conditions with regard to these assets which have not already been fulfilled by section 3.11.2 (iii), the return shall be effected for the account of the Known Participants.

The parallel debt shall lapse upon the return to the Clearing Member for the account of the Known Participants; any further collateral obligations which this Clearing Member has towards the Known Participant according to section 3.5.1 para 5 shall remain unaffected.

ECC shall transfer any remaining residual amount or residual collateral back to the Clearing Member.

- (v) Repayment of remaining Trading Participant Cash Collateral to the Trading Participant, release of the remaining collateral regarding Emission Rights to Trading Participants, waiver of the right to discharge the rights under the Trading Participant Bank Guarantee by returning the Trading Participant Bank Guarantee to the bank issuing the said guarantee.

### 3.12 Default Management Auctions

- (1) Positions can be closed out according to section 3.11.1 no. 3 in the framework of OTC auctions (Default Management Auctions). ECC is authorised to auction Spot Market products in

accordance with the following rules as well. In this case, the rules regarding positions apply accordingly for Spot Market products.

- (2) Participation in Default Management Auctions is voluntary in principle; however in accordance with the provisions regarding its default management process ECC can also require a Non-Clearing Member or Clearing-Member to take part in Default Management Auctions (Mandatory Auctions). ECC will only order a Mandatory Auction after it has taken all measures in accordance with the rules of its default process which it considers required and reasonable for closing out, in particular, at least one Default Management Auction on voluntary basis.
- (3) The following rules apply to Default Management Auctions.

### **3.12.1 Participation in the Default Management Auction**

- (1) ECC can select Non-Clearing Members or Clearing Members at its own discretion – e.g. by assessing the risk, the trading activity and the existing positions of the Trading Participant in the products to be auctioned – and invite them to take part in a Default Management Auction. ECC shall only invite Non-Clearing Members or Clearing Members that are recognised by ECC as Trading Participants in, at least, one of the products to be auctioned.
- (2) Concurrently with the invitation of the Trading Participant, ECC informs the System Clearing Members of the invited Non-Clearing Members of the invitation to take part in the auction. Provided the auction is not a Mandatory Auction, a System Clearing Member can object to the participation of a Non-Clearing Member in the auction until the end of the Bidding Period.

### **3.12.2 Special provisions for the Mandatory Auction**

- (1) If Trading Participants were requested by ECC by an auction letter (Auction Letter) to take part in Mandatory Auctions, they are obliged to submit bids in these auctions in accordance with the more detailed provisions in the Auction Letter (in particular in respect of, product and minimum bid size, cf. section 3.12.7).
- (2) With the approval of ECC, Trading Participants can appoint a third party towards ECC, in particular, their System Clearing Member, to take part in a Mandatory Auction for them. If the appointed third party confirms the appointment, it assumes all rights and obligations under the auction, including the provisions in section 3.12.7, on behalf of the Trading Participant. The third party must be entitled to take part in the ECC Default Management Auctions and it must be admitted to trading on the partner exchanges in, at least, the same product groups as the respective Trading Participant concerned. Unless otherwise specified in writing, the third party is appointed until the appointment is revoked by ECC or the Trading Participant.
- (3) Instead of participating in future Mandatory Auctions ECC offers Trading Participants, to apply for an exemption and to pay a non-participation fee in each event. Such request will only be approved if the Trading Participant demonstrates to ECC that legal provisions, bylaws or other provisions prohibit participation in an auction or the holding of open positions in general or

overnight. The request must be submitted at the latest four weeks before a potential Mandatory Auction. ECC does not have to render a decision on delayed requests. Unless otherwise specified in the approval letter, the approval of the request is valid until it is revoked by ECC or by the Trading Participant.

- (4) The method for calculating the non-participation fee is determined by ECC and published on the ECC website. The non-participation fee is charged at the time at which ECC carries out a Mandatory Auction. To the degree to which the losses caused by the default of a Clearing Member exceed the collateral furnished by it, the non-participation fee is used to cover these losses. The remaining amounts of the non-participation fee are distributed proportionately (based on trading volume) to those Trading Participants whose bids ECC has accepted.

### **3.12.3 Execution of the Default Management Auction**

- (1) Before every auction, ECC informs all invited Trading Participants of the positions to be auctioned in an Auction Letter sent out via e-mail. The Auction Letter includes a request for the Trading Participants to submit Bids for the positions to be auctioned using the auction form specified by ECC (invitatio ad offerendum).
- (2) The Auction Letter specifies a deadline for the submission of bids (Bidding Period). Bids which are submitted after the expiry of this deadline are generally not considered. At the same time, the Auction Letter also specifies a deadline for the execution of the auction after the end of the Bidding Period (Auction Period). Bids remain valid until the end of the Auction Period.
- (3) ECC can extend or shorten the Bidding Period at its own discretion at any time before its end or cancel the Default Management Auction. If ECC has declared the Default Management Auction a Mandatory Auction, it cannot shorten the Bidding Period. ECC will cancel a voluntary Default Management Auction in its entirety or with regard to individual positions in particular in those cases in which there is an insufficient number of bids or of suitable bids. The invited Trading Participants will be informed of the respective measure via e-mail. In the event of a cancellation, submitted bids are no longer valid; in any other cases bids which have already been submitted remain effective.
- (4) ECC can extend or shorten the Auction Period at its own discretion at any time before its expiry. If ECC has declared a Default Management Auction a Mandatory Auction, it cannot extend the Auction Period. The invited Trading Participants will be informed of any change of the Auction Period via e-mail. If the Auction Period is extended, bids submitted by a Trading Participant only remain effective if the Trading Participant has expressly approved the extension of the Auction Period.
- (5) The Trading Participant is obliged to treat all the information regarding a Default Management Auction as being confidential. In as far as a Trading Participant does not take part in the auction; the information has to be deleted forthwith. In particular, the information must not be passed on either directly or indirectly and it must not be used for proprietary trading purposes outside of the Default Management Auction, for price agreements with third parties or for the submission of recommendations to buy or to sell or abusively in any other way.

### 3.12.4 Submission of bids

- (1) The bids are submitted by the Trading Participants with the help of an auction form using the method specified by ECC in the Auction Letter. If required, ECC shall verify the authenticity of the bids submitted by means of a telephone enquiry or using other suitable means of confirmation (e.g. via fax).
- (2) Until the end of the Bidding Period, the Trading Participant can amend submitted bids by transferring a new auction form. In this case, the entire auction form is considered a new bid and all auction forms submitted previously cease to be valid altogether; as a result, only the last auction form submitted before the end of the Bidding Period forms the binding bid. The time of the submission of the bid is defined as the time of receipt of the auction form by ECC. Any limitations of liability which might be transferred by the Trading Participant upon the submission of the auction form or any other declaration which might raise doubts regarding the binding character of a bid will be disregarded. Except in the case of a Mandatory Auction, Trading Participants are not obliged to submit bids for all positions. Bids by a Trading Participant regarding positions for which the said Trading Participant is not an approved Trading Participant of ECC shall not be considered in the auctions. Bids must be submitted in the currency of the corresponding position.

### 3.12.5 Acceptance of bids

- (1) During the Auction Period, ECC carries out the auction per product in accordance with the principles specified in para. 2. Auctions are carried out as “pay-as-bid”<sup>7</sup> auctions. Trades are concluded by ECC accepting bids subject to the condition precedent of a successful registration according to section 3.12.5.
- (2) Bids are first sorted by price for each product with the respective better bid taking priority. If the price is the same, the chronological order of the submission of the bids shall be decisive with the respective earlier bid having priority (price-time priority). ECC shall only accept orders until the respective quantity to be auctioned has been sold. Therefore, bids can also be accepted in part. Bids which according to ECCs assessment deviate significantly from the current fair market value or – outside of Mandatory Auctions – the acceptance of which increases the risk in the remaining portfolio to be closed out, can remain unconsidered. If the bids are not sufficient to sell the entire volume to be auctioned, a sale of partial quantities is also possible.
- (3) At the latest upon the end of the Auction Period the successful bidders are informed of the bids which ECC accepts. ECC is not obliged to inform bidders of the non-acceptance of bids.

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<sup>7</sup> “Pay-as-bid” auctions are auctions in which the successful bidder receives one unit of a certain product at the price offered by the bidder. There is no uniform pricing on the basis of all bids submitted.

### 3.12.6 Registration and settlement of the trades

- (1) With the successful registration of the trade in accordance with the rules of the respective market, a binding contract regarding the position to be auctioned is concluded between ECC and the Trading Participant.
- (2) The trades of the successful bidders are registered at the respective bid price. Registration is effected by ECC in the name and on behalf of the successful bidder immediately after acceptance of the bids according to section 3.12.5 para 3. ECC may also use trading-on-behalf services of the respective market for registration. With their participation in the auction the Trading Participants authorise ECC and, if applicable, the respective market to register the trades concluded in their name and undertake to provide all other acts of cooperation which are required for the registration. The Trading Participants will be informed by ECC of registrations without undue delay.

### 3.12.7 Minimum bid size

- (1) ECC can allocate individual minimum bid sizes per position to be auctioned to every Trading Participant in a Mandatory Auction. The minimum bid size of a Trading Participant corresponds to his share in the position to be auctioned and is rounded up to a full contract. The share per trading participant and position to be auctioned corresponds to the share of the current net position of a trading participant without observing the algebraic sign on the net open interest of all trading participants<sup>8</sup> in a mandatory auction at the last ECC business day before the auction. The positions to be auctioned are adjusted for cascading carried out during batch processing and booked-out maturities and for successfully allocated bids to all participants from preliminary auctions. However, the minimum bid size corresponds, at a maximum, to the net position of this Trading Participant in this contract. Moreover, in determining the shares and the minimum bid sizes of the Trading Participants, ECC will fully consider the bids accepted for these positions in previous auctions for closing-out of the positions of the same Clearing Member.
- (2) If – in a Mandatory Auction – a Trading Participant does not submit a bid or submits a bid regarding a number of contracts below the minimum bid size or submits a bid at prices which, in the opinion of ECC, deviate significantly from the fair market value, ECC can carry out an allocation of positions remaining after the Default Management Auction in accordance with section 3.12.8. . ECC will agree on this opinion - as far as economically reasonable within the specified deadlines – with the market operation (or equivalent function) of the markets where the corresponding products are traded.

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<sup>8</sup> The sum of net long and short positions in a single contract per trading participant observing the algebraic sign, summed over all trading participants without observing the algebraic sign.

### 3.12.8 Allocation of positions after Default Management Auctions<sup>9</sup>

- (1) If positions to be closed out remain after a Mandatory Auction, ECC will allocate these positions to the Trading Participants in the Mandatory Auction in the following order of priority:
  - (a) Level 1: All Trading Participants that have not taken part in the auction. Within level 1, open positions are allocated on a pro-rata basis in accordance with the share of the minimum bid sizes of a Trading Participant in proportion to the total of the minimum bid sizes of all Trading Participants within this level.
  - (b) Level 2: All Trading Participants that have not bid the minimum bid size for the position to be auctioned according to section 3.12.6. Within level 2, open positions are allocated on the basis of the difference between the bid size submitted and the minimum bid size.
  - (c) Level 3: Trading Participants that have submitted bids on the minimum bid sizes allocated to them in these positions at prices which, in the opinion of ECC, deviate significantly from the fair market value. Within level 3 open positions are allocated on the basis of the difference between the respective bid prices and the fair market value or – if available – at the daily settlement price.
- (2) The allocation is effected to the Trading Participants at a maximum up to the amount of the minimum bid size according to the order of priority stipulated in para 1 for every position remaining for closing-out at this point in time. Positions are only assigned to a certain level if open positions still remain after the allocation within a preceding priority. In the event of an allocation within level 2 and 3, only those bids/missing bids of the Trading Participant (bid or ask) which were relevant for the position to be auctioned (bid or ask side) are taken into account. Positions remaining after the calculation of the share (including rounding) are allocated at random.
- (3) The price at which a position is allocated to the Trading Participants corresponds to the daily settlement price established by the partner exchanges on the day of the auction.
- (4) Trading Participants which positions were allocated to according to the above provisions will be informed of the allocation by ECC forthwith. The trades are registered in accordance with section 3.12.6.

### 3.13 Measures for the Implementation of the Austrian Energy Efficiency Act (EEffG)

- (1) Trading Participants that are final energy consumers within the meaning of section 5 sub-section 1 no. 2 of the Austrian EEffG are obliged to register with ECC in as far as they have purchased volumes of energy for the final consumption of energy (within the meaning of section 5 sub-section 1 no. 1 EEffG) since 1<sup>st</sup> January 2014 or intend to purchase energy for the final consumption of energy from ECC Lux. The registration must be made in writing before

<sup>9</sup> An allocation of positions according to section 3.12.8 of the Clearing Conditions will only be performed at Default-Management Auctions undertaken after January 1<sup>st</sup>, 2019.



acceptance of the first delivery of energy for the final consumption. With regard to periods in the past, registration must be effected subsequently within a period of one month after these Clearing Conditions take effect. A higher annual fee is charged for trading participants registered as final energy consumers in order to cover the costs of the measures by ECC connected with EEffG (details are specified in the ECC price list). Trading Participants that do not register with ECC as final energy consumers within the meaning of EEffG assure ECC that they have not purchased any volumes of energy from ECC Lux for the final consumption of energy (within the meaning of section 5 sub-section 1 no. 1 EEffG) and that they do not purchase energy from ECC Lux for the final consumption of energy without a prior registration.

- (2) The Trading Participant is obliged to report the energy purchased from ECC Lux for the final consumption of energy within the meaning of EEffG from 1<sup>st</sup> January 2014 to ECC. These reports shall be submitted on an ongoing basis, at the latest, on the third business day of every delivery month. The reports for reporting months which have already expired must be submitted within a period of four weeks after these Clearing Conditions take effect. In addition, the Trading Participants are obliged to submit an annual report on the final energy consumption volumes within the meaning of EEffG to ECC by 15<sup>th</sup> January of the following year. ECC then forwards this report to ECC Lux.
- (3) ECC shall collect an energy efficiency payment margin in the amount of the statutory compensation amount according to section 21 EEffG from the Trading Participant via its Clearing Member as the paying agent for the entire sales volumes (total spot and derivatives sales volumes of the corresponding delivery invoice) of energy to Trading Participants in Austrian market areas registered as final energy consumers. In addition, ECC will collect a margin to secure future energy efficiency payments by the Trading Participant before the beginning of delivery.
- (4) Once it has been determined with binding legal effect that the compensation amount under EEffG can be calculated with regard to net deliveries or based on monthly reports according to sub-section 2, ECC shall adjust the calculation of the energy efficiency payment margin and the margins forthwith. Amounts or margins overpaid are refunded or released in accordance with sub-section 6 sentence 2.
- (5) ECC Lux shall determine the due compensation amounts according to EEffG on the basis of the reports specified in sub-section 2 and invoice these amounts to the Trading Participants by 14<sup>th</sup> February of the following year. The energy efficiency payment margin for the past years withheld by ECC shall be offset in this respect. If the amount withheld by ECC does not cover the statutory compensation amount, the remaining amount shall be collected via the Clearing Member as the paying agent.
- (6) If Trading Participants that contribute to a situation in which the compensation amount does not have to be paid by ECC or by ECC Lux because of their own or purchased efficiency measures, ECC or ECC Lux can refund the compensation amount saved by means of these efficiency measures in as far as these efficiency measures were recognised by the monitoring office and the amount of such and effectively transferred to ECC Lux. The same shall apply if

it has been established with binding legal effect that ECC or ECC Lux is not obliged to pay the compensation amount in its entirety or with regard to individual participants or volumes.

- (7) If the data reported by the Trading Participant on the energy volumes for final consumption do not comply with the actual or officially determined final energy consumption volumes, if the final energy consumption volumes are reported too late or if the compensation amount changes, ECC or ECC Lux shall subsequently determine the compensation amount to be paid by the Trading Participant and shall invoice these to the Trading Participant. Compensation amounts incurred with regard to Trading Participants that have failed to register shall subsequently be charged to the respective Trading Participant together with the higher annual fee. In cases of incorrect or delayed reporting of energy consumption volumes or of a missing registration, ECC or ECC Lux respectively can charge a non-refundable surcharge of 50% on all subsequent payments. This surcharge, e.g. serves to cover the increased processing and administrative efforts of ECC as well as the lump-sum settlement of the risk arising from delayed registration or incorrect reporting which has not been settled yet. In addition, ECC shall be entitled to suspend Trading Participants in the event of violations of reporting and registration requirements. A violation of the reporting requirements arises, in particular, if the monthly and annual reports do not comply with the final energy consumption volumes actually procured from ECC Lux or if registration is not effected or not effected in due time.
- (8) The provisions contained in this sub-section can be suspended by ECC for transactions on markets which assume the commercial and legal risk of the settlement payment to the satisfaction of ECC. In this case, ECC shall separately communicate the non-applicability of this sub-section.
- (9) Moreover, the markets can also reduce the financial burden on the Trading Participants through their own or purchased measures. In this case, ECC shall request the trading participants in these markets to communicate the final energy consumption volumes relevant for such efficiency measures to ECC in a legally binding manner (relevant final energy consumption volumes) in as far as these Trading Participants have made energy efficiency payments for certain final energy consumption volumes but have not carried out sufficient own efficiency measures which can be taken into account according to sub-section 6. ECC will not effect any refunding according to sub-section 6 for the relevant final energy consumption volumes. Markets taking part in this can purchase recognised efficiency measures coordinated with ECC on the basis of the relevant final energy consumption volumes. A reduction in the settlement payments of ECC resulting from this shall be proportionally credited to the trading participants on the basis of the reported final energy consumption volumes.
- (10) ECC can withhold a deduction of 10% for savings through own or purchased efficiency measures of the Trading Participants according to sub-section 6 or of the markets according to sub-section 9 in order to enable ECC to settle the risk of the possible disqualification of efficiency measures by the monitoring body according to section 24 sub-section 6 EEffG on a lump-sum basis within a two-year review period and to cover the processing and administrative costs connected with this risk. ECC reserves the right not to consider individual efficiency

measures or not to consider such in their entirety with regard to the reduction of the settlement payment.

- (11) All payments and credits in connection with the rules in this section are settled via the Trading Participant's Clearing Member as the paying agent. If the Clearing Member is not available as a paying agent (e.g. because the Trading Participant has been suspended or because the NCM agreement has been terminated), the respective payment recipient shall designate a different paying agent.
- (12) The rules of this sub-section 3.13 shall apply irrespective of any actual liability on the part of ECC Lux under EEffG with regard to covering of risks. If it is established with binding legal effect that ECC Lux does not have an obligation under EEffG, ECC shall adjust the rules accordingly and refund energy efficiency payments which have already been made. Should regulatory requirements or the actual costs of ECC or ECC Lux respectively necessitate an increase in the deduction as outlined in sub-section 10, ECC or ECC Lux respectively can make the required adjustments also with retroactive effect.
- (13) The provisions in this chapter remain applicable beyond a termination of the NCM Agreement or a revocation or suspension of the approval of a Trading Participant until settlement of the statutory compensation amounts by ECC towards the monitoring office has been effected or until the energy efficiency measures for the reduction of the compensation amount have been recognised by the monitoring office in a legally binding manner.

## 4. Special provisions regarding Derivatives Market Transactions

### 4.1 Fundamental principles of the establishment of margins

- (1) A margin (collateral) for the costs of closing-out (SPAN® Initial Margin) shall be furnished for net positions in futures and options.
- (2) With regard to net short positions in options for which daily profit and loss settlement is not effected (Premium Styled Options), a margin in the amount of the daily settlement price of the option shall be furnished (Premium Margin). Net long positions in options with regard to which daily profit and loss settlement is not effected a credit in the amount of the daily settlement price of these options will be established. This credit can be taken into account with regard to margin requirements regarding the SPAN® Initial Margin, Spot Initial Margin, Delivery Margin or Option Premium for net short positions.
- (3) If transmission system and/or hub operators are entitled to
  - assert claims towards the respective Settlement Entity or ECC in the event of the non-delivery or of the non-acceptance of deliveries under futures which have fallen due by Trading Participants,
  - refuse or reduce nominations of ECC
 a margin has to be furnished or ECC will require correspondingly higher margins with regard to these possible claims (Delivery Margin).
- (4) In order to secure claims of the respective Settlement Entity regarding a delayed submission of Emission Rights or Guarantees of Origin under due futures to the registry account of the respective Settlement Entity and/or regarding a failure to procure Emission Rights on the internal inventory account of the Trading Participant obliged to effect delivery in time, ECC can charge a margin (Delivery Margin).

### 4.2 Settlement of the Transactions

#### 4.2.1 Settlement of financially settled Futures

##### 4.2.1.1 General Information

- (1) Futures contracts with financial settlement whose cascading and fulfilment shall be effected uniformly in accordance with the provisions made in these Clearing Conditions are traded on the Markets.
- (2) The concrete specification of the subject of the contracts is made in the Contract specifications of the respective EEX markets which have been agreed upon by ECC.
- (3) These futures shall be settled financially at the end of the respective current Delivery Period as described below.

- (a) Futures whose Delivery Period exceed one calendar month, are cascaded in accordance with section 4.2.1.3.
- (b) Futures, whose Delivery Period do not exceed a period of one calendar month are settled financially in accordance with section 4.2.1.4.

#### **4.2.1.2 Daily Settlement**

- (1) With regard to every futures contract the change in the value of the position is established on every Trading Day ("Variation Margin") during batch processing depending on the currency of the Future Contract and credited to the respective Clearing Account or debited from said account of the Clearing Member. The change in the value is calculated on the basis of the difference in the daily settlement prices of the current and of the preceding Business Day. With regard to positions which have only be opened or closed in the course of the respective current Business Day, the change in the value shall be calculated on the basis of the difference between the price at which the transaction was concluded and the daily settlement price of the respective Business Day concerned.
- (2) The daily settlement price of a future shall be established on the market on which the product is traded in accordance with its rules and determined by ECC. ECC can determine the daily settlement price in deviation to this.
- (3) Paragraph 1 shall apply accordingly with regard to the legal relationship between Clearing Members and their Non-Clearing Members. In the case of Special Segregated Participants, the Clearing Member is obliged to forward the Variation Margin to these forthwith or to collect the Variation Margin from these.

#### **4.2.1.3 Cascading of Futures with a Delivery Period of more than one Month**

- (1) After performing of daily settlement on the last day of trading, the holders of quarter futures are assigned the three corresponding month futures, which taken together correspond to the Delivery Period of this quarter future, instead of these futures at the same daily settlement price.
- (2) After performing daily settlement on the last day of trading the holders of season futures are assigned the corresponding month futures for the calendar months April/May/June (Summer Season) or October/November/December (Winter Season) as well as the respective following quarter futures at the same daily settlement price on the same Business Day.
- (3) After performing daily settlement on the last day of trading the holders of year futures are assigned the corresponding three month futures for the following calendar months from January to March as well as the corresponding three quarter futures for the second to the fourth calendar quarter which taken together correspond to the Delivery Period of the year futures instead of these futures at the same daily settlement price on the same Business Day.
- (4) Futures with a Delivery Period deviating from paragraph 1 to 3 will be settled accordingly as long as the Delivery Period is more than one month.

- (5) The positions assigned in accordance with paragraphs 1 and 3 shall take part in the clearing procedure subject to the provisions which are relevant for these as of the day of their assignment.

#### **4.2.1.4 Settlement of Futures with a Delivery Period of one Month or less**

- (1) On the day on which the final settlement price is established, positions are balanced by means of a difference depending on the currency of the Futures Contract which is credited to the respective Clearing Account of the Clearing Member or which is debited from such. Said difference shall be calculated on the basis of the difference between the final settlement price and the daily settlement price of the previous Business Day. With regard to positions which have only been opened in the course of the day on which the final settlement price is established the difference shall be calculated on the basis of the difference between the final settlement price and the price of the transaction.
- (2) The final settlement price is calculated by the respective market according to the more detailed provisions in the Contract Specification for the respective products and is determined by ECC. If the final settlement price for a Delivery Period is negative, the presentation of the final settlement price in the settlement system deviates from the final settlement price actually established. Also in this case, the final settlement price shall be established in accordance with the principles laid down in the Contract Specifications for the respective product.
- (3) In case an establishment of prices in accordance with the provision referred to herein above is not possible or in case the price established does not correspond to the actual conditions prevailing on the market, a deviating final settlement price shall be established by the respective market and determined by ECC. ECC shall also be entitled to specify a deviating final settlement price.

### **4.2.2 Settlement of physically settled Power Futures**

#### **4.2.2.1 General information**

- (1) Futures contracts on power with physical settlement (delivery) in the transmission systems of various transmission system operators are traded on the markets which are settled uniformly in accordance with the provisions made in these Clearing Conditions.
- (2) The concrete determination of the subject of these contracts is made in the contract specifications of the respective markets as agreed upon by ECC.
- (3) Physical settlement of futures shall be effected on a daily basis as described below:
  - (a) Futures, the Delivery Period of which exceeds one calendar month, are cascaded in accordance with section 4.2.1.3.
  - (b) Futures, the Delivery Period of which does not exceed a period of one calendar month, are settled in accordance with section 4.2.1.4 and 4.2.2.3 or 4.2.2.4 respectively.



#### **4.2.2.2 Daily settlement**

- (1) Before the start of the delivery and for physically settled OTF futures also during the delivery period (paras 2 and 3 are not applicable to OTF futures in this respect) ECC will undertake the daily settlement in accordance with section 4.2.1.2.
- (2) As of the second Business Day before the beginning of the delivery the settlement price shall remain constant for the entire Delivery Period. It shall be established as the final settlement price by the respective market two Business Days before the beginning of the delivery at the latest and be determined by ECC. ECC can also establish the final settlement price in deviation to this.
- (3) With regard to positions which have only been opened or closed in the course of the Delivery Period, preconditioned the month or week future is tradable during Delivery Period, the change in the value on the Business Day on which the position was opened or closed shall be calculated under consideration of the current contract volume based on the difference between the price of the transaction and the final settlement price. Said change in the value shall be established during end-of-day processing and credited to the Clearing Account or debited from it.
- (4) The paragraphs herein above shall apply accordingly with regard to the legal relationship between Clearing Members and their Non-Clearing Members.

#### **4.2.2.3 Delivery and Acceptance of Delivery of Power**

- (1) Physical settlement of the futures shall be effected directly by the Trading Participant towards the respective Settlement Entity and at the same time between the respective Settlement Entity and ECC subject to the provisions contained in these Clearing Conditions and the respectively valid balance agreements and at the same time between the respective Settlement Entity and ECC. The delivery is effected by submitting a nomination or schedule in accordance with the requirements of the respective Balancing Agreement, which comprises the underlying delivery transaction as well as the binding confirmation of the nomination or schedule by the respective transmission system operator. On every delivery day the part of the contract shall be delivered which has been defined for delivery according to the respective contract specifications for delivery on every day of the Delivery Period.
- (2) Every Trading Participant shall communicate amendments of the balance agreements on which power trading is based, or the termination of such to ECC forthwith.
- (3) In case a Trading Participant is in default with his obligation to deliver or to accept delivery or in case such party loses the capability for physical settlement as per section 2.6.1 para 1 lit. c or in case such violates a covenant as per section 2.6.1 para 1 lit. c, ECC shall be entitled to take all the required measures in order to safeguard performance and the minimization of the damage with regard to the transactions entered into, if applicable, also by including the respective market in this process. Further consequences might arise from the provisions contained in the respective balance agreement.

- (4) If deviations occur in the physical settlement of power transactions, the rules contained in subsection 3.4 shall apply.

#### **4.2.2.4 Delivery and Acceptance of Delivery of physically settled Power Futures**

- (1) For the physical fulfilment of OTF futures European Energy Exchange AG will in the name and on behalf of the Trading Participant submit during the entire delivery period of the contract daily position-reflecting and non-price related orders (market orders) for day-ahead hourly contracts at EPEX Spot S.E. ("EPEX Spot"). The order submission at EPEX Spot takes place automatically and mandatory during the entire delivery period and is not subject to the control of the Trading Participant. These orders are binding for the Trading Participants, will be accounted for during the auction process at EPEX Spot and are executed at the market price determined by EPEX Spot. The further settlement is effected according to section 5.2.2, 5.2.3 and 5.2.6. If the orders of the Trading Participants are not executed at EPEX Spot the obligation to physical delivery ceases. This does not preclude that the contract will be treated as physically delivered according to Annex I section C no. 6 of Directive 2014/65/EU.
- (2) Section 4.2.2.3, 4.2.2.5 and 4.2.2.6 are not applicable to OTF futures.

#### **4.2.2.5 Financial Settlement in Case of Delivery**

- (1) Settlement of the transactions is based on the volumes delivered in accordance with these Clearing Conditions, multiplied by the final settlement price established for this Delivery Period in total plus the statutory taxes incurred.
- (2) In case of contracts, which are not tradable within the Delivery Period all payments for one delivery day including the statutory taxes incurred are debited from the Clearing Account of the Clearing Member or credited to it during end-of-day processing on the Business Day before the delivery day.
- (3) In case of contracts which are tradable within the Delivery Period all payments for one delivery day including the statutory taxes incurred are debited from the Clearing Account of the Clearing Member or credited to it during end-of-day processing two Business Days before the delivery day.
- (4) The above paragraphs also apply for the legal relationship between Clearing Members and their Non-Clearing Members.

#### **4.2.2.6 Treatment with regard to Value added Tax in Case of Delivery**

- (1) The volumes which are introduced into delivery in accordance with these clearing conditions multiplied by the final settlement price established for the Delivery Period as a whole shall form the basis for the calculation of the value added tax. On this basis as well as under consideration of the information furnished by the Trading Participants regarding taxation treatment, the respective Settlement Entity shall separately calculate the value added tax for the transactions which it has incurred.

- (2) The assessment basis for the value added tax shall be the volumes to be delivered multiplied by the final settlement price for the respective Delivery Period increased and/or decreased by the clearing fees charged.
- (3) The amount of the value added tax established in this way shall be charged or credited separately for every Trading Participant.

### **4.2.3 Settlement of options**

#### **4.2.3.1 General**

Settlement of options is effected according to the provisions made in these Clearing Conditions.

#### **4.2.3.2 Option premium and daily settlement**

- (1) The option premium shall be debited from the Clearing Account of the Clearing Member or credited to it during end-of-day processing of the Trading Day.
- (2) There shall be no daily settlement of the change in the value of the option.
- (3) ECC shall set off the option premium with the Clearing Members; the Clearing Members in turn shall set off the premium with their Non-Clearing Members.

#### **4.2.3.3 Margins to be furnished until exercising of the options**

- (1) At first, the margin for the costs of potential closing out at the settlement price shall be furnished on each Business Day for all positions (Premium Margin). The settlement price of an option contract shall be established by EEX and determined by ECC. ECC shall be entitled to establish the settlement price in deviation to this.
- (2) In addition to the Premium Margin a further margin (Additional Margin) is established which covers the changes in the close-out costs for all option positions in case the most unfavourable price development until the next calculation of margins established by ECC occurs.

#### **4.2.3.4 Procedure in case the Option is exercised**

- (1) In case an option is exercised, positions are opened for the buyer and for the seller in the futures underlying the option (underlying) in accordance with the Contract Specifications of the Market as agreed upon by ECC.
- (2) The seller of an option is assigned upon exercising on the exercise day by means of a procedure ensuring the neutrality of the assignment procedure. Partial assignments shall be permissible.
- (3) During end-of-day processing on the exercise day a long position is opened in the underlying future contract at the agreed exercise price for the Trading Participant who exercises a buy option.

- (4) During end-of-day processing on the exercise day a corresponding short position is opened in the underlying future at the agreed exercise price for the Trading Participant to whom exercising of a buy option is assigned.
- (5) During end-of-day processing on the exercise day a corresponding short position is opened in the underlying future at the agreed exercise price for the Trading Participant who exercises a sell option.
- (6) During end-of-day processing on the exercise day a corresponding long position is opened in the underlying future at the agreed exercise price for the Trading Participant to whom exercising of a sell option is assigned.
- (7) In case the Trading Participant is not a Clearing Member, section 3.6.1 para 1 shall apply accordingly in respect to the exercising and assigning of an option with regard to the position in the underlying which has been opened.

#### **4.2.3.5 Particularities in the Settlement of the Futures Position**

Until the assignment of the exercised options, the settlement of options contracts regarding futures corresponds to the provisions regarding the settlement of option contracts and upon opening of the future position the settlement of the option contracts corresponds to the respective provisions for the settlement of future contracts with the special feature that the daily settlement is netted-out once on the exercise day as the difference between the exercise price and the daily settlement price of the future concerned.

### **4.2.4 Settlement of Futures on Emission Rights**

#### **4.2.4.1 General information**

Various futures contracts regarding Emission Rights with physical settlement are traded on the Markets settlement of which shall be effected uniformly in accordance with the provisions of these Clearing Conditions.

#### **4.2.4.2 Daily Settlement**

Before the start of the delivery, daily settlement is effected according to 4.2.1.2.

#### **4.2.4.3 Financial settlement upon delivery**

- (1) The number of the Emission Rights to be delivered multiplied by the final settlement price plus any taxes required by law shall form the basis of the settlement of transactions.
- (2) All payments including the statutory taxes incurred are credited to the Clearing Account of the Clearing Member or debited from it on the delivery day.
- (3) The above paragraphs apply to the legal relationship between the Clearing Members and their Non-Clearing Members accordingly.

#### **4.2.4.4 Treatment with regard to value added tax upon delivery**

- (1) The Emission Rights which are subject to delivery according to the provisions contained in the Trading Conditions of the markets multiplied by the final settlement price shall form the basis for the calculation of the value added tax if such tax incurs according to legal requirements. The assessment basis for the value added tax is increased or decreased by the delivery fees invoiced by ECC.
- (2) On this basis and taking into consideration the statement of the Trading Participant for individual taxation ECC calculates the incurred value added tax for the transactions if applicable.
- (3) The amount of the value added tax determined shall be invoiced separately and/or credited separately for every Trading Participant on an exchange if legally required.

#### **4.2.4.5 Delivery and acceptance of Emission Rights**

- (1) The delivery day of the different futures on Emission Rights is defined in the respective contract specifications.
- (2) Settlement of the futures regarding Emission Rights shall be effected directly by the Trading Participant towards ECC subject to the provisions contained in these Clearing Conditions. Trading Participants obliged to deliver Emission Rights shall ensure their capacity to deliver by means of corresponding stocks in the registry accounts of ECC kept fiduciary (treuhänderisch) for all Trading Participants by ECC at the latest until a deadline as defined by ECC.
- (3) Deliveries of Emission Rights shall be effected by means of recording in the internal inventory accounts and shall effect a corresponding change in the number of shares which the Trading Participant holds in the total stock kept fiduciary (treuhänderisch) in the registry accounts of ECC at the same time. Through recording of these changes within the internal inventory accounts (section 3.6.9), the delivery by the selling Trading Participant to ECC and the delivery by ECC to the buying are effected at the same time.
- (4) All deliveries of Emission Rights shall be effected step by step in return for the payment of the purchase price. Payment of the purchase price is effected by means of offsetting in accordance with provision in section 3.3.6 in conjunction with subsection 3.6.6.
- (5) The obligation to deliver an Emission Right shall be considered fulfilled at the time at which the following preconditions are fulfilled:
  - all entries in the in the internal inventory accounts kept by ECC, which are required for the transmission of the Emission Rights, have been effected and
  - corresponding cash settlement (section 3.3.6 in conjunction with section 3.6.6) has been carried out.
- (6) In case a Trading Participant defaults with regard to its delivery obligations, the consequences of such default are specified in section 5.3.6.

## **4.2.5 Settlement of Futures on Guarantees of Origin**

### **4.2.5.1 General information**

Various futures contracts regarding Guarantees of Origin with physical settlement are traded on the Markets settlement of which shall be effected uniformly in accordance with the provisions made in these Clearing Conditions.

### **4.2.5.2 Daily Settlement**

Before the start of the delivery, daily settlement is effected according to 4.2.1.2.

### **4.2.5.3 Financial settlement upon delivery**

- (1) The number of the Guarantees of Origin to be delivered multiplied by the final settlement price plus any taxes required by law shall form the basis of the settlement of transactions.
- (2) All payments including the statutory taxes incurred are credited to the Clearing Account of the Clearing Member or debited from it on the delivery day.
- (3) The above paragraphs apply to the legal relationship between the Clearing Members and their Non-Clearing Members accordingly.

### **4.2.5.4 Treatment with regard to value added tax upon delivery**

- (1) The Guarantees of Origin which are subject to delivery according to the provisions contained in the Trading Conditions of the markets multiplied by the final settlement price shall form the basis for the calculation of the value added tax if such tax incurs according to legal requirements. The assessment basis for the value added tax is increased or decreased by the delivery fees invoiced by ECC Lux.
- (2) On this basis and taking into consideration the statement of the Trading Participant for individual taxation ECC Lux calculates the incurred value added tax for the transactions if applicable.
- (3) The amount of the value added tax determined shall be invoiced separately and/or credited separately for every Trading Participant on an exchange if legally required.

### **4.2.5.5 Delivery and acceptance of Guarantees of Origin**

- (1) The delivery day of the different futures on Guarantees of Origin is defined in the respective contract specifications.
- (2) Settlement of the futures regarding Guarantees of Origin shall be effected directly by the Trading Participant towards ECC Lux and, at the same time, between ECC Lux and ECC subject to the provisions contained in these Clearing Conditions. Trading Participants obliged to deliver Guarantees of Origin shall ensure their capacity to deliver by means of corresponding stocks in the registry accounts of ECC Lux kept fiduciary (treuhänderisch) for all Trading Participants by ECC Lux at the latest until a deadline as defined by ECC.



- (3) Deliveries of Guarantees of Origin shall be effected by means of recording on these internal inventory accounts and shall effect a corresponding change in the number of shares which the Trading Participant holds in the total stock kept fiduciary (treuhänderisch) in the registry accounts of ECC Lux at the same time. Through recording of these changes within the internal inventory accounts (section 3.6.9), the delivery by the selling Trading Participant to ECC Lux and the delivery by ECC Lux to ECC as well as the delivery by ECC to ECC Lux and the delivery by ECC Lux to the buying Trading Participant are effected at the same time.
- (4) All deliveries of Guarantees of Origin shall be effected step by step in return for the payment of the purchase price. Payment of the purchase price is effected by means of offsetting in accordance with provision in section 3.3.6 in conjunction with subsection 3.6.6.
- (5) The obligation to deliver Guarantees of Origin shall be considered fulfilled at the time at which the following preconditions are fulfilled:
  - all entries in the in the internal inventory accounts kept by ECC, which are required for the transmission of the Guarantees of Origin, have been effected and
  - corresponding cash settlement (section 3.3.6 in conjunction with section 3.6.6) has been carried out.
- (6) In case a Trading Participant defaults with regard to its delivery obligations, the consequences of such default are specified in section 5.4.6.

## **4.2.6 Settlement of physically settled Natural Gas Futures**

### **4.2.6.1 General information**

- (1) On the markets, futures contracts regarding natural gas with delivery in the transmission system of various transmission system operators or at the hub of a hub operator are traded, the settlement of which shall be effected uniformly in accordance with the provisions contained in these Clearing Conditions.
- (2) Physical settlement of the futures shall be effected on a daily basis as described below.
  - (a) Futures, whose Delivery Period exceeds one calendar month, are cascaded in accordance with section 4.2.1.3.
  - (b) Futures, whose Delivery Period does not exceed one calendar month, are settled in accordance with section 4.2.1.4 and section 4.2.6.3.

### **4.2.6.2 Daily settlement**

- (1) Before the start of delivery daily settlement is effected in accordance with section 4.2.1.2.
- (2) As of the second Business Day prior to the beginning of delivery the settlement price shall remain constant for the entire Delivery Period. At the latest two Business Days prior to the beginning of delivery it shall be established by the respective market as the final settlement price and determined as such by ECC. ECC can determine the daily settlement price in deviation to this.

- (3) With regard to positions which have only been opened or closed in the course of the Delivery Period, preconditioned the month or week future is tradable during Delivery Period, the change in the value on the Business Day on which the position is opened or closed shall be calculated on the basis of the difference between the price of the transaction and the final settlement price under consideration of the current contract volume. This change in value shall be established during end-of-day processing and credited to or debited from the Clearing Account.
- (4) The paragraphs herein above shall apply accordingly with regard to the legal relationship between Clearing Members and their Non-Clearing Members.

#### **4.2.6.3 Delivery and acceptance of natural gas**

- (1) The delivery of the futures shall be effected subject to the provisions stipulated in these Clearing Conditions as well as the respectively valid balance agreements directly by the Trading Participant towards the respective Settlement Entity and at the same time between the respective Settlement Entity and ECC. The delivery is effected by submitting a nomination or schedule in accordance with the requirements of the respective balance agreement, which comprises the underlying delivery transaction as well as the binding confirmation of the nomination or schedule by the respective transmission system operator. On every delivery day the part of the contract shall be delivered which has been defined for delivery according to the respective contract specifications for delivery on every day of the Delivery Period.
- (2) Every Trading Participant shall communicate the change and/or the termination of the balance agreements on which natural gas trading is based to ECC forthwith.
- (3) In case a Trading Participant is in default with regard to its delivery or acceptance of delivery obligation or in case such party loses the capability for physical settlement as per section 2.6.1 para 1 lit. c or in case such party violates a covenant as per section 2.6.1 para 1 lit. c, ECC shall be entitled to take all measures which are required in order safeguard the performance or a reduction of the damage with regard to the transactions entered into, if required, by including the respective Settlement Entity and the respective market in the process. Further consequences might arise from the provisions contained in the respective balance agreement.
- (4) If a transmission network or hub operator undertakes necessary measures towards ECC, the respective Settlement Entity or Trading Participants to maintain network security section 3.4 shall apply accordingly.

#### **4.2.6.4 Financial settlement in case of delivery**

- (1) Settlement of the transactions is based on the volumes to be delivered in accordance with these Clearing Conditions, multiplied by the final settlement price established for the Delivery Period in total plus the statutory taxes incurred.
- (2) In case of contracts, which are not tradable during the Delivery Period all payments for one delivery day including the statutory taxes incurred are debited from the Clearing Account of the Clearing Member or credited to it during end-of-day processing on the Business Day before the delivery day.

- (3) In case of contracts, which are tradable during the Delivery Period all payments for one delivery day including the statutory taxes incurred are debited from the Clearing Account of the Clearing Member or credited to it during end-of-day processing two Business Days before the delivery day.
- (4) If deviations arise in the physical settlement of gas transactions, the provisions in section 3.4 apply.

#### **4.2.6.5 Treatment in terms of value added tax in case of delivery**

- (1) The volumes which have been delivered subject to the provisions contained in these Clearing Conditions multiplied by the final settlement price established for the Delivery Period in total shall form the basis of the calculation of the value added tax. On this basis and under consideration of the information provided by the Trading Participants regarding the treatment in terms of taxation, the respective Settlement Entity shall calculate the value added tax for the transactions incurred separately.
- (2) The volumes to be delivered multiplied by the final settlement price for the respective Delivery Period as increased or decreased by the clearing fees charged shall form the assessment basis.
- (3) The amount of the value added tax established in this way shall be billed or credited to every Trading Participant separately.

## 5. Special Provisions regarding Spot Market Transactions

### 5.1 Fundamental principles regarding the establishment of margins

#### 5.1.1 Principles of the establishment of margins for System Clearing Members

- (1) A margin (Spot Initial Margin) covering the possible default of net payers for ECC (including any taxes which might be incurred) and the default risks arising from the non-delivery (or incomplete delivery) of completed transactions (Current Exposure Spot Market) shall be furnished for risks from Spot Market Transactions. Moreover, a margin also has to be furnished for the risk determined statistically with regard to the potential future trading behaviour of a Trading Participant (Initial Margin Spot Market).

Credits from the Premium Margin for Derivatives Market Transactions are taken into account with regard to the Initial Margin Spot Market and the Current Exposure Spot Market.

- (2) ECC can request a further margin (Spot Delivery Margin) for possible risks of the respective Settlement Entity as a result of the inability to deliver Registry Based Products at the delivery time.
- (3) In as far as transmission system or hub operators are entitled to assert claims against the respective Settlement Entity or ECC or have the right to refuse or reduce the nomination of ECC in the event of the non-delivery of commodities sold or of the non-acceptance of purchased commodities by the Trading Participants, a margin shall be furnished to cover these potential claims (Delivery Margin).
- (4) ECC reserves the right to set off margins from various margin types and not to report these separately in this respect.

#### 5.1.2 Principles of the establishment of margins for DCP Clearing Members

- (1) In order to maintain the Trading Limits granted by ECC in accordance with section 3.1.2 para. 4 and to collateralise the risks resulting from trading within these Trading Limits in consideration of the effects and the functioning of these Trading Limits in the respective Trading System of the Markets, the DCP Clearing Members provide ECC with a margin (collateral) covering the possible default of net payments to ECC (including any taxes which might be incurred) and the default risks arising from the non-delivery or incomplete delivery under transactions concluded or orders entered (Initial Margin Spot Market with regard to DCP Clearing Members).
- (2) Usually, the margin is determined for DCP Clearing Members once per Business Day. Moreover, it is always determined in the event that a DCP Clearing Member wishes to reduce the collateral furnished or the granted Trading Limit.

## **5.2 Special provisions regarding power trading**

### **5.2.1 General information**

- (1) On the Markets Spot Market Transactions regarding power with physical settlement (delivery) are traded. The settlement of these Spot Market Transactions is effected in accordance with the provisions made in these Clearing Conditions.
- (2) Insofar as within the framework of day-ahead or intraday auctions of the partner exchanges cross-border transmission capacities are traded as products specified by the markets (Market Coupling Contract), the settlement of which is carried out in accordance with the specifications made in these Clearing Conditions.
- (3) As part of intra-day power trading the settlement of power deliveries as per section 5.2.3 can also be effected transnationally between different market areas by using Physical Transmission Rights.
- (4) If a Clearing Entity or a transmission system operator requests the provision of collateral from the respective Settlement Entity or ECC as a precondition for the settlement of physical transactions, ECC is entitled to cover the arising liquidity requirement at its own discretion by collecting additional cash collateral ("Cash Margin") or determining a minimum share of the Margin Requirement which has to be covered by cash collateral (Minimum Cash Quota). The respective Cash Margin is collected from all Trading Participants in the respective market area.

### **5.2.2 Financial settlement of the transactions**

- (1) Initially, the delivery volumes and prices established in the trade confirmations of the markets plus the applicable statutory tax forms the basis of the settlement.
- (2) The reports regarding the transactions concluded by the Trading Participants on a Trading Day shall be communicated to these by ECC forthwith, usually still on the same Business Day, or they are provided within the system of the market.
- (3) All payments including the statutory incurred taxes are credited to the Clearing Account of the Clearing Member or debited from it during end-of-day processing on the Trading Day or, if this day is not a Business Day, on the next Business Day.

### **5.2.3 Settlement and acceptance of delivery of power**

- (1) Physical settlement (delivery) of the Spot Market Transactions is effected directly by the Trading Participant towards the respective Settlement Entity and at the same time between the respective Settlement Entity and ECC subject to the provisions specified in these Clearing Conditions and the respectively valid balance agreements. Delivery is effected by submitting a nomination or schedule in accordance with the requirements of the respective Balancing

Agreement, which comprises the underlying delivery transaction as well as the binding confirmation of the nomination or schedule by the respective transmission system operator.

- (2) Every Trading Participant shall communicate an amendment and/or termination of the balance agreements on which power trading is based to ECC forthwith.
- (3) In case a Trading Participant is in default with regard to its delivery or acceptance of delivery obligation or in case he loses the capability for physical settlement, ECC shall be entitled to take all the required measures to safeguard the performance or reduction of the damage with regard to the transactions entered into if required by including the respective Settlement Entity and the respective market. Further consequences might arise from the provisions contained in the respective balance agreement.
- (4) If deviations occur in the physical settlement of power transactions, the rules contained in section 3.4 shall apply.
- (5) The provisions stipulated in this section 5.2.3 shall not apply to PXE Spot Market Transactions.

#### **5.2.4 Settlement of Market Coupling Contracts**

- (1) Via the usage of Capacity Rights (Physical Transmission Rights) by ECC Market Coupling Contracts are settled directly by the Trading Participant and ECC in accordance with these Clearing Conditions and the respectively valid agreements between ECC and the respective partner exchange, the coupled markets and transmission system operators or their representatives if the latter have been included on the basis of separate agreement.
- (2) Settlement of the Market Coupling Contracts is effected through the use of the Physical Transmission Rights by ECC towards the transmission system operators included and/or their representatives in the direction from the exporting transmission system to the importing transmission system.
- (3) If the use of Physical Transmission Rights cannot be ensured by the transmission system operators included, ECC is entitled, according to the more detailed provisions in section 3.4, to take all the measures required to secure the performance or to reduce any damage with regard to the transactions entered into. The financial settlement of Market Coupling Contracts shall be carried out in accordance with section 5.2.2.

#### **5.2.5 Settlement of Market Coupling Clearing Transactions**

The physical settlement of the Market Coupling Transactions is effected directly by the Market Coupling Counterparty towards ECC in accordance with these Clearing Conditions and the respectively valid balancing agreement. The physical delivery of power is effected by means of the submission of a schedule or nomination which complies with the requirements of the respective balancing agreements and covers the underlying delivery transaction as agreed as well as the binding confirmation of the schedule and/or the nomination of the transmission system operator.



## **5.2.6 Treatment of the transactions in terms of value added tax**

- (1) The transactions as established in the trade confirmations and, if applicable, from deviation settlements according to the more detailed provisions in section 3.4 shall form the basis for the calculation of the value added tax. On this basis and under consideration of the information provided by the Trading Participants regarding the taxation treatment, the respective Settlement Entity shall calculate the incurred value added tax with regard to the transactions separately.
- (2) The trade confirmations provided by the respective market increased or decreased by the transactions fees billed where necessary shall form the assessment basis for the value added tax.
- (3) The amount of the value added tax established in this way shall be invoiced or credited separately for every Trading Participant.
- (4) Since ECC solely provides services in connection with financial settlement for PXE Spot Market Transactions, value added tax for these transactions is not calculated by ECC but by PXE or by the counterparty commissioned by PXE.

## **5.3 Special Provisions regarding secondary Trading in Emission Rights**

### **5.3.1 General Information**

On the Markets transactions regarding Emission Rights with physical settlement are traded the settlement of which is effected uniformly in accordance with the provisions stipulated in these Clearing Conditions.

### **5.3.2 Settlement of the Transactions**

- (1) The transactions as communicated in the trade confirmations at the Market plus the statutory taxes shall form the basis of settlement.
- (2) The reports regarding the transactions shall be forwarded by ECC forthwith, usually on the same day of trading, or they are provided within the system of the Market.

### **5.3.3 Financial Settlement**

#### **5.3.3.1 Transactions of Trading Participants**

- (1) All payments including the statutory incurred taxes are credited to the Clearing Account of the Clearing Member or to an account at a different payment agent as defined by the Trading Participant and approved by ECC or debited from it during end-of-day processing of the Trading Day.

- (2) In case the Trading Participant has not defined a payment agent, the above mentioned provisions will apply to the legal relationship between the Clearing Member and their Non-Clearing Members.

#### **5.3.4 Treatment of the transactions in Terms of Value added Tax**

- (1) The transactions as established in the trade confirmations shall form the basis for the calculation of the value added tax. On this basis and under consideration of the information provided by the Trading Participants regarding the taxation treatment, ECC shall calculate the incurred value added tax with regard to the transactions separately.
- (2) The trade confirmations provided by the respective market increased or decreased by the transactions fees billed shall form the assessment basis for the value added tax.
- (3) The amount of the value added tax established in this way shall be invoiced or credited separately for every Trading Participant.

#### **5.3.5 Delivery of Emission Rights**

- (1) Deliveries of Emission Rights are effected by bookings within these internal inventory accounts and, at the same time, these effect a corresponding change in the Trading Participants' share in the total inventory in the registry accounts kept fiduciary (treuhänderisch) by ECC. Through recording of the changes within the internal inventory accounts (section 3.6.9), the delivery by the selling Trading Participant to ECC and the delivery by ECC to the buying Trading Participant are carried out at the same time.
- (2) All deliveries of Emission Rights are effected in concurrent performance (Zug um Zug; section 362 BGB (German Civil Code)) in return for the payment of the purchase price on the delivery day. Payment of the purchase price is effected by means of offsetting in accordance with the provision in section 3.3.6 in conjunction with subsection 3.6.6. The acquiring Trading Participant pledges the Emission Rights acquired in a Spot Market Transaction, including the appertaining rights, to ECC by way of a first-order lien to cover the claim to the purchase price for these Emission Rights. In the event that the acquiring Trading Participant is a Non-Clearing Member, the said Non-Clearing Member pledges the Emission Rights acquired in the Spot Market Transaction, including the appertaining rights, to its Clearing Member by way of a second-order lien to secure the claim to the reimbursement of the purchase price for these Emission Rights. The liens specified above shall take precedence over the general security rights (section 3.5.9). ECC and the Clearing Member accept the pledges. The Trading Participant hereby informs ECC of the pledges. Section 3.5.9 para 5 shall apply accordingly with regard to the liens specified herein above.
- (3) The obligation to deliver Emission Rights shall be considered fulfilled at the time at which the following preconditions are fulfilled:
  - all entries in the internal inventory accounts kept by ECC, which are required for the transmission of the Emission Rights have been effected and

- corresponding cash settlement (section 3.3.6 in conjunction with subsection 3.6.6) has been carried out.

- (4) All Trading Participants shall safeguard the capacity to deliver at the time of delivery prior to the conclusion of trades and submit missing stocks to the internal registry account of ECC at the latest by the end of the business hours on the day on which the transaction is concluded. In order to ensure delivery in due time, the Trading Participants are obliged to set up the delivery account of ECC Lux as a so-called “Trusted Account” within the meaning of the (EU) Directive 389/2013.

### **5.3.6 Special Regulations regarding Default Special Regulations regarding Default**

- (1) If ECC cannot use existing Emission Rights for the settlement of trades as a result of circumstances for which the Trading Participant required to submit these is responsible, ECC can request the Trading Participant required to submit these rights or its Clearing Member in the capacity of the guarantor to pay the current exchange or market price, which shall fall due for payment immediately instead of the Emission Rights which are required for delivery. With regard to this request, ECC can use the rights pledged in accordance with section 3.5.10 upon the maturity of the pledge.
- (2) If a Trading Participant is in default, in particular, on account of the non-delivery of Emission Rights to be delivered to a registry account of ECC, at the latest, by 10:30 on the delivery day, ECC can carry out the following measures, in addition to charging margins:
  - (a) ECC can effect a replacement purchase of the Emission Rights not submitted at its reasonable discretion in exchange trading, by means of an over-the-counter transaction or in another suitable form, at the earliest, at the delivery time.
  - (b) In the event that ECC announces or effects a replacement purchase in accordance with paragraph 2 lit. a, deliveries by the Trading Participant in default are no longer taken into account with a redemptive effect upon the delivery of the due Emission Rights. However, ECC shall be free to forego the continuation of the replacement purchase procedure and to consider the Emission Rights or Guarantees of Origin delivered with a delay in the settlement of the delivery obligation.
  - (c) In as far as the replacement purchase and the delivery of the Emission Rights to be delivered have been effected, the delivery obligations resulting from the original transaction cease to apply with redemptive effect. The costs caused by the replacement purchase carried out or, at least, begun shall be assumed by the Trading Participant that has violated the obligation to deliver these Emission Rights in due time.
  - (d) If a replacement purchase is not successful in its entirety or in part after two Business Days after the delivery day, ECC shall specify a compensation amount which shall replace the Emission Rights not delivered or not acquired through a replacement purchase (cash settlement) instead of fulfilment. The Trading Participant in default and its Clearing

Member as the guarantor are obliged to pay this compensation amount. The compensation amount which ECC sets off against the purchase price to be paid for the Emission Rights not delivered is established on the basis of the sales price at the time of the conclusion of the trade or – if these are higher than the sales price – on the basis of the margins called by ECC for the trades concerned.

- (3) ECC can have recourse to a Trading Participant, without its System Clearing Member guaranteeing this, with regard to cases of damage which it or other Trading Participants have sustained as a result of the default. Regardless of the occurrence of damage, ECC shall be entitled to the payment of liquidated damages plus interest per calendar day until the delivery by the Trading Participant in default or until the replacement purchase or the determination of the compensation amount in accordance with section 3.9.1 para 3. The outstanding amount within the meaning of section 3.9.1 para 3 corresponds to the amount used for the replacement according to paragraph 2 lit. a or to the compensation amount according to paragraph 2 lit. d.
- (4) Moreover, in the event of cash settlement according to paragraph 2 lit. d, ECC is entitled to liquidated damages as a contractual penalty in the amount of 100% of the sales price without its Clearing Member providing a guarantee with regard to this. In as far as the margins collected were higher than the sales price and in as far as this results in a compensation amount according to paragraph 2 lit. d, the liquidated damages shall be reduced by the amount exceeding the sales price.
- (5) ECC does not assume any delivery guarantee and procurement risk with regard to Emission Rights. Emission Rights can only be delivered to the buyer if corresponding stocks are available from the Trading Participant who is required to submit these. Any default caused by the Trading Participant required to submit the Emission Rights in the form of impossibility or defaults with the consequences as per paragraphs 1 and 2 must be accepted by the buyer of the Emission Rights. With regard to any possible damage sustained by the buyer affected by the default, ECC shall
  - (a) compensate this primarily by forwarding liquidated damages realised in accordance with paragraph 4
  - (b) and, at its option, assert the damage against the Trading Participant in default on behalf of the buyer concerned or assign corresponding claims to the buyer concerned in as far as the damage exceeds this amount or in as far as the liquidated damages cannot be realised.

There are no further claims against ECC on the part of the buyer of the Emission Rights affected by this.

## **5.4 Special provisions regarding Trading in Guarantees of Origin**

### **5.4.1 General Information**

On the Markets transactions regarding Guarantees of Origin with physical settlement are traded the settlement of which is effected uniformly in accordance with the provisions stipulated in these Clearing Conditions.

### **5.4.2 Settlement of the Transactions**

- (1) The transactions as communicated in the trade confirmations at the Market plus the statutory taxes shall form the basis of settlement.
- (2) The reports regarding the transactions shall be forwarded by ECC forthwith, usually on the same day of trading, or they are provided within the system of the Market.

### **5.4.3 Financial Settlement**

- (1) All payments including the statutory incurred taxes are credited to the Clearing Account of the Clearing Member or to an account at a different payment agent as defined by the Trading Participant and approved by ECC or debited from it during end-of-day processing of the Trading Day.
- (2) In case the Trading Participant has not defined a payment agent, the above mentioned provisions will apply to the legal relationship between the Clearing Member and their Non-Clearing Members.

### **5.4.4 Treatment of the transactions in Terms of Value added tax**

- (1) The transactions as established in the trade confirmations shall form the basis for the calculation of the value added tax. On this basis and under consideration of the information provided by the Trading Participants regarding the taxation treatment, ECC Lux shall calculate the incurred value added tax with regard to the transactions separately.
- (2) The trade confirmations provided by the respective market increased or decreased by the transactions fees billed shall form the assessment basis for the value added tax.
- (3) The amount of the value added tax established in this way shall be invoiced or credited separately for every Trading Participant.

### **5.4.5 Delivery of Guarantees of Origin**

- (1) Deliveries of Guarantees of Origin are effected by bookings within the internal inventory accounts and, at the same time, these effect a corresponding change in the Trading Participants' share in the total inventory in the registry accounts kept fiduciary (treuhänderisch) by ECC Lux. Through recording of the changes within the internal inventory accounts the delivery by

the selling Trading Participant to ECC Lux and the delivery by ECC Lux to ECC as well as the delivery by ECC to ECC Lux and the delivery by ECC Lux to the buying Trading Participant are carried out at the same time.

- (2) All deliveries of Guarantees of Origin are effected in concurrent performance (Zug um Zug; section 362 BGB (German Civil Code)) in return for the payment of the purchase price on the delivery day. Payment of the purchase price is effected by means of offsetting in accordance with the provision in section 3.3.6 in conjunction with section 3.6.6.
- (3) The obligation to deliver Guarantees of Origin shall be considered fulfilled at the time at which the following preconditions are fulfilled:
  - all entries in the internal inventory accounts kept by ECC, which are required for the transmission of the Guarantees of Origin have been effected and
  - corresponding cash settlement (section 3.3.6 in conjunction with subsection 3.6.6) has been carried out.
- (4) All Trading Participants shall safeguard the capacity to deliver prior to the conclusion of trades by means of corresponding stocks in the registry accounts.

#### **5.4.6 Special Regulations regarding Default**

- (1) If ECC cannot use existing Guarantees of Origin for the settlement of trades as a result of circumstances for which the Trading Participant required to deliver these Guarantees of Origin is responsible, ECC can request this Trading Participant or its Clearing Member in the capacity of the guarantor to pay the current exchange or market price, which shall fall due for payment immediately instead of the Guarantees of Origin which are required for delivery. With regard to this request, ECC can use the rights pledged in accordance with section 3.5.10 upon the maturity of the pledge.
- (2) If a Trading Participant is in default, in particular in respect of the non-delivery of Guarantees of Origin to be delivered to a registry account of ECC Lux at the latest by 8:00 on the delivery day, ECC can carry out the measures, in addition to charging margins as described in section 5.3.6 para 2 a – d.
- (3) Rights and obligations mentioned in section 5.3.6 para 3 – 5 shall apply mutatis mutandis for Guarantees of Origins taking into account that delivery is performed between the Trading Participant and ECC Lux.

### **5.5 Special Provisions regarding Trading in Capacity Guarantees**

#### **5.5.1 General Information**

On the Markets transactions regarding Capacity Guarantees with physical settlement are traded the settlement of which is effected uniformly in accordance with the provisions stipulated in these Clearing5.3.6 Conditions.



### **5.5.2 Settlement of the Transactions**

- (1) The transactions as communicated in the trade confirmations at the Market plus the statutory taxes shall form the basis of settlement.
- (2) The reports regarding the transactions shall be forwarded by ECC forthwith, usually on the same day of trading, or they are provided within the system of the Market.

### **5.5.3 Financial Settlement**

- (1) All payments including the statutory incurred taxes are credited to the Clearing Account of the Clearing Member or to an account at a different payment agent as defined by the Trading Participant and approved by ECC or debited from it during end-of-day processing of the Trading Day.
- (2) In case the Trading Participant has not defined a payment agent, the above mentioned provisions will apply to the legal relationship between the Clearing Member and their Non-Clearing Members.

### **5.5.4 Treatment of the transactions in Terms of Value added tax**

- (1) The transactions as established in the trade confirmations shall form the basis for the calculation of the value added tax. On this basis and under consideration of the information provided by the Trading Participants regarding the taxation treatment, ECC Lux shall calculate the incurred value added tax with regard to the transactions separately.
- (2) The trade confirmations provided by the respective market increased or decreased by the transactions fees billed shall form the assessment basis for the value added tax.
- (3) The amount of the value added tax established in this way shall be invoiced or credited separately for every Trading Participant.

### **5.5.5 Delivery and Acceptance of Delivery of Capacity Guarantees**

- (1) Deliveries of Capacity Guarantees are effected by bookings within the internal inventory accounts and, at the same time, these effect a corresponding change in the Trading Participants' share in the total inventory kept by ECC Lux in its registry account. Through recording of the changes within the internal inventory accounts (section 3.6.9), the delivery by the selling Trading Participant to ECC Lux and the delivery by ECC Lux to ECC as well as the delivery by ECC to ECC Lux and the delivery by ECC Lux to the buying Trading Participant are carried out at the same time.
- (2) All deliveries of Capacity Guarantees are effected in concurrent performance (Zug um Zug; section 362 BGB (German Civil Code)) in return for the payment of the purchase price on the delivery day. Payment of the purchase price is effected by means of offsetting in accordance with the provision in section 3.3.6 in conjunction with subsection 3.6.6.

- (3) The obligation to deliver Capacity Guarantees shall be considered fulfilled at the time at which the following preconditions are cumulatively fulfilled:
  - all entries in the internal inventory accounts kept by ECC, which are required for the transmission of the Capacity Guarantees have been effected,
  - the transfer of the Capacity Guarantees to the respective registry accounts of the trading Participants has been conducted according to the internal inventory accounts, as well as
  - corresponding cash settlement (section 3.3.6 in conjunction with subsection 3.6.6) has been carried out.
- (4) All Trading Participants shall safeguard their capacity to deliver at the time of delivery prior to the conclusion of trades by the submitting the respective stocks to the internal registry account of ECC Lux.

### **5.5.6 Special Regulations regarding Default**

- (1) If ECC cannot use existing Capacity Guarantees for the settlement of trades as a result of circumstances for which the Trading Participant required to submit these is responsible, ECC can request the Trading Participant required to submit these rights or its Clearing Member in the capacity of the guarantor to pay the current exchange or market price, which shall fall due for payment immediately instead of the Capacity Guarantees which are required for delivery. With regard to this request, ECC can use the rights pledged in accordance with section 3.5.10 upon the maturity of the pledge.
- (2) If a Trading Participant is in default, in particular, on account of the non-delivery of Capacity Guarantees to be delivered to the registry account of ECC Lux, at the latest, by 07:00 p.m. on the second Business Day prior to the auction, ECC can carry out the following measures, in addition to charging margins:
  - (a) ECC can effect a replacement purchase of the Capacity Guarantees not submitted at its reasonable discretion in exchange trading, by means of an over-the-counter transaction or in another suitable form, at the earliest, at the delivery time.
  - (b) In the event that ECC announces or effects a replacement purchase in accordance with paragraph 2 lit. a, deliveries by the Trading Participant in default are no longer taken into account with a redemptive effect upon the delivery of the due Capacity Guarantees. However, ECC shall be free to forego the continuation of the replacement purchase procedure and to consider the Capacity Guarantees delivered with a delay in the settlement of the delivery obligation.
  - (c) In as far as the replacement purchase and the delivery of the Capacity Guarantees to be delivered have been effected, the delivery obligations resulting from the original transaction cease to apply with redemptive effect. The costs caused by the replacement purchase carried out or, at least, begun shall be assumed by the Trading Participant that has violated the obligation to deliver these Capacity Guarantees in due time.

- (d) If a replacement purchase is not successful in its entirety or in part after two Business Days after the delivery day, ECC shall specify a compensation amount which shall replace the Capacity Guarantees not delivered or not acquired through a replacement purchase (cash settlement) instead of fulfilment. The Trading Participant in default and its Clearing Member as the guarantor are obliged to pay this compensation amount. The compensation amount which ECC sets off against the purchase price to be paid for the Capacity Guarantees not delivered is established on the basis of the sales price at the time of the conclusion of the trade or – if these are higher than the sales price – on the basis of the margins called by ECC for the trades concerned.
- (3) ECC can have recourse to a Trading Participant, without its System Clearing Member guaranteeing this, with regard to cases of damage which it or other Trading Participants have sustained as a result of the default. Regardless of the occurrence of damage, ECC shall be entitled to the payment of liquidated damages plus interest per calendar day until the delivery by the Trading Participant in default or until the replacement purchase or the determination of the compensation amount in accordance with section 3.9.1 para 3. The outstanding amount within the meaning of section 3.9.1 para 3 corresponds to the amount used for the replacement according to paragraph 2 lit. a or to the compensation amount according to paragraph 2 lit. d.
- (4) Moreover, in the event of cash settlement according to paragraph 2 lit. d, ECC is entitled to liquidated damages as a contractual penalty in the amount of 100% of the sales price without its Clearing Member providing a guarantee with regard to this. In as far as the margins collected were higher than the sales price and in as far as this results in a compensation amount according to paragraph 2 lit. d, the liquidated damages shall be reduced by the amount exceeding the sales price.
- (5) ECC Lux does not assume any delivery guarantee and procurement risk with regard to Capacity Guarantees. Capacity Guarantees can only be delivered to the buyer if corresponding stocks are available from the Trading Participant who is required to submit these. Any default caused by the Trading Participant required to submit the Capacity Guarantees in the form of impossibility or defaults with the consequences as per paragraphs 1 and 2 must be accepted by the buyer of the Capacity Guarantees. With regard to any possible damage sustained by the buyer affected by the default, ECC shall
  - (a) compensate this primarily by forwarding liquidated damages realised in accordance with paragraph 4
  - (b) and, at its option, assert the damage against the Trading Participant in default on behalf of the buyer concerned or assign corresponding claims to the buyer concerned in as far as the damage exceeds this amount or in as far as the liquidated damages cannot be realised.

There are no further claims against ECC Lux or ECC on the part of the buyer of the Capacity Guarantees affected by this.

## **5.6 Special provisions regarding Natural Gas Trading**

### **5.6.1 General Information**

On the Markets Spot Market Transactions regarding natural gas with physical settlement (delivery) are traded. The settlement of these Spot Market Transactions is effected in accordance with the provisions made in these Clearing Conditions.

### **5.6.2 Financial Settlement of the Transactions**

- (1) The delivery volumes established in the trade confirmations by the markets and the prices, plus the incurred statutory taxes constitute the basis for the settlement.
- (2) The reports regarding the transactions concluded by the Trading Participants on a Trading Day shall be communicated to these by ECC forthwith, usually still on the same Business Day or they are provided within the system of the market.
- (3) All payments including the statutory incurred taxes shall, on principle, be credited to the Clearing Account of the Clearing Member or debited from it during end-of-day processing of the Trading Day. Payments of transactions, the delivery day of which occurs after the next Business Day, are credited to the Clearing Account of the Clearing Member or debited from it during end-of-day processing of the Business Day before the delivery.

### **5.6.3 Settlement and Acceptance of Delivery of Natural Gas**

- (1) Physical settlement (delivery) of the Spot Market Transactions is effected directly by the Trading Participant towards the respective Settlement Entity and at the same time between the respective Settlement Entity and ECC subject to the provisions specified in these Clearing Conditions and the respectively valid balance agreements. Delivery is effected by submitting a nomination or schedule in accordance with the requirements of the respective Balancing Agreement, which comprises the underlying delivery transaction as well as the binding confirmation of the nomination or schedule by the respective transmission system operator.
- (2) In addition to the obligations stipulated in paragraph 1, a Trading Participant who is obliged to deliver or to accept delivery of quality-specific gas products and/or gas products which are traded with regard to a certain grid area or a certain balancing energy area ("local gas products") has to cause the physical effect or has to have it caused by a third party according to the relevant valid conditions for quality-specific and/or local gas products of the respective Balancing Group Network Operator. The respective Balancing Group Network Operator is exclusively authorized to demand fulfilment of the obligations stipulated in this paragraph. No obligation of ECC whatsoever towards the Trading Participant or towards the Balancing Group Network Operator is existent in this regard.
- (3) Every Trading Participant shall communicate an amendment and/or termination of the balance agreements on which natural gas trading is based to ECC forthwith.

- (4) In case a Trading Participant has defaulted with regard to its delivery or acceptance of delivery obligation or in case he loses the capability for physical settlement ECC shall be entitled to take all the required measures to safeguard the performance or reduction of the damage with regard to the transactions entered into if required by including the respective Settlement Entity and the respective market. Further consequences might arise from the provisions contained in the respective balance agreement.
- (5) If deviations occur in the physical settlement of gas transactions, the provisions contained in section 3.4 shall apply.

#### **5.6.4 Treatment of the Transactions in Terms of Value added tax**

- (1) The transactions as established in the trade confirmations of every Trading Day and, if applicable, from deviation settlements in accordance with the more detailed provisions of section 3.4 shall form the basis for the calculation of the value added tax. On this basis and under consideration of the information provided by the Trading Participants regarding the taxation treatment, the respective Settlement Entity shall calculate the incurred value added tax with regard to the transactions separately.
- (2) The trade confirmations provided by the market increased or decreased by the clearing fees billed shall form the assessment basis for the value added tax.
- (3) The amount of the value added tax established in this way shall be invoiced or credited separately for every Trading Participant.

## 6. Special Provision regarding the Primary Auctions of Allowances

This section shall provide dedicated rules concerning the auctioning of Allowances pursuant to Regulation 1031/2010 EU (the "Auctioning Regulation"<sup>10</sup>). These rules shall apply to the spot market auctions performed by European Energy Exchange ("EEX") as the auction platform pursuant to the Auctioning Regulation ("Primary Auctions") and represent the implementation of the Auctioning Regulation with regard to clearing and settlement of Primary Auctions of Allowances, for which ECC is the clearing system connected to the auction platform in accordance with Article 27(2) of the Auctioning Regulation acting as the sole CCP for the primary auction.

The primary auction is conducted for the Member States that have concluded a contract or any other contractual arrangements with EEX<sup>11</sup> for appointing it as auction platform pursuant to Articles 26(1) and 30(1) of the Auctioning Regulation or making use of it pursuant to Article 30 (7) of the same Regulation (the "Service Contract").

In relation to Member States participating in the joint action pursuant to Article 26 of the Auctioning Regulation, the rules in this chapter are to be construed together with the escrow agreement and custody agreement concluded between ECC and such Member States (the "Escrow Agreement" and the "Custody Agreement"). In case of contradictions between the special provisions of this chapter 6 and the provisions of the Escrow Agreement and/or the Custody Agreement, the provisions of the Escrow agreement and/or the Custody Agreement shall prevail in relation to such Member States.

In relation to the Member States not participating in the joint action pursuant to Article 26 of the Auctioning Regulation Allowances will be held in escrow for such Member State by ECC acting as a custodian for the Member States represented by their respective Auctioneer according to Article 50 of the Auctioning Regulation and as stipulated in these Clearing Conditions until delivery of the allowances is effected to the successful bidders in accordance with section 6.4.7.

In case of contradictions between the special provisions of this chapter, and the rules or provisions in any other sections, annexes, schedules, forms or side letters of or to these Clearing Conditions, the dedicated rules of this chapter 6 shall prevail.

### 6.1 Participation in Clearing on ECC for Primary Auctions

#### 6.1.1 Participation as a Bidder

Bidders participating in Primary Auctions must be approved as Trading Participants by ECC according to section 2.6. The provisions of these Clearing Conditions shall apply to them accordingly.

<sup>10</sup> Commission Regulation (EU) No. 1031/2012 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community.

<sup>11</sup> ECC AG acting as the clearing system for the auctioning of allowances may also be a party of the contract.



## 6.1.2 Participation as System Clearing Member of a Bidder

System Clearing Members of Bidders participating in Primary Auctions are obliged to publicly disclose the levels of prices and fees charged to Bidders in Primary Auctions in accordance with Art. 38 EMIR. The System Clearing Members grant ECC and EEX the right to republish such fees on their respective websites.

## 6.1.3 Participation as Auctioneer

### 6.1.3.1 Preconditions for Participation in Clearing as an Auctioneer

Pursuant to Article 22 (1) and (2) of the Auctioning Regulation, each Member State shall appoint an Auctioneer who will represent the appointing Member State(s) by auctioning the Allowances on its(their) behalf. The Member States are participating in the auctioning of Allowances at EEX and in the clearing and settlement of the auctioned Allowances at ECC through the admission of their appointed Auctioneers which shall only be admitted in their capacity as representatives of the appointing Member States. Auctioneers of Allowances can take part in clearing without a clearing licence or the conclusion of an NCM Agreement. The admission by ECC to participate as an Auctioneer in Primary Auctions requires the following conditions to be fulfilled:

- (a) The Auctioneer must be a public or private entity appointed as an Auctioneer by the contracting Member State that it represents, pursuant to Article 22 (1) of the Auctioning Regulation with a mandate to auction Allowances and receive the auction proceeds on its behalf pursuant to Article 23 (a) and (b) of the Auctioning Regulation. The Auctioneer must be admitted at EEX as representative of its appointing Member State(s), exclusively for the purpose of auctioning the Allowances and receiving the auction proceeds on behalf of that Member State pursuant to Article 23 (a) and (b) of the Auctioning Regulation.
- (b) The entity appointed by the relevant contracting Member State(s) to act as Auctioneer must be a “participant” within the meaning of Article 2(f) of the Settlement Finality Directive (“SFD”), which means that it shall either be:
  - an institution within the meaning of Article 2(b) SFD;
  - a central counterparty within the meaning of Article 2(c) SFD;
  - a settlement agent within the meaning of Article 2(d) SFD;
  - a clearing house within the meaning of Article 2(e) SFD; or
  - a system operator within the meaning of Article 2(p) SFD.
- (c) The Auctioneer must provide a suitable settlement account (TARGET2 Account) which is also recognised by ECC and to which ECC can pay out the auction proceeds after the execution of the auction (“Nominated Bank Account” according to Article 44 (1) Auctioning Regulation).

### 6.1.3.2 Scope of admission as Auctioneer; Applicable rules

- (1) The Auctioneer may only operate within the scope of its appointment pursuant to Article 22 (1) of the Auctioning Regulation and with a mandate to auction the volume of Allowances to be auctioned by each Member State appointing it and to receive the auction proceeds due on behalf of the Member State by which it has been appointed, pursuant to Article 23 (a) and (b) of the Auctioning Regulation.
- (2) Upon admission by ECC, the Auctioneer is exclusively permitted to participate in Primary Auctions in the capacity of a seller.
- (3) In accordance with Article 50 (1) of the Auctioning Regulation, the Auctioneer is required to provide Allowances as collateral prior to the opening of the bidding window for the Auction. These pre-delivered Allowances shall be held in escrow by ECC as a security trust ("Sicherungstreuhand") acting as custodian and escrow agent, pending their delivery. No other collateral or contributions can be requested from the Auctioneers for the purpose of their participation in the ECC system.
- (4) The rules regarding Trading Participants contained in these Clearing Conditions shall apply to the Auctioneers except the provisions in chapter 2, sections 3.1.1 (Rights and obligations of the Clearing Member), 3.1.2 (Trading Limits and other special agreements), 3.1.3 (Rights and obligations of the Non-Clearing Member), 3.1.4, 3.1.5 and 3.1.6 (Change of clearer and position transfer), 3.2 (Clearing of Registered Transactions), 3.3.1 para 1, 2 and 3 (Conclusion of a Transaction), 3.3.2 (Contract obligations arising from Derivatives Market Transactions), 3.3.3 para 2 and 4, (Contract obligations arising from Spot Market Transactions), 3.3.4 (Settlement of PXE Spot Market Transactions), 3.3.5 para 2 and 3 (Physically settled transactions - central delivery point), 3.3.6 (Offsetting Procedure), 3.3.8 para 2 and 3 (Objections), 3.3.9 (Assignment), 3.3.11 (Emergency Measures); Section 3.3.12 (Liability). 3.4 (Deviations in the physical settlement of grid-bound Products), 3.5 (Margins and Collateral), 3.6.1 (types of position accounts), 3.6.2 (Proprietary positions accounts), 3.6.3 (Agent Position Account), 3.6.4 (Market maker position accounts), 3.6.5 (Account keeping), 3.6.6 (Clearing Accounts), 3.6.7 (Collateral Clearing Account), 3.6.8 (Cash Collaterals Account for Trading Participants), 3.6.9 (Internal Inventory Accounts for Emission Rights), 3.7 (Fees and Price List), **Fehler! Verweisquelle konnte nicht gefunden werden.** (Default Fund), 3.9 (Default), 3.10 (Termination and close-out Netting Provisions); 3.11 (Legal consequences upon termination); 3.12 (Default Management Auctions), 3.13 (Measures for the Implementation of the Austrian Energy Act) and chapters 4 (Special Provision regarding Derivatives Market Transactions) and 5 (Special Provision regarding Spot Market Transactions) of these Clearing Conditions.
- (5) Any participation by an Auctioneer in a Primary Auction shall be excluded if the Allowances to be auctioned have not been submitted to ECC's auction delivery account in due time before the beginning of the auction concerned.
- (6) ECC is entitled to revoke or suspend admission as an Auctioneer at any time if the preconditions for the admission as Auctioneer have ceased to be fulfilled or if to the Auctioneer is in a material breach of its obligations under these Clearing Conditions which is not capable of

being remedied or is not remedied within 20 Business Days of being required by ECC to do so.

- (7) Each Auctioneer shall be entitled to unilaterally terminate its admission as an Auctioneer representing its respective Member State at any time, by means of a written notice, without specifying the reason for such termination.
- (8) Any termination, revocation or suspension of an admission as an Auctioneer as from the opening of the bidding window as defined in Art. 3 no.6 of the Auctioning Regulation shall not affect the rights and obligations of ECC and of that Auctioneer arising from the respective Primary Auctions of Allowances for which the relevant Auctioneer is responsible pursuant to Articles 22 (1) and 23 of the Auctioning Regulation, until such Primary Auctions of Allowances are settled with finality, i.e. until the relevant Allowances have been delivered on the custody accounts of the successful bidders and the corresponding auction proceeds have been credited to the Nominated Bank Account, alternative account or notary trust account of the relevant Auctioneer.
- (9) In case a new Auctioneer is appointed by a Member State pursuant to Articles 22 (1) of the Auctioning Regulation, and that new Auctioneer complies with the conditions of section 6.1.3.1 of these Clearing Conditions, the admission of the previous Auctioneer representing that Member State shall be automatically terminated upon the admission of such newly appointed Auctioneer without changing the rights and obligations under these Clearing Conditions in relation to the Member State/States represented by the Auctioneer that has been replaced.

## 6.2 Settlement of Disputes and Liability

In relation to the Member States participating in the joint action pursuant to Article 26 of the Auctioning Regulation, the provisions of the related and valid Service Contract between the Member States and ECC shall exclusively apply with regard to the settlement of disputes and the Court of Jurisdiction.

In relation to the Auctioneers each Member State is liable towards ECC for all acts performed by its Auctioneer within the scope of that Auctioneers authority to represent the relevant Member State pursuant to Article 22 (1) of the Auctioning Regulation and the applicable act of appointment. In relation to such acts the liability provisions of the related and valid Service Contract between the Member States and ECC shall apply.

With regard to the bidders acting in their capacity as Clearing Members or Non-Clearing Members, the liability provisions of these Clearing Conditions apply.

## 6.3 Settlement Finality

The settlement finality provisions applicable to the Primary Auctions of Allowances are stipulated under chapter 8 of these Clearing Conditions.

## 6.4 Clearing and Settlement of Primary Auctions of Allowances

### 6.4.1 Transfer of Allowances to be auctioned

- (1) Pursuant to Article 15 of Regulation (EU) 389/2013 (the “Registry Regulation”), ECC keeps separate auction delivery accounts in the Union Registry on behalf of Member States not participating in a joint action as provided in Article 30 Auctioning Regulation and on behalf of Member States participating in a joint action as provided in Article 26 Auctioning Regulation. These auction delivery accounts can be used for Primary Auctions only.
- (2) ECC and EEX shall determine the Auction Table in accordance with the Auction Calendar as amended from time to time and in accordance with Article 62 and 63 of the Registry Regulation.
- (3) In accordance with Article 64 of the Registry Regulation, the Allowances to be auctioned will be transferred for the Auctioneers into the nominated auction delivery account held by ECC according to the respective valid Auction Tables, in due time before the auction. If no transfer has occurred in due time before the beginning of the auction, ECC will request EEX to cancel the respective auction.
- (4) For each auction delivery account held by ECC in the union registry on an omnibus basis, ECC keeps separate internal inventory accounts for each Member State represented by its relevant Auctioneer as custody accounts on which the Allowances are credited. Upon each transfer of the Allowances into the auction delivery account held by ECC in the Union Registry, ECC proceeds to matching book entries of the Allowances in the custody accounts of each Member States represented by its relevant Auctioneer. The Allowances credited to the custody accounts are held in escrow by ECC acting as custodian and escrow agent, in accordance with Article 50 of the Auctioning Regulation. The Allowances held by ECC in accordance with this chapter are off-balance sheet of ECC and constitute collateral security provided into the system within the meaning of Article 2 lit. m SFD, benefitting from the protection of Article 9 para 1 SFD and in particular of section 166 para 3 of the German Insolvency Act. ECC holds the Allowances as collateral provided by the Auctioneer to the benefit of ECC to cover its potential exposures as a result of ECCs obligation to deliver the auctioned Allowances to the successful bidders after the payment of the auction proceeds has been effected.

The auction delivery account kept by ECC at the Union Registry for the Member States represented by its relevant Auctioneer participating in a joint action according to Article 26 Auctioning Regulation, the custody accounts provided by ECC for those Member States represented by its relevant Auctioneer, as well as the escrow arrangements and rights and obligations of ECC and the relevant Member States with respect to the appointment of ECC as custodian and escrow agent pursuant to Article 46 of the Auctioning Regulation for those Member States are governed by the separate Custody and Escrow Agreements.

### 6.4.2 Conclusion of a Transaction

Contractual relations resulting from the Primary auctions (Transactions) are concluded between the Member State represented by its respective Auctioneer as the seller and ECC as the buyer

and at the same time between ECC as the seller and the bidder as the buyer at the moment of determination of the auction clearing price by EEX in accordance with Article 7 (2) of the Auctioning Regulation.

### 6.4.3 Contractual Obligations arising from Transactions in Primary Auctions

- (1) After the conclusion of a transaction in a Primary Auction, ECC is under an obligation to pay out the auction proceeds to the Auctioneer and to deliver the auctioned Allowances to the successful bidders.
- (2) In Primary Auctions, the Clearing Members appointed by the successful bidders shall be responsible in accordance with section 3.3.3 para 3 of these Clearing Conditions for the payment obligations of the successful bidders arising from the matched orders in Primary Auctions. If a Clearing Member participates in Primary Auctions as bidder it must meet its payment obligations arising from matched orders in Primary Auctions in accordance with section 3.3.3 para 1 of these Clearing Conditions.

### 6.4.4 Principles of the Settlement of the Transactions and Reports

- (1) The transactions as communicated in the trade confirmations by EEX plus the statutory taxes shall form the basis of settlement.
- (2) The delivery and trade reports regarding the transactions shall be forwarded by ECC to the Auctioneers forthwith, usually on the day of the Primary Auction, or they are provided within the trading system of EEX.

### 6.4.5 Financial Settlement (payment and transfer of the auction proceeds)

#### 6.4.5.1 Transactions of Bidders

All payments including the statutory incurred taxes are debited from the Clearing Account of the Clearing Member during end-of-day processing of the Trading Day.

#### 6.4.5.2 Transactions of Auctioneers

- (1) ECC will transfer the auction proceeds in accordance with Article 44(2) of the Auctioning Regulation, immediately after cash collection from the Clearing Members of the successful bidders has taken place on the first Business Day following the day of the auction (T+1) around 8:15 a.m. (but not later than at the end of the respective Business Day) to the respective Nominated Bank Account of the Auctioneer without any deductions (net) and without charging any fees. All payments will be effected in EUR.
- (2) In the event of a failure of cash collection by ECC from one or more Clearing Members, ECC shall effect the transfer of the auction proceeds by applying its default provisions and utilising collateral and Default Fund contributions as stipulated in sections **Fehler! Verweisquelle konnte nicht gefunden werden.** to 3.12 of these Clearing Conditions.

- (3) Where transfer of the auction proceeds to the Nominated Bank Account of a given Auctioneer is unsuccessful due to circumstances outside ECC's control, ECC shall meet its payment obligation by transferring the amount payable to an alternative account if the relevant Auctioneer has nominated such account. Where such alternative account is not provided or payment to that account is also unsuccessful, ECC shall effect its payment obligation by transferring the amount payable to a notary trust account (NOTAR-ANDERKONTO) in cleared funds for the benefit of the relevant Auctioneer. In the case of a transfer to such notary trust account, any cost and possible damages pertaining to the holding of the funds on such notary trust account shall be incurred by the relevant Auctioneer, unless the inability to pay to the Nominated Bank Account falls within the scope of responsibility of ECC in which case ECC shall be liable for the costs and potential damages. The arrangements entered into between ECC and the notary shall provide that the notary shall use its best endeavour to execute without delay the transfer of the amount payable to any account identified and notified by the Auctioneer.
- (4) The amount transferred to each Auctioneer shall be equal to the number of Allowances auctioned by that Auctioneer multiplied by the auction clearing price announced in the results of the auction.
- (5) With the transfer of the auction proceeds by ECC according to para 1 to 4 above ECC shall be released from its payment obligations.

#### **6.4.6 Treatment of the Transactions in Terms of Value added Tax**

- (1) The transactions as established in the trade confirmations shall form the basis for the calculation of the value added tax. On this basis and under consideration of the information provided by the Trading Participants regarding the taxation treatment, ECC shall calculate the incurred value added tax with regard to the transactions separately.
- (2) The trade confirmations provided by EEX increased or decreased by the transactions fees billed shall form the assessment basis for the value added tax.
- (3) The amount of the value added tax established shall be invoiced or credited separately for every Trading Participant.

#### **6.4.7 Delivery of the auctioned Allowances to the successful Bidders**

- (1) Upon payment of the auction proceeds to the Auctioneers, the auctioned Allowances are released from escrow and delivered to the successful bidders in accordance with Article 47 of the Auctioning Regulation by:
  - debiting them from the custody accounts of the Member State represented by its respective Auctioneers and crediting them to the internal inventory accounts kept by ECC as custody accounts for the successful bidders on the first Business Day following the day of the Primary Auction; and
  - confirming the transfers of the relevant Allowances from the Auction Delivery Account to the trading account of ECC at the Union Registry in the meaning of Article 39 (1) and



(2) of the Registry Regulation. ECC will start the execution of the necessary steps for such confirmation of the transfers of the relevant Allowances from the Auction Delivery Account to the trading account of ECC at the Union Registry immediately after crediting the internal inventory accounts kept by ECC as custody accounts for the successful bidders referred to in the previous paragraph. The confirmation shall be concluded without delay. After its confirmation, the transfer will be finalised in accordance with the 26-hour delay as laid down in Article 39 (3) of the Registry Regulation.

- (2) In case of failure of cash collection by ECC from one or more Clearing Members ECC shall take delivery of the Allowances pursuant to Article 45 para 4 lit. a of the Auctioning Regulation. In such case the Allowances are delivered to ECC by:
  - debiting them from the custody accounts of the Member State represented by its respective Auctioneers and crediting them to the internal inventory account kept by ECC on the first Business Day following the day of the Primary Auction; and
  - confirming the transfers of the relevant Allowances in the meaning of Article 39 (1) and (2) of the Registry Regulation from the Auction Delivery Account to the relevant account of ECC at the Union Registry as stipulated under para 1 second indent.
- (3) This delivery takes place in fulfilment of the obligation of the Member States represented by their respective Auctioneers to deliver the Allowances to ECC as an equitable consideration ("gleichwertige Gegenleistung" in the meaning of section 142 of the German Insolvency Act) in return of the payment of the auction proceeds effected by ECC to the Auctioneers, and, at the same time, in fulfilment of the obligation of ECC to deliver the allowances to the successful bidders as an equitable consideration ("gleichwertige Gegenleistung" in the meaning of section 142 of the German Insolvency Act) in return of the payment of the auction proceeds effected by successful bidders to ECC.
- (4) The delivery by crediting of the internal inventory accounts of the successful bidders and the delivery by crediting of the internal inventory accounts of ECC shall be conditional on the confirmation, in the meaning of Article 39 (1) and (2) of the Registry Regulation, of the transfers of the relevant Allowances from the Auction Delivery Account to the relevant account of ECC at the Union Registry and the relevant incoming credits of Allowances on the internal inventory accounts of the successful bidders or ECC shall only be available to them when they are finally settled upon confirmation in the Union Registry.
- (5) In the relationship between ECC and the Auctioneers representing Member States participating in a joint action according to Article 26 of the Auctioning Regulation the delivery shall additionally be effected in accordance with the Custody Agreement and Escrow Agreement.

In the relationship between ECC and the successful bidders the delivery shall additionally be effected in accordance with section 5.3.5 of these Clearing Conditions.
- (6) After delivery has been effected in accordance with section 5.3.5 of these Clearing Conditions, the successful bidder may request a transfer of the auctioned Allowances from the ECC trading account to the nominated registry account of the Trading Participant. ECC will perform such transfer if no conflicting rights to such transfer exist under these Clearing Conditions.

- (7) If ECC fails to deliver the whole or part of the auctioned Allowances due to circumstances outside its control, ECC shall deliver the Allowances at the earliest opportunity and the successful bidders shall accept delivery at that later date. This shall be the sole remedy to which a successful bidder shall be entitled to in such case (see Article 48 para 1 and 2 of the Auctioning Regulation).

## 7. Final Provisions

### 7.1 Sovereign acts

Any legal act which is transacted by ECC or the respective Settlement Entity upon an instruction by a market or by a supervisory authority shall not constitute a violation of this agreement.

### 7.2 Forwarding of information

#### 7.2.1 Forwarding of information regarding Clearing Members and/or Non-Clearing Members to third parties

- (1) ECC and the respective Settlement Entity shall treat all data and information referring to its Clearing Members and their Non Clearing Members as confidential. ECC and the respective Settlement Entity shall only be entitled to forward information with regard to customers in case such is already part of the public domain or in case this is required by legal provisions or in case the Clearing Member concerned has approved of such forwarding of information.
- (2) Regardless of the provisions contained in paragraph 1, ECC shall be entitled to forward the following information to the markets for the transactions of which it has taken over clearing:
  - (a) granting of a clearing license (section 2.1.2),
  - (b) termination and suspension of the clearing license (section 2.1.8),
  - (c) restriction of a clearing license (section 2.1.9),
  - (d) default by the Clearing Member (section 3.9.1),
  - (e) licensing of a Clearing Member or of a Non-Clearing Member as a Trading Participant (section 2.6.1),
  - (f) revocation of a license as a Trading Participant (section 2.6.2),
  - (g) termination of the NCM Agreement (section 2.2.2).
- (3) Regardless of the provisions contained in paragraph 1 ECC shall, moreover, be entitled to forward or request all of the data and information referring to the Clearing Member which is required for the proper execution of clearing and/or the settlement of the transaction in terms of money, to clearing and settlement institutions called in to that end which are subject to confidentiality provisions similar to those of ECC.

#### 7.2.2 Forwarding of information regarding Clearing Members and/or Non-Clearing Members to supervisory and regulatory authorities

ECC and the respective Settlement Entity shall be entitled to forward data and information to competent supervisory authorities or other third parties entitled to such both within the country and abroad, which are subject to provisions regarding confidentiality similar to those of ECC,

as part of the legal provisions applicable with regard to its Clearing Members as well as to ECC and/or the respective Settlement Entity.

### **7.2.3 Exclusion of commercial use of data**

Clearing Members and Non Clearing Members may only use data and information received from the Clearing System or the reports of ECC for their own trading and settlement purposes. A transfer of this data to third parties or a processing of the received data, insofar as this is not necessary for trading on the respective partner exchange of ECC or the Clearing of these transactions, as well as any kind of commercial use of this data, is not permitted without prior consent of ECC.

## **7.3 Miscellaneous**

In case individual provisions of these Clearing Conditions should be or become void or unenforceable in their entirety or in part, this shall not affect the effectiveness or the enforceability of the remaining provisions. The ineffective provision shall be replaced with a provision permitted by law which is legally effective and corresponds to the commercial intention of the parties. The same shall apply with regard to any unintentional loopholes in the regulations.

## **7.4 Applicable law, legal venue**

- (1) These Clearing Conditions shall be governed exclusively by the applicable material law of the Federal Republic of Germany to the exclusion of the UN law on sales. The material law of the place at which physical settlement is actually provided and/or, in the case of grid-bound products, the material law applicable to the transmission system operator or the hub operator within whose transmission system delivery is effected shall govern the execution of the physical settlement of transactions.
- (2) Leipzig shall be the exclusive legal venue for all conflicts arising in connection with these Clearing Conditions and Leipzig shall be the place of performance.

## **7.5 Amendments and supplements**

Amendments and supplements to these Clearing Conditions shall be electronically announced to the Clearing Members and Non-Clearing Members of ECC by means of a circular letter and by means of a publication on the internet sites of ECC [www.ecc.de](http://www.ecc.de) and the markets at least ten (10) Business Days before such amendments take binding effect. The amendments of these Clearing Conditions and supplements hereto shall be considered accepted unless the Clearing Member or Non-Clearing Member objects to these in writing to ECC within a period of ten (10) Business Days after their announcement. ECC reserves the right to

- terminate the clearing license of the Clearing Member concerned or to order the suspension of the clearing license in the event of an objection by the Clearing Member; or

- terminate the NCM-Agreement of the Non-Clearing Member concerned or to order the suspension of the approval as a Trading Participant in the event of an objection by the Non-Clearing Member.

## 8. System Agreement

### 8.1 Payment system within the meaning of the Settlement Finality Directive

#### 8.1.1 System

- (1) ECC provides the clearing and settlement of transfer orders within the meaning of section 8.1.2 of System Clearing Members and Settlement Banks in accordance with these Clearing Conditions as the operator (system operator within the meaning of section 1 para. 16a KWG, Art. 2 lit. p and Art. 2 lit. a SFD) of a system within the meaning of section 1 para. 16, 24b KWG, section 675 p para. 5 BGB and article 2 lit. a SFD and is legally responsible for operating the ECC system. The ECC system is governed by German law and has been reported as a designated system to the European securities and market supervisory authorities by the German Bundesbank in accordance with section 1 para. 16 s. 1 KWG and Art. 2 lit. a SFD. ECC as the central counterparty and clearing house, the System Clearing Members and the Settlement Banks ("System Participants") are participants in the system.
- (2) The system operated by ECC is governed by various protective provisions according to which specifically
  - (a) Transfer orders and set-offs (including compression and aggregation) are legally binding and also effective towards third parties and may not be reversed in the event of insolvency proceedings against a System Clearing Member or a Settlement Bank (section 96 para. 2, 116 s. 3, 147 section 1 s. 2 InsO [Insolvency Code]; cf. article 3 SFD) as from the moment of entry into the system as specified in section 8.2 and 8.3 below;
  - (b) Transfer orders cannot be revoked by System Clearing Members or Settlement Banks or by third parties after the time specified in section 8.2 or for Primary Auctions as from the moment of irrevocability as specified in section 8.3 para 1 lit. b (art. 675p para. 5 BGB, cf. article 5 SFD);
  - (c) The rights of ECC as the system operator or of another participant (including the Member States represented by the Auctioneers) regarding provided real collateral which is furnished to it on account of these Clearing Conditions shall not be affected by insolvency proceedings against a System Clearing Member, ECC, a Settlement Bank, or any third party which provided the collateral (section 166 para. 3 no. 1 InsO, cf. Article 9 para. 1 SFD); this includes pre-delivered Allowances held in escrow by ECC as a security trust ("Sicherungstreuhand") under the Escrow Agreement or under these Clearing Conditions to cover exposures of ECC as a result of ECC's obligation to deliver the Allowances to the successful bidders; and
  - (d) The effects of insolvency proceedings on the rights and obligations of the System Clearing Members or Settlement Banks as participants in the system are exclusively governed by German law as the legislation of the country which is applicable to the system (section 340 para. 1, 3 InsO, art. 9 para. 1 Regulation (EC) No. 1346/2000 regarding Insolvency Proceedings, cf. article 8 SFD).



### 8.1.2 Transfer Orders

- (1) A transfer order which can be submitted to the system operated by ECC is an instruction which entails the assumption or fulfilment of a payment obligation in accordance with these Clearing Conditions. The time at which the transfer order is submitted to the system and the time at which it becomes irrevocable is listed in section 8.2 and 8.3.
- (2) Regardless of the legal reason for such – payment instructions result from the conclusion or registration of a transaction by Trading Participants in a market as well as from the conclusion of subsequent measures, in particular, resulting from the formation of net accounts receivable or payable and compressions (section 3.3.6), trade transfers (section 3.6.5), position transfers (sections 3.1.4, 3.6.4 and 3.6.5) as well as from the formation of net positions (section 3.11) and balancing claims (sections 3.10.1). Furthermore, transfer orders result from requesting, transferring, returning and using collateral as well as commitments by the Settlement Bank to accept liability for certain financial liabilities towards ECC.

### 8.1.3 System collateral

The collateral provided to ECC as system operators according to section 3.5.1 constitutes system collateral within the meaning of section 166 para. 3 no. 1 InsO, which is used to cover claims of ECC from the system.

### 8.1.4 Obligation of a Settlement Bank

A Settlement Bank is liable towards ECC for the fulfilment of a transfer order initiated by the Settlement Bank or a confirmation by the Settlement Bank of a payment request of ECC against the Settlement Account of the DCP Clearing Member.

### 8.1.5 System Agreement

- (1) In as far as the Clearing Conditions were part of an agreement between a System Clearing Member and ECC, chapter 8, the provisions in chapter 7 as well as all provisions and definitions of terms in these Clearing Conditions referring to System Clearing Members together form an independent contractual agreement (“System Agreement”).
- (2) In as far as the Clearing Conditions are part of an agreement between a Settlement Bank and ECC, only this chapter 8 as well as the definitions of Settlement Bank, Settlement Account and DCP Clearing Member in the Clearing Conditions are part of this independent contractual agreement (“System Agreement”).
- (3) The entirety of the System Agreements according to paras. 1 and 2 constitutes a formal agreement within the meaning of article 2 a) of the Settlement Finality Directive which forms a system within the meaning of the Settlement Finality Directive.

## 8.2 Time of the submission and irrevocability of transfer orders

- (1) Transfer orders are submitted to the ECC system by the System Participants and, hence, are irrevocable, as of the point of time at which
  - (a) an order entered into the trading system of a market is matched with another order in accordance with the rules and regulations of this market or
  - (b) a trade is registered or – in the case of registration using STP systems (section 3.2 para. 3) – accepted by the ECC interface in accordance with the rules and regulations of a market or
  - (c) a Settlement Bank has initiated a transfer order for the benefit of ECC and against the Settlement Account of the DCP Clearing Member or has confirmed to ECC in a manner previously agreed between the parties that a financial liability as requested by ECC does exist and will be fulfilled. The Settlement Bank is liable to ECC for the fulfilment of this financial liability (section 8.1.4).
- (2) In deviation from para 1, all other transfer orders by System Participants and, in particular, those which result from the formation of net accounts receivable or payable and compressions (section 3.3.6), trade transfers (section 3.6.5), position transfers (sections 3.1.4, 3.6.4 and 3.6.5) and from the formation of net positions (section 3.11) as well as offsetting claims (section 3.10.1) or from requesting, transferring, returning and using of collateral are considered submitted to the ECC system and irrevocable as of the time at which ECC identifies or records the respective transfer orders in the Clearing System.

## 8.3 Time of entry into the system and irrevocability of transfer orders and finality of transfers in relation to primary auctions of Allowances

For a Transfer Order regarding the payment of the relating auction proceeds to the Auctioneers and the delivery of Allowances auctioned in Primary Auctions:

- (a) the moment of entry into the system according to Article 3 (3) SFD (**Settlement Finality 1**) shall be the moment, when ECC and ECC submit the auction tables to the European Commission in accordance with Articles 62 to 63 of the Registry Regulation. If the auction tables should be amended at a later stage, the moment of entry into the system shall remain to be the moment of submission of the initial auction table;
- (b) the Transfer Order shall be irrevocable (**Settlement Finality 2**) as of the moment of determination of the auction clearing price by EEX;
- (c) each Transfer of Allowances by the Member States to ECC and payment of the auction proceeds by ECC to the Member States shall be final and irrevocable immediately and automatically (**Settlement Finality 3**) upon fulfilment of the following three conditions:
  - the crediting of the related auction proceeds to the Nominated Bank Account of the Auctioneer or a respective alternative account according to section 6.4.5.2 para 3; and

- the release of the Allowances from escrow in accordance with section 6.4.7 para 1 or 2 of these Clearing Conditions, and crediting of the Allowances to the internal inventory account of the successful bidders or, in case of failure of collection of the auction proceeds from the successful bidders, crediting the Allowances to the internal inventory accounts of ECC; and
- the confirmation, in the meaning of Article 39 (1) and (2) of the Registry Regulation, of the transfers of the relevant Allowances from the Auction Delivery Account to the relevant account of ECC at the Union Registry.

The delivery of the Allowances by the Member States to ECC by releasing the escrow is final and irrevocable if and only if the payment of the corresponding auction proceeds to the bank account of ECC is final and irrevocable and vice-versa.

- (d) each Transfer of Allowances by ECC to the successful bidders and payment of the auction proceeds by the successful bidders to ECC shall be final and irrevocable immediately and automatically **(Settlement Finality 3)** upon fulfilment of the following three conditions:

- the crediting of the related auction proceeds to the bank account of ECC;
- the crediting of the Allowances to the internal inventory accounts which are kept by ECC as custody accounts of the successful bidders in accordance with section 6.4.7; and
- the confirmation of the transfers of the relevant Allowances from the Auction Delivery Account to the trading account of ECC at the Union Registry, in the meaning of Article 39 (1) and (2) of the Registry Regulation.

The delivery of the Allowances by ECC to the successful bidders by crediting the custody accounts of the successful bidders and confirming the relevant transfer in the Union Registry is final and irrevocable if and only if the crediting of the corresponding auction proceeds to the bank account of ECC is final and irrevocable and vice-versa.