



Clearing Conditions of European Commodity 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. Currently, the exchanges CEGH Gas Exchange of Vienna Stock Exchange (CEGH Gas Exchange), European Energy Exchange (EEX), EPEX Spot SE (EPEX), HUPX Zrt. (HUPX), Powernext SA (POWERNEXT) and Power Exchange Central Europe a.s. (PXE) are licensed as markets.

In co-operation with ECC, the primary CCP of EEX, Eurex Clearing AG (ECAG) provides clearing services for transactions in certain markets and in certain products (co-operation products) as a central counter-party (Sub-CCP) on the basis of a separate agreement (CCP-Sub-CCP Agreement).¹

Physical settlement of all transactions for which ECC has assumed clearing is provided through European Commodity Clearing Luxembourg S.a.r.l. (ECC Lux), a subsidiary of ECC, 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 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.

¹ [The cooperation between Eurex AG, Eurex Clearing AG and ECC AG will be terminated on July 31st 2014. The respective rules in the clearing conditions will be amended accordingly in the next release.](#)

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. In as far as no other provisions are made, the accounting cut-off shall correspond to the end of trading on every business day.
Auction delivery account	Delivery account for auctioned certificates in accordance with Article 13 of the Regulation (EU) No. 389/2013 of 2 nd May 2013 establishing a Union Registry (Registry Regulation)
Back-up Clearing Member	A Clearing Member that can take over clearing forthwith in the event of a change of the clearer.
Balance 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 and ECC Lux regarding the settlement of power and natural gas deliveries.
Batch processing	Daily process of ECC for daily settlement, position administration as well as calculation and booking of margins for all transactions for which ECC has taken over clearing.
Business hours	The business hours are from 7.30 am until 7.00 pm on every business day.
Business day	The days from Monday to Friday on which transactions are settled financially by ECC excluding TARGETII holidays.
Cash pledge account	Pledge account of the Clearing Member with regard 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]
CEGH Gas Exchange	CEGH Gas Exchange of Vienna Stock Exchange is a market on which derivatives and spot market transactions in natural gas are traded or registered.
Clearing	Financial and physical settlement of transactions as well as collateralisation of transactions.
Clearing account	Accounts of the Clearing Members, the Sub-CCP and ECC, which are kept by ECC or a third party on behalf of ECC and to which payments are credited or from which such are debited in batch processing during settlement of the transactions

	in accordance with these Clearing Conditions.
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 admitted as Non-Clearing Members and Trading Participants by ECC.
Clearing Broker Client	A client of a Clearing Member which is a Non-Clearing Member at ECC and takes part in the clearing procedure at ECC through that respective Clearing Member (Clearing Broker) and which is approved as Trading Participant by ECC <u>Non-Clearing Member that gets access to a market via its Clearing Member and that is approved as a Trading Participant by ECC.</u>
Clearing house	Central counterparty for the transactions included in clearing.
Clearing Member	Participant in the clearing procedure who has a clearing license. A Clearing Member can also be licensed by ECC as a Trading Participant for one of the products.
<u>Clearing Member Representative</u>	<u>Either 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.</u>
<u>Client</u>	<u>Client of a Clearing Member that has not concluded any NCM Agreement with the Clearing Member and ECC.</u>
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.
Co-operation products	Products which are traded on a market recognised by ECC and for which a Sub-CPP is included in the clearing process on the basis of an agreement.
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 counterparty 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 with the objective of providing physical settlement of all transactions for which ECC has assumed clearing for the Trading Participants.
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.
Emission right	Shares in the total inventory of allowances under the Greenhouse Gas Emissions Trading Act held by ECC LUX for all Trading Participants which are credited in internal inventory accounts and which are designed to contribute to the reduction of global CO2 emissions (EU Emission Allowances, EU Aviation Allowances, Certified Emission Reductions and Emission Reduction Units). ECC LUX keeps these allowances in trust in registry accounts for the auctioneers and/or bidders and Trading Participants in accordance with the provisions of the Clearing Conditions.
EPEX	EPEX Spot SE, EPEX is a market on which spot market transactions in power are concluded or registered in the framework of exchange trading.
General Omnibus Participant	All clients and Non-Clearing Members of a Clearing Member that are neither Segregated Non-Clearing Members nor Omnibus Clients or Simple Omnibus Participants.
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.
HUPX	HUPX Zrt. HUPX is a market on which power spot and derivatives market transactions are concluded in the framework of exchange trading
Known Participants	Segregated Participants and Non-Segregated Non-Clearing Members

Margin requirement	The collateral to be provided which is calculated on every ECC business day and requested by ECC in accordance with these Clearing Conditions.
Market Coupling	A mechanism for the integration of power markets through coordinated pricing and the allocation of transmission capacities.
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 subject of clearing services.
Market	Exchange, multilateral trading facility or comparable organisation which permits the conclusion or registration of transactions in products included in clearing by ECC.
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 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.
Position	Balance of several derivatives market transactions regarding the same contract which have not been settled yet.
POWERNEXT	Powernext SA. POWERNEXT is a market on which derivatives and spot market transactions are traded or registered.
Primary-CCP	ECC as the central counterparty in its legal relationship with the Sub-CCP
Product	Spot market contract or all derivatives market contracts with the same underlying and different maturity dates which are traded in one market and have been included in clearing by ECC.
PXE	Power Exchange Central Europe a.s. is a market on which derivatives market transactions are traded or registered. Spot market transactions of PXE Trading Participants are traded on the common day-ahead market of PXE and OTE ("PXE Spot Market Transactions").
Segregated Account	In a Segregated Account, trades and positions of the Segregated Participant are recorded separately from a) the proprietary positions of the Clearing Member, b) of trades and positions of other 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.
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.
Segregated Participant	Segregated Non-Clearing Member and Omnibus Clients.

Settlement account	TARGET2 or CBF 6 Series accounts of the Clearing Members, the Sub-CCP and of ECC, to which the daily balance of their clearing accounts is credited or from which such is debited. ECC specifies for every product whether TARGET2 or CBF 6 Series accounts have to be used as settlement accounts.
<u>Simple-Omnibus</u>	<u>A Simple Omnibus solely consists of those Simple Omnibus Participants of a Clearing Member which are allocated to the Simple Omnibus by the Clearing Member within the clearing systems of ECC.</u>
<u>Simple-Omnibus Participant</u>	<u>Certain clients and Non-Clearing Members of a Clearing Member, which are neither Segregated Non-Clearing Members, nor Omnibus Clients or Simple-Omnibus Participants.</u>
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).
Spot market	Market or sub-market on which transactions regarding products are concluded and/or registered which are settled within a period of two business days.
Spot market transaction	Transaction by a Trading Participant which is fulfilled within two business days.
Stop Button	Application to EEX regarding the exclusion of a Non-Clearing Member and declaration no to execute any further transactions of this Clearing Member on the derivatives market of EEX which is provided technologically.
Sub-CCP	A central counterparty within the meaning of art. 1 paragraph 2 KWG [German Banking Act] which takes part in the clearing provided by ECC on the basis of a special agreement (CCP-Sub-CCP Agreement).
Trade	A trade is a 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.
Trade Limit	Arrangement for limiting of orders which can be entered into the trading system of a Market by a Non-Clearing Member which is technically provided and agreed on by contract be-

	tween the Clearing Member and the Non-Clearing Member.
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 Participant	Company which is licensed as a Trading Participant in one market, which is 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.
Unfulfilled trade	Spot Market or Derivatives Market transaction, which has not yet been settled financially and/or physically. The balance across several unfulfilled Derivatives Market trades on the same contract is also referred to as a position.

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 (CM agreement) with ECC. A clearing license authorizes the holder to clear transactions in products which are currently approved by ECC or which will be approved by said party in the future. 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 clearing license can be granted as a general clearing license or as a direct clearing license. A general clearing license authorizes the holder to clear transactions on 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.

2.1.2 General Preconditions to be fulfilled by a Clearing Member

- (1) Only institutions fulfilling the following preconditions can be granted a clearing license:
 - (a) Institutions based in a member state of the European Union or in Switzerland 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 subject to the supervision by the competent authorities within their countries of incorporation in accordance with the parameters of the directives of the European Union or, in case the company is based in Switzerland, of the Swiss bank commission.
 - (b) Branch offices and branch establishments within the meaning of articles 53, 53 b or 53 c of the German banking act (KWG) 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 paragraph 1 of the Swiss Federal Law regarding Banks and Savings Associations in conjunction with art. 1 et seqq. of the Ordinance of the Swiss Bank Commission 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 barriers to exit 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) 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.

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 for their branch offices or branch establishments will be fulfilled to an unrestricted amount upon the first request to that end by ECC. For the purpose of verification of the legal validity of said 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.

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

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

[For 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 4th July 2012, the same requirements regarding liable equity funds shall apply as for Clearing Members with a direct clearing license.](#)

- (3) The calculation of the liable equity 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 equity 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 clearing license. For the purpose of verification ECC shall be entitled to commission a final auditor at the expense of the institution filing the application.
- (4) In case the liable equity funds of the institution filing the application are not sufficient for granting of a 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 3.5 ([“Collateral Replacing Equity”](#)).

The bank guarantee must be issued to the benefit of ECC by a national banking institution within the meaning of art. 1 para 1 of the German banking act (KWG) 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 Clearing Member and the banking institution issuing the guarantee must not be identical in person any shall not be affiliated companies within the meaning of art. 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 Clearing Member. The type, content and form of the bank guarantee shall be specified by ECC.

- (5) Moreover, evidence of the following shall be furnished:
- (a) at least a pledged-securities account at Clearstream Banking AG if securities are posted as collateral and if applicable a cash pledge account.
 - (b) a settlement account at the central bank of a member state of the European Union which takes part in the settlement via the TARGET2 system (TARGET2 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 **customers 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. At least one sufficiently qualified member of staff has to be present as well as available by phone, e-mail and fax at any time during any given business day.
 - (f) the contribution to the Clearing Fund as per section 3.8.

2.1.3 Product-specific Preconditions on the Part of the Clearing Member

- (1) The following shall be required for clearing of products in USD:
- (a) a settlement account through which USD funds can be processed at Clearstream Banking AG, Frankfurt, (CBF 6 Series Account),
 - (b) the technical connection to the CreationOnline or S.W.I.F.T system,
 - (c) as well as an authorization to Clearstream Banking Frankfurt AG to execute payment instructions on the respective CBF- 6 Series Account concerned.
- (2) The following shall be required for clearing of products in GBP:

- (a) a settlement account through which GBP funds can be processed at Clearstream Banking AG, Frankfurt, (CBF 6 Series Account),
 - (b) the technical connection to the CreationOnline or S.W.I.F.T system,
 - (c) as well as an authorization to Clearstream Banking Frankfurt AG to execute payment instructions on the respective CBF- 6 Series Account concerned.
- (3) For clearing of transactions of the CEGH Gas Exchange a registration as settlement member by the Vienna Stock Exchange is required.

2.1.4 Notification Requirements and Right to audit

- (1) Every Clearing Member shall inform ECC forthwith as soon as the general and product-specific 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 the event of any of the following:
 - (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 shall investigate any of its affairs 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) 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;
 - (g) the sale of a significant part of the Clearing Members business or assets to another entity and
 - (h) 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.
 - (i) if the auditors of the Clearing Members do not issue an unqualified financial report.
 - (j) any event of default of a Non-Clearing Member or an Clearing Broker Client respectively which might pose a significant risk to the Clearing Member.
- (3) Clearing Members shall be obliged to furnish evidence of the existence of the required liable equity funds to ECC by submitting a copy of an audited financial statement within a

period of six months after the end of any given business year of the Clearing Member concerned.

- (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 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 Clearing Member should give prompt written information on ECCs 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 ECCs 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.

2.1.5 Non-transferability

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

2.1.6 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 move. 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 shall 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 or
 - (b) the general preconditions for granting of a clearing license have subsequently ceased to exist or

- (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 or
- (d) measures according to art. 45 et seqq. KWG have been instituted against the Clearing Member or in case an application for insolvency proceedings has been filed. The measures as per art. 45 et seqq. KWG 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 art. 45 et seqq. KWG have been instituted against a company which exercises control over the Clearing Member within the meaning of Art. 17 AktG [German Companies Act] or of comparable national rules (ultimate parent) or in case an application for insolvency proceedings has been filed. Measures as per art. 45 et seqq. KWG 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.
- (f) the Clearing Member objects to an amendment of these Clearing Conditions within the period of time specified under section 6.5.

ECC shall communicate the termination of the clearing license to the Clearing Member concerned in writing by specifying the reasons for said measure.

- (3) In case of the 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 said 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 affiliated 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 that they can make arrangements for the transfer of their trades and positions and, if applicable, collateral to another Clearing Member.

- (5) If the Clearing Member violates the provisions contained in section 4 lit. (a), ECC is entitled to proceed in accordance with section 4 lit (b). ~~In case the close-out procedure and/or~~

~~the transfer is not concluded within a period to be specified for each individual case by ECC, ECC can have close-out or transfer effected according to section 3.9.3.~~

~~In case of the termination or suspension of a clearing license ECC can either close-out or transfer positions according to section 3.9.3 itself or allow the Clearing Member and its affiliated Non-Clearing Members to conclude close-out transactions or risk minimizing position transfers upon approval by ECC. In as far as the provisions contained in section 3.10 are not applied in case of the insolvency of a Clearing Member, all transactions which have not been fulfilled have to be closed-out or transferred to another Clearing Member. The Clearing Member shall inform its Non-Clearing Members forthwith so that these can take precautions for a transfer to another Clearing Member. ECC shall monitor the close-out or the transfer.~~

~~(5) In case the close-out procedure and/or the transfer is not concluded within a period to be specified for each individual case by ECC, ECC can have close-out or transfer effected according to section 3.9.3.~~

(6) 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 and for the clearing of which it is responsible.

2.1.7 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 subsequent to granting of the license.

ECC shall inform the Clearing Member concerned of the restriction of the clearing license in writing by specifying the reason for such measure.

(2) In case of a restriction of the clearing license, the Clearing Member and its affiliated Non-Clearing Members are only entitled to carry out close-out transactions or risk minimizing position transfers upon approval by ECC in the products concerned as of that time. 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 that these can then 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 ~~3.9.3~~ 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 fulfilled and for the clearing of which it is responsible.

2.1.8 Back-up Clearing Members

(1) Clearing Members can be appointed as Back-Up Clearing Members of a Non-Clearing Member or of an Omnibus Account. To this end, the Non-Clearing Member or the respec-

[tive Omnibus Representative](#), the Back-Up 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 Clearing Member.

- (2) Upon request by the Non-Clearing Member [or by the Omnibus Representative](#), a Back-Up Clearing Member can assume clearing for said Non-Clearing Member [or Omnibus Account](#) in accordance with the provisions contained in sections 3.1.4 and 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. The following shall be required for licensing:

- (a) conclusion of a corresponding NCM Agreement with the co-operating Clearing Member and ECC.
- (b) Moreover, the clearing license of the Clearing Member co-operating with said Non-Clearing Member has to 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 applicable access policies of ECC.

2.2.2 Termination of the NCM Agreement

- (1) ECC shall 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 Clearing Member all transactions regarding this product which have not been fulfilled yet. The 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 Clearing Member repeatedly infringe on essential provisions of the Clearing Conditions in spite of a warning being given. 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 fulfilled yet or transfer such to another Clearing Member. The Clearing Member shall fulfil the obligations arising from the remaining transactions of the Non-Clearing Member.
- (3) A Clearing Member 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 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 Clearing Member, any more. The Clearing Member shall fulfil the obligations arising from the remaining transactions of the Non-Clearing Member.

- (4) A Non-Clearing Member shall be entitled to terminate an NCM Agreement in its entirety or with regard to individual products at any time; this 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 Clearing Member and ECC.
- (5) 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 Email 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 Clearing Member that are not Non-Clearing Members

2.3.1 Omnibus Clients and other clients

Clients of a 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 a different client are kept by the Clearing Member together with the trades and positions of other of these different clients in a client account of this Clearing Member.

2.3.2 Preconditions for keeping trades and positions in an Omnibus Account

A Clearing Member can keep trades and positions for clients in an Omnibus Account provided the 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 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 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 Clearing Member's authorisation to keep trades and positions in an Omnibus Account for clients ceases to apply. In this case, the Clearing Member is not allowed to enter new orders for the Omnibus Client concerned. Moreover, the Clearing Member must delete all outstanding orders for the respective Omnibus Clients and close out all unfulfilled trades for the respective Omnibus Clients or transfers these to another Clearing Member. The Clearing Member has to fulfil its obligations under the remaining transactions for the respective Omnibus Clients concerned. The Clearing Member has to fulfil its obligations from the remaining transactions for the respective Omnibus Clients.

2.3.2.4

Trading Participants

2.3.2.4.1 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) licensing 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 or, as an alternative, for products on the Derivatives Market a covenant by the Trading Participant to exclude physical settlement of the transactions in this product by means of closing-out in due time in accordance with the rules of ECC provided ECC and the respective Clearing Member approve of such.
- (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; alternatively ECC will only inform the Trading Participant and its respective Clearing Member.

2.3.22.4.2 Revocation of an approval

- (1) ECC shall revoke approval as a Trading Participant regarding one product in case the preconditions for said approval have ceased to exist. 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 supporting Clearing Member of the revocation in writing by specifying the reasons for such measure.
- (2) In case of a revocation of said approval, the Trading Participant shall only be entitled to conclude close-out transactions or risk minimizing position transfers upon approval by ECC regarding these products as of that time. All transactions regarding these products which have not been fulfilled shall be closed out or transferred to another Clearing Member. ECC shall monitor close-out or transfer.
- (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) 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.

2.42.5 Auctioneer for EU Emission Allowances A

2.4.12.5.1 Preconditions for participation in clearing as an auctioneer

Auctioneers of EU emission allowances can take part in ECC clearing even without a clearing licence or the conclusion of an NCM Agreement. Admission to participation as an auctioneer for EU emission allowances by ECC requires the following conditions to be fulfilled:

- (a) The auctioneer must be an institution under private or public law which is appointed for the purpose of the initial allocation of greenhouse gas emission allowances (EU emission allowances) within the meaning of directive 2003/87/EC and its amending laws (public order) by one or several member states of the European Union or by the EU Commission.
- (b) The auctioneer must provide a suitable settlement account (TARGET II Account) which is also recognised by ECC and to which ECC, as the paying agent of ECC Lux, can pay out the revenue after the execution of the auction.
- (c) From ECC's perspective a settlement of all transactions arising from the auctions which is free of a risk of default needs to be safeguarded.

2.4.22.5.2 Scope of admission as an auctioneer, applicable rules

- (1) Upon admission as an auctioneer, the party concerned is recognised by ECC as a trading participant within the meaning of section 2.3. However, the auctioneer is exclusively permitted to participate in the capacity of a seller in Emission Rights Primary Auctions on the Spot Market.

- (2) The auctioneer may only operate in the framework of his public order.
- (3) The rules regarding trading participants contained in these Clearing Conditions shall apply to the auctioneer – unless other provisions are made herein below or on the basis of a special agreement between ECC and the auctioneer. As regards liability the provisions made in these Clearing Conditions with regard to Clearing Members shall apply (section 3.4.12).
- (4) Any participation by the auctioneer in an Emission Rights Primary Auctions on the Spot Market shall be excluded if the EUA to be auctioned have not been submitted to an account kept by ECC Lux at a suitable registry in due time before the beginning of the respective auction concerned. In this case, no margins need to be provided by the auctioneers.
- (5) Unless otherwise agreed, ECC is entitled to revoke admission as an auctioneer at any time, section 2.4.2 shall apply accordingly.

~~Inclusion of products~~

- ~~(1) ECC shall take a decision regarding the inclusion of products for clearing. If an ECC advisory board 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 which is organized as an exchange, a multilateral trading facility or a similar institution, which is subject to a form of government or similar monitoring and in which proper trading or a 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 authorizations 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 securitization of transactions regarding this product.~~

2.5.2.6

operation with Clearing Entities for Spot Market Transactions

C

2.5.1.2.6.1 Scope of the Cooperation

- (1) ECC cooperates with other 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 ~~to ECC~~ in the form of guarantees. Clearing Entities are exempt from the requirement to make contributions to the ECC Clearing Fund.

~~2.5-2.6.2~~ 2.6.2 ECC's Duty to assume Liability/Default of the Clearing House

The duty to assume liability on the part of ECC or ECC Lux is restricted towards the trading participants as follows in the case of transactions as per section 2.6.1 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 ECC Lux shall be excluded.
~~The duty to assume liability on the part of ECC or ECC Lux is restricted towards the trading participants as follows in the case of transactions as per section 2.6.1 paragraph 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 3.9.3 of these Clearing Conditions. If the collateral furnished is not realisable or not sufficient to cover the financial consequences of a default, ECC shall proportionately reduce its daily net payments to the trading participants in the corresponding products and markets until the financial consequences of the default are covered or reclaim overpaid amounts; any further liability on the part of ECC or ECC Lux shall be excluded.~~

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

~~The duty to assume liability on the part of ECC or ECC Lux is restricted towards the trading participants as follows in the case of transactions as per section 2.6.1 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 daily net payments to the trading participants in the corresponding products and markets until the financial consequences of the default are covered or reclaim overpaid amounts; any further liability on the part of ECC or ECC Lux shall be excluded.~~

2.7 Inclusion of Products

- (1) ECC shall take the decision regarding the inclusion of products for clearing. If an ECC advisory board 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 which is organised as an exchange, a multilateral trading facility or a similar institution subject to a form of government or similar monitoring and in which proper trading or a 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) General 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 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 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.
- (3) Upon a request to that end by the supporting Clearing Member on 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 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 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 trade limit specified by the Clearing Member or
 - (c) the Non-Clearing Member has failed to fulfilled any other obligation which might exist towards the Clearing Member even though a warning has been given by the Clearing Member.
 - (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 insolvent 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 \[German Companies Act\] or similar national provisions \(parent company\) on the Non-Clearing Member shall correspond to an insolvency regarding a Non-Clearing Member.](#) ~~of the insolvency of the Non-Clearing Member within the meaning of section 3.10.1 paragraph 2.~~

A request by phone shall be confirmed in writing forthwith.

- (4) A Clearing Member can submit an application for the temporary exclusion of one of the Non-Clearing Members which it supports from the EEX derivatives market products which can be traded within the EUREX system also by means of a corresponding entry into the EUREX system (Stop Button) provided the Clearing Member concerned has concluded an agreement regarding the permissibility and toleration of such a measure with the Non-Clearing Member. At the same time, the Clearing Member declares that it is not prepared to execute further transactions of this Non-Clearing Member on the derivatives market of EEX. The Clearing Member can submit said declaration and application which is supported by the technology as a supplement to paragraph 3 if the Non-Clearing Member
- (a) does not provide the margin established by its Clearing Member, daily settlement payments, if it does not perform delivery obligations or acceptance of delivery obligations and obligations to make payments, if it does not pay premiums or fees which have fallen due and which are legally based on transactions on the derivatives market of EEX or in case it does not provide/ perform such when due or
 - (b) does not take an order limit established by the Clearing Member or supported technologically (Trade Limit) for the derivatives market of EEX into account or
 - (c) has failed to fulfil its other or special obligations with regard to transactions on the derivatives market of EEX agreed on by contract towards the Clearing Member as per section 3.1.2.

The Clearing Member which has used the function of the Stop Button is obliged to make all the required declarations to permit trading on the derivatives market of EEX by means of a corresponding entry into the EUREX system (deactivation of the Stop Button) forthwith once the preconditions for the use of the Stop Button specified in paragraph 4 have ceased to exist.

- (5) If a Non-Clearing Member is excluded from trading Clearing Members can exercise any options themselves or close out or transfer transactions which have not been fulfilled to another Clearing Member which have been concluded or registered by their Non-Clearing Members. If the Clearing Member is not able to exercise options or the close out or to transfer transactions due to technical reasons (e.g. missing approval of the Clearing Member as Trading Participant at a market), ECC may exercise – on written and irrevocable request of the Clearing Member and subject to the technical and operational feasibility - options, transfer transactions which have not yet been fulfilled on behalf of the Clearing Member to another Clearing Member or to assign closeout transactions concluded by a third party (e.g. broker) by using trade transfers according section 3.6.5 (7) to the Non-Clearing Member.
- (6) In case a Clearing Member or its affiliated Non-Clearing Member does not effect delivery and/or acceptance of delivery and payment which has fallen due towards ECC or ECC Lux, the Clearing Member as well as its affiliated Non-Clearing Members can be excluded from trading on the markets upon a request to that end by ECC for the duration of the default. Moreover, the transactions on all accounts which have not been fulfilled and for whose clearing the Clearing Member is responsible can be closed out or transferred to

another Clearing Member. ECC shall not be liable for any losses which a Non-Clearing Member incurs in the case of the exclusion of its Clearing Member.

- (7) ECC shall inform the 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 Clearing Member or the risk evaluation of said party.

3.1.2 Special agreements by the Clearing Members with their Non-Clearing Members

- (1) Clearing Members can conclude special agreements with their Non-Clearing Members in particular with regard to the settlement of derivatives market transactions on EEX. They are, in particular, entitled to agree technically supported order limits (Trade Limits) and the consequences in case of a non-compliance with these Trade Limits. This includes, in particular, the obligation to tolerate procedures supported by the system regarding the temporary exclusion from trading on the Derivatives Market of EEX (Stop Button), 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 Trade Limits are described in art. 39 of the Trading Conditions of EEX.
- (2) Upon a request by the Clearing Members commissioned by them, the Non-Clearing Members are obliged to establish agreements regarding Trade Limits with these. In this case, the Clearing Members can store the Trade Limits agreed on with their respective Non-Clearing Members in the system of ECC or in the trading systems of the respective markets. In case Non-Clearing Members enter further restricting Trade Limits for themselves or in the relationship with the Clearing Member's Trade Limits, these limits entered are considered Trade Limits of the Clearing Member in the relationship with ECC.
- (3) The paragraphs herein above as well as section 3.1.1 para 4 apply accordingly with regard to Clearing Members of the Sub-CCP with reference to co-operation products traded on EEX markets.

3.1.3 Rights and obligations of the Non-Clearing Member

- (1) A Non-Clearing Member can conclude an NCM Agreement with a Clearing Member with a general clearing license or an NCM Agreement with an affiliated 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 sect. 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.
- ~~(23)~~ A Non-Clearing Member has to settle its transactions in a market through a given 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 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 2.1.8. Sentence 1 shall also not apply in the

event of a change of the Clearing Member with an accelerated position transfer until the final conclusion of the change of the Clearing Member.

3.1.4 Change of clearer and position transfer

- (1) At ECC a Non-Clearing Member [or an Omnibus Representative](#) can apply for a change of its Clearing Member at any time. The change of the clearer is effected by appointing a new 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 Clearing Member on account of which the corresponding positions which have not yet been fully settled in the relationship between the transferring Clearing Member and ECC cease to exist and, at the same time, they are re-established in the relationship between the Clearing Member accepting such transfer and ECC (jointly referred to as the “position transfer”). The ~~position transfer~~ [position transfer](#) does not affect the rights and obligations of the Non-Clearing Member [or of all Omnibus Clients concerned](#) under the positions transferred; as a result of the transfer, the positions transferred are not considered positions with regard to the NCM Agreement [or the Omnibus Agreement](#) between the Non-Clearing Member [or regarding the Omnibus Account respectively](#) and the Clearing Member accepting the transfer and these are no longer considered positions with regard to the NCM Agreement [or the Omnibus Agreement](#) between the Non-Clearing Member [or regarding the Omnibus Account respectively](#) and the transferring Clearing Members. All position transfers are effected at the settlement price for the business day before the business day on which the position transfer is effected.
- (2) Unfulfilled Spot Market transactions, which have been concluded until the first accounting cut off after the change of the clearer and delivery, settlement and payment instructions from Derivatives Market positions which have fallen due or which have partly fallen due are not covered by the change of the clearer according to Paragraph 1. These are still settled with the transferring Clearing Member instead.
- (3) ECC usually carries out the position transfer with a lead time of three business days according to Paragraph 1 if the transferring Clearing Member and the Clearing Member accepting such transfer approve of the transfer and if there is a valid NCM Agreement [or Omnibus Agreement](#) between ECC, the Non-Clearing Member [or regarding the Omnibus Account](#) and the Clearing Member to which the positions are transferred.

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 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 2:00pm at the latest and provided the following preconditions are cumulatively fulfilled at this time:
 - [In as far as a Non-Clearing Member is concerned, t](#)~~There~~ ~~There~~ is an NCM Agreement between the 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 Clearing Member accepting the transfer and the Omnibus Representative, the Omnibus Clients and the ECC.](#)
- The Clearing Member accepting the transfer is technically set up within the ECC system.
- ECC has received the approval of the Clearing Member accepting the transfer.
- The risk situation of the 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 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 Clearing Member accepting the transfer 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 clearer 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 2:00pm 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 ~~and, if applicable, the provisions contained in the NCM Collateral Agreement concluded by and between the Clearing Member and the Non-Clearing Member~~ 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 3.5.6, the Non-Clearing Member [or the Omnibus Representative](#) can submit an application for the transfer of the collateral provided by its 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 Clearing Member; this approval can also be granted in advance.
- (3) [The transferring Clearing Member commissions and authorises ECC to transfer the transferable collateral \(as defined below\), which is posted in the CBF pledged securities account and the pledged cash account, to the Non-Clearing Member or the Omnibus Representative concerned or to a third person 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 Clearing Member for the Non-Clearing Member or the Omnibus Account to the 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 account and all the cash collateral posted in the pledged cash account with the exception of:

- (a) Collateral for trades and instructions within the meaning of section 3.1.4 para 2 sentence 1 which are still settled towards the transferring 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
- (b) Collateral for claims which the transferring Clearing Member might still have from the Non-Clearing Member concerned or from the Omnibus Account at the time of the transfer (substitute collateral). As regards the provision of substitute collateral, the version which has been separately agreed between the Non-Clearing Member or the Omnibus Representative and the transferring Clearing Member shall apply.

(34) If the preconditions specified in Paragraph 2 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.

(45) ~~A Non-Clearing Member can also apply for the transfer of the collateral to the collateral account of the Clearing Member accepting the transfer at ECC.~~ 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 Clearing Member accepting the transfer.

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 possess-

es an approval as a Trading Participant can perform trading and position keeping on third party accounts for its Clearing Broker Clients.

- (2) A Trading Participant shall be obliged towards ECC Lux to fulfil all delivery obligations and/or acceptance of delivery and payment obligations arising from all transactions concluded, registered or accepted by them.

3.2 Legal relations in case of the inclusion of the Sub-CCP

3.2.1 General

The Sub-CCP can provide clearing of own transactions of its Clearing Members, the customers' transactions and of transactions concluded by the Non-Clearing Members in co-operation products in accordance with the CCP-Sub-CCP Agreement concluded with ECC in co-operation with ECC.

3.2.2 Rights and obligations of the Sub-CCP

- (1) The legal relationships between ECC and the Sub-CCP as an independent clearing house connected with ECC by means of a contract with regard to the co-operation products are governed by the provisions of the CCP-Sub-CCP Agreement concluded between the two clearing Entities and – with a lower priority – by these clearing conditions.
- (2) In accordance with the detailed provisions in sections 3.4.1 et seqq., the Sub-CCP enters into the transactions in co-operation products at the same time and in the same manner as a Clearing Member of ECC provided a Clearing Member of the Sub-CCP is involved in such.

3.2.3 Rights and obligations of the Clearing Members of the Sub-CCP

- (1) The legal relationship between the Sub-CCP and its Clearing Members as well as their Non-Clearing Members is governed by the clearing conditions of the Sub-CCP. Subject to the provisions contained in paragraph 2, ECC or ECC Lux does not have any legal relationship with the Clearing Members of the Sub-CCP.
- (2) A Clearing Member of the Sub-CCP which wishes to take part in trading in co-operation products has to be recognised as a Trading Participant of ECC in accordance with section 2.3 of these conditions. Evidence of a clearing license from ECC is not required.

3.2.4 Rights and obligations of the Non-Clearing Members of the Sub-CCP

- (1) Subject to the provisions contained in paragraph 2, the legal relationship between the Sub-CCP and its Clearing Members as well as of Non-Clearing Members is exclusively governed by the rules and regulations of the Sub-CCP.
- (2) A Non-Clearing Member of the Sub-CCP which wishes to take part in trading in co-operation products has to be recognised as a Trading Participant of ECC in accordance with section 2.3 of these conditions. Evidence of an NCM Agreement with ECC is not required.

3.3 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 the products included in clearing 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. [Trades which are concluded on account of Default Management Auctions \(section 3.12.5\) 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 LinkSM) are offered and operated by external STP system providers.
- (4) The STP systems have the following uniform default standard configuration:
 - 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 which are marked as automatically matched within a broker system are effected automatically (“auto-confirmation function”).
 - All other confirmations and/or take-ups have to be effected manually within the periods of time specified by the system. If one party does not provide the manual confirmation, the transaction is not registered. If the manual take-up is not effected, the position remains in the current agent or proprietary position account.

The confirmation of an entry for registration at a market is based on the rules and regulations of the respective market which take precedence over the provisions contained in these Clearing Conditions in this respect.

The trading participants can change the standard configuration referred to above with the help of the 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. The change in the configuration becomes effective upon the written communication of the switch effected. The standard configuration can also be unilaterally changed to a manual take-up by ECC by way of a written communication.

- (5) Trading participants are obliged to check a registration at a market effected by using STP systems, the submission for clearing and the subsequent trade transfer forthwith, however, at the latest until the beginning of the next business day.

3.4 General Clearing Conditions; Liability

3.4.1 Conclusion of transactions

- (1) According to the closer definition in this paragraph and in sections 3.4.2 and 3.4.4, derivatives market transactions on the markets are concluded between ECC and a Clearing Member or such are concluded between ECC and the Sub-CCP according to the closer definition in this paragraph and in section 3.4.5 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 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 Registered 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 Registered Transaction which has been entered into the system of the market, a transaction is concluded between this Non-Clearing Member and its Clearing Member and, at the same time, a corresponding transaction is concluded between this Clearing Member and ECC.
 - (c) In case an order regarding co-operation products entered into the system by a Clearing member of the Sub-CCP is matched with another order or in case an Registered Transaction regarding co-operation products is entered into the system of the market, a corresponding transaction is concluded between this Clearing Member and the Sub-CCP and, moreover, a corresponding transactions is also concluded between the Sub-CCP and ECC at the same time.
 - (d) In case an order regarding co-operation products entered into the system by a Non-Clearing Member of the Sub-CCP is matched with another order or in case an Registered Transaction regarding co-operation products is entered into the system of the market, a transaction is concluded between this Non-Clearing Member and its Clearing Member and, at the same time, a corresponding transaction is concluded between this Clearing Member and the Sub-CCP and, moreover, a corresponding transaction is also concluded between the Sub-CCP and ECC at the same time.
- (2) According to the more detailed definition provided in section 3.4.3, spot market transactions on the markets are concluded between ECC and ECC Lux and between ECC Lux and the Trading Participant at the same time. In deviation of the above neither ECC nor ECC Lux becomes a contractual party to the PXE spot market transactions. These transactions are being concluded between the Trading Participants and a counterparty (Energy Clearing Company a.s. – EnCC) commissioned by PXE. EnCC is a Clearing Entity according to section 2.6.

3.4.2 Contract obligations arising from derivatives market transactions

- (1) 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 3.4.5 paragraphs 2 to 3, a Clearing Member shall, moreover, also be obliged to fulfil 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 transaction fees of the Non-Clearing Member shall be exempt from the obligations referred to in the paragraphs herein above.

3.4.3 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 Clearing Member supporting the Non-Clearing Member shall be liable as a guarantor 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. Irrespective of the right to deliver or to take delivery, the guarantee regarding this obligation shall only cover money in as far as ECC Lux 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 paying agent through which the Non-Clearing Member settles its transactions.

3.4.4 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 Clearing Member supporting the Non-Clearing Member shall be liable as a guarantor 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 Clearing Member as the paying agent through which the Non-Clearing Member settles its transactions.

3.4.5 Physical delivery of transactions - central delivery point

- (1) Physical delivery of transactions with regard to which ECC has assumed clearing is exclusively provided through its subsidiary – ECC Lux – with the effect that Trading Participants exclusively fulfil their delivery or acceptance of delivery obligations arising from derivatives market transactions and spot market transactions which are fulfilled physically according to their respective contract specifications towards ECC Lux. ECC guarantees the Trading Participants the fulfilment of these transactions by ECC Lux in accordance with the contract.

- (2) In the case of derivatives market transactions by Trading Participants holding a license as Clearing Member, the legal relationships described in section 3.4.1 paragraph 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:

ECC Lux 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 ECC Lux; at the same time, corresponding delivery obligations and/or acceptance of delivery and payment obligations towards ECC arise on the part of ECC Lux. 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 ECC Lux, 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 ECC Lux. As a result of this, the Clearing Member is obliged towards ECC Lux to deliver or accept delivery the commodity on which the future is based and ECC Lux, in turn, is obliged towards ECC to deliver and/or accept delivery of said commodity.

- (3) In the case of derivatives market transactions by Trading Participants without a license as Clearing Member (Non-Clearing Members), the legal relationships described in section 3.4.1 paragraph 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) ECC Lux 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 Clearing Member to ECC Lux; at the same time, corresponding delivery obligations and/or acceptance of delivery and payment obligations towards ECC arise on the part of ECC Lux. At the same time, the Clearing Member assigns the claims to deliver and/or the claims to accept delivery and payment which it has towards ECC to ECC Lux, while, at the same time, the corresponding delivery obligations and/or acceptance of delivery and payment obligations towards the Clearing Member arise on the part of ECC Lux. As a result of this, the Clearing Member is obliged towards ECC Lux to deliver or accept delivery the commodity on which the future is based and ECC Lux, in turn, is obliged towards ECC to deliver and/or accept delivery said commodity.

(b) The 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 ECC Lux and ECC Lux accedes to the corresponding delivery obligations and/or acceptance of delivery and payment obligations of the 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 ECC Lux to deliver and/or accept delivery the commodity on which the future is based and ECC Lux, in turn, is obliged towards ECC with regard to this.

(c) Regardless of the right to deliver or accept of delivery, the Clearing Member supporting the Non-Clearing Member shall only have pecuniary liability as a guarantor towards ECC Lux with regard to these obligations in as far as ECC or ECC Lux can

request the payment of money instead of the delivery or acceptance of delivery – in particular, in the event of a failure of delivery. Financial settlement after the execution of the deliveries is effected by the Clearing Member through which the Non-Clearing Member settles its transactions as the paying agent.

- (d) ECC may take all measures to secure the fulfilment of the delivery obligations or the acceptance of delivery or payment obligations of the Non-Clearing Member respectively. In particular ECC may conclude replacement transactions or request adequate collateral from the Non-Clearing Member.

3.4.6 Contract obligations in case of the inclusion of the Sub-CCP

- (1) The Sub-CCP is obliged to fulfil all liabilities arising from matching of orders (matching) or Registered Transactions in co-operation products which have been entered into the system of a market by its Clearing Members as well as by its Non-Clearing Members.
- (2) In the case of derivatives market transactions by Trading Participants for co-operation products holding a license as a Clearing Member of the Sub-CCP, the legal relationships described under section 3.4.1 paragraph 1 are modified as follows in each case upon expiry of a future at the time at which the obligations to deliver and/or the acceptance of delivery and payment obligations arise:
 - (a) ECC Lux accedes to the contractual relationship as a new contractual partner by ECC assigning the claims to delivery and/or the claims to acceptance of delivery and payment towards the Sub-CCP to ECC Lux; at the same time, corresponding obligations to deliver and/or acceptance of delivery and payment obligations towards ECC arise on the part of ECC Lux. At the same time, the Sub-CCP assigns the claims to delivery and/or the acceptance of delivery and payment claims existing towards ECC to ECC Lux and corresponding obligations to deliver and/or acceptance of delivery and payment obligations towards Sub-CCP arise on the part of ECC Lux at the same time. As a result of this, the Sub-CCP is directly obliged towards ECC Lux and ECC Lux, in turn, is directly obliged towards ECC to deliver and/or accept delivery the commodity on which the future is based.
 - (b) The Sub-CCP then assigns the claims to delivery and/or the acceptance of delivery and payment claims which it holds towards its Clearing Member to ECC Lux and ECC Lux accedes to the corresponding obligations to deliver and/or the acceptance of delivery and payment obligations of the Sub-CCP towards the Clearing Member of the Sub-CCP in place of the Sub-CCP. As a result of this, the Clearing Member is directly obliged towards ECC Lux and ECC Lux, in turn, is directly obliged towards ECC to deliver and/or accept delivery of the commodity on which the future is based.
 - (c) Regardless of the right to deliver or accept delivery, the Sub-CCP shall only hold pecuniary liability towards ECC Lux as a guarantor with regard to these obligations in as far as ECC Lux can demand the payment of money from the Sub-CCP in place of the delivery or acceptance of delivery and payment – in particular in the event of a failure of delivery. Financial settlement after the execution of the deliveries is effected via the Sub-CCP as the paying agent.

- (3) In the case of derivatives market transactions by Trading Participants in co-operation products without a license as Clearing Members of the Sub-CCP (Non-Clearing Member of the Sub-CCP), the legal relationships described under sub-section 3.4.1 para 1 are modified as follows in each case upon expiry of a future at the time at which the obligations to deliver and/or the acceptance of delivery and payment obligations arise:
- (a) ECC Lux accedes to the contractual relationship as a new contractual partner by ECC assigning the claims to delivery and/or the acceptance of delivery and payment claims towards the Sub-CCP to ECC Lux; at the same time, corresponding obligations to deliver and/or acceptance of delivery and payment obligations towards ECC arise on the part of ECC Lux. At the same time, the Sub-CCP assigns the claims to delivery and/or the acceptance of delivery and payment obligations towards ECC to ECC Lux; moreover, the corresponding delivery obligations and/or acceptance of delivery and payment obligations towards the Sub-CCP arise on the part of ECC Lux at the same time. As a result of this, the Sub-CCP is directly obliged towards ECC Lux and ECC Lux, in turn, is directly obliged towards ECC to deliver and/or accept delivery the commodity on which the future is based.
 - (b) The Sub-CCP then assigns the claims to delivery and/or the acceptance of delivery and payment claims which it holds towards its Clearing Member to ECC Lux and ECC Lux accedes to the corresponding obligations to deliver and/or the acceptance of delivery and payment obligations of the Sub-CCP towards the Clearing Member of the Sub-CCP in place of the Sub-CCP. As a result of this, the Clearing Member is directly obliged towards ECC Lux and ECC Lux, in turn, is directly obliged towards ECC to deliver and/or accept delivery the commodity on which the future is based.
 - (c) The Clearing Member of the Sub-CCP then assigns the claims to delivery and/or the acceptance of delivery and payment claims which it holds towards the Non-Clearing Member to ECC Lux and ECC Lux accedes to the corresponding obligations to deliver and/or the acceptance of delivery and payment obligations of the Clearing Member of the Sub-CCP towards the Non-Clearing Member instead of the Clearing Member of the Sub-CCP. As a result of this, the Non-Clearing Member is directly obliged towards ECC Lux and ECC Lux, in turn, is directly obliged towards ECC to deliver and/or to accept delivery the commodity on which the future is based.
 - (d) Regardless of the right to deliver or accept delivery, the Sub-CCP shall only hold pecuniary liability towards ECC Lux as a guarantor with regard to these obligations in as far as ECC can demand the payment of money from the Sub-CCP in place of the delivery or acceptance of delivery and payment – in particular in the event of a failure of delivery. Financial settlement after the execution of the deliveries is effected via the Sub-CCP through which the Trading Participant settles its transactions as the paying agent. ECC Lux shall be entitled to assign its claims towards the Sub-CCP arising under the guarantee to ECC.
- (4) Regardless of the right to deliver or accept of delivery, the Sub-CCP shall only have pecuniary liability as a guarantor towards ECC Lux with regard to these obligations in as far as ECC Lux can request from the Sub-CCP the payment of money instead of the delivery or acceptance of delivery – in particular, in the event of a failure of delivery. Financial set-

tlement after the execution of the deliveries is effected by the Sub-CCP as the paying agent.

3.4.7 Offsetting procedure

- (1) In as far as no deviating provisions are made in these Clearing Conditions, ECC shall net out all accounts receivable and accounts payable from spot market transactions which have not been fulfilled as well as from expired futures contracts and the clearing of which is effected by ECC in accordance with the Clearing Conditions into a net account receivable and/or a net account payable towards every Clearing Member and towards the Sub-CCP on every business day during batch processing which has the consequence that only said net account receivable or account payable exists between ECC and the Clearing Member and the Sub-CCP with regard to a delivery and/or acceptance of delivery and the payment of money. In addition to this, ECC nets out all the transactions regarding futures contracts and options contracts and other transactions to be cleared in accordance with these Clearing Conditions into one net position at the end of any trading day in accordance with sentence 1.
- (2) According to Paragraph 1 offsetting with a Clearing Member regarding transactions on proprietary and agent position accounts (section 3.6) of the respective Clearing Member is carried out separately for the proprietary position accounts and the agent position accounts. In the case of offsetting as per Paragraph 1 regarding separate agent position accounts of the Clearing Member, accounts receivable and accounts payable pursuant to Paragraph 1 Sentence 1 and positions pursuant to Paragraph 1 Sentence 2 arising from positions of Non-Clearing members which are kept separately at the Clearing Member (section 3.6.3), are not considered separately.
- (3) Accounts receivable and accounts payable on the part of ECC Lux with regard to a Trading Participant shall be netted out by ECC Lux into a net account receivable or net account payable during batch processing on every business day. This net account receivable or payable is settled by ECC as the paying agent of ECC Lux.
- (4) Accounts receivable and accounts payable of ECC towards ECC Lux shall be netted out by ECC Lux into a net account receivable or net account payable during batch processing on every business day.

3.4.8 Business days

- (1) Business days of ECC are the days from Monday to Friday on which the transactions concluded or registered on a market are settled financially and/or physically. ECC publishes a list of the days from Monday to Friday which are not business days.
- (2) Those days specified by the respective market on which trading takes place or on which transactions can be registered are considered trading days.
- (3) The business hours are from 7:30 am until 7:00pm on every business day.
- (4) All times are according to the time zone applicable at ECC's registered.

3.4.9 Objections

- (1) Objections against daily trade confirmations (reports) by ECC, including the items of the German Bundesbank (BBK), the Swiss National Bank (SNB), Clearstream Banking AG and Eurex Clearing AG, have to be raised towards ECC, the Sub-CCP or the Clearing Member with whom the transaction was concluded in writing or via fax immediately after receipt and at the latest by 12:00 am on the next business day. Otherwise, the trade confirmations shall be considered approved.
- (2) Objections against invoices or credit notes by ECC or ECC Lux have to be raised by specifying reasons in writing or via e-mail to ECC forthwith, however, at the latest within a period of 10 ECC business days after receipt of such. Otherwise, an invoice by ECC or ECC Lux 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 of the next ECC business day. Otherwise the position transfer is finally effective.

3.4.10 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, including the Emission Rights or Guarantees of Origin booked currently or in the future within these internal accounts (section 3.6.8) and all related rights (especially the current or future right against ECC Lux to deliver the Trading Participants' share in the total inventory in the registry account of ECC Lux to another registry account), can only be effected with the approval by ECC or subject to the conditions of these Clearing Conditions. The provisions contained in art. 354a of the German Commercial Code (HGB) shall not be affected. ECC Lux is entitled to assign its rights arising under or on the basis of the Clearing Conditions to ECC.

3.4.11 Emergency measures

In case proper clearing is obstructed at a Clearing Member or at the Sub-CCP in particular on account of technical delays, the Clearing Member affected or the Sub-CCP 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.

3.4.12 Liability

- (1) ECC and ECC Lux 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 ECC Lux and on the part of a third party shall not be affected. ECC and ECC Lux can assign their claims to damages which they have towards the Clearing Member which is in default or in technical default to third parties.

- (2) ECC and ECC Lux 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 which are brought about by acts of authorities both from within the country and from abroad. In cases of damage which a Clearing Member or the Sub-CCP 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 ECC Lux 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 ECC Lux or as a result of errors made during entering of data in the framework of settlement and the administration of margins for Clearing Members or the Sub-CCP, ECC or ECC Lux 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 ECC Lux 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 or of the conclusion of the CCP-Sub-CCP Agreement. ECC and ECC Lux 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 ECC Lux shall not be responsible for the technical equipment and systems of the markets.
- (3) ECC and ECC Lux 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 case they deem such move justified also under consideration of the interests of the Clearing Members and of the Sub-CCP. In case ECC or ECC Lux utilizes this right, their responsibility shall be restricted to the careful selection and instruction of the third party commissioned by them (art. 664 paragraph 1 BGB [German civil code]). However, ECC and/or ECC Lux shall be obliged to assign any claims which might exist towards the third party upon a request to that end.
- (4) ECC and ECC Lux shall not be held liable for any losses or cases of damage towards Clearing Members, the Sub-CCP or Non-Clearing Members in case said losses or cases of damage are not caused by premeditation or gross negligence on the part of ECC and/or ECC Lux or from a violation of an essential obligation under these Clearing Conditions towards these. In the event of a slightly negligent violation of essential obligations under these Clearing Conditions, the liability of ECC and ECC Lux 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 the conclusion of the CCP-Sub-CCP Agreement. Any liability for consequential damage shall be excluded.
- (5) ECC and ECC Lux shall not accept any liability towards Clearing Members, the Sub-CCP or Non-Clearing Members or third parties for any cases of damage which might have occurred, for consequential damage, losses or lost profits in case it uses its rights subject to the provisions in section 3.9 of these Clearing Conditions (Default and penalties) or in case it initiates emergency measures in case of technical defaults.

- (6) ECC and ECC Lux do not accept any liability towards Non-Clearing Members or third parties for any cases of damage, consequential damage or lost profits which might be caused if the Clearing Members make use of their rights according to section 3.1.1.
- (7) In as far as these Clearing Conditions do not expressly provide for a different regulation, ECC and ECC Lux shall not be liable towards third parties who are not participants in market themselves, with regard to any 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 ECC Lux 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 schedule reporting or nomination is impossible because of other reasons which do not lie within its responsibility.
- (9) ECC does not accept any liability for the correctness, completeness and validity of the transactions and declarations transmitted via the STP systems. ECC, in particular, does not accept 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 Non-Segregated Non-Clearing Members and Segregated Participants in accordance with section 3.5.1 para 4 shall be limited to six times the actual annual remuneration for this services (maximum limit). The total of all remuneration payments which the Segregated Non-Clearing Members and the Segregated 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 in as far as the maximum limited specified is exceeded by up to 100%.

3.5 Margins and Collateral

3.5.1 Obligation to furnish collateral and parallel debt

- (1) In order to secure all obligations which a 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. Emission rights are not considered securities or book-entry security securities in this sense.

- ~~(2) All margins furnished by a Clearing Member shall be deemed as collateral for all obligations of this Clearing Member towards ECC for its participation in clearing at ECC according to sections 4.1 and 5.1. In order to secure risks from its own transactions or transactions guaranteed by it, every Clearing Member shall deposit collateral, at least, to the amount specified by ECC and of the kind accepted by ECC.~~
- ~~(2) All margins furnished by a Clearing Member shall be deemed as collateral for all obligations of this Clearing Member towards ECC for its participation in clearing at ECC according to sections 4.1 and 5.1.~~
- ~~(32) 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 CET of the following ECC Business Day. ECC will establish the level of the collateral requirement (margin requirement) on each ECC Business Day. The collateral must be furnished until 8:00 CET of the following ECC Business Day.~~
- ~~(43) The margin requirement issued by ECC on an ECC business day shall be fulfilled by the Clearing Member in cash, securities and/or book-entry security in accordance within accordance with the provisions in sections 3.5.4 and 3.5.5. Emission rights are not considered securities or book-entry security securities in this sense.~~
- ~~(34) 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.~~
- ~~(45) In addition to the claim to the provision of collateral on the part of ECC specified in para 1, every Clearing Member grants ECC a separate and independent claim (“parallel debt”) to the benefit of the Non-Segregated Non-Clearing Members and of the Segregated Participants (“Known Participants” within the meaning of article 48 para 7 EMIR) to request performance of all obligations which the Clearing Member has towards the Known Participants from the Clearing Member by way of an unconditional promise to pay. “Collateral obligations” of a Clearing Member comprise all the obligations which a 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 Clearing Member and a Known Participant which solely covers transactions which are subject to clearing at ECC.~~

~~Obligations of the Clearing Member with regard to collateral of 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 Clearing Member as collateral are also exempted from the collateral obligation.~~

The 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 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 subsection 1 and 3.11.3 lit. b (ii), 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 to be furnished shall be established by ECC. The bases for the determination of the margins are laid down in section 4.1 for Derivatives Market transactions and in section 5.1 for Spot Market transactions. 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;
- ~~the every~~ agent position accounts (A-accounts) 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;
- ~~the every~~ agent position accounts (A-accounts) 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. In the calculation of the amount of the margin requirements emission allowances held by the Trading Participants ~~or passed through in accordance with section 3.5.10~~ can be considered 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 Trading Participant's request requires approval by the Clearing Member and/or Sub-CCP that is assigned to the inventory account within the meaning of section 3.6.8 para_1 sentence 2.

(2) 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 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 accepted by ECC 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 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) The Clearing Member shall have the right to request supplementary margins from a Non-Clearing Member with which it is affiliated immediately at any time, if required according to the risk assessment undertaken at any time during a business day. Every Clearing Member is obliged to ensure for every Omnibus Account that the Clearing Member is given the right to immediately request an additional margin from the Omnibus Account as a result of the risk assessment made during the day at any time.

3.5.4 Collateral in cash

- (1) ECC shall specify in which currencies margins can be deposited in cash. The provisions contained in section 3.5.7 apply to collateral which is passed through by a Clearing Member in accordance with section 3.5.6.

- (2) Margins are furnished in EUR by the 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 Clearing Member forthwith.

- ~~(3)~~ Margins in other currencies approved by ECC according to paragraph 2 are furnished by means of the payment of the respective sum by the Clearing Member concerned into the account of ECC. After the bank concerned has confirmed the payment to ECC, the amount in question is credited to the margin account (section 3.6.7) of the 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 pursuant to sentence 2 is received at ECC by a time specified by ECC at the latest.

- ~~(43)~~ In case the amount of the margin is not credited to the account of ECC within the period of time specified (section 3.5.1 paragraph 2), ECC shall be entitled to take measures according to sections 3.9.1 et seqq. 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 Clearing Member. The release is effected by means of booking within the internal collateral clearing account of the Clearing Member (section 3.6.7) and the immediate payment to the Clearing Member's Target 2 account or, in the case of collateral in other currencies than those approved by ECC according to paragraph 2, to the account of the Clearing Member established to this end. If a request for the release of collateral is precluded by a margin requirement from the 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 retransfer claim towards ECC in accordance with these Clearing Conditions.

- (5) ECC shall be entitled to use the margins furnished in cash at its own discretion within the framework of its business activities in order safeguard its own working order as a clearing house and for investment purposes.
- ~~(6) The repayment of the margins in cash which have been deposited shall be granted at the instance of ECC.~~
- (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 Clearing Member exceeds the accounts receivable of ECC, ECC shall be entitled towards the Clearing Member to proceed with any surplus amount as described in more detail in section 3.11.
- (6) The Clearing Member and ECC agree that the cash collateral also serves to collateralise the parallel debt referred to in section 3.5.1 para 4, which ECC has towards the Clearing Member. The Clearing Member and ECC agree that a) the cash collateral should primarily be used to cover the claims which ECC has towards the Clearing Member (except for ECC's parallel debt specified in section 3.5.1 para 4) and that b) the cash collateral should only be used to cover ECC's parallel debt specified in section 3.5.1 para 4 in the manner described in section 3.11.1 no. 1 subsection 1 and 3.11.3 in as far as the total collateral furnished by the 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 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 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. ECC shall inform the Clearing Member with regard to the fact which securities or book-entry securities are not accepted as collateral or which are not accepted any more.
- (3) The Clearing Member and ECC agree that ECC acquires a pledge in all securities which are in the pledged securities accounts of the Clearing Member at Clearstream Banking Account established exclusively for ECC at present or will be posted in these in the future. For the purpose of pledging, the Clearing Member assigns its claims towards Clearstream Banking AG with regard to the surrender of these securities to ECC. The Clearing Member shall inform Clearstream Banking AG of the conclusion of the pledge agreement forthwith. If securities are posted within the pledged securities account at Clearstream Banking AG, these are assigned to ECC by way of security; the foregoing provision shall apply mutatis mutandis. The 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 Clearing Member shall not permit such claims to arise without the approval of ECC. For the provision of the margin in accordance with paragraph 1 the Clearing Member shall create a lien regarding all the securities deposited in its pledged securities deposit for ECC by concluding a corresponding pledging agreement. The Clearing Member shall notify Clearstream Banking AG of the conclusion of said pledging agreement. In as far as Clearing Members furnish margins in book-entry security, these are submitted to a fiduciary assignment; sentence 2 shall apply accordingly.~~

- (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 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 a utilisation on its behalf.~~
- (5) ~~The 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 Clearing Member referred to in section 3.5.1 para 4. The Clearing Member and ECC agree a) that any revenue from the utilisation of the securities deposited in the pledged securities account 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 Clearing Member (with the exception of the parallel debt of ECC referred to under section 3.5.1 para 4) and that b) such revenue should only be used to cover the parallel debt of ECC specified in section 3.5.1 para 4 in the manner described in sections 3.11.1 no. 1 subsection 1 und 3.11.3 lit. b (ii) – (iv) in as far as total collateral furnished by the Clearing Member exceeds the claims of ECC referred to above.~~
- (6) ~~security~~ ~~The transfer of securities and of book-entry securities to the pledged securities account according to para 3 shall be carried out by means of a timely instruction by the Clearing Member to Clearstream Banking AG to transfer the securities or the book-entry securities to the pledged securities account of the Clearing Member concerned held at Clearstream Banking AG. Depositing of the securities and of the book-entry security shall be carried out by means of a timely instruction by the Clearing Member to Clearstream Banking AG to transfer the securities into the pledged securities account 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 margin account (section 3.6.7) of the 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 Clearing Member at the latest. In case the securities or book-entry securities not accepted as margins are transferred to the trust deposit, ECC shall arrange for a refund.

- (75) 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 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 margin account of the clearing member (section 3.6.7) and shall grant its approval to Clearstream Banking AG. If compliance with such a request would render the remaining margin inadequate for the next business day, ECC will only book on the margin account and notify Clearstream Banking AG or SegalIntersettle 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) On account of the conclusion of a Collateral Agreement for Passing-Through of Collateral (with all parts referred to below) collateral which a Non-Clearing Member has provided to the Clearing Member on account of its obligations under section 3.5.1 paragraph 4 can be used to fulfil the obligation of this Clearing Member to provide collateral to ECC according to section 3.5.1 paragraph 1 (passing-through of collateral). The Collateral Agreement for Passing-Through of Collateral consists of the following agreements:~~

- ~~a) an NCM collateral agreement between the Clearing Member and the Non-Clearing Member,~~
- ~~b) a pledge agreement (first-priority pledge) between the Clearing Member and ECC,~~
- ~~c) a pledge agreement (second-priority pledge) between the Non-Clearing Member and the Clearing Member and, if applicable,~~
- ~~d) the authorisation by ECC regarding the transfer of collateral in the event of a change of the clearer with an accelerated position transfer according to section 3.1.5.~~

- ~~(2) In the event of passing-through of collateral on the basis of a Collateral Agreement for Passing-Through of Collateral, ECC shall keep a separate agent position account and a separate collateral clearing account for every Non-Clearing Member which is a party to such an agreement in accordance with the more detailed provisions contained in these Clearing Conditions for the purpose of the separate calculation and administration of collateral. In the event of passing-through of collateral, the provisions contained in sections 3.5.7, 3.5.8 and 3.5.10 shall apply.~~

- (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 Segregated Participant has to provide to the Clearing Member on the basis of the agreement under section 3.5.2 para 2 and to collateral for clearing of the Segregated Participant on ECC exceeding this obligation. The Clearing Members are obliged to conclude Close-out Netting Agreements with their Segregated Non-Clearing Members and Omnibus Clients.

- (2) In fulfilling the obligation as per section 3.5.2 para 2, the Segregated Participant shall provide collateral to the Clearing Member in accordance with the following provisions. The

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

- (3) In the case of securities collateral, the collateral provided on the basis of para 2 is transferred to the Clearing Members property upon the transfer and in the case of cash collateral, the collateral is transferred to the Clearing Members assets. If the securities collateral comprises securities held abroad, the legal position to which the Segregated Participant as the party depositing the securities is entitled towards the depository shall be transferred instead of the property as such. The Clearing Member is entitled to dispose of the collateral without any restrictions in accordance with the provisions in these Clearing Conditions.
- (4) The 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 Non-Clearing Members and Omnibus Representatives according to section 3.5.9 para 8.
- (5) The Clearing Member is obliged to have all the collateral furnished by the 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 Segregated Customers by transmitting a corresponding order for a retransfer to ECC or by transferring the said collateral to the CBF pledge account which is kept for the Segregated Participant in as far as this collateral is accepted by ECC.
- (6) If the amount of the collateral passed through by the Segregated Participants exceeds the amount of the collateral to be furnished by the Segregated Participant in accordance with section 3.5.2 on any given business day, the Segregated Participant shall, at his 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 Clearing Member – unless this is precluded by deviating agreements between the Clearing Member and the 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 Clearing Member has pledged to ECC on the basis of the provisions in section 3.11 or if the Clearing Member utilises collateral which was provided by a Segregated Participant on account of a termination of the close-out netting agreement between the Clearing Member and the Segregated Participant, the following provisions apply:

- (a) the claim to performance which the Clearing Member has towards the 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 Segregated Participant has towards the Clearing Member as per para 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 Clearing Member has utilised this collateral.
- (c) In as far as the claim to performance which the Clearing Member has towards the Segregated Participant under transactions which are settled on ECC via the 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 Segregated Participant's claim to transfer remains unaffected contrary to (b) (ii) in accordance with para 5. Apart from this, (b) (i) shall apply.
- (8) In the event of a termination of the Close-Out Netting Agreement between the Clearing Member and the Segregated Participant, the party entitled to compensation under the Close-Out Netting Agreement will forthwith assess all collateral which was provided on the basis of these Clearing Conditions and for which the Clearing Member has not yet transferred any assets of the same kind to the Segregated Participant in accordance with para 5. The corresponding amounts are included in the uniform compensation claim to be established like outstanding payments 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 Segregated Participant and the Clearing Member with regard to the transfer of sums of money or securities according to para 2 or para 5 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 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 Clearing Member could have received in such a sale observing the interests of the 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 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 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 Clearing Member owes the amount

which would accrue to the Segregated Participant under consideration of the amount of its claims to reimbursement or offsetting which were previously communicated to the Clearing Member if the said client were the proprietor of the respective security collateral including a) the withholding tax in as far as the Segregated Participant could claim an exemption from this tax or its reimbursement and b) any tax credit to which the Segregated Participant would be entitled under these circumstances according to sentence 1. The 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 Clearing Member accordingly have to be considered as cash collateral in the determination of a potential insufficient or excess cover.

(11~~2~~) In the event of passing-through of collateral, ECC shall keep a separate agent position account and a separate collateral clearing account for every Segregated Participant in accordance with the more detailed provisions of these Clearing Conditions for the purpose of the separate calculation and administration of margins.

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 Clearing Member by means of a payment into the cash pledge account of the Clearing Member in deviation from the provisions in section 3.5.4. The provision of cash collateral is only admissible in EUR.
~~In deviation from the provisions in section 3.5.4 cash collateral can also be provided by a Clearing Member by means of a payment into the cash pledge account of the Clearing Member. The provision of cash collateral is only admissible in EUR.~~
- (2) ECC immediately credits the amount received in the cash pledge account to the collateral clearing account (section 3.6.6 para. 1) of the Clearing Member and to the separate collateral clearing account (section 3.6.7 para 2) of the Non-Clearing Member or the Omnibus Account.
~~ECC immediately credits the amount received in the cash pledge account to the collateral clearing account (section 3.6.6 para. 1) of the Clearing Member and to the separate collateral clearing account (section 3.6.7 para 2) of the Non-Clearing Member or the Omnibus Account.~~
- (3) Upon a request to this end by the 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 Clearing Member shall enclose the release declaration of the Non-Clearing Member or Omnibus Representative with the request. If the application for a release is precluded by a collateral requirement from the Clearing Member on account of the Non-Clearing Member concerned or the Omnibus Account, such release shall only be effected if the missing amount has been settled by the time specified by ECC.
~~Upon a request to this end by the Clearing Member ECC shall release collateral which is booked in the cash pledge account. The written release by the Non-Clearing Member shall be enclosed with this application provided a subordinated pledge is established for it. If the application for a release is precluded by a margin requirement from the Clearing Member on account of the Non-Clearing Member concerned, such release shall only be effected if the missing amount is settled until 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 account 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 Clearing Member by the Non-Clearing Member or the Omnibus Client 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 Clearing Member and to the separate collateral clearing account of the Non-Clearing Member or the Omnibus Account and shall consider such amount credited in the next calculation of the collateral requirement for the 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 Clearing Member shall ensure a release of the pledge of the Clearing Member or Omnibus Representative which might be required at the same time. If the application for a release is precluded by a collateral requirement from the Clearing Member on account of the Non-Clearing Member concerned or of the Omnibus Account, such release shall only be effected if the missing amount has been settled by the time specified by ECC.

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

- ~~(1) In accordance with section 3.5.5 para. 3 and 4 sentence 1 collateral in securities can be deposited in a pledged securities deposit of the Clearing Member with regard to a given Non-Clearing Member kept separately at CBF ("CBF pledged securities deposit"). Only securities which fulfil the requirements in section 3.5.5 para. 2 and ownership of which has been transferred to the Clearing Member by the Non-Clearing Member in accordance with the provisions of the pledge agreement for passing-through of collateral 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 Clearing Member and to the separate collateral clearing account of the Non-Clearing Member and shall consider such amount credited in the next calculation of the margin requirement for the Clearing Member in accordance with the more detailed provision in section 3.5.1.~~
- ~~(3) With regard to the release section 3.5.5 paragraph 5 shall apply accordingly with the supplementary provision that the Clearing Member shall ensure a release of the pledge of the Clearing Member which might be required at the same time. The release of pledged securities is effected by ECC by entering these on the internal margin clearing accounts concerned and by means of a communication to CBF. If the application for a release is precluded by a margin requirement from the Clearing Member on account of the Non-Clearing Member concerned, such release shall only be effected if the missing amount is settled until the time specified by ECC.~~

3.5.9 Pledges in connection with passing-through of collateral

- (1) For the security purpose specified in para 3 the 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 Clearing Member assigns its claims to the surrender of these securities which it has towards Clearstream Banking AG, Frankfurt am Main to ECC for the purpose of pledging of the securities specified above. ECC accepts the pledge.
 - (b) its claims – primarily claims to delivery and surrender – to which the 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 account 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 Clearing Member has against the bank keeping the account 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. ECC hereby accepts the pledge.
- (2) The Clearing Member shall inform Clearstream Banking AG, Frankfurt am Main of the pending pledges with regard to the CBF pledged securities account and the bank keeping the account with regard to the pledged cash account forthwith.
- (3) The pledges granted in para 1 lit. (a) to (c) are used as collateral for the performance of all obligations of a Clearing Member towards ECC resulting from trades of the Segregated Participants.
- (4) In the relationship with ECC, the 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 Clearing Member shall establish a further pledge with regard to the collateral according to para 8 letters (a) to (c) for the Non-Clearing Member concerned or for the Omnibus Representative. The Clearing Member shall not establish any further third-party rights which can arise on account of the contract 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 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, Frankfurt am Main in its name.
- (8) With regard to the purpose of security specified in para 10, the Clearing Member pledges the following to the Non-Clearing Member concerned 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 Non-Clearing Member hereby accepts the pledge. For the purposes of pledging, the 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 Non-Clearing Member or Omnibus Representative in accordance with Art. 1223 BGB [German Civil Code]. The Non-Clearing Member accepts the assignment.
- (b) Its claims – primarily claims to delivery and surrender – to which the 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 Account at present or will be recorded therein in the future. The Non-Clearing Member accepts the pledge.
- (c) All claims which the Clearing Member has against the bank keeping the account with regard to the pledged cash account and which it will have in the future. The Non-Clearing Member accepts the pledge.
- (d) With regard to the Omnibus Accounts the corresponding declarations pursuant to (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 Clearing Member shall notify Clearstream Banking AG, Frankfurt am Main of the pending pledges with regard to the securities collateral and the bank keeping the account with regard to the pledged account forthwith.
- (10) The pledges created in para 8 lit. a to c are used to collateralise all claims which the Non-Clearing Member or the Omnibus Clients has/have against the 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 Non-Clearing Member or the Omnibus Representative attains ownership or legal ownership of the receivables without prior warning in accordance with Art. 1259 Sentence 1 BGB (a) upon a termination in accordance with section 3.10.2 with regard to the Clearing Member upon the fulfilment 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 Non-Clearing Member or Omnibus Client is entitled from the Clearing Member on the basis of the respective Close-Out Netting Agreement.
- (12) The following provisions apply in the relationship between ECC, the Clearing Member and the Non-Clearing Member or the Omnibus Representative:

 - (a) Subject to the provision in the sentence 2, ECC may exclusively arrange the utilisation of the assets pledged by the Clearing Member in accordance with sub-sections 1 and 8. With ECC's approval, the 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 Clearing Member in accordance with para 1 and 8 will first be used to satisfy ECC's claims arising from the obligations of a 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 Non-Clearing Member or the Omnibus Clients has/have against the Clearing member (a) from the NCM Agreement or the Omnibus Agreement and (b) from the respective Close-Out Netting Agreement.
- (c) The Non-Clearing Member is and the Omnibus Clients are only entitled to an assignment of the receivables from the 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 Non-Clearing Member or the Omnibus Clients.

3.5.93.5.10 Security rights regarding Emission rights

- (1) ~~The Trading Participant and ECC agree that the Trading Participant pledges its Emission rights booked currently or in the future within the internal accounts (section 3.6.8) and all related rights (especially the current or future right against ECC Lux to deliver the Trading Participants' share in the total inventory in the registry account of ECC Lux to another registry account) to ECC. The pledge in favor of ECC secures all existing and future claims against the Trading Participant which ECC is entitled to in accordance with the 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 the co-operating Clearing Member as a contracting party or guarantor for the transactions of said Trading Participant; in case the Trading Participant is a Clearing Member or Non-Clearing Member of a Sub-CCP the pledge also assures the corresponding claims of ECC against the Sub-CCP.~~ Every Trading Participant pledges all rights which are connected with Emission Allowances booked within the internal inventory accounts at present or in the future (section 3.6.8) and, in particular, the right towards ECC Lux regarding the delivery of the right on which the Emission Allowances are based to another registry account to ECC. The Trading Participant and ECC agree that the Trading Participant pledges its Emission rights booked currently or in the future within the internal accounts (section 3.6.8) and all related rights (especially the current or future right against ECC Lux to deliver the Trading Participants' share in the total inventory in the registry account of ECC Lux to another registry account) to ECC. 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 the 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 the co-operating Clearing Member as a contracting party or guarantor for the transactions of said Trading Participant; in case the Trading Participant is a Clearing Member or Non-Clearing Member of a Sub-CCP the pledge also assures the corresponding claims of ECC against the Sub-CCP.
- (2) If the Trading Participant is a Non-Clearing Member, it pledges all rights which are connected with the Emission Allowances booked within its internal inventory account (section 3.6.8) at present or in the future and, in particular, the claim towards ECC Lux regarding

the delivery of the rights on which the Emission Allowances are based to a registry account and to its co-operating Clearing Member or co-operating Clearing Members. In case the Trading Participant is a Clearing Member or Non-Clearing Member of a Sub-CCP, the aforementioned pledge is effected in favour of the Sub-CCP. The co-operating Clearing Members and the sub-CCP each accept the pledge. The pledge in favour of the co-operating Clearing Member and Sub-CCP secures all, existing and future claims against the pledging Trading Participant resulting from the utilisation as a guarantor or contracting party of ECC with regard to the pledging Trading Participant's transactions. The following provisions apply in the relationship between the co-operating Clearing Members, the Sub-CCP and ECC:

- (a) Subject to the provision in sentence two, ECC alone may arrange the utilisation of the rights pledged by a Non-Clearing Member. With the approval by ECC, the Non-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 the Clearing Conditions. Any remaining surplus shall be used to satisfy the rights of recourse or other rights of the co-operating Clearing Members and of the sub-CCP from the pledging Trading Participants as a result of recourse as a guarantor or contracting partner of ECC for the transactions of the pledging Trading Participants.
 - (c) Both the co-operating Clearing Members and the sub-CCP 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 co-operating Clearing Members, the sub-CCP and ECC is not affected.
- (3) The Trading Participant herewith notifies ECC in its capacity as the authorised receiving agent of ECC Lux about the pledges in accordance with section ~~3.5.9~~ 3.5.9 para 1 and para 2.
- (4) Up to a default or ~~a bankruptcy situation~~ situation close-out between the Clearing Member or ECC and the Trading Participant, ECC Lux is ~~authorized~~ authorised and obliged to execute the Trading Participants' orders ~~for rights~~ regarding the allowances on which the Emission Rights are based. ~~Emission rights that are subject to the pledge, including all rights connected with these at present or in the future.~~ If the collateral values of the emission rights have been considered in calculating the amount of the margin requirement of ECC from the Clearing Member or the Sub-CCP (section 3.5.2 para 1), the Trading Participant may only request deliveries of allowances on which the Emission Rights are based ~~emission rights~~ and have such carried out if the margin requirement which has to be re-determined upon ~~such a~~ the delivery of the allowances on which the Emission Rights are based is still covered by collateral available in cash, securities and book-entry security securities; sections 3.6.8 para 2 and para 3 shall apply accordingly.
- (5) If the Trading Participant, one of its co-operating Clearing Members or the Sub-CCP default on collateralised liabilities, the respective secured party (ECC, Clearing Member or Sub-CCP) may sell the Emission Rights, including any rights connected with these at pre-

~~sent or in the future~~ emission rights the allowances on which the Emission Rights are based or, ~~including any rights connected with these at present or in the future or~~, in as far as possible, satisfy the claims through the appropriation of such without prior warning; sections ~~3.9.33.10~~ and ~~3.10.23.11~~ shall not be affected.

- (6) Any proceeds from the utilisation of pledges regarding assets pledged in connection with Emission Rights 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 5.3.5.2 para 2. ~~The rights of lien are subordinate to those rights of lien specified in section 5.3.5.2 para. 3.~~ ~~The rights of lien are subordinate to those rights of lien specified in section 5.3.5.2 para. 3.~~

~~3.5.10~~ ~~Passing-through of the security rights in Emission rights~~

- ~~(1) In calculating the margin requirement, ECC can also consider the collateral values of the rights of security in emission rights passed through by a Non-Clearing Member via a Clearing Member or a Sub-CCP. A decision on passing-through of security rights applied for by the non-Clearing Member is taken by ECC at its discretion. The details are determined by ECC, the non-Clearing Member and the coordinating Clearing Member or the Sub-CCP in the collateral agreement. The rights of lien provided for in section 3.5.9 are subordinate to the rights of lien established herein for the period of passing-through.~~
- ~~(2) During passing-through of emission rights, the Non-Clearing Member can request emission rights which are passed through to be returned to its own inventory account with the approval of the coordinating Clearing Member, with which the collateral agreement was concluded, at any time until a case of a default or a bankruptcy. With regard to further disposals section 3.5.9 para. 4 sentence 2 and section 3.6.8 para. 2 and para. 3 shall apply.~~

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 their ~~customers~~ clients, including Omnibus Clients as well as the transactions of Non-Clearing Members are recorded in internal proprietary, agent and, if applicable, market maker position accounts of the respective Clearing Member.
- (2) With regard to each Clearing Member two proprietary position accounts, further agent position accounts and, in as far as required, two market maker position accounts are kept. Similar accounts are kept for the Non-Clearing Members and, if applicable, for Omnibus Clients of the respective Clearing Member.
- (3) Transactions by the Clearing Members and Non-Clearing Members of the Sub-CCP in cooperation products are recorded in internal Sub-CCP position accounts. A Sub-CCP position account is kept for the Sub-CCP.

3.6.2 Proprietary position accounts

- (1) Only the transactions on own account transacted by the Clearing Member are recorded on the 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 contained 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) ~~customers~~ and Non-Clearing Members of the Clearing Members and Non-Clearing Members of the Clearing Member using this Clearing Member as a Clearing Broker are recorded on the client position accounts of said Clearing Member. In the event of passing-through of collateral (section 3.5.6), a separate agent position account is kept ~~as a sub-account of the agent position account of a Clearing Member~~ for every Segregated Non-Clearing Member ~~passing through collateral 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.
- (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 in the same option series or in the same futures contract in the agent position accounts. A Clearing Member must not close an agent position with another agent position. 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 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 contained 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 as well as in the Sub-CCP position account of the Sub-CCP 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 and the position account of the Sub-CCP. ECC provides the balance as well as the details regarding the transactions for every individual position account to its Clearing Members and the Sub-CCP within its system.

The Sub-CCP itself is responsible for the assignment of positions of its Clearing Members. The Sub-CCP keeps these position accounts itself for these Clearing Members in accordance with its clearing conditions and under consideration of the provisions contained in section 3.6.5.

- (3) All positions in options series are deleted automatically on the position accounts of a Clearing Member and/or on the position account of the Sub-CCP 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 or the position account of the Sub-CCP 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 position accounts of the Clearing Members and/or the position account of the Sub-CCP 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 either 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 given 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 concerned 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 or to the Sub-CCP for the entitled Clearing Member of the Sub-CCP 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 concerned Non-Clearing Member as a representative of the Clearing Member on the day of the conclusion of the respective transaction concerned 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 the respective Clearing Members of these Non-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) In case the preconditions described in the paragraphs herein above are fulfilled, position or trade transfers are also permitted between a Clearing Member of ECC and a Clearing Member of the Sub-CCP.

3.6.6 Clearing accounts

- (1) ECC shall keep internal clearing accounts for the spot and for the derivatives market transactions for every Clearing Member and the Sub-CCP, in which the daily settlement payments, option premiums as well as other cash liabilities in EUR arising from the clearing procedure are settled. The daily balance of the clearing accounts shall be debited from the settlement account of the Clearing Member and/or of the Sub-CCP or credited to said account in case ECC does not claim an amount of money on such account as a margin. All Clearing Members and the Sub-CCP shall ensure their financial solvency on the respective business day by means of a corresponding balance on their settlement account.
- (2) ECC shall keep for each foreign currency one internal clearing account for every Clearing Member on which the daily settlement payments as well as other cash obligations in USD or GBP arising from the clearing procedure are settled. The daily balances of these internal clearing accounts, which is established on the basis of batch processing for a business day, shall be debited with the CBF 6 Series Account of the Clearing Member or credited to said account on the following business day. All Clearing Members shall ensure their financial solvency on the respective business day by means of a corresponding balance on their CBF 6 Series account.
- (3) Paragraphs 1 and 2 apply accordingly with regard to the legal relationship between Clearing Members and their Non-Clearing Members, with pledged funds not entered in the clearing accounts but in the collateral clearing account of the Clearing Member.

3.6.7 ~~Securities Collateral~~ clearing account

- (1) For every 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 credited to separate collateral clearing accounts of this Clearing Member according to para 2
- ~~are considered. ECC shall keep an internal securities clearing account for every Clearing Member on which the additions and disposals regarding the collateral in securities deposited in a pledged securities deposit at Clearstream Banking AG and, if applicable, additions and disposals regarding the cash pledge account of the Clearing Member concerned are taken into account as booked.~~
- (2) 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 collateral clearing account of the Clearing Member for every Segregated Non-Clearing Member or Omnibus Account ~~passing~~

~~through collateral~~ 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 Clearing Member.

(3) 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 Clearing Member with regard to this Segregated Non-Clearing Member or Omnibus Account.

(4) Subject to the technical and operational feasibility by ECC, a Clearing Member can request that

(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 pledged cash account of the respective Collateral Clearing Account and

(b) the value of the securities transferred to the BFP pledged securities account 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 Clearing Members Standard Collateral Clearing Account.

(5) 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 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 Segregated Participants and Simple Omnibus Participants.

(6) The requirements of Art. 39 in conjunction with Article 48 EMIR are complied with as follows:

(a) The assets corresponding to positions of the Segregated Participants consist of:

- the sum of the amounts booked on the separate collateral clearing accounts for the Segregated Participants and
- emission rights of a Non-Clearing Member which were pledged according to section 3.5.10 or section 5.3.5.2 para 2 and
- 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 Segregated Participant with insufficient coverage of the General Omnibus Collateral Clearing Account being distributed proportionately to client 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 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 client position accounts and accounts of the Non-Clearing Members (without making the share negative as a result) and then being distributed proportionately to client 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 emission rights pledged according to section 3.5.10 or section 5.3.5.2 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 client position account or NCM to the sum of the margin requirements of all client positions accounts or NCM 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 client 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 client position accounts and accounts of the Non-Clearing Members (without making the share negative as a result) and then being distributed proportionately to client position accounts and accounts of the Non-Clearing Members in accordance with the margin requirements.

(c) The assets corresponding to position accounts of the General Omnibus Participants consist of:

- a Non-Clearing Member's emission rights pledged according to section 3.5.10 or section 5.3.5.2 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 client 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 client accounts and Non-Clearing Members (without making their share negative as a result) and being distributed proportionately to client accounts and 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 Clearing Members consist of the value of the Standard Collateral Clearing Account without consideration of the sums in the separate sub-accounts of the 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 client accounts and Non-Clearing Members first (without making the share negative as a result).

3.6.8 Internal inventory accounts for Emission rights and Guarantees of Origin

- (1) ECC keeps internal inventory accounts regarding the Emission rights or Guarantees of Origin which are booked on the registry account of ECC Lux for every Trading Participant. Every internal inventory account of a Non-Clearing Member and of a Clearing member or a Non-Clearing Member of a Sub-CCP is connected to a coordinating Clearing Member or a Sub-CCP and is exclusively used for transactions which the Non-Clearing Member carries out via this Clearing Member and/or this Sub-CCP. Disposals and additions by means of sales and purchases and/or by means of the surrender and return on the registry ac-

count are exclusively booked on said internal inventory accounts. The Emission rights and/or Guarantees of Origin booked in the internal inventory accounts substantiate the claim to the proportionate delivery which the Trading Participant has towards ECC Lux with regard to the total stock in the registry account kept in trust.

- (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 3.5.9 para 4 does not apply.
- (3) Upon a written request via telefax to this end to be declared by the Clearing Member and/or the Sub-CCP to which the respective internal inventory account is assigned within the meaning of section 3.6.8 para 1 sentence 2 towards ECC, the delivery of Emission rights and/or Guarantees of Origin to another registry account can be suspended temporarily. The request for the Clearing Member's and/or Sub-CCP's suspension is only possible within the period bindingly communicated to the Clearing Member by ECC in advance and shall also apply to subsequent requests by the Non-Clearing Member with regard to the delivery of emission allowances until the suspension is revoked by the Clearing Member. The Clearing Member or a Sub-CCP shall only demand such a suspension if this is necessary to secure claims against a Non-Clearing Member or a Clearing Member or Non-Clearing Member of the Sub-CCP; 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 charges 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 Clearing Fund

3.8.1 Clearing Fund

- (1) In accordance with the provisions specified herein below ECC shall administrate a Clearing Fund. The Clearing Fund consists of funds by the Clearing Members (Clearing Fund contributions) which ECC can utilise in the event of a default of the Clearing Member ~~according section 3.9~~ or in the event of ~~a termination according to section 3.10 (both referred to as default)~~ a close-out netting with regard to this (default).
- (2) Regardless of other margins, every Clearing Member shall be obliged to provide a contribution to the Clearing Fund. The amount of the contribution to be provided in each case shall be established by ECC for each Clearing Member in accordance with the published calculation method. ECC will from time to time adjust the contribution of each Clearing Member. If the Clearing Member uses the possibility of passing through collateral in accordance with section 3.5.6, ECC is entitled to demand a contribution to the Clearing Fund to the amount specified by ECC in addition to the amount specified in this paragraph.
- (3) The respective amount shall be furnished in accepted collateral according to the provisions contained in section 3.5.

Bank guarantees may still be accepted for a transitional period in exceptional circumstances after risk analysis by ECC. If a bank guarantee has not been replaced by another bank guarantee or accepted collateral according to the provision contained in section 3.5, in cash or in securities by the Clearing Member concerned until 10 days before expiry of such guarantee, ECC shall collect the contribution to the Clearing Fund from the Clearing Member concerned in the framework of the daily cash settlement. If said collection of the contribution is not possible for ECC or if said collection fails, the Clearing Member concerned shall automatically be in default in accordance with section 3.9.

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 Clearing Fund](#) ~~according to section 3.8.3 subparagraph 2~~. 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 web site.

3.8.3 Utilization of the Clearing Fund

- (1) The contribution to the Clearing Fund made by a Clearing Member can be used to remedy the default of this or other Clearing Members. The contributions to the Clearing 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~~ [collateral replacing equity](#) and a contribution to the Clearing 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 financial consequences of the default. . The provisions regarding the utilization of the Clearing Fund distinguish between contributions to the Clearing Fund of Clearing Members with a supervisory risk weight of zero and such of Clearing Members with a supervisory risk weight exceeding zero.
- (2) In case of a default of a Clearing Member with a supervisory risk weight exceeding zero, ECC shall utilize the margins in the order specified herein below:
 1. Other margins as such on the part of the Clearing Member which has defaulted in accordance with section 3.8.1 et seqq.
 2. Contribution to the Clearing Fund by the Clearing Member which has defaulted.
 3. Pre-Funded Financial Resources by ECC to the current amount,
 4. Contributions to the Clearing Fund by all Clearing Members with a supervisory risk weight exceeding zero; in this context, the contributions shall be utilized to the same proportionate shares.
 5. Contributions to the Clearing Fund by Clearing Members with a supervisory risk weight of zero; in this context, the contributions shall be utilized to the same proportionate shares.
- (3) In case of a default of a Clearing Member with a supervisory risk weight of zero, ECC shall ~~utilize~~ [use](#) the margins according to the provision in para 2 provided that the contributions of the Clearing Members with a supervisory risk weight of zero will be utilized be-

fore the contributions of the Clearing Members with a supervisory risk weight exceeding zero.

- (4) In case a Clearing Member in default provides the payments owed by said party after the contributions to this Clearing Fund by the other Clearing Members have been ~~utilized~~ used to the full extent or in part, ECC shall use such payment in order to replenish the contributions of the other Clearing Members with a share amounting to the same percentage once again; however, such amounts shall only be replenished to the amount of the ~~utilization~~ use which has taken place at maximum.

3.8.4 Replenishment of the contributions to the Clearing Fund

Utilized contributions to the respective Clearing Fund shall be replenished to their original amount by the Clearing Members within a period of ten business days after their utilization. This obligation shall not apply with regard to Clearing Members who terminate their clearing license by means of a written notice towards ECC on the fifth business day following the ~~utilization~~ use of said funds at the latest.

3.8.5 Release of the contributions to the Clearing Fund

- (1) In case ECC or a Clearing Member terminate the clearing license, ECC shall release the contribution to the respective Clearing 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 or in case another Clearing Member defaults before such date on which a contribution to the Clearing Fund in question has to be released, such release shall only take place after the obligations of the other Clearing Member which has defaulted have been entirely fulfilled towards ECC in deviation to paragraph 1.

3.9 Default

3.9.1 Occurrence of default

- (1) A Clearing Member shall be put in default even without a warning being given by means of a written notification or by means of a notification via the phone by ECC or ECC Lux 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 fulfil other obligations to be fulfilled towards ECC or ECC Lux in accordance with these Clearing Conditions.
- (2) Clearing Members shall inform ECC right away in case they cannot fulfil 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 ECC Lux shall be entitled to have recourse to a Clearing Member for cases of damage which it or other Clearing Members sustains on account of a default caused by such Clearing Member. Regardless of the occurrence of a case of damage at ECC or ECC Lux, 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 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 ECC Lux 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 ~~3.9.3~~3.9.1. 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. 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 Position transfer, close-out and utilization of margins~~

~~In case a Clearing Member is in default, ECC shall if required by including the respective markets apply the following measures:~~

- ~~1. Transfer of all or particular open positions to other Clearing Members at the discretion of ECC and considering the overall risk for ECC. Provided the approval of the Back-Up Clearing Member has been granted, open positions of a Non-Clearing Member that has appointed a Back-Up Clearing Member according to section 2.1.8 shall be transferred to the Back-Up Clearing Member in accordance with provisions 3.1.4 and 3.1.6 even without an application by the Non-Clearing Member.~~

- ~~2. Netting out of the remaining open positions, of the accounts receivable and liabilities arising from spot market transactions which have not been fulfilled and from the futures contracts which have fallen due in all of the accounts kept by the Clearing Member (proprietary accounts as well as accounts of the Non-Clearing Members supported) into one single net position and/or net account receivable or net liability.~~
- ~~3. Close out of the net position and/or net account receivable or net liability by ECC, the market or by a Trading Participant appointed by such.~~
- ~~4. The use of all securities of the Clearing Member shall be effected separately according to collateral groups.~~
 - ~~(i) The Emission rights of a Non-Clearing Member taken into account in the calculation of the margin requirement in accordance with section 3.5.2 or section 3.5.10 para. 1 and the collateral, which each individual Non-Clearing Member covered by the Clearing Member provides through collateral passed through according to sections 3.5.6 and 3.6.7, each form a collateral group of their own. With regard to this collateral group collateral can only be used to fulfil the obligations of the Non-Clearing Member passing through these which are established for this Non-Clearing Member's separate agent position account after netting out and closing out according to Fig. 2 and 3.~~
 - ~~(ii) The remaining collateral which the Clearing Member which is in default has provided to ECC forms another collateral group. With regard to this collateral group collateral can be used to fulfil all obligations of the Clearing Member.~~

~~In addition, the Clearing Member's contributions to the Clearing Fund are utilised according to section 3.8.3 as well as a bank guarantee for missing liable equity where provided and required (section 2.1.2 subparagraph 4). Collateral or guarantees which have been utilised are realised by ECC or by an authority appointed by it according to its dutiful discretion.~~

- ~~5. Reimbursement of any possible surplus in case the revenue generated from the utilizations as per no. 3 and 4 results in a higher amount than is required in order to cover all the liabilities of the Clearing Member which is in default.~~
- ~~6. In case the revenue generated from the utilisation as per no. 3 and 4 results in a lower amount than is required in order to cover all the liabilities of the Clearing Member which is in default, the rules stipulated in section 3.8.3 subparagraph 2 no. 3 to 5 shall apply.~~

~~3.9.43.9.3~~ 3.9.43.9.3 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 concerned. 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 with 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 in-

terests of the Clearing Member and of the (general) interest in safeguarding proper trading on the exchange and of proper settlement of transactions.

(3) A default can result in a termination according to section 3.10 as determined by ECC.

~~3.9.53.9.4~~ 3.9.4 Non-application of the rules regarding default with regard to the Sub-CCP, its affiliated Clearing Members and Non-Clearing Members

- (1) The provisions made in this section shall not apply in case of a default on the part of a Clearing Member of the Sub-CCP or of the Sub-CCP itself. With regard to such a case, the clearing conditions of the Sub-CCP shall be applied in the relationship between the Sub-CCP and its Clearing Member and the provisions of the CCP-Sub-CCP Agreement shall apply in the relationship between ECC and the Sub-CCP.
- (2) Special default provisions with regard to co-operation products, in particular in case of a default in physical delivery or in the acceptance of delivery of such shall also apply with regard to the Clearing Members and Non-Clearing Members of the Sub-CCP provided they are recognised as Trading Participants of ECC.

~~3.10 Close-out netting provisions~~ Termination and close-out netting provisions

~~3.10.1 provisions~~ Termination in the relationship between a Clearing Member and ECC ~~General provisions~~

- ~~(1) The provisions below govern which legal consequences arise in the relationship between a Clearing Member and ECC in case a termination event as described in section 3.10.2 paragraph 1 occurs.~~
- ~~(2) The Clearing Members are at liberty to conclude close-out netting agreements with their Non-Clearing Members which govern the legal consequences in the relationship between the Clearing Member and a Non-Clearing Member if a circumstance arises with regard to the said Non-Clearing Member, which gives the Clearing Member the right to terminate the NCM Agreement with this Non-Clearing Member for a material reason or in the event that a case of insolvency arises with regard to this Non-Clearing Member. In the event that ECC has approved a close-out netting agreement between a Clearing Member and a Non-Clearing Member, the rules of this close-out netting agreement shall take precedence over these Clearing Conditions.~~

(1) In the event that

- (a) ~~i) 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),² clause 7 sub-clause 2 and 3 (event of an insolvency, compensation claims),³ clause 8 (claims to damages and compensation for benefits received)⁴ and clause 9 sub-clause 1 (unpaid amounts)⁵ 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:

~~(3) — The other rules of the Clearing Conditions shall not be affected by the provisions of this section, unless a different provision is expressly made therein. The rules regarding the utilization and offsetting of collateral under consideration of the respective collateral group (section 3.9.3 paragraph 4) shall apply accordingly even if the Clearing Member is or was not in default at the time at which the event described in section 3.10.2 occurred. In as far as a circumstance with regard to a Clearing Member, which entitles ECC to terminate the Clearing Agreement with this Clearing Member for a material reason arises or in as far as~~

² 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.”

³ 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.”

⁴ 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.”

⁵ 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.”

~~a case of insolvency arises with regard to this Clearing Member, the provisions below shall take precedence over all other rules of the Clearing Conditions which govern netting-out or closing-out of positions.~~

~~Termination of derivatives market transactions which have not been fully settled yet~~

~~(1) In the event that~~

~~— a circumstance which entitles ECC to terminate the Clearing Agreement with the Clearing Member for an important cause arises with regard to a Clearing Member or~~

~~— a case of an insolvency arises with regard to this Clearing Member or ECC, or~~

~~— if ECC fails to comply with an undisputed obligation to pay money or deliver securities to a Clearing Member for a period of thirty (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 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),⁶ clause 7 sub-clause 2 and 3 (event of an insolvency, compensation claims),⁷ clause 8 (claims to damages and compensation for benefits received)⁸ and clause 9 sub-clause 1 (unpaid amounts)⁹ of the~~

⁶ ~~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."~~

⁷ ~~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."~~

⁸ ~~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."~~

⁹ ~~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~~

~~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 ~~(own transactions of the Clearing Member and transactions of the Non-Clearing Members),~~ 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.
- 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 Clearing Member or ECC~~ a party or if such authority takes a measure which is likely to prevent the ~~Clearing Member or ECC~~ the party from fulfilling its payment obligations under transactions on account of provisions under bankruptcy or insolvency law or similar provisions which are material for the ~~Clearing Member’s or ECC’s~~ 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 ~~such party~~ a Clearing Member.”
- 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 3.10.2 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. 2 lit. b) and c). ~~In clause 8 sub-clause 1 sentence 2 of the Master Agreement, the phrase “without undue delay” shall be replaced by the phrase “without undue delay; however, at the latest on the fifth business day after the opening of the insolvency proceedings”.~~
- ~~If ECC is the party giving notice or the solvent party (referred to as the “Party Entitled to Damages”), closing out of derivatives market transactions or the transfer of such transactions to another Clearing Member, each in accordance with clause 3.9.3, shall also be considered conclusions of replacement transactions within the meaning of clause 8 sub-clause 1 of the Master Agreement. In the event of the transfer of transactions to another Clearing Member, the damage within the meaning~~

~~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.”~~

~~of clause 8 paragraph 1 of the Master Agreement shall be established on the basis of the settlement price¹⁰ of the transaction concerned.~~

~~(2) If a close-out netting agreement between a Clearing Member and a Non-Clearing Member has not been concluded, all corresponding transactions of the Clearing Member with the Non-Clearing Members that settle their transactions via this Clearing Member shall be terminated at the same time in the event of the termination of the clearing agreement as per Paragraph 1. These obligations shall be replaced by a uniform compensation claim between the respective Non-Clearing Member and the Clearing Member, the amount of which shall be calculated by ECC on the basis of the calculation as per Paragraph 1 and communicated by ECC to the respective Non-Clearing Member and the Clearing Member in as far as ECC is the Party Entitled to Damages. In as far as there is a close-out netting agreement between the Clearing Member and a Non-Clearing Member which has been approved by ECC, the termination of transactions concluded by the Clearing Member concerned and the Non-Clearing Member concerned shall exclusively be governed by the provisions of this close-out netting agreement. 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.~~

(32) 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 ECC Lux shall continue to apply according to Section 3.4.4 subsection 3.

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

(1) Subject to the provisions below and to the provisions in section 3.5.6 para 8 the 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 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 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 Clearing Member and a Non-Clearing Member, the rules of the Close-Out Netting Agreement take precedence over these Clearing Conditions.

(2) If no Close-Out Netting Agreement between a Clearing Member and a Non-Clearing Member has been concluded all corresponding transactions of the Clearing Member with the Non-Clearing Members that settle their transactions via this Clearing Member shall be terminated at the same time in the event of the termination of the clearing agreement as

¹⁰ ~~The settlement price of a derivatives market transaction is determined for every business day by the market on which this derivatives market transaction is traded in accordance with its rules. If a price within the meaning of these Clearing Conditions is not established for a given business day or if the price established by the market concerned obviously significantly deviates from the market price of the respective derivatives market transaction for this day according to findings by ECC, the settlement price for this derivatives market transaction for this business day can be determined by ECC in a commercially reasonable manner.~~

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 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 respective Non-Clearing Member and the Clearing Member.

(3) If a close-out netting agreement between the Clearing Member and a Non-Clearing Member which has not been approved by ECC deviates from the close out netting provisions of ECC with respect to termination and the calculation of the single compensation claim the respective rule in para 2 shall apply.

(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 Clearing Member and the Non-Clearing Members who settle transactions via this Clearing Member shall terminate at the same time. These obligations under these transactions shall be replaced by a uniform compensation claim between the respective Non-Clearing Member and the Clearing Member, the amount of which shall be calculated by ECC on the basis of the settlement with ECC.

If a Close-Out Netting Agreement has been concluded between a Clearing Member and a non-Clearing Member, 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 Clearing Member and a Non-Clearing Member or client. The uniform compensation claim between the Clearing Member and the Non-Clearing Member or client shall be calculated by the 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 3.10.2, 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 applicable by including the respective markets:

1. Transfer of all or of individual open positions 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 a Non-Clearing Member or of an Omnibus Client which a Back-up Clearing Member has specified according to section 2.1.8 are also transferred to the Back-up Clearing Member without an application to this end by the Non-Clearing Member or by the Omnibus Representative 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 Segregated Participants have been transferred according to section 3.11.1 no. 1, ECC shall initiate the transfer of the assets of these Seg-

regated 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 Segregated Participant in accordance with section 3.11.3 lit. a upon a request to this end 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 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 3.11.3 lit. b (ii) – (iv) settling the parallel debt referred to in section 3.5.1 para 4. Emission rights of a Non-Clearing Member which were pledged in accordance with section 3.5.10 and section 5.2.5.2 para 2 shall remain in the accounts kept for the respective Non-Clearing Members concerned.

2. Netting-out of the open positions which have not been transferred and of the Clearing Member's accounts receivable and payable under Spot Market transactions which have not been settled and under due futures contracts in all of the accounts held by the Clearing Member (own accounts and accounts of the supported Non-Clearing Members and Omnibus Accounts) and of an account receivable or payable according to Fig. 1 into a single net position or net account receivable or payable in accordance with section 3.10.2.
3. Closing-out of the net position by ECC, the market or by a Trading Participant determined by ECC and offsetting of the amount resulting from closing-out with the net account receivable or with the net account payable
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 Member in Emission Allowances according to section 3.5.10 and section 5.3.5.2 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 Clearing 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 3.11.3 in as far as the collateral did not have to be 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) client position accounts of the Clearing Member,
- (c) combined accounts of a Non-Segregated Non-Clearing Member,
- (d) combined accounts of a Segregated NCM 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 fig. 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 client 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 emission rights) allocated to other client 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 emission allowances) which are allocated to other client position accounts or accounts of non-Segregated Non-Clearing Members according to section 3.6.7 para 6 can be used. In this context, assets which are booked in the separate collateral clearing accounts of the Segregated Participants and the Simple Omnibus Collateral Clearing Accounts are taken into account.

3.11.3 Transfer of collateral/distribution of cash collateral and of utilisation proceeds of security collateral

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 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 (in as far as such has been established pursuant to section 3.6.7 para 4) which were not needed to satisfy the claims of ECC (with the exception of the parallel debt according to section 3.5.1 para 4) are used in the following manner:
- (i) Assets which are allocated to client positions 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) 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 4 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 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 4 shall remain unaffected. If there is no administrator or if an administrator has not been appointed yet, ECC shall act on its own with regard to 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 4 – use collateral furnished by the Clearing Member, in as far as a utilisation has not been taken place according to section 3.11.2 or a distribution of assets according to section 3.11.3 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 4, 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 which have not been used according to section 3.11.2 or which have not been (i) distributed according to section 3.11.3 lit. b (without considering the assets in the separate collateral clearing accounts of the Segregated Participants and in the Simple Omnibus Collateral Clearing Accounts) 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, § 364 para 1 German Civil Code).
- After such payment, the parallel debt under section 3.5.1 para 4 shall also be considered fulfilled.

(iv) ECC shall re-transfer any residual amount or residual collateral which might remain from assets which are allocated to the Known Participants according to section 3.6.7 para 6 (with the exception of Emission Allowances of a Non-Clearing Member which were pledged according to section 3.5.10 and section 5.3.5.2 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 (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 4 shall remain unaffected.

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

~~3.11.13.11~~ 3.12 Default Management Auctions

Closing-out according to section 3.11.1 fig. 3 can be effected in the framework of Default Management Auctions in accordance with the provisions specified hereinbelow. ~~If a Clearing Member is in default or if it is undergoing a close-out netting procedure, ECC can, at its own discretion, close-out positions of this Clearing Member as well as own spot market transactions and spot market transactions of the Non-Clearing Members which it supports or it can carry out substitute transactions regarding these positions or spot market transactions (referred to as closing-out hereinafter). Closing-out can be effected in the framework of Default Management Auctions in accordance with the provisions specified herein.~~

~~3.11.13.12.1~~ 3.12.1 Participation in the Default Management Auction

- (1) ECC can specify the trading participants invited to take part in a Default Management Auction at its own discretion, e.g. by assessing the risk and the trading activity. On principle, ECC shall only invite trading participants that have been recognised by ECC in, at least, one of the products to be auctioned and whose Clearing Member has assumed clearing of registered transactions of the trading participant in these products. An auction participant that has been invited is not obliged to take part in a Default Management Auction.
- (2) Concurrently with the invitation for the trading participant, ECC shall inform the supporting Clearing Members of the trading participants that have been invited of the said invitation to take part in the auction. Until the end of the bidding period, the Clearing Members can object to the participation of the trading participants supported by them in the auction. The approval of the supporting Clearing Member is considered granted upon the end of the bidding period.

~~3.11.23.12.2~~ 3.12.2 Execution of the Default Management Auction

- (1) Before every auction, ECC informs all invited auction participants of the positions to be auctioned in an auction letter via e-mail. This auction letter contains an invitation for the

auction participants to submit bids regarding the positions to be auctioned using the auction form (invitatio ad offerendum) which forms part of the auction letter.

- (2) The auction letter specifies a period for the submission of bids (bidding period). Bids which are submitted after the end of this period are not taken into account. Furthermore, the auction letter specifies a period for the execution of the auction after the end of the bidding period (auction period). The bids are valid until the expiry of the auction period and they can only be amended or withdrawn during the bidding period.
- (3) ECC can extend or reduce the bidding period or choose to cancel the Default Management Auction at any time before the end of the bidding period. ECC shall cancel a Default Management Auction in its entirety or with regard to individual positions and spot market products, in particular, in those cases in which there are not enough bids or not enough suitable bids. The invited auction participants are informed of the corresponding measure via e-mail. In the event of cancellation, the bids submitted are no longer binding; in all other cases, bids which have been submitted shall remain in force.
- (4) ECC can extend or shorten the auction period at its own discretion at any time before its expiry. The auction participants invited are informed of any shortening or extension of the auction period via e-mail. In the event of an extension of the auction period, bids submitted by an auction participant shall only remain effective if the auction participant has expressly agreed to the extension of the auction period.
- (5) The auction participant is obliged to treat all the information regarding a Default Management Auction as being confidential. In as far as a participant does not take part in the auction, the information has to be deleted forthwith. The information must not be passed on either directly or indirectly and, in particular, it must not be used for proprietary trading purposes, for price agreements with third parties or for the submission of recommendations to buy or to sell or used abusively in any other way.

3.11.33.12.3 Submission of bids

- (1) The bids are submitted electronically by the auction participants by submitting the auction form from the e-mail address to which the auction letter was sent. If required, ECC will verify the authenticity of the bids submitted through a telephone enquiry or a fax confirmation.
- (2) Until the expiry of the bidding period, the auction participant can submit several bids. In this process, the entire auction form is considered the bid and each new auction form submitted is considered a new bid. The last bid submitted before the end of the bidding period is considered a binding bid. The time of receipt of the e-mail at ECC is considered the time of the submission of the bid. Any limitation of liability or other declarations (such as e.g. disclaimers) which might be contained in the e-mail or its attachment which might give rise to doubts regarding the binding character of the offer are not taken into account. The auction participants are not obliged to submit bids for all positions or spot market transactions. Furthermore, they are not entitled to submit bids for positions or spot market transactions for which they are not recognised as trading participants. Bids which are submitted with regard to these products nonetheless are not taken into account in the auc-

tions. Bids have to be submitted in the currency of the corresponding position or spot market transactions.

~~3.11.4~~3.12.4 Acceptance of bids

- (1) During the auction period, ECC carries out the auction in accordance with the principles outlined in paragraph 2. Auctions are carried out as “pay-as-bid”¹¹ auctions.
- (2) The bids are initially sorted according to price for each product with the respective higher bid taking priority. If the price is the same, the chronological order shall be decisive for acceptance with a bid submitted earlier taking priority (price-time priority). ECC accepts bids per product until the respective volume to be auctioned has been sold to a maximum. Therefore, bids can also be accepted in part. Bids, which after evaluation by ECC deviate considerably from the current market level, may remain unconsidered. Should the number of bids not be sufficient to auction the entirety of the volume to be auctioned, ECC also has the right to sell subsets.
- (3) The successful bidders are informed by ECC of the bids which ECC accepts at the latest upon the end of the auction period. ECC accepts the bids subject to the condition precedent of the registration of the transactions in accordance with section 3.12.5. ECC is not obliged to inform bidders of the non-acceptance of bids.

~~3.11.5~~3.12.5 Registration and settlement of the transactions

- (1) A binding contract regarding the position or the spot market transaction to be auctioned is concluded in accordance with the rules of the respective market upon the successful registration of the transaction.
- (2) The bids of the successful bidders are registered at the respective bid price. The successful auction participants are forthwith informed by ECC with regard to registrations which have been made. ECC effects the registration in the name and on behalf of the successful bidder and of the respective counterparty forthwith after the acceptance of the bids according to section 3.12.4 paragraph 3. ECC can also use the trading-on-behalf services of the respective market for the registration. With their participation in the auction, the auction participants authorise ECC and, if applicable, the respective market concerned to register the transactions concluded in their name and undertake to carry out all collaborative actions which are otherwise required for the registration.

¹¹ “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.

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 the option is established. This credit can be taken into account with regard to 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 ECC Lux 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, acceptance of delivery by Trading Participants, a margin has to be furnished with regard to these possible claims (Delivery Margin).
- (4) With regard to possible claims by ECC Lux on account of the submission of Emission rights or Guarantees of Origin under due futures which are not submitted to the account of ECC Lux at the registry in due time and/or on account of a failure to procure emission allowances for 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 or 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 periods do not exceed a period of one calendar month are settled financially in accordance with section 4.2.1.4.

- (4) Financially settled EEX Futures Contracts are co-operation products.

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 or of the Sub-CCP. 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 affiliated Non-Clearing Members. [In the case of 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 the execution 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 through to March as well as the corresponding three quarter futures for the second through 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 para 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 the Sub-CCP 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 Specifications, regarding 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. In this case, the final settlement price shall once again be established in line 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 Futures on Power with Physical Fulfilment

4.2.2.1 General information

- (1) Futures contracts on power with physical settlement in the transmission system of various transmission system operators are traded on the markets the settlement of which is effected 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 delivery of 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 periods do not exceed a period of one calendar month, are settled in accordance with section 4.2.2.3.

4.2.2.2 Daily settlement

- (1) As of the second Business Day before the beginning of the physical 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 physical delivery at the latest and be determined by ECC. ECC can also establish the final settlement price in deviation to this.

- (2) 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 batch processing and credited to the clearing account or debited from it.
- (3) The paragraphs herein above shall apply accordingly with regard to the legal relationship between Clearing Members and their affiliated Non-Clearing Members.

4.2.2.3 Physical Delivery and Acceptance of Delivery of Power

- (1) Settlement of the futures 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 and the respectively valid balance agreements and at the same time between ECC Lux 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 2.4.1 paragraph 1 (c) or in case such violates a covenant as per section 2.4.1 paragraph 1 (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 a transmission network provider undertakes necessary measures towards ECC, ECC Lux or the Trading Participants e. g. in order to maintain network security or in the framework of the valid force majeure regulation, section 5.2.5 shall apply accordingly.

4.2.2.4 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 the Sub-CCP or credited to it during batch 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 the Sub-CCP or credited to it during batch processing two Business Days before the delivery day.
- (4) The above paragraphs also apply for the legal relationship between Clearing Members and their respective Non-Clearing Members.

4.2.2.5 Treatment with regard to Sales 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 sales tax. On this basis as well as under consideration of the information furnished by the Trading Participants regarding taxation treatment, ECC Lux shall separately calculate the sales tax for the transactions which it has incurred.
- (2) The assessment basis for the sales tax shall be the volumes to be delivered multiplied by the final settlement price for the respective Delivery Period increased and/or reduced by the clearing fees charged.
- (3) The amount of the sales 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

- (1) Settlement of options is effected according to the provisions made in these Clearing Conditions.
- (2) EEX-Options are co-operation products.

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 batch 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 the Non-Clearing Members which are affiliated with them.

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 batch processing on the exercise day a long position is opened in the underlying future contract at the exercise price agreed on for the Trading Participant who exercises a buy option.
- (4) During batch processing on the exercise day a corresponding short position is opened in the underlying future at the exercise price agreed on for the Trading Participant to whom exercising of a buy option is assigned.
- (5) During batch processing on the exercise day a corresponding short position is opened in the underlying future at the exercise price agreed on for the Trading Participant who exercises a sell option.
- (6) During batch processing on the exercise day a corresponding long position is opened in the underlying future at the exercise price agreed on 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 paragraph 1 shall apply accordingly in 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 and Guarantees of Origin

4.2.4.1 General information

- (1) Various futures contracts regarding Emission Rights and 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.
- (2) EEX Futures on Emission Rights are co-operation products.

4.2.4.2 Daily Settlement

Before the start of the physical 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 and 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 the Sub-CCP or debited from it on the delivery day.
- (3) The above paragraphs apply to the legal relationship between the Clearing Members and their respective Non-Clearing Members accordingly.

4.2.4.4 Treatment with regard to sales tax upon delivery

- (1) The Emission rights or Guarantees of Origin which are subject to delivery according to the provisions contained in the trading conditions multiplied by the final settlement price shall form the basis for the calculation of the sales tax if such tax incurs according to the legal requirements. The assessment basis for the sales 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 sales tax for the transactions if applicable.
- (3) The amount of the sales tax determined in this way 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 and Guarantees of Origin

- (1) The delivery day of the different futures on Emission rights and Guarantees of Origin is defined in the respective contract specifications.
- (2) Settlement of the futures regarding Emission rights and 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 Emission rights shall ensure their capacity to deliver by means of corresponding stocks in the registry accounts of ECC Lux kept in trust for all Trading Participants by ECC Lux at the latest until a deadline as defined by ECC.
- (3) Deliveries of Emission rights and 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 in trust in the registry accounts of ECC Lux at the same time. Through recording of these 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 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 subsection 3.4.7 in conjunction with subsection 3.6.6.
- (5) The obligation to deliver an Emission right or 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 Emission rights or Guarantees of Origin, have been effected and
 - corresponding cash settlement (section 3.4.6 in conjunction with subsection 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 physically delivered Natural Gas Futures

4.2.5.1 General information

- (1) On the markets, futures contracts regarding natural gas with physical 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 the 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 4.2.5.3.
- (3) Natural Gas Futures traded at EEX are co-operation products.

4.2.5.2 Daily settlement

- (1) Before the start of delivery daily settlement is effected in accordance with section 4.2.2.2.
- (2) As of the second Business Day prior to the beginning of the physical delivery the settlement price shall remain constant for the entire Delivery Period. At the latest two Business Days prior to the beginning of the physical 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 batch 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 affiliated Non-Clearing Members.

4.2.5.3 Physical delivery and acceptance of natural gas

- (1) The delivery of the futures shall be effected subject to the provisions contained in these Clearing Conditions as well as the respectively valid balance agreements directly by the Trading Participant towards ECC Lux and at the same time between ECC Lux 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 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 has defaulted with regard to its delivery or acceptance of delivery obligation or in case such party loses the capability for physical settlement as per section 2.4.1 paragraph 1 (c) or in case such party violates a covenant as per section 2.4.1 paragraph 1 (c), ECC shall be entitled to take all measures which are required in order to safeguard the performance or a reduction of the damage with regard to the transactions entered into, if required, by including ECC Lux 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, ECC Lux or Trading Participants to maintain network security section 5.4.4 applies accordingly.

4.2.5.4 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 the Sub-CCP or credited to it during batch 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 batch processing two Business Days before the delivery day.
- (4) The above paragraphs apply to the legal relationship between the Clearing Members and their respective Non-Clearing Members accordingly.

4.2.5.5 Treatment in terms of sales tax in case of delivery

- (1) The volumes which are introduced into delivery subject to the provisions contained in the Clearing Conditions multiplied by the final settlement price established for the Delivery Period in total shall form the basis of the calculation of the sales tax. On this basis and under consideration of the information provided by the Trading Participants regarding the treatment in terms of taxation, ECC Lux shall calculate the sales 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 reduced by the clearing fees charged shall form the assessment basis.
- (3) The amount of the sales 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

- (1) A margin (Spot Initial Margin) covering the default of net payers for ECC (including any taxes which might be incurred) shall be furnished for risks from spot market transactions.
Credits from the Premium Margin for derivatives market transactions are taken into account with regard to the Spot Initial Margin.
- (2) ECC can request a further margin (Spot Delivery Margin) for possible risks of ECC Lux as a result of the inability to deliver Emission rights at the delivery time (cf. Section 5.3.5.2 para 5).
- (2) In as far as transmission system or hub operators are entitled to assert claims against ECC Lux or 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).

5.2 Special provisions regarding power trading

5.2.1 General information

- (1) On the markets Spot Market transactions regarding power with physical delivery, the settlement of which is effected in accordance with the provisions made in these Clearing Conditions, are traded.
- (2) In the framework of the day-ahead auctions of EPEX Spot SE 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) In the framework 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.

5.2.2 Settlement of the transactions

- (1) The transactions as established in the trade confirmations by the markets plus the taxes as per the legal requirements form the basis for 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 taxes applicable as per the relevant laws are credited to the clearing account of the Clearing Member or debited from it during batch processing on the trading day or, if this day is not an Business Day, on the next Business Day.

5.2.3 Physical delivery and acceptance of delivery of power

- (1) Physical delivery of the spot market transactions is effected directly by the Trading Participant towards ECC Lux and at the same time between ECC Lux and ECC subject to the provisions specified in these Clearing Conditions and the respectively valid balance agreements. 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.
- (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 has defaulted with regard to its delivery or acceptance of delivery obligation or in case he loses the capability for physical settlement as per section 2.4.1 paragraph 1 (c) 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 ECC Lux and the respective market. Further consequences might arise from the provisions contained in the respective balance agreement.
- (4) The provisions stipulated in this 5.2.3 shall not apply to PXE Spot Market Transactions.

5.2.4 Fulfilment of Market Coupling Contracts

- (1) Market Coupling Contracts are fulfilled directly by the Trading Participant towards ECC Lux and at the same time between ECC Lux and ECC in accordance with these Clearing Conditions and the respectively valid agreements between ECC and EPEX Spot SE, the coupled markets, transmission system operators and the respective Clearing Entities according to section 2.6 included on the basis of separate agreement or their representatives.
- (2) Fulfilment of the Market Coupling Contracts is effected through the use of the Physical Transmission Rights by ECC Lux towards the transmission system operators included and/or their representatives in the direction from the exporting transmission system to the importing transmission system.
- (3) Regardless of the provisions contained in section 5.2.5, ECC is entitled to take all required measures to ensure fulfilment or the reduction of any possible damage regarding the transactions entered into if the use of Physical Transmission Rights cannot be ensured by the transmission system operators included.

5.2.5 Measures by transmission system operators

- (1) Should a transmission network provider have to undertake necessary measures, such as the reduction of schedules in order to maintain network security due to network constraints or in the framework of the force majeure provisions applicable to it, which have an effect on the schedule registration and deliveries in the application of these clearing conditions, then the reduced deliveries and/or acceptance of deliveries of power form the basis for settlement.

- (2) Paragraph 1 shall apply accordingly with regard to measures by a transmission system operator which said party carries out because of and in the framework of cross-border deliveries of power between different market areas by using Physical Transmission Rights.
- (3) The affected Trading Participants are obliged to comply with necessary changes, such as the resending of schedules. They must abide by the measures of the transmission operator and, therefore, the respective measures of ECC or ECC Lux. Settlements and schedule registrations which have already occurred shall lose their validity.
- (4) Any liability of ECC or ECC Lux for measures by the transmission system operator, or for own measures of ECC or ECC Lux based on these, is excluded.
- (5) The corresponding market rules shall apply to the physical fulfilment of PXE spot market transactions for which ECC has assumed services in connection with financial settlement.

5.2.6 Treatment of the Transactions in terms of Sales Tax

- (1) The transactions as established in the individual trade confirmations shall form the basis for the calculation of the sales tax. On this basis and under consideration of the information provided by the Trading Participants regarding the taxation treatment, ECC Lux shall calculate the sales tax payable with regard to the transactions separately.
- (2) The trade confirmations provided by the trading system increased or reduced by the transactions fees billed shall form the assessment basis for the sales tax.
- (3) The amount of the sales 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, sales tax for these transactions is not calculated by ECC but by PXE or by the counterparty commissioned by PXE.

5.2.7 Trade limits for intra-day Trading

- (1) Clearing Members of ECC can establish a trade limit for intra-day power trading with delivery for every Non-Clearing Member of which they are in charge. A trade limit is a limit established by means of an amount in terms of money within which the Non-Clearing Member can buy power for a positive price or respectively sell for a negative price in intra-day trading between the accounting cut-offs on two Business Days. ECC shall monitor compliance with the trade limits – if required, by including the market, and inform the Clearing Member concerned in case these are exceeded.
- (2) As soon as a Trading Participant enters buy orders with a positive price or sell orders with a negative price in the system which exceeds the trade limit, ECC shall apply to the market for a cancellation of the orders exceeding the trade limit.

5.3 Special provisions regarding trading in Emission Rights and Guarantees of Origin

5.3.1 General Information

On the Markets transactions regarding Emission rights and Guarantees of Origin with physical settlement are traded the settlement of which is effected uniformly in accordance with the provisions made 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 taxes required by law 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 those of the taxes required by law 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 batch processing of the trading day.
- (2) In case the Trading Participant hasn't defined a payment agent, the above mentioned provisions will apply to the legal relationship between the Clearing Member and the connected Non-Clearing Members respectively.

5.3.3.2 Transactions of Auctioneers

ECC will transfer the auction proceeds on the delivery day at around 8:15 CET to the respective TARGET 2 account nominated by the Auctioneer without any deductions (net) and without charging any fees unless otherwise agreed. All payments will be affected in EUR.

5.3.4 Treatment of the transactions in Terms of Sales Tax

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

5.3.5 Delivery of Emission Rights

5.3.5.1 Delivery of Emission Rights auctioned according to the Auctioning Regulation (EU) 1031/2010

- (1) ECC Lux keeps separate Auction Delivery Accounts for Member States not participating in a joint action according to Article 30 of Regulation (EU) 1031/2010 and Member States participating in a joint action according to Article 26 of Regulation (EU) 1031/2010.

Emission Rights to be auctioned will be transferred by the Union Registry according to the respective valid Auction Tables two business days prior to the auction until 10:00 CET at the latest into the respective Auction Delivery Account of ECC Lux operated by the Union Registry. With the transfer of the Emission Rights into the Auction Delivery Accounts of ECC Lux title with regard to these Emission Rights will be transferred to ECC Lux according to Art. 40 of the Registry Regulation 389/2013 and ECC Lux will hold these Emission Rights in escrow as collateral in accordance with Article 50 of Regulation (EU) 1031/2010 for the Auctioneers until delivery of the Emission Rights to the successful bidders. These Emission Rights constitute system collateral within the meaning of § 166 para 3 subpara 1 of the German Insolvency Act in order to secure the delivery obligations of the Auctioneers towards ECC. Under the escrow agreement ECC Lux has no right to dispose of the Emission Rights other than by delivery to the successful bidders. Such delivery will not be initiated by ECC until after payment of the auction proceeds has been effected by ECC to the nominated TARGET2 account of each Auctioneer.

- (2) ECC shall determine the Auction Table in accordance with the Auction Calendar as amended from time to time and in accordance with Art. 62 and 63 of the Registry Regulation (EU) 389/2013. Transfer of Emission Rights by means of an Auction Table must be in accordance with the most recent valid Auction Calendar.
- (3) For each Auction Delivery Account ECC Lux keeps internal inventory accounts for each Auctioneer regarding the Emission Rights booked in the Auction Delivery Account of ECC Lux. The additions and disposals of Emission Rights in the Auction Delivery Account by means of sale and purchase or by means of surrender and return shall be booked in these internal inventory accounts and, at the same time, these effect a corresponding change in the Auctioneers' share in the total inventory in the Auction Delivery Account of ECC Lux.
- (4) The Auction Delivery Accounts referred to in paragraph 1 can only be used for primary auctioning of Emission Rights.
- (5) After payment of the auction proceeds to the Auctioneers, delivery from the Auctioneers to the successful bidders shall be affected according to section 5.3.5.2 para 3 and in accordance with the auction results as received from EEX.
- (6) Immediately after the delivery of the Emission Rights has been effected, ECC will transfers the Emission Rights to the registry account of ECC Lux. Due to limitation of the Union Registry the transfer will be finalised 26h after its initiation only. From the time of delivery until the transfer into the registry account ECC Lux will hold the Emission Rights in escrow in the ECC Auction Delivery Account acting as custodian for the successful bidders.

5.3.5.2 Delivery of Emission Rights in Secondary Trading

- (1) Deliveries of Emission rights are effected by bookings within these internal 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 in trust 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 Emission rights are effected step by step 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 sub-section 3.4.7 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 the coordinating Clearing Member by way of a second-order lien to secure the claim to the reimbursement of the purchase price for these emission allowances. If the acquiring Trading Participant is a Clearing Member or a Non-Clearing member of a Sub-CCP, it shall pledge the Emission rights acquired in the Spot Market transaction, including the appertaining rights to the Sub-CCP 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, ECC LUX and the Clearing Member accept the pledges. The Trading Participant hereby informs ECC as the authorized receiving agent of ECC LUX of the pledges. Section ~~3.5.9~~3.9.1 (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 3.4.6 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 their respective inventory accounts at the latest by the end of the business hours on the day on which the transaction is concluded

5.3.6 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 in trust 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 step by step 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 sub-section 3.4.7 in conjunction with subsection 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 3.4.6 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.

5.3.7 Special regulations regarding default

- (1) If ECC cannot use existing emission rights or Guarantees of Origin for the fulfilment 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 supporting 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 or 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, on account of the non-delivery of emission rights or 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 following measures, in addition to charging margins:
 - (a) ECC can effect a replacement purchase of the emission rights or Guarantees of Origin 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 (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 or Guarantees of Origin. However, ECC shall be at liberty 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 fulfilment of the delivery obligation.
 - (c) In as far as the replacement purchase and the delivery of the emission rights or Guarantees of Origin to be delivered have been effected, the delivery obligations re-

sulting 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 or Guarantees of Origin in due time.

- (d) At the latest in the event that the replacement purchase is not successful in its entirety or in part within a period of two business days after the delivery day, ECC shall specify a compensation amount which shall replace the emission rights or Guarantees of Origin not delivered or not acquired through a replacement purchase (cash settlement) instead of fulfilment. The trading participant in default and its supporting 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 or Guarantees of Origin 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 the supporting 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. paragraph 3. The outstanding amount within the meaning of section 3.9.1 paragraph 3 corresponds to the amount used for the replacement according to paragraph 2 (a) or to the compensation amount according to paragraph 2 (d).
- (4) Moreover, in the event of cash settlement according to paragraph 2(d), ECC is entitled to liquidated damages in the amount of 100% of the sales price without the supporting 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 (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 emission rights and Guarantees of Origin. Emission rights and Guarantees of Origin can only be delivered to the buyer if corresponding stocks are available from the trading participant required to submit these. Any default caused by the trading participant required to submit the emission rights and Guarantees of Origin 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 or Guarantees of Origin. 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 section (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 emission rights or Guarantees of Origin affected by this.

- ~~(1) In case the Trading Participant who is obliged to deliver is in default, in particular because such party has not submitted the Emission rights or Guarantees of Origin to be delivered by it to a registry account of ECC Lux in accordance with the instructions by ECC on the delivery day at the latest or ECC Lux is prevented from using submitted Emission rights or Guarantees of Origin for the fulfilment of transactions, ECC can request the Trading Participant or the covering Clearing Member to pay the exchange or market price of the Emission rights to be furnished instead of the Emission rights to be delivered or carry out the following measures at its discretion:~~
- ~~(a) ECC can carry out stocking up for the Emission rights or Guarantees of Origin which have not been delivered in exchange trading or in any other suitable manner as of the first business day after the delivery day at the earliest, in case it is convinced on account of extraordinary risks that the margins which have been deposited are not sufficient for securing these transactions any more or in case it deems a replacement of the Emission rights or Guarantees of Origin which have not been delivered on the Markets or off the exchange by ECC to the account of the Trading Participant who is obliged to deliver required because of other serious reasons (stocking up). A serious reason shall be in particular an approaching date for the delivery of Emission rights pursuant to art. 6 TEHG (German law on greenhouse emissions trading).~~
- ~~(b) In case the Emission rights or Guarantees of Origin to be delivered by the Trading Participant obliged to deliver are not delivered to ECC Lux on the 5th business day after the delivery day at the latest, ECC shall stock up the Emission rights or Guarantees of Origin which have not been delivered within a period of time established by it, which usually amounts to 5 business days. The right to deliver on the part of the Trading Participant who is in default shall be precluded for this period of time. Stocking up can be carried out in accordance with paragraph 1 lit. a or by means of an auction.~~
- ~~(c) With regard to stocking up by means of an auction the following shall apply:~~
- ~~— ECC or EEX AG, which it has commissioned to that end, shall publish a maximum price for each Emission right or Guarantee of Origin for the respective auction up to which it is prepared to accept bids. The maximum price for this auction is calculated on the basis of the value established by ECC for the corresponding Emission rights or Guarantees of Origin with a surcharge of 100 per cent.~~
- ~~— Every Trading Participant who has been licensed to that end by ECC, can participate in these auctions.~~
- ~~(d) In case the measures provided for in paragraph 1 lit. a and b are not successful within the period of time established in accordance with lit. b, ECC shall be entitled to establish a cash settlement with regard to a transaction or the part of a transaction which has not been fulfilled so that the obligations to perform arising from this~~

~~transaction on the part of the Trading Participant who is in default and of ECC Lux cease to apply. The Trading Participant who is in default as well as the Clearing Member co-operating with him shall be obliged to pay a cash settlement to ECC Lux instead. In this case the same shall apply with regard to trades with the same contents concluded between ECC Lux and one or several other Trading Participants. The execution of a cash settlement shall be based on the precondition that two attempts at stocking up by means of one auction each according to lit. c have been executed by ECC or by EEX AG, which it has commissioned to that end, prior to that.~~

~~— The amount of the cash settlement to be paid shall be established on the basis of the total of the following positions:~~

~~— The amount of the cash settlement to be paid is established by means of a comparison between the value established by ECC for the Emission rights or Guarantees of Origin concerned plus a surcharge to the amount of 100 per cent, the highest sales price of the trades concerned as well as of the highest purchase price of the trades concerned.~~

~~— The highest price established in the context of this comparison is then multiplied by the respective number of trades concerned. The sum resulting from this is set off with the respective final amounts of the trades concerned and hence yields the amount to be paid to ECC in the framework of cash settlement.~~

~~— After receipt thereof, ECC shall pay out this amount to the other Trading Participants which have concluded transactions with the same contents with ECC Lux in accordance with sentence 4.~~

~~(2) — The Trading Participant which was not been supplied in due time has to allow the measures according to paragraph 1. In as far as ECC has initiated stocking up by means of an auction pursuant to paragraph 1 or in accordance with measures as per paragraph 1 lit. a, the Trading Participant obliged to deliver shall not be entitled to deliver the Emission rights or Guarantees of Origin which it owes to ECC Lux on the day of the respective auction or of the measures according to paragraph 1 lit. a. In case stocking up of the Emission rights or Guarantees of Origin to be delivered has been achieved by means of an auction or in any other way, the obligations to deliver arising from the original trade in Emission rights shall expire on account of this.~~

~~(3) — The costs incurred on account of measures as per paragraph 1 shall be borne by the Trading Participant. Amongst other aspects, ECC shall charge a fee for each auction which has been carried out to the amount of EUR 250 for each delivery of Emission rights or Guarantees of Origin which is in default.~~

~~(4) — ECC can have recourse to the Trading Participant and the Clearing Member co-operating with said party in case of damage which it or other Trading Participants have suffered on account of a default caused by the Trading Participant. Regardless of the occurrence of a case of damage ECC shall be entitled to demand interest as well as liquidated damages. The liquidated damages shall be calculated as follows:~~

~~Until the delivery of the outstanding Emission rights or Guarantees of Origin by the Trading Participant who is in default, until stocking up or until settlement of the trades for which no delivery has taken place by means of cash settlement ECC shall be entitled to the payment of liquidated damages and of interest in accordance with the provisions in section 3.9.1 paragraph 3. The period of time which is decisive for the calculation of the liquidated damages including the interest shall be extended up to and including the business day on which the Emission rights or Guarantees of Origin delivered or acquired by means of stocking up are transferred to the other Trading Participants to be supplied by means of a credit entry on the respective internal inventory accounts. This shall apply accordingly in as far as claims to the delivery or claims to damages have been assigned to ECC or in as far as a cash settlement is executed by it.~~

5.4 Special provisions regarding Natural Gas trading

5.4.1 General Information

On the markets, Spot Market transactions regarding natural gas with physical delivery are traded, the settlement of which is effected uniformly in accordance with the provisions made in these Clearing Conditions.

5.4.2 Settlement of the Transactions

- (1) The transactions as established in the trade confirmations by the markets plus the taxes as per the legal requirements form the basis for 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 taxes applicable as per the relevant laws shall, on principle, be credited to the clearing account of the Clearing Member or debited from it during batch 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 batch processing of the business day before the delivery.

5.4.3 Physical delivery and Acceptance of Delivery of Natural Gas

- (1) Physical delivery of the spot market transactions is effected directly by the Trading Participant towards ECC Lux and at the same time between ECC Lux and ECC subject to the provisions specified in these Clearing Conditions and the respectively valid balance agreements. 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.
- (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 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 products of the respective Balancing Group Network Operator. The re-

spective Balancing Group Network Operator is exclusively authorized to demand fulfillment 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 as per section 2.4.1 paragraph 1 (c) 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 ECC Lux and the respective market. Further consequences might arise from the provisions contained in the respective balance agreement.

5.4.4 Measures of a Transmission Network or Hub-Operator

- (1) Should a transmission network or hub operator, in accordance with its rules and regulations, including such rules and regulations regarding Force Majeure which apply to its respective transmission network or hub, have to undertake necessary measures, such as the partial or complete reduction of schedules in order to maintain network security due to network constraints, which have an effect on the schedule registration and deliveries in the application of these clearing conditions, then the reduced deliveries and/or acceptance of deliveries of power form the basis for settlement.
- (2) The directly or indirectly affected Trading Participants are obliged to comply with necessary changes, such as the resending of schedules. They must abide by the measures of the transmission system or hub operator and therefore the respective measures of ECC or ECC Lux. Settlements and schedule registrations which have already occurred shall lose their validity.
- (3) Liability of ECC or ECC Lux for measures by the transmission system or hub operator, or own measures based on these, is excluded.

5.4.5 Treatment of the Transactions in Terms of Sales Tax

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

5.4.6 Trade Limits for the EEX Spot Market

- (1) Clearing Members of ECC can establish a trade limit for intra-day power trading with delivery for every Non-Clearing Member of which they are in charge. A trade limit is a limit

established by means of an amount in terms of money within which the Non-Clearing Member can buy power for a positive price or respectively sell for a negative price in intra-day trading between the Booking cut-offs on two Business Days. ECC shall monitor compliance with the trade limits – if required, by including the market, and inform the Clearing Member concerned in case these are exceeded.

- (2) As soon as a Trading Participant enters buy orders with a positive price or sell orders with a negative price in the system which exceeds the trade limit, ECC shall apply to the market for a cancellation of the orders exceeding the trade limit.

6 FINAL PROVISIONS

6.1 Sovereign acts

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

6.2 Forwarding of information

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

- (1) ECC and ECC Lux shall treat all data and information referred to its Clearing Members and the respective Non Clearing Members as confidential. ECC and ECC Lux 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 2.1.6),
 - (c) restriction of a clearing license (section 2.1.7),
 - (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 2.4.1),
 - (f) revocation of a license as a Trading Participant (section 2.4.2),
 - (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.

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

ECC and ECC Lux 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, in the framework of the legal provisions applicable with regard to its Clearing Members as well as to ECC and/or ECC Lux.

6.3 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.

6.4 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 fulfilment 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.

6.5 Amendments and supplements

Amendments and supplements to these Clearing Conditions will be announced to the clearing participants by ECC electronically by means of a circular letter and by means of a publication on the internet sites of ECC www.ecc.de and the markets at least 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 and the Sub-CCP object to these in writing to ECC within a period of 10 business days after their announcement. In the event of an objection against an amendment of the Clearing Conditions, ECC reserves the right to terminate the clearing license of the Clearing Member concerned or to order the suspension of the clearing license.