Institution Clearing

Member Questionnaire

04.2023

Leipzig

Ref. CM\_Questionnaire

**Preliminary note**

According to the German Banking Act European Commodity Clearing AG (ECC) is obliged to implement measures against money laundering, financing of terrorist activities and fraud. According to EMIR article 37 ECC is also obliged to define admission criteria for Institution Clearing Member and to review compliance with these criteria at least annually. In case an Institution Clearing Member does not comply with the admission criteria ECC is entitled to suspend the respective Institution Clearing Member based on a risk analysis. Based on the risk assessment ECC is also entitled to define additional measures (e.g. margin limits, position limits). Basis for the risk assessment is this questionnaire. Submitting the completed version of this questionnaire is prerequisite to obtain the ECC Institution Clearing Member license. Please be aware that, depending on the information given within the questionnaire and the accompanying documents, ECC can ask for additional information/documents. All questions within this questionnaire are related to the clearing business.

Checklist: Mandatory documents

Please provide the following documents (translated into English or German):

Please make sure that you attach all necessary documents listed here. For the annual financial statement, it is possible to provide a link that directly leads to the document on the website.

|  |  |
| --- | --- |
| **Document** | **Available? (yes/no)** |
| **Mandatory documents for admission and review** |
| Latest commercial registry extract (not older than 3 months) |  |
| Organizational chart visualizing the internal structure of your company |  |
| Shareholder structure chart incl. all companies along the chain between your company and your Ultimate Parent |  |
| Audited Annual Financial Statements (incl. audit report) |  |
| Audited Annual Financial Statements (incl. audit report) of the Ultimate Parent |  |
| Regulatory Disclosure according to Basel, Pillar III (if applicable) |  |
| Regulatory Disclosure according to Basel, Pillar III of the Ultimate Parent (if applicable) |  |
| Wolfsberg Financial Crimes Compliance Questionnaire (if applicable) |  |
| Evidence about profit transfer agreement (if applicable) |  |
| Evidence about parental guarantee (if applicable) |  |
| Evidence about letter of comfort (if applicable) |  |
| **Mandatory documents for admission only** |
| Bank License |  |
| Color scanned copy of the passport/ID card of the legal representative(s) |  |
| Target2 Form 2002 |  |
| Target2 Form 2001 |  |

1. Basic information
	1. Enter the following information about your company:
		1. Full company name:

Click here to enter text.

* + 1. Address:

Click here to enter text.

* + 1. Country of domiciliation:

Click here to enter text.

* + 1. Company is a regulated financial institution, bank or financial services provider:

[ ]  Yes

[ ]  No

* + 1. Company is classified by ECB as MFI (“Monetary Financial Institution“):

 [ ]  Yes, the MFI ID is: Click here to enter text.

 [ ]  No

* 1. Please submit a chart explaining the shareholder/ownership structure of the company, up to and including the Ultimate Parent level as well as the direct and indirect shareholders with a minimum of 10% aggregate ownership or comparable control rights.

For foundations or trusts: please provide the name, date of birth and nationality of the trustor, the beneficiary (group of beneficiaries, if applicable) and the administrator

The following information are required:

* name of the company or in case of a natural person, first name + surname
* country of residence
* citizenship & date of birth in case of a natural person
* shares and/or voting rights (in%)

|  |  |  |  |
| --- | --- | --- | --- |
| **Name** | **Citizenship / Country of residence** | **DOB** (dd.mm.yyyy) | **Share** (in %) |
|  |  |  |  |
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If applicable, enter the following information about your company’s Ultimate Parent (top company in which your company’s results are consolidated or the highest company that holds – directly or indirectly - a share of at least 50% of your company):

* + 1. Name of the Ultimate Parent:

 Click here to enter text.

* + 1. Your company’s Ultimate Parent is a regulated financial institution, bank or financial services provider:

 [ ]  Yes

[ ]  No

* + 1. Your company’s Ultimate Parent is classified by ECB as MFI (“Monetary Financial Institution“)

[ ]  Yes, the MFI ID is: Click here to enter text.

[ ]  No

* + 1. Which share does your company’s Ultimate Parent hold overall, directly and indirectly?

Overall share (in %):

 Click here to enter text.

Direct Share (in %):

 Click here to enter text.

Indirect Share (in %):

 Click here to enter text.

* 1. Has your company been part of a merger or consolidation during last business year? Has the Ultimate Parent or Beneficial Owner of your company changed during last business year?

 [ ]  Yes, the following changes took place:

 Click here to enter text.

[ ]  No

* 1. Has your company, its group and/or its management been under investigation (e.g. by tax, financial, competition or energy authorities) within the last three years or is such an investigation currently ongoing?

 [ ]  Yes

Please provide details below:

Click here to enter text.

[ ]  No

* 1. Are there any Politically Exposed Persons (PeP)[[1]](#footnote-1) among your company’s direct shareholders or beneficial owners?

[ ]  Yes (please provide details in the table below)

[ ]  No

|  |  |  |  |
| --- | --- | --- | --- |
| **Last Name** | **First name** | **DOB** (dd.mm.yyyy) | **Reason for PEP status** |
|  |  |  |  |
|  |  |  |  |

1. Key figures
	1. Please provide the key financials in the following table based on the latest audited annual report/financial statement (individual annual accounts or lowest consolidated annual accounts in which your company is consolidated).

Please make sure, that the reported figures here are in line with the latest audited financial statement or the latest Regulatory Disclosure Report (according to Basel, Pillar III).

|  |  |  |
| --- | --- | --- |
| Key figure | Figures (reported currency/in %) | Figures (in Euro/in %) |
| Data as of |  |  |
| Tier 1 Regulatory Capital |  |  |
| Total Regulatory Capital |  |  |
| Total equity (according to financial statements) |  |  |
| Total assets (according to financial statements) |  |  |
| Net income[[2]](#footnote-2) (according to financial statements) |  |  |
| Tier 1 capital ratio (in %) |  |  |
| Total capital ratio (in %) |  |  |

* 1. Are the figures provided within question B.1 determined according to IAS/IFRS?

 [ ]  Yes

 [ ]  No, the following accounting standard was applied:

 Click here to enter text.

* 1. If relevant, please provide your Key Financials at the highest level at which you are consolidated in the following table based on the latest audited annual accounts.

Please make sure, that the reported figures here are in line with the latest audited financial statement or the latest Regulatory Disclosure Report (according to Basel, Pillar III).

|  |  |  |
| --- | --- | --- |
| Key figure | Figures (reported currency/in %) | Figures (in Euro/in %) |
| Data as of |  |  |
| Tier 1 Regulatory Capital |  |  |
| Total Regulatory Capital |  |  |
| Total equity (according to financial statements) |  |  |
| Total assets (according to financial statements) |  |  |
| Net income2(according to financial statements) |  |  |
| Tier 1 capital ratio (in %) |  |  |
| Total capital ratio (in %) |  |  |

* 1. Are the figures provided within question B.3 determined according to IAS/IFRS?

 [ ]  Yes

 [ ]  No, the following accounting standard was applied:

 Click here to enter text.

* 1. Is there one of the following types of contract in place between your company and your company’s Ultimate Parent? Please provide appropriate evidence if the answer is “Yes” (cf. checklist).
		1. Profit transfer agreement[[3]](#footnote-3)

 [ ]  Yes

 [ ]  No

* + 1. Parental guarantee

 [ ]  Yes

 [ ]  No

* + 1. Letter of comfort[[4]](#footnote-4)

 [ ]  Yes

 [ ]  No

* 1. Is there another company along the overall group structure (without considering the Ultimate Parent) which has one of the following contracts in place?

And if yes, which company has made such a commitment? Please provide the full name.

* + 1. Profit transfer agreement3

 [ ]  Yes, with the following company:

 Click here to enter text.

 [ ]  No

* + 1. Parental guarantee

 [ ]  Yes, with the following company:

 Click here to enter text.

 [ ]  No

* + 1. Letter of comfort4

 [ ]  Yes, with the following company:

 Click here to enter text.

 [ ]  No

* 1. Please provide the aggregated figure of the exposure of your company (ECC Institution Clearing Member) to all Central Counterparties (CCPs; including ECC) in the following table.

|  |  |
| --- | --- |
|  | **Exposure[[5]](#footnote-5) to all CCPs as of 31 December****of the year before completing this questionnaire** |
|  | **Pre-funded resources**(i.e. posted collateral + default fund contributions) | **Non-pre-funded resources**(i.e. assessment powers committed)[[6]](#footnote-6) |
| Currency |  |  |
| Amount |  |  |

1. Risk Management & Compliance
	1. Please provide the following information regarding your company’s Anti Money Laundering Officer:
		1. Name:

Click here to enter text.

* + 1. Mail address:

Click here to enter text.

* + 1. Phone number:

Click here to enter text.

* 1. In case your company offers clearing for physically delivered products, is the risk of VAT fraud taken into account when defining measures or onboarding new customers?

[ ]  Yes

 [ ]  No

 If no, please explain why not:

 Click here to enter text.

 [ ]  n/a; clearing of financially settled products only

* 1. Does your company conduct reviews of already admitted clearing customers to update the assessment about associated risks of money laundering and fraudulent acts, especially VAT fraud of this customer?

[ ]  Yes

If yes, which frequency is applied?

 Click here to enter text.

 [ ]  No

 If no, please explain why not:

 Click here to enter text.

* 1. Does your company do business in or receive and/or deliver (directly or indirectly) to countries with insufficient measures to prevent money laundering (high-risk countries according to the Commission Delegated Regulation (EU) 2016/1675 or FATF list)?

 [ ]  Yes

 [ ]  No

If yes, please state respective countries. Is special attention paid on the risk of money laundering or sanction evasion and are appropriate actions taken?

Click here to enter text.

Does your company do business in or receive and/or deliver (directly or indirectly) to:

* countries against which the UN, EU, UK or US have applied comprehensive economic sanctions (embargoes), e.g. Iran, Syria, Libya, Cuba etc.
* sanctioned entities and process their funds through ECC or its partners?

 [ ]  Yes

 [ ]  No

If yes, please state respective countries and/ or entities.

Click here to enter text.

* 1. Does your company offer anonymous access to products cleared by ECC?

 [ ]  Yes

 [ ]  No

* 1. Are the measures/processes defined by your company to comply with relevant AML-, CTF- and KYC-requirements subject to a review by an independent audit on a regular basis?

 [ ]  Yes

 [ ]  No

If yes, and in case of findings in the last few audits, were these mitigated or resolved?

 [ ]  Yes

 [ ]  No

 [ ]  n/a; no findings were raised in the AML, CTF or KYC area

Please describe significant findings related to AML-, CTF- and KYC- requirements in the last few audits. How were these mitigated or resolved?

Click here to enter text.

* 1. Does your company regularly train the staff members regarding AML and fraud prevention?

 [ ]  Yes

 [ ]  No

* 1. In case your company is a “Financial Conduct Authority” (FCA)/ ”Prudential Regulation Authority” (PRA) regulated entity, please name the person approved for the “Client Assets Sourcebook” operational oversight function according to CF10a (“The CASS operational oversight function”):
		1. Name:

Click here to enter text.

* + 1. Mail address:

Click here to enter text.

* + 1. Phone number:

Click here to enter text.

* 1. Does your company have an adequate business continuity management system in place, including a business continuity plan, which defines the backup procedures and disaster recovery procedures for the business processes and their critical underlying resources (staff, workspace, IT systems, 3rd party service providers) that are essential to provide clearing services?

 [ ]  Yes

If yes, in which cycle are these measures tested? Please also provide date and result of the last test cycle.

 Click here to enter text.

In which cycle are these measures independently evaluated/audited? Please also provide date and result of the last evaluation.

 Click here to enter text.

 [ ]  No

If no, please explain why not.

 Click here to enter text.

* 1. Are the risks from clearing services (including Operational, Liquidity and Credit Risk) reported on a regular basis to the senior management (e.g. a risk committee)?

 [ ]  Yes

 [ ]  No

* 1. Does your company call at least the amount of collateral calculated by ECC from the clearing customers (as defined in Clearing Conditions)?

 [ ]  Yes

 [ ]  No

* 1. Does your company have minimum requirements for accepted securities (i.e. regarding high liquidity and low credit risk)?

 [ ]  Yes

 [ ]  No

 [ ]  n/a; only cash accepted as collateral

* 1. Does your company calculate haircuts on cash in foreign currencies and securities?

 [ ]  Yes

 [ ]  No

 [ ]  n/a; foreign currencies not accepted as cash collateral

* 1. Does your company calculate the risk exposure against clearing customers intraday and if required carries out intraday margin calls?

 [ ]  Yes

 [ ]  No

* 1. Do you consider in your credit risk management the residual risk resulting from the fact that the margin requirements calculated by ECC are calibrated to cover a 99% confidence level?

 [ ]  Yes

 [ ]  No

* 1. Does your company have processes to handle the close-out of positions after the default of a clearing customer?

 [ ]  Yes

 If yes, in which cycle are the processes tested?

 Click here to enter text.

 [ ]  No

* 1. Have there been defaults of clearing customers against your company due to insolvency during the last 12-month period?

 [ ]  Yes

If yes, was the loss from close-out of positions fully covered by the received collateral?

 Click here to enter text.

 [ ]  No

* 1. Do you have processes and qualified staff to fulfill your obligations under ECC’s Default Management Process in a potential Clearing Member default event?

[ ]  Yes

 [ ]  No

 If no, please explain why not:

 Click here to enter text.

* 1. Do you have arrangements and processes with your Non-Clearing-Members in place regarding their participation in ECC’s Default Management auction?

[ ]  Yes

If yes, did you test these processes in the last 12 months?

[ ]  Yes

 [ ]  No

 [ ]  No

1. Organization
	1. Does your company have sufficient staff (including backups) as well as IT resources to ensure the adequate completion of all business processes related to clearing activities?

 [ ]  Yes

 [ ]  No

 If no, please explain why not:

 Click here to enter text.

* 1. Does your company ensure that at least one sufficiently qualified member of staff is available for the execution of the business processes related to the function as Institution Clearing Member, and that this person can be reached via phone/email/fax throughout the business day?

 [ ]  Yes

 [ ]  No

 If no, please explain why not:

 Click here to enter text.

* 1. Have the clearing business and related processes during the last year been subject to audits by external auditors (auditor, competent authority)?

 [ ]  Yes

 If yes, did serious findings occur?

 [ ]  Yes, the following findings occurred:

 Click here to enter text.

 [ ]  No

 [ ]  No

1. Recovery & Resolution Processes

Since the financial crisis in 2008, jurisdictions worldwide have implemented targeted banking regulation legislation for recovery and resolution of banks. They provide for special planning and internal as well as regulatory measures in situations where the solvency or viability of the institute is severely threatened. Your institutions’ plans and processes in this area are therefore an important part in ECC’s risk and default management plans and provisions.

**Your Institute’s Recovery Planning**

* 1. Are you subject to national / European recovery and resolution regulation (e.g. BRRD in the EU, its national implementation or equivalent regulation in a non-EU jurisdiction)?

 [ ]  Yes

 [ ]  No

* 1. What is your institutes Competent/Supervisory Authority (please refer to the entity named under A.1)?

[ ]  European Central Bank

 [ ]  National Competent Authority in the European Union

Please enter the respective name here: Click here to enter text.

 [ ]  Other non-EU Competent Authority

Please enter the respective name here: Click here to enter text.

* 1. If your institute, or a parent company, is not classified as G-SIB (Gobal Systemically Important Bank): Is your institute or a parent company classified as Domestic/Local-SIB or Other-SIB by your National or European regulator?

 [ ]  Yes

 [ ]  No

* 1. Do you have a Recovery Plan in the meaning of BRRD (or equivalent national legislation)?

 [ ]  Yes, we maintain an entity-specific recovery plan.

 [ ]  No, but we are part of the group recovery plan of our (ultimate) parent.

 [ ]  No

* 1. Do the communication processes foreseen in recovery ensure that ECC is informed on the activation of recovery measures with a potential impact on ECC (see Clearing Conditions, rule 2.1.6 (2c))?

 [ ]  Yes

 [ ]  No

If no, please explain why not:

Click here to enter text.

* 1. Is your clearing activity at ECC part of a function classified as ‘critical function’ according to Art. 2 (35) BRRD (or equivalent national legislation)?

 [ ]  Yes

 [ ]  No

* 1. According to your Recovery Plan: What is the preferred strategy for the clearing service at ECC?

 [ ]  Continuance of business (including restructuring/sale)

 [ ]  Controlled Wind-Down

 [ ]  Ad-hoc closure & stop of payments

* 1. Is closing positions or winding down the clearing service at ECC part of the recovery plan?

 [ ]  Yes

 What is your currently estimated wind down period in a recovery scenario?

 Click here to enter text.

 [ ]  No

* 1. Do you perform dry-runs of your recovery plan processes?

 [ ]  Yes

 [ ]  No

If yes: Did you find weaknesses regarding the clearing service or clearing and settlement processes?

 [ ]  Yes

 Please explain your measures (incl. timeline) for remediation:

 Click here to enter text.

 [ ]  No

**Resolution Planning by your Resolution Authority**

* 1. What is your, or in case of a group resolution plan the group’s, responsible Resolution Authority?

Click here to enter text.

* 1. Are you informed on and support the resolution planning process at your responsible Resolution Authority?

 [ ]  Yes

 [ ]  No

If yes, are your functions as an Institution Clearing Member at ECC classified as critical function according to Art. 2 (35) BRRD (or equivalent national legislation)?

 [ ]  Yes

 [ ]  No

Does the resolution plan observe ECC’s answers to the ‘*FSB Questionnaire on maintaining access to CCPs for banks in resolution*‘ (see <https://www.ecc.de/en/about-ecc/company/reports> and ECC’s Clearing Conditions, rule 2.1.6 (2c))

 [ ]  Yes

 [ ]  No

If no, please specifiy measures foreseen to fulfill obligations and communication requirements towards ECC in case of resolution.

 Click here to enter text.

* 1. Is winding down the clearing service at ECC foreseen in the resolution plan?

[ ]  Yes

What is the planned wind down period in resolution?

Click here to enter text.

 [ ]  No

1. Contact Persons
	1. Pursuant to Article 50c, 1. of Regulation (EU) 648/2012 (EMIR), European Commodity Clearing AG (ECC) is obliged to make the information on the Hypothetical Capital (terms also used in this context are KCCP or c-factor report) available to the Institution Clearing Members and their Competent Authorities. Therefore, it is necessary to provide us with the E-mail addresses to be used for this purpose.

Please use block letters.

* + 1. E-mail recipient(s) at your company (Institution Clearing Member):

|  |  |  |
| --- | --- | --- |
| **Last name** | **First name** | **E-mail address** |
|  |  |  |
|  |  |  |
|  |  |  |

* + 1. E-mail recipient(s) at your company’s Competent Authority

|  |  |  |
| --- | --- | --- |
| **Last name** | **First name** | **E-mail address** |
|  |  |  |
|  |  |  |
|  |  |  |

* 1. In order to make the processing of the Institution Clearing Member Questionnaire efficient, it would be helpful if there was a central contact person/department. This single point of contact should be specified.

In case there is no single point of contact, please provide various contact details but with the corresponding note of the topics/subjects covered.

Please use block letters.

Contact persons at your company:

|  |  |  |  |
| --- | --- | --- | --- |
| **Last name** | **First name** | **E-mail address** | **Assigned field of topics/subject** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

* 1. Please state the responsible Director/Head and functional team address to be contacted in case of activation of ECC’s Default Management Process.

|  |  |  |  |
| --- | --- | --- | --- |
| **Last name** | **First name** | **E-mail address** | **Assigned field of topics/subject** |
|  |  |  | responsible Director/Head  |
|  |  |  | Contact person/functional inbox |

* 1. To clarify questions regarding your recovery options towards ECC and to establish high level contact in case of a crisis related to recovery or resolution situation, please state the responsible Director/Head and responsible contact persons for Recovery and Resolution related topics.

|  |  |  |  |
| --- | --- | --- | --- |
| **Last name** | **First name** | **E-mail address** | **Assigned field of topics/subject** |
|  |  |  | responsible Director/Head  |
|  |  |  | Contact person/functional inbox |

1. Confirmation of Clearing Agreements

|  |  |
| --- | --- |
| [ ]  | We herewith confirm for the future our acceptance of the versions of the relevant clearing agreement(s) and the documents incorporated and/or referenced therein (including, in particular, the Clearing Conditions and the Price List) as published at <https://www.ecc.de/en/about-ecc/rules> and <https://www.ecc.de/en/about-ecc/rules/price-list>, respectively, on the date of the submission of our response to this due diligence questionnaire to European Commodity Clearing AG (incorporating all previous amendments published by European Commodity Clearing AG to these documents based on its amendment process). For the avoidance of doubt, these versions shall replace any previous versions.[[7]](#footnote-7) |

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Place | Date | Company stamp and legally binding signature(s) of applicant/ Institution Clearing Member |
|  |  |  |

1. For details, please refer to Article 3 of Directive (EU) 2015/849 [↑](#footnote-ref-1)
2. Net income before preferred dividends after adjusting for extraordinary items and accounting changes [↑](#footnote-ref-2)
3. A profit transfer agreement/loss pooling agreement pursuant or equivalent to Art. 291 Aktiengesetz (German Stock Corporation Act) is an agreement by which a company undertakes to transfer its entire profits to another company. [↑](#footnote-ref-3)
4. The letter of comfort/comfort letter (equivalent is a letter of credit/parental guarantee) is a declaration issued by a company by which it commits to compensate any loss or debt for the benefit of another company. [↑](#footnote-ref-4)
5. “*Exposure*“ means the amount of losses that your company as an Institution Clearing Member could be exposed to, due to its participation in all CCPs that your company may be using at global level (not just European level). “*Institution Clearing member*“ refers to the legal entity being member of the CCP, not to its affiliates [↑](#footnote-ref-5)
6. “*Assessment powers committed*“ refers to the number of assessments committed as included in the relevant CCPs rulebooks across all CCPs that your company may be using, assuming a single default event. If unlimited, please include the figure equivalent to three (3) assessments, unless otherwise indicated by the respective CCP. [↑](#footnote-ref-6)
7. *Background of this question*: In 2021, the German supreme court (Bundesgerichtshof) has ruled that unilateral amendment clauses in standard terms violate mandatory German contract law when used against consumers. While we are of the opinion that this judgement is not relevant for the amendments made by European Commodity Clearing AG to its legal framework, we herewith would like to rule out any uncertainties resulting out of that judgement for the functioning of the clearing system maintained by European Commodity Clearing AG. [↑](#footnote-ref-7)