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# Clearing Conditions of European Commodity Clearing AG

02.10.2023  
Leipzig

Release 0063a

*The English version is for informal use  
only. Only the German version is legally  
binding.*

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## Preamble

The European Commodity Clearing AG (“ECC”) with registered offices in Leipzig, Germany is a central counterparty according to § 1 paragraph 31 German Banking Act (KWG) in conjunction with Article 2 No. 1 Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 04 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR) in the respectively applicable version (“CCP”) and operates a system for collateralisation and settlement of the Transactions concluded or registered on the markets approved by it. Furthermore, ECC is a designated payment system in accordance with Article 10 of the Directive 98/26/EC on settlement finality in payment and securities settlement systems (“Settlement Finality Directive” - SFD) in the respectively applicable version.

ECC provides Clearing Services for markets on which various products are traded. An overview of the licensed markets and the products which can be traded there is available at <https://www.ecc.de/en/clearing/partner-exchanges-and-products>.

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.

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

In as far as the Clearing Conditions are part of a contract concluded between an Institution Clearing Member and ECC or of a contract concluded between a Settlement Bank and ECC, the provisions regarding the payment system in chapter 7, the provisions in chapter 6 as well as all provisions and definitions of terms in these Clearing Conditions referring to Institution Clearing Members or Settlement Banks as participants in the system together form an independent contractual agreement (“System Agreement”). The entirety of these System Agreements constitutes a formal agreement within the meaning of Article 2 lit. a) SFD which forms a system within the meaning of the SFD.

## 1. Definition of Terms

Allowance	Allowance within the meaning of Article 3 lit. a) of Directive 2003/87/EC.
Auction Collateral Delivery Account	Auction Collateral Delivery account for Allowances in accordance with Article 13 of Commission Delegated Regulation (EU) 2019/1122 of 12 March 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry (Registry Regulation).
Auction Format	Determines whether Auction Units of one or several identically composed of Positions of one or several Product are offered in a Default Management Auction.
Auction of Guarantees of Origin	Trading method for the auctioning of Guarantees of Origin on the Spot Market.
Auction Unit	Means the composition of one unit or several identically composed units of Positions of one or several Products into Auction Units that are offered in a Default Management Auction.
Auctioneer	<p>1. Any public or private entity appointed by a (Member) State to auction Allowances on its behalf pursuant to Article 22 paragraph 1 of the Commission Regulation (EU) No. 1031/2010 (Auctioning Regulation) with a mandate to auction Allowances and receive and disburse the auction proceeds on behalf of the (Member) State appointing it pursuant to Article 23 paragraph 1 lit. a), b) and c) Auctioning Regulation or</p> <p>2. The European Investment Bank (“EIB”) for</p> <p>a) the Innovation Funds and the Modernisation Fund according to Article 24 Auctioning Regulation and</p> <p>b) the Recovery and Resilience Facility according to Article 10e of Directive 2003/87/EC.</p>
Auctioneer for Guarantees of Origin	Any legal entity who is entitled to sell Guarantees of Origin.
Balancing Agreement	All contractual agreements between the Transmission System Operator and the Trading Participant as well as between the Transmission System Operator and ECC or the Settlement Entity respectively regarding the settlement of Grid-bound Energy deliveries.

Batch Processing	Process of ECC on every Business Day for settlement, position administration as well as calculation and booking of margins for all Transactions for which ECC has taken over clearing.
Business Day	The days from Monday to Friday with the exception of those days which are marked as days that are not Business Days in the calendar published by ECC on the ECC website.
Business Hours	From 7:30 a.m. CET until 7:00 p.m. CET on every Business Day.
Capacity Guarantee	An intangible, tradable, fungible, and transferable certificate according to Article L. 335-1 f. des Code de l'énergie and the décret n° 2012-1405 created by the French national Transmission System Operator and issued to an electricity producer for a given calendar year on the producible capacity of its generating plants.
Cash Collateral Account	Internal inventory account in which Trading Participants' cash collateral is booked by ECC in accordance with section 3.5.8.
CBF Pledged-Securities Account	Pledged-securities account of an Institution Clearing Member at the Clearstream Banking AG for the deposit of securities.
Clearing	Task of a central counterparty, in particular position keeping and financial and physical settlement of Transactions as well as collateralisation of Transactions.
Clearing Broker	Clearing Member which enables a Clearing Broker Client to access a Market without being admitted as a Participant on this Market itself. Clearing Broker Clients must be approved as Non-Clearing Members and Trading Participants by ECC.
Clearing Broker Client	Non-Clearing Member that gets access to a Market via its Clearing Member and that is approved as a Trading Participant by ECC.
Clearing Member	Participant in the clearing procedure who has an Institution clearing license as an Institution Clearing Member or a Direct Clearing Participant (DCP) clearing license as a DCP Clearing Member. Both Institution Clearing Members and DCP Clearing Members are system participants within the meaning of Article 2 lit. f) SFD.
Clearing System	The IT system of ECC, in particular, the spot market settlement and the IT system of Eurex Clearing AG used by ECC (Eurex Clearing System), including the IT infrastructure of

	ECC, Eurex Clearing AG or their respective service providers connected with it.
Client	Client of an Institution Clearing Member that is no Non-Clearing Member and participates in Clearing through this Institution Clearing Member. ECC distinguishes between Omnibus Clients and other clients (see section 2.3.1).
Collateral Registry Account	Institution Clearing Members shall transfer Emission Rights to the ECC Collateral Registry Account to utilize them as collateral towards ECC. Non-Clearing Members may not transfer Emission Rights to the Collateral Registry Account in their own name and for their own account, but only at the behest of their Institution Clearing Member.
Compression	A process for risk reduction in which Derivatives Market Transactions between ECC and a Clearing Member and between a Clearing Member and a Non-Clearing Member which refer to the same Contract or Contracts of an Intermarket Spread Products expire at uniform times and are replaced by a new uniform Derivatives Market Transaction the payment and delivery obligations of which correspond to the balance of all payment and delivery obligations of the Derivatives Market Transactions replaced.
Connected Bank	An institution designated by the DCP Clearing Member and accepted by ECC which maintains one or more Settlement Accounts for a DCP Clearing Member, has entered into an agreement with a Forwarding Bank to receive "Request for Transfer" instructions (MT101 messages) on the Society for Worldwide Interbank Financial Telecommunication network (SWIFT network) and thereupon executes payment orders for a DCP Clearing Member on behalf of the DCP Clearing Member vis-à-vis ECC.
Contract	Standardised contracts for products defined in the contract specifications of the markets, including the definition of the respective due date of delivery.
Cool-Down Cap	Limits the sum of Additional Contribution and Replenishment per Clearing Member. It shall be a maximum of three (3) times the Default Fund Contribution requirement established by ECC according to section 3.7.1 paragraph 2 on the Business Day before the start of the Cool-Down Period. Additional Contributions are limited to one (1) time the Default Fund Contribution requirement per Default Event.

Cool-Down Event	Each termination of a clearing membership according to section 3.9 in which a non-defaulting Clearing Member's Default Fund contributions are used to cover Default Damages. For the definition of the date of this event, the date of termination is relevant.
Cool-Down Period	A period of thirty (30) Business Days which shall commence on the date of a Cool-Down Event. If one or more further Cool-Down Events occur within a Cool-Down Period, the period shall be extended by thirty (30) Business Days by each such further Cool-Down Event from (and including) the relevant further Cool-Down Event dates. An extension of the Cool-Down Period is subject to a maximum duration of ninety (90) days starting on the date of the first Cool-Down Event.
Correspondent Bank	Bank appointed by ECC as being authorised to hold Settlement Accounts in various currencies for Institution Clearing Members.
DCP Clearing Member	Clearing Member that has a Direct Clearing Participant (DCP) clearing license and which is exclusively entitled to clear own Spot Market Transactions. As a Clearing Member of ECC, a DCP Clearing Member is a participant in the ECC system within the meaning of Article 2 lit. f) SFD.
Default Damage	Any loss incurred by ECC in connection with a Default Event.
Default Event	Default of a Clearing Member according to section 3.8 or 3.9 which leads to a termination of the clearing license of the respective Clearing Member.
Default Fund	May also be referred to as Clearing Fund in ECC documentations.
Delivery Period	The Delivery Period is according to the respective contract specification the period which is defined for the delivery of Grid-bound Energy.
Delivery Time	The Delivery Time is according to the respective contract specification the date which is defined for the delivery of the respective Products.
Derivatives Market	Market or sub-market on which Transactions in contracts with a deferred settlement date (usually later than two (2) Business Days) are concluded and/or registered that is no Spot Market.
Derivatives Market Transaction	Transaction by a Trading Participant which has a deferred settlement date (futures or options) that is no Spot Market Transaction.

Deutsche Börse Group	Deutsche Börse AG or entities in which Deutsche Börse AG holds directly or indirectly a majority share.
ECC	European Commodity Clearing AG. The ECC is the Central Counterparty for all the Transactions included in clearing.
ECC website	Means the company website available at <a href="http://www.ecc.de">www.ecc.de</a> .
Emergency Member Stop	Procedure supported by the system for the temporary exclusion from trading of either (i) a Non-Clearing Member by the Clearing Member or (ii) a Clearing Member and all Non-Clearing Members of this Clearing Member by ECC on some or all markets.
Emission Rights	Emission Allowances within the meaning of the German Greenhouse Gas Emissions Trading Act (TEGH), Allowances and Certified Emission Reductions (CERs). nEHS Certificates are described separately (see below) and are not covered by the term Emission Rights as defined in these Clearing Conditions.
Essential Provisions	Provisions relating to anti-money laundering, implementing EMIR or other regulatory requirements and provision ensuring the orderly clearing and settlement at ECC.
Fallback Coordinator	Nominated Electricity Market Operator (“NEMO”) which is Fallback Coordinator according to the Nordic Fallback procedure.
Foreign Currency	Any currency other than EUR which may be used for Clearing.
Forwarding Bank	Payment Bank designated by ECC that maintains a Settlement Account for ECC, that has connected to various Connected Banks to receive MT101 messages on the SWIFT network and forwards corresponding MT101 messages initiated by ECC to the Connected Banks.
General Omnibus Participant	All clients and Non-Clearing Members of a Clearing Member that are neither Special Segregated Non-Clearing Members nor Omnibus Clients nor Simple Omnibus Participants.
General Segregated Non-Clearing Member	Non-Clearing Member that are no Special Segregated Non-Clearing Members.
General Segregated Participants	General Segregated Non-Clearing Members and other clients.
Grid-bound Energy	Power and Natural Gas.
Guarantee of Origin	An electronic document which, in accordance with the requirements of Article 19 of Directive 2018/2001/EU, serves exclu-

	sively as evidence to a final customer that a specified proportion or quantity of energy has been produced from renewable sources.
Indirect Clients	According to Article 1 lit. b) of Delegated Regulation (EU) 2017/2154, clients of an Institution Clearing Member's clients that receive clearing services from an Institution Clearing Member's client via an Indirect Clearing Agreement.
Insolvency Administrator	Insolvency Administrator of the Clearing Member under the German Insolvency Code (InsO) or comparable institution which, under the relevant legal system, is provisionally or definitively entrusted by a court, authority or other competent authority with the conduct of insolvency proceedings in connection with an insolvency.
Institution Clearing Member	Clearing Member which has an Institutions clearing license and is entitled to clear own Transactions, client Transactions and Transactions of Non-Clearing Members. Where references are made to System Clearing Member in previous versions of these Clearing Conditions and the ECC forms, such references shall be deemed to be references to Institution Clearing Members.
Intermarket Liquidity Provider	Trading Participant which, based on an agreement with the market operator(s), contributes to the provision of liquidity on two (2) markets with the help of Intermarket Spread Products on these markets.
Intermarket Spread Product	Combination of two (2) futures Contracts which are traded on different Markets and which have the same risk characteristics according to ECC's assessment.
Investment Loss	Any loss incurred by ECC in relation to the holding or investment of collateral in cash and contributions to the Default Fund of the Institution Clearing Members in a Non-Default Event.
Known Participants	Special Segregated Participants and General Segregated Non-Clearing Members.
Margin Requirement	The collateral to be provided by a Clearing Member calculated on every Business Day and requested by ECC in accordance with these Clearing Conditions.
Market	Regulated exchange, multilateral trading facility, non-multilateral trading facility, organised trading facility or comparable organisation which permits the conclusion or registration of Transactions in products included in clearing by ECC.

Market Coupling	A mechanism for the integration of power markets through coordinated pricing and the allocation of transmission capacities.
Market Coupling Clearing Transaction	A Transaction between ECC and a Market Coupling Counterparty as a result of which the power deliveries between ECC and a Market Coupling Counterparty are settled in the context of Market Coupling.
Market Coupling Contract	A contract which makes the available transmission capacity between two market areas tradable in the form of Physical Transmission Rights and which makes this the possible subject of clearing services.
Market Coupling Counterparty	A Central Counterparty or a party commissioned to settle power exchange Transactions which is included in Market Coupling and settles Market Coupling Clearing Transactions or local (non-market area cross-border) Transactions with ECC based on Market Coupling Contracts.
Market Coupling Facilitator	Central body designated for Market Coupling by the Transmission System Operators for capacity allocation and congestion management.
NCM Agreement	Agreement between a Clearing Member, a Non-Clearing Member and ECC as well as, if applicable, any supplementary agreements.
nEHS Certificate	Certificate that entitles the holder to emit one (1) metric tonne of greenhouse gases in metric tonnes of carbon dioxide equivalent within a specified period of time pursuant to § 3 No. 2 of the German Fuel Emissions Trading Act (BEHG).
nEHS Disposal Account	Account of ECC at the national Emissions Trading Registry as defined in the German Fuel Emissions Trading Ordinance (BEHV).
nEHS Payment Account	Account designated towards ECC by a DCP Clearing Member participating exclusively in nEHS Transactions from which the payment of the purchase price is made to the nEHS Recipient Account in nEHS Transactions.
nEHS Recipient Account	Account designated by ECC to a DCP Clearing Member participating exclusively in the nEHS Transaction for the purpose of receiving the purchase price and the respective fees in the nEHS Transaction; the purchase price credited in full to the nEHS Recipient Account is held by ECC in escrow for the nEHS seller.

nEHS Seller	Competent authority to sell nEHS Certificates as defined in the BEHG.
nEHS Transaction	Spot Market Transaction regarding the sale and purchase of nEHS Certificates at fixed prices.
Non-Clearing Member	Participant in the clearing procedure who has concluded an NCM Agreement with an Institution Clearing Member and is approved as a Trading Participant for certain products by ECC.
Non-Default Event	Means a scenario in which losses are incurred by ECC for any reason other than a Default Event, including but not limited to, business, custody, investment, legal or operational failures or fraud, including failures resulting from cyber-attacks.
Nordic Fallback	In the Nordic market areas of Denmark, Sweden, Norway and Finland (“Nordics”), the so-called Nordic Fallback process <sup>1</sup> may be applied in the event that no results are achieved in the single day-ahead Market Coupling. This process is defined by the Nordic Transmission System Operators together with the Nordic national regulatory authorities in accordance with Article 44 Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (CACM) Fallback Coordinator to all SDAC-Trading Participants that have traded in the respective market areas on the reference day (no-price situation). The provisions on Nordic Fallback dealt with in these Clearing Conditions exclusively concern the no-price situation of the Nordic Fallback procedure.
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. In accordance with section 3.5.7 paragraph 2, separate securities Clearing Accounts are introduced for Omnibus Accounts.
Omnibus Agreement	An agreement, specified by ECC, between an Institution Clearing Member, the Omnibus Clients, ECC and an Omnibus Representative about the implementation of an Omnibus Account, the appointment of an Omnibus Representative and a regulation for the separated management of the Omnibus Account.

<sup>1</sup> Proposal for "fallback procedures" amended by the Transmission System Operators of the Nordic Capacity Calculation Region in accordance with Article 44 of Regulation (EU) 2015/1222 of 24 July 2015 establishing guidelines on capacity allocation and congestion management.

Omnibus Client	Client of an Institution 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 sections 3.4.8 et seq.
Omnibus Representative	Representative of Omnibus Clients who is authorised by all Omnibus Clients to make or receive statements on their behalf and who is appointed as a fiduciary for possible transfers securities or Emission Rights from the transfer of collateral as well as cash.
Payment Bank	Bank appointed by ECC as being authorised to hold Settlement Accounts in various currencies for ECC.
Position	The balance of several Derivatives Market Transactions regarding the same Contract which have not been settled yet.
Product	Spot Market contract or all Derivatives Market Contracts with the same underlying but different maturity dates and/or Delivery Periods which are traded on a market and have been included in clearing by ECC.
Recovery Measure	A measure of ECC provided for in its recovery plan. Such a measure may in particular be the measures of loss allocations under section 3.4.6.2, the request for Additional Contributions under section 3.7.4 paragraph 5, the allocation of positions under section 3.11.8 and the cash settlement under section 3.11.9.
Recovery Situation	Describes ECC's decision to take action under its recovery plan with respect to a Default Event or Non-Default Event.
Register Administrator	Operator of (1) the Register for Guarantees of Origin, or (2) the Register for nEHS Certificates.
Registry Based Products	Emission Rights and Capacity Guarantees, that are booked on internal stock accounts of ECC.
SDAC-Market Area	Market area that is coupled with another market area or several market areas as a result of the European Single Day Ahead Market Coupling Initiative. For the Markets cleared by ECC, this currently includes the market areas Austria, Belgium, Denmark, Finland, France, Germany, Luxembourg, Netherlands, Norway, Poland and Sweden.
SDAC-Product	All Day Ahead products offered for clearing by the ECC in an SDAC-Market Area

SDAC-Trading Participant	A Trading Participant admitted to trading in Single Day Ahead Market Coupling Products in one or more SDAC-Market Areas.
Segregated CBF Pledged-Securities Account	Securities Account of the Institution Clearing Member at the Clearstream Banking AG which is set-up exclusively for securities collateral of a Segregated Participant
Segregated Cash Account	Internal Pledge Account of the Institution Clearing Member with ECC which is set-up exclusively for cash collateral of a Segregated Participant.
Settlement Account	<p>Every T2-account or any other account of Institution Clearing Members held at a Correspondent Bank approved by ECC as Settlement Account, to which the daily balance of their Clearing Accounts is credited or from which such is debited.</p> <p>Every account kept for DCP Clearing Members at a Settlement Bank or a Connected Bank.</p> <p>Every T2-account or CBF 6 Series account held for ECC. Every account held for ECC at a Settlement Bank, Payment Bank or Forwarding Bank.</p> <p>ECC specifies for every product which type of accounts must be used as Settlement Accounts and publishes the respective Settlement Accounts on the ECC website.</p>
Settlement Bank	Institute that has concluded a System Agreement with ECC and, if applicable, a Settlement Bank Agreement, keeps one or several Settlement Accounts for DCP Clearing Members and carries out payment instructions for DCP Clearing Members towards ECC.
Settlement Bank Agreement	Agreement between a Settlement Bank, a DCP Clearing Member and ECC regarding keeping of a Settlement Account and which upon request of ECC arranges, <i>inter alia</i> , pledging of the credit claims of the DCP Clearing Member booked in the Settlement Account to ECC.
Settlement Entity	<p>A company that has entered into the physical settlement of Transactions in accordance with these conditions and based on its own obligations under a purchase agreement with Trading Participants.</p> <p>Settlement Entity is European Commodity Clearing Luxembourg S.à.r.l. („ECC Lux“). For all Emission Rights markets and nEHS certificates ECC acts as Settlement Entity itself.</p>
Share in Collective Holding	Shares in the total inventory of Registry Based Products held by the Settlement Entity in its account at the respective registry

	<p>(including the Collateral Registry Account) for all Trading Participants which are credited in internal inventory accounts. The Settlement Entity keeps these Registry Based Products in trust (“fiduziarische Treuhand”) in accordance with the provisions of the Clearing Conditions.</p> <p>Shares in Collective Holdings are not considered as securities or book-entry securities in this sense of 3.4.7.</p>
Simple Omnibus	A Simple Omnibus solely consists of those Simple Omnibus Participants of a Clearing Member which are allocated to the Simple Omnibus concerned within the Clearing Systems of ECC.
Simple Omnibus Participant	Certain clients and Non-Clearing Members of a Clearing Member, which are neither Special Segregated Participants, nor General Omnibus Clients.
Special Segregated Non-Clearing Member	A Non-Clearing Member that has chosen the version “individual segregation” in the collateral agreement and whose securities are passed through in accordance with sections 3.4.8 et seq.
Special Segregated Participant	Segregated Non-Clearing Member and Omnibus Clients.
Spot Market	Market or sub-market on which Transactions regarding Contracts are concluded which are usually settled within a period of two (2) Business Days.
Spot Market Transaction	Transaction by a Trading participant on a Spot Market.
Stop Button	Technical implementation of the Emergency Member Stop in the Eurex Clearing System.
Stop Limit	A contractual limit for the Non-Clearing Members risk position which is contractually agreed between the Clearing Member and the Non-Clearing Member and upon exceeding of which the Clearing Member will submit a request for the exclusion of the Trading Participant concerned from trading on the markets cleared by ECC.
Stop Request	Technical implementation of the Emergency Member Stop within the ECC Self-Service Limit Maintenance system.
System Agreement	Independent contractual agreement under the provision regarding the payment system in chapter 7, the provisions in chapter 6 as well as all provisions and definitions of terms in these Clearing Conditions which refer to Institution Clearing Members or Settlement Banks as participants in the system. The entirety of these System Agreements constitutes a formal

	agreement within the meaning of Article 2 lit. a) SFD which forms a system within the meaning of the SFD.
T2-account	An account within the payments module with a Eurosystem central bank participating in T2 or with another central bank which is not a Eurosystem central bank but participates in T2 pursuant to a specific agreement.
Trade/Transaction	Every Spot or Derivatives Market Transaction in one of the products approved by ECC which Trading Participants have concluded or registered in a market and which is settled by ECC.
Trading	Comprises order book trading and the registration of Trades at a market.
Trading Day	The days specified by the respective market on which trading takes place or on which Transactions can be registered.
Trading Limit	Technical limit on the number of orders that can be entered by a Trading Participant in the trading system of the market.
Trading Participant	Company 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.
Trading Participant Bank Guarantee	<p>First-demand bank guarantee covering current and future liabilities which a DCP Clearing Member or Non-Clearing Member has towards ECC under its participation in clearing provided by an institute accepted by ECC, whose guarantee amount is denominated in a currency approved by ECC and whose conditions correspond to the guarantee conditions specified by ECC.</p> <p>For the Trading Participant Bank Guarantee, the form provided by ECC on the ECC website must be used together with the guarantors also listed there.</p>
Trading Participant Cash Collateral	Cash collateral provided to ECC by a Trading Participant in a currency approved by ECC which ECC keeps each in a Cash Collateral Account for this Trading Participant.
Trading Participant Collateral	Collateral provided according to section 3.4.12, 3.4.13 or 3.4.14 which can be considered in the calculation of the amount of the Margin Requirement in accordance with section 3.4.2 in the form of (1) collateral regarding Shares in Collective Holdings, (2) Trading Participant Cash Collateral and (3) Trading Participant Bank Guarantees.
Transmission System Operator	Transmission and Hub Operator or Market Area Manager.

Unsettled Trade	Spot or Derivatives Market Transaction, which has not yet been settled financially and/or physically.
<p>In as far as the following provisions refer to one of the persons specified above in the singular, each of these rules shall apply to all of such persons. Rules concerning a Clearing Member in the relationship with Non-Clearing Members, Omnibus Clients, Omnibus Representatives, Clients or Settlement Banks shall apply to this Clearing Member each exclusively in the relationship with such Non-Clearing Members, Omnibus Customers, Omnibus Representatives, Customers or Settlement Banks with whom this Clearing Member has a Contractual Relationship.</p>	

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

### 2.1 Clearing Member

#### 2.1.1 Clearing License

- (1) A clearing license is required for participation in clearing as a Clearing Member. The clearing license is obtained by means of the conclusion of a corresponding clearing agreement (“Clearing Agreement”) with ECC. A clearing license authorizes the holder to clear Transactions in products which are currently approved or will be approved by ECC. The clearing license can be restricted by ECC with regard to individual products in case the Clearing Member does not fulfil the preconditions which are specific for the respective product.
- (2) An institution clearing license can be granted as a general clearing license or as a direct clearing license. A general clearing approval authorizes the holder to clear Transactions on its own account, customer Transactions or Transactions by Non-Clearing Members. A direct clearing license authorizes the member concerned to clear Transactions on own account, customer Transactions as well as Transactions by affiliated Non-Clearing Members. General clearing license and direct clearing license are considered as institutions clearing licenses within the meaning of these Clearing Conditions also when granted before 01 August 2016.
- (3) A DCP clearing license exclusively authorises DCP Clearing Members to clear its own Spot Market Transactions in the products accepted for DCP clearing.

#### 2.1.2 General Preconditions to be fulfilled by an Institution Clearing Member

- (1) Only institutions fulfilling the following preconditions can be granted a clearing license as an Institution Clearing Member in the form of a general clearing license or a direct clearing license:
  - (a) Institutions based in a member state of the European Union, in Switzerland or Norway provided they have been licensed by the authorities in charge within their countries of incorporation and the license comprises the banking transactions or financial services which are required for participation in clearing and the institutions are also under the supervision of the competent authorities within their countries of incorporation in accordance with the parameters of the directives of the European Union, in case the company is based in Switzerland, of the Swiss Financial Market Supervisory Authority (FINMA), or if the company is based in Norway, of the Financial Supervisory Authority of Norway Finanstilsynet;
  - (b) Branch offices and branch establishments within the meaning of §§ 53, 53b or 53c 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 Article 2 paragraph 1 lit. a) of the Swiss Federal Law regarding Banks and Savings Associations in conjunction with the Ordinance of FINMA regarding foreign banks in Switzerland provided the branch establishment fulfils the preconditions as per lit. (a) and section 2.1.2;
- (d) Other branch offices based in a member state of the European Union (“receiving state“) provided the respective main office (financial institution, securities trading company) with registered offices in a member state of the European Union (“country of origin“) is licensed by its national supervisory authority and is supervised accordingly and provided the license comprises the banking transactions or financial services required for clearing operations, there are no exit barriers for branch establishments for institutions with headquarters in a member state of the European Union in the country of origin, a notification procedure has been carried out in the receiving country and the branch establishment and/or the institution fulfils the preconditions under section 2.1.2;
- (e) Institutions based outside the European Union, Switzerland or Norway provided (i) the applying institution has been licensed by its national supervisory authority and the license comprises banking transactions or financial services required for participation in clearing, (ii) in its country of domicile it is supervised according to standards equivalent to the applicable regulatory standards of the European Union as determined by ECC and provided that (iii) the national supervisory authority is a signatory to Appendix A of the IOSCO Multilateral Memorandum of Understanding or has signed an applicable bilateral memorandum of understanding with the German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin).

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

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

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

- (2) A general clearing license is based on the precondition of liable equity capital on the part of the applicant institution to the amount of at least 30,000,000 EUR or the corresponding equivalent value in the currency of the country in which the applicant institution is based.

A direct clearing license is based on the precondition of liable equity capital on the part of the applicant institution to the amount of at least 7,500,000 EUR or the corresponding equivalent value in the currency of the country in which the applicant institution is based.

For Institution Clearing Members with a general clearing license, which possess a license according to EMIR, the same requirements regarding liable capital funds shall apply as for Clearing Members with a direct clearing license.

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

The bank guarantee must be issued to the benefit of ECC by a German banking institution within the meaning of § 1 paragraph 1 KWG or by a comparable foreign institution. ECC may 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 Institution Clearing Member and the banking institution issuing the guarantee must be different in person and shall not be affiliated companies within the meaning of § 15 German Stock Corporation Act (AktG). 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 named by ECC upon the first request of ECC to that end in case of insufficient margins by the Institution Clearing Member (see section 3.10.1 No. 5). The type, content and form of the bank guarantee shall be specified by ECC.

- (5) Moreover, an Institution Clearing Member has to furnish evidence of the following:
- (a) at least a CBF Pledged-Securities Account, if securities are posted as collateral and optional a Segregated Cash Account,
  - (b) a Settlement Account,
  - (c) technical connection to the settlement system of ECC,
  - (d) the utilization of the adequate technological equipment (back-office equipment) in order to ensure proper recording, booking and monitoring of all Transactions as well as of the margins and the calculation of the required margins towards its clients in accordance with

the minimum requirements by ECC (clearing obligations); in addition to that, the rules and regulations regarding the technical equipment of ECC shall apply accordingly,

- (e) the appointment and employment of at least one sufficiently qualified member of staff for the proper discharge of the clearing obligations at the back office (“Back Office Contact”) and naming of a Default Management Contact (functional e-mail address and hotline) under the supervision of sufficiently qualified members of staff empowered to receive and deliver notifications in the course of the Default Management Auctions according to section 3.11 via e-mail or telephone. The Back Office Contact as well as the Default Management Contact must be present as well as available by telephone and e-mail at any time during any given Business Day and
- (f) the contribution to the Default Fund as per section 3.7.

### 2.1.3 General Preconditions for a DCP Clearing Member

- (1) A DCP clearing license can only be granted to:
  - (a) companies which were recognised by ECC as Trading Participants in Spot Markets for which ECC has assumed Clearing Services and which are admitted for DCP Clearing and whose recognition has not been fully revoked,
  - (b) companies which are based in a state for which ECC approves DCP Clearing Members in principle (in accordance with the publication on the ECC website),
  - (c) companies which have a liable equity capital of at least 50,000 EUR and
  - (d) which are not Institution Clearing Members.

Deviating from lit. (c), a liable equity capital of at least 25,000 EUR is sufficient for exclusive participation in nEHS Transactions.

- (2) Upon request by ECC, DCP Clearing Members must participate in the “Know Your Customer” (“KYC”) - process and fill in and submit a KYC questionnaire and all other documents ECC asks for in this context and pass the KYC assessment and/or a comparable ECC admission requirement.
- (3) In case the liable equity capital required according to paragraph 1 above of the applicant is not sufficient for the granting of a DCP clearing license, ECC may determine that the missing amount can be balanced by means of Collateral Replacing Equity. In general, Collateral Replacing Equity is granted in form of a bank guarantee. The bank guarantee must be issued to the benefit of ECC by a national banking institution within the meaning of § 1 paragraph 1 KWG or by a comparable foreign institution. ECC may determine that a guarantee by the parent company is deemed sufficient provided the guarantee granted by such is comparable to a bank guarantee. In this case the provisions regarding the bank guarantee shall apply accordingly.

The bank guarantee has to contain the unconditional and irrevocable guarantee by the guarantor ensuring that the sum guaranteed is provided to an account held by ECC upon the first

request of ECC to that end in case of insufficient margins by the Institution Clearing Member. The type, content and form of the bank guarantee shall be specified by ECC.

Exceptionally, ECC may determine that the shortfall shall be made up by Collateral Replacing Equity in the form of collateral in cash or securities according to section 3.4.

- (4) A DCP Clearing Member must furnish proof of the following:
- (a) at the request of ECC one or several Settlement Accounts with a Settlement Bank or Connected Bank,
  - (b) in case of a Settlement Account at a Settlement Bank:
    - the conclusion of a Settlement Bank Agreement or the conclusion of an agreement between the DCP Clearing Member and the Settlement Bank regarding keeping of a Settlement Account and, upon a request by ECC, separate pledging of the credit claim of the DCP Clearing Member booked in the Settlement Account and reported to the Settlement Bank to ECC,
    - the authorisation of ECC to dispose of the balance in the Settlement Account at the expense of the DCP Clearing Member to fulfil its liabilities towards ECC,
  - (c) in case of a Settlement Account at a Connected Bank:
    - the authorisation of the Connected Bank to dispose of funds in the Settlement Account to the debit of and on behalf of the DCP Clearing Member in response to MT101 messages initiated by ECC and forwarded by the Forwarding Bank to the Connected Bank to discharge the DCP Clearing Member's obligations towards ECC, and
    - confirmation by the DCP Clearing Member that it will not without the consent of ECC object to such dispositions by the Connected Bank,
  - (d) the provision of a contribution to the Default Fund in accordance with section 3.7,
  - (e) the appointment and employment of at least one sufficiently qualified member of staff for the proper discharge of the clearing obligations at the back office ("Back Office Contact") that must be present as well as available by telephone and e-mail at any time during any given Business Day.

For DCP Clearing Members participating exclusively in nEHS Transactions paying the purchase price from the nEHS Payment Account to the nEHS Recipient Account, lit. (a), (b), (c) and (e) above are not applicable.

- (5) A DCP Clearing Member must notified the use of systems for trading, in which a computer algorithm determines single order parameters automatically (algorithmic trading) to ECC prior to their launch. ECC may permanently or temporarily, completely or partially forbid using such system mentioned in sentence 1 in particular if a disturbance of the proper clearing and settlement process is impending.

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

- (1) For clearing of products in EUR Institution Clearing Members are required to provide a T2-account. If the Institution Clearing Member can evidence, that it does not have a T2-account itself and has not agreed with a direct T2 participant to submit payment orders and receive payments via the latter's T2-account and the Institution Clearing Member assures ECC, that it could only facilitate settlement via a T2-account with considerable, unreasonable effort, if at all, it may apply to ECC to use a Settlement Account with a Correspondent Bank for the Clearing of Products in EUR as an alternative financial settlement path. In this case the Institution Clearing Member shall give power of attorney to ECC regarding such Settlement Account with the Correspondent Bank to submit payment instructions on its behalf and instruct the Correspondent Bank to execute the payment instructions submitted by ECC and to credit respective funds to ECC's Settlement Account with the Payment Bank. ECC shall instruct the Payment Bank to transfer a credit balance identified by ECC on its Settlement Account with the Payment Bank to ECC's T2-account.
- (2) By applying for the use of a Settlement Account with a Correspondent Bank for the clearing of Products in EUR, the Institution Clearing Member assures to ECC by way of an independent, unconditional obligation to indemnify, that the Institution Clearing Member shall be liable, irrespective of fault, for all damages and losses incurred by ECC as a result of the Institution Clearing Member's use of this alternative financial settlement path due to (a) errors or malfunctions on the side of the Institution Clearing Member, the Correspondent Bank or the Payment Bank (b) a failure to credit ECC's Settlement Account at the Payment Bank, (c) a failure to transfer a credit balance determined by ECC with regard to its Settlement Account with the Payment Bank to ECC's T2-account, (d) a failure to transfer any amount of money due to the Institution Clearing Member from ECC's Settlement Account with the Payment Bank to the Institution Clearing Member's Settlement Account with the Correspondent Bank ("Obligation to Indemnify").

Upon ECC's request, the Institution Clearing Member shall be obliged to fulfil a payment claim of ECC arising from the Institution Clearing Member's Obligation to Indemnify without undue delay by making and crediting a payment to an account at a Payment Bank designated by ECC. If the Institution Clearing Member has fully satisfied ECC's claim for payment under the Obligation to Indemnify, ECC shall assign any claims it may have against the Payment Bank to the Institution Clearing Member.

An Obligation to Indemnify of the Institution Clearing Member shall not apply if a damage or loss has been caused by ECC intentionally or through gross negligence.

- (3) The following shall be required for clearing of products in a Foreign Currency for Institution Clearing Members:
- (a) a Settlement Account at a Correspondent Bank capable of handling Foreign Currencies as well as,
  - (b) an authorization of ECC submit payment instructions for the respective Settlement Account of the Institution Clearing Member.

- (4) For clearing of products in Foreign Currencies for DCP Clearing Members, a Settlement Account, through which funds in Foreign Currencies can be settled, at a Settlement Bank, Correspondent Bank or Connected Bank is required.

### 2.1.5 Specific Requirements for US-Clearing Members

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

#### 2.1.5.1 Specific Preconditions for US-Clearing Members

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

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

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

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

- (2) For US-Clearing Members the following additional continuing obligations shall apply:
- (a) In addition to the notification requirements stipulated in section 2.1.6 the US-Clearing Member shall inform ECC without undue delay, if it ceases to be in compliance with one of the preconditions in section 2.1.5.
- (b) The US-Clearing Member shall file a copy of its monthly Form 1-FR or, if applicable, of the FOCUS Report (as defined by the U.S. Securities and Exchange Commission) and its annual audited financial report with ECC promptly, but in any event no later than thirty (30) Business Days after such report is available.
- (c) The US-Clearing Member shall inform ECC without undue delay of any decline in equivalent regulatory capital of 20% or more from the capital that was shown on its most recent monthly Form 1-FR, that was transmitted to ECC, or, if applicable, FOCUS report.

- (d) The US-Clearing Member shall enable ECC at any time to comply with the requirement of CFTC Regulation 30.7 to provide technological connectivity in favour of CFTC in respect of the Customer Secured Account of the US-Clearing Member.

### 2.1.6 Notification Requirements and Right to Audit

- (1) Every Clearing Member shall inform ECC forthwith as soon as the general (section 2.1.2) or product-specific (section 2.1.4) preconditions for its participation in clearing on ECC are not fulfilled any longer or in case other circumstances have arisen which might lead to the lapse of these preconditions.
- (2) The Clearing Member shall notify ECC without delay in writing or via e-mail to [clearing@ecc.de](mailto:clearing@ecc.de)<sup>2</sup> in any of the following events. In addition, ECC must be informed immediately via telephone in the cases as per lit. (a) to (g):
- (a) any event that has impacted or is likely to significantly impact the Clearing Member's ability to meet the membership criteria,
  - (b) the Clearing Member has been notified that a competent authority or other government agency shall investigate any of its divisions that are material to its performance under the Clearing Conditions,
  - (c) on the activation of a restructuring plan, early intervention or resolution measures or any other comparable procedure,
  - (d) it fails to comply with any applicable financial requirement of any governmental authority, regulatory authority, exchange, clearing organisation or Transmission System Operator or another delivery facility,
  - (e) an insolvency affecting itself or any of its parent company or affiliates,
  - (f) of any "early warning" or similar matter with regard to an imminent insolvency according to lit. (e) above 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,
  - (g) any event of default of a Non-Clearing Member or Clearing Broker Client which might impose a significant risk for the Clearing Member,
  - (h) a merger, combination or consolidation between the Clearing Member and another legal entity, a change of the ultimate parent company 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,
  - (i) the sale of a significant part of the Clearing Members business or assets to another legal entity,

<sup>2</sup> In case of error messages during the delivery of the e-mail, the ECC website shall be searched for a suitable alternative e-mail address or another form of message transmission must be chosen.

- (j) 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,
  - (k) if the auditors of the Clearing Members do not issue an unqualified financial report and
  - (l) moreover, in the case of DCP Clearing Members, any essential change in the information provided to ECC in the framework of the KYC questionnaire.
- (3) Clearing Members are obliged to furnish proof of the required available equity to ECC by submitting a copy of their annual financial statement within a period of six (6) months (Institution Clearing Members) or nine (9) months (DCP Clearing Members) after the end of every financial year. In as far as there is a legal obligation for auditing of the annual financial statement by an auditor of annual accounts, a copy of the audited annual financial statement with an audit opinion shall be submitted.
- (4) Upon request of ECC evidence of:
- (a) the continued existence of the preconditions for granting of a clearing license,
  - (b) the ability of the Clearing Member to perform its obligations under the Clearing Conditions and
  - (c) the ability of the Clearing Member to manage its risk out of its clearing obligations including credit, operational and compliance risk
- shall be furnished to ECC at any time. For the purpose of a further investigation ECC may commission an auditor within the meaning defined in the KWG 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 Institution Clearing Member shall give prompt written information upon ECC's request relating to its Non-Clearing Members, Clearing Broker Clients or Clients including:
- (a) the identity and positions of Non-Clearing Members, Clearing Broker Clients or Clients and the respective ultimate bearer of risk,
  - (b) as far as available to the Clearing Member, the information required according to ECC's KYC questionnaire and
  - (c) any relationship of the Non-Clearing Members, Clearing Broker Client or Client to the Clearing Member potentially resulting in a material increased risk to ECC.

### 2.1.7 Non-transferability

A clearing license cannot be transferred by means of a legal transaction without ECC's consent.

### 2.1.8 Termination and Suspension of the Clearing License

- (1) Every Clearing Member may terminate its clearing license by means of a written notice without specifying reasons for such termination. Such termination shall only become effective once all

those Transactions for the clearing of which the Clearing Member concerned is responsible have been closed out or transferred to another Clearing Member and once all outstanding delivery obligations and acceptance of delivery obligations as well as all obligations to effect payments on the part of the Clearing Member concerned and all outstanding delivery obligations and obligations to accept delivery on the part of client Non-Clearing Members have been fulfilled.

- (2) ECC may terminate a clearing license in the following cases:
- (a) the general preconditions for granting of a clearing license were not fulfilled in the first place, in particular if the clearing license was granted on the basis of incorrect or incomplete information furnished by the Clearing Member,
  - (b) the general preconditions for granting of a clearing license have subsequently ceased to exist,
  - (c) the Clearing Member violates an Essential Provision of the Clearing Conditions and repeatedly transgresses such in spite of a warning being given; in this context, the non-existence of intention or negligence on the part of the Clearing Member shall be irrelevant insofar,
  - (d) measures according to §§ 45 et seq. KWG have been instituted against the Clearing Member or in case an application for insolvency proceedings has been filed. The measures as per §§ 45 et seq. 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 §§ 45 et seq. KWG have been instituted against a company which exercises control over the Clearing Member within the meaning of § 17 AktG or of comparable national rules (ultimate parent company) or in case an application for insolvency proceedings has been filed. Measures as per §§ 45 et seq. 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, or
  - (f) the Clearing Member objects to an amendment of these Clearing Conditions within the period of time specified under section 6.7.

ECC shall communicate the termination of the clearing license to the Clearing Member concerned in writing, via telefax, via e-mail or via SWIFT message.

- (3) In case of well-founded suspicion that the preconditions for a termination as per paragraph 2 have been fulfilled, ECC can order the suspension of the clearing license for a period of six (6) months at most. For the purpose of examination, ECC may request all the necessary information and records from the Clearing Member concerned at the expense of this party. A suspension of the clearing license can also be ordered for the term of the default or technical default as per sections 3.8.1 et seq. In the case that ECC determines that the Clearing Member poses a significant credit or operational risk to ECC, ECC may impose position limits on the Clearing

Member or order the suspension of the clearing license for the duration that such risk is deemed significant.

- (4) In the case of the termination or suspension of a clearing license, ECC is entitled to:
- (a) request the Clearing Member and its Non-Clearing Members to conclude closing-out Transactions or to carry out risk-alleviating position transfers with the approval of ECC within a period established by ECC for the specific case or
  - (b) carry out a termination on its own at any time by accordingly applying section 3.9 with the legal consequences described in section 3.10.

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

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

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

- (1) ECC shall restrict a clearing license with regard to certain products in case the product-specific preconditions for the respective product are not fulfilled or have ceased to exist.
- ECC shall inform the Clearing Member concerned of the restriction of the clearing license in writing, via telefax, via e-mail or via SWIFT message.
- (2) In case of a restriction of the clearing license, the Clearing Member and its Non-Clearing Members are only entitled to carry out close-out Transactions or risk minimizing position transfers regarding the concerned products upon approval by ECC. All Unsettled Trades in these products must be closed out or transferred to another Clearing Member. The Clearing Member shall inform its Non-Clearing Members of this fact forthwith, so these can take precautions for the transfer to another Clearing Member. ECC shall monitor the close-out transaction and/or the transfer.
- (3) If the close-out transaction or the transfer is not completed within a period of time to be set by ECC for the individual case, ECC may arrange for the close-out or transfer in accordance with section 3.10.1.
- (4) The restriction of the clearing license shall not affect the rights and obligations of the Clearing Member from Unsettled Trades in these products for the clearing of which it is responsible.

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

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

- (2) Upon request by the Non-Clearing Member or by the Omnibus Representative, a Back-Up Institution Clearing Member can assume clearing for said Non-Clearing Member or Omnibus Account in accordance with the provisions contained in sections 3.1.4 to 3.1.6.

## **2.2 Non-Clearing Member**

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

A license by ECC shall form the precondition for participation in the clearing procedure as a Non-Clearing Member. The following shall be required for licensing:

- (a) conclusion of a corresponding NCM Agreement with the co-operating Institution Clearing Member and ECC,
- (b) the clearing license of the Institution Clearing Member of the Non-Clearing Member must comprise the product concerned,
- (c) participating in the KYC process including completion of a KYC questionnaire if requested by ECC and passing of the KYC assessment or other comparable access policies of ECC and
- (d) the naming of a Default Management Contact (functional e-mail address and hotline) under the supervision of a sufficiently qualified member of staff empowered to receive and deliver notifications in the course of the Default Management Auctions according to section 3.11 via e-mail or telephone. The Default Management Contact must be present as well as available by telephone and e-mail at any time during any given Business Day.

### **2.2.2 Termination of the NCM Agreement**

- (1) ECC shall be entitled to terminate an NCM Agreement regarding a product in case the preconditions for licensing as a Non-Clearing Member for the product concerned have ceased to be fulfilled. This shall not affect the validity of the NCM Agreement regarding other products. In case ECC terminates an NCM Agreement, the Non-Clearing Member is not allowed to enter new orders regarding this product anymore. Furthermore, the Non-Clearing Member must delete all outstanding orders regarding this product, and it has to close out or transfer to another Institution Clearing Member all Unsettled Trades regarding this product. The Institution Clearing Member shall fulfil the obligations arising from the remaining Transactions of the Non-Clearing Member.
- (2) ECC may terminate an NCM Agreement in its entirety in case the Non-Clearing Member or the Institution Clearing Member repeatedly infringe on Essential Provisions of the Clearing Conditions in spite of a warning being given or objects to an amendment of these Clearing Conditions during the period specified in section 6.7. In case ECC terminates an NCM Agreement, the

Non-Clearing Member is not entitled to enter new orders anymore. Moreover, it has to delete all outstanding orders and close out all Unsettled Trades or transfer such to another Institution Clearing Member. The Institution Clearing Member shall fulfil the obligations arising from the remaining Transactions of the Non-Clearing Member.

- (3) ECC can terminate an NCM Agreement at any time if the approval as a Trading Participant is revoked in its entirety.
- (4) An Institution Clearing Member or ECC may terminate an NCM Agreement in its entirety or with regard to individual products. The period of notice for a termination according to sentence 1 is one (1) month to the end of the calendar 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 Unsettled Trades regarding these products or transfer such to another Institution 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 Institution Clearing Member, anymore. The Institution Clearing Member shall settle the obligations arising from the remaining Transactions of the Non-Clearing Member.
- (5) A Non-Clearing Member may terminate an NCM Agreement in its entirety or with regard to individual products at any time. A termination shall be based on the precondition that it has closed out all Unsettled Trades in the concerned products 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 Institution Clearing Member and ECC.
- (6) The right to extraordinary termination for cause according to § 314 German Civil Code (BGB) remains unaffected. In this case the Non-Clearing Member is not entitled to enter any new orders. Furthermore, it shall delete all outstanding orders and close out all Unsettled Trades or transfer such to another Institution Clearing Member. The Institution Clearing Member shall settle the obligations arising from the remaining Transactions of the Non-Clearing Member.
- (7) A termination of the NCM Agreement shall only become effective once it has been received in writing by the other two parties concerned.

### **2.2.3 Suspension from Trading**

- (1) If a Non-Clearing Member fails to make a due delivery or acceptance of delivery or payment to ECC or a settlement entity, the Non-Clearing Member may, upon application by ECC, be suspended from trading on the markets for the duration of the default. Unsettled Trades of the Non-Clearing Member may also be closed out or transferred to an Institution Clearing Member or, with the consent of the Institution Clearing Member of such Non-Clearing Member, to another Non-Clearing Member. ECC is not liable for losses incurred by a Non-Clearing Member in the event of its suspension from trading in the markets.
- (2) ECC shall inform the Institution Clearing Member of any measures taken with respect to any of its Non-Clearing Members to the extent that such measures may affect the legal position of the Institution Clearing Member or its risk assessment.

## 2.2.4 Notification Requirements

- (1) The Non-Clearing Member shall promptly notify ECC in writing, via e-mail to [memberreadiness@ecc.de](mailto:memberreadiness@ecc.de)<sup>3</sup> or via telefax of any material change of the following:
  - (a) a merger, combination or consolidation between the Non-Clearing Member and another legal entity,
  - (b) a change of the ultimate parent company 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 KYC questionnaire.
- (2) Upon ECC's request, the Non-Clearing Member shall provide a completed KYC questionnaire.

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

### 2.3.1 Omnibus Clients and other Clients

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

- (a) Omnibus Clients for whom segregation regarding the respective Omnibus Account is effected and to whom the rules in section 2.3.2 apply or
- (b) Other clients. Trades and positions of such other client are kept by the Institution Clearing Member together with the Trades and positions of other of these other clients in a client account of this Institution Clearing Member, insofar as these clients are not Indirect Clients as referred to in section 2.4.

### 2.3.2 Preconditions for keeping Trades and Positions in an Omnibus Account

An Institution Clearing Member can keep Trades and positions for clients in an Omnibus Account provided the Institution 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 Institution 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 Institution 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.

<sup>3</sup> In case of error messages during the delivery of the e-mail, the ECC website shall be searched for a suitable alternative e-mail address another form of message transmission must be chosen.

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

## 2.4 Indirect Clients

### 2.4.1 General Requirements

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

Indirect Clearing Service Providers can either

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

### 2.4.2 Accounts for Indirect Clients

Institution Clearing Members can set up the following accounts at ECC for Indirect Clearing Service Providers:

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

### 2.4.3 Obligations of the Institution Clearing Member

- (1) The Institution Clearing Member alone is responsible for the correct opening and use of the accounts for Indirect Clients.
- (2) An Institution Clearing Member keeping accounts according to section 2.4.2 lit. (b) books Indirect Clients' positions and collateral in the corresponding accounts at ECC in accordance with the contractual agreements with these Indirect Clients.
- (3) All other obligations of the Institution Clearing Member are based on Article 4 of the Delegated Regulation (EU) 2017/2154 of the Commission of 22 September 2017 amending Regulation (EU) No. 600/2014 of the European Parliament and of the Council with Technical Regulation Standards for Indirect Clearing Agreements and cannot be transferred to ECC.

## 2.5 Special Segregated Participants and Non-Segregated Participants

### 2.5.1 Special Segregated Participants

- (1) A Special Segregated Participant is
  - (a) every Special Segregated Non-Clearing Member, i.e. every Non-Clearing Member for which a Collateral Agreement for "Individual Segregation" is in place and
  - (b) every Omnibus Client, i.e. every client of an Institution Clearing Member who is party to an Omnibus Agreement and whose Transactions and positions are kept in an Omnibus Account of the Institution Clearing Member.
- (2) Collateral which a Special Segregated Participant provides is passed through in accordance with sections 3.4.8 et seq. and booked in separate Collateral Clearing Accounts of the Institution Clearing Member by ECC in accordance with section 3.5.7 for the purpose of separate calculation and administration of collateral for each (i) Special Segregated Non-Clearing Member and (ii) Omnibus Account. The special provisions contained in sections 3.10 et seq. apply with regard to the use of collateral of Special Segregated Participants in the event of a termination.

### 2.5.2 General Segregated Participants

- (1) A General Segregated Participant is
  - (a) every General Segregated Non-Clearing Member, i.e. every Non-Clearing Member that has not concluded a Collateral Agreement with its Institution Clearing Member and whose collateral is not passed through and
  - (b) every other client, i.e. every client of an Institution Clearing Member that has not concluded an NCM Agreement and an Omnibus Agreement with the Institution Clearing Member and ECC and that takes part in clearing at ECC via this Institution Clearing Member.

- (2) A General Segregated Participant is either (a) a General Omnibus Participant or (b) a Simple Omnibus Participant.
- (3) Collateral which an Institution Clearing Member provides for a General Segregated Participant is booked by ECC according to section 3.5.7 for the purpose of the separate calculation and administration of separate Collateral Clearing Accounts as sub-accounts of the standard Collateral Clearing Account of the Institution Clearing Member with such collateral being booked (a) in a General Omnibus Collateral Clearing Account, provided such an account has been established, for General Omnibus Participants and (b) in one or several Simple Omnibus Collateral Clearing Accounts for Simple Omnibus Participants.

## 2.6 Trading Participants

### 2.6.1 Precondition for Approval as a Trading Participant

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

In the case of Derivatives Market Transactions, proof of the capacity to physically fulfil Transactions can be replaced with the consent of ECC and the Clearing Member by a statement by the Trading Participant under which the Trading Participant undertakes to exclude the physical settlement of the Transactions in this product by means of closing of open positions in due time as required by ECC (see the respective Trading Participant (TP) forms).

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

### 2.6.2 Revocation of an Approval

- (1) ECC shall revoke the approval as a Trading Participant regarding one or more product(s) in case the preconditions for said approval have ceased to exist, in case of a violation of Essential

Provisions of the Clearing Conditions or if the Trading Participant repeatedly violates other provisions of these Clearing Conditions or its obligations resulting from the Trading Participant forms. ECC shall revoke approval as a Trading Participant for a quality-specific gas product, if it is demanded by the responsible Balancing Group Network Operator.

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

ECC shall inform the respective market, the Trading Participants and, if applicable, its Institution Clearing Member of such revocation in writing, via telefax or via e-mail. Reasons for such revocation shall be given within one (1) month.

- (2) In case of a revocation of said approval, the Trading Participant may only be entitled to conclude close-out Transactions or risk minimising position transfers upon approval by ECC regarding these products as of that time. All Unsettled Trades in these products shall be closed out or transferred to another Trading Participant. ECC shall monitor those close-outs or transfers.
- (3) In case close-out or transfer is not permitted to the Trading Participant or is not concluded within a period of time specified for each individual case by ECC, ECC can have closing out or transfer effected.
- (4) If ECC revokes the recognition as a Trading Participant, the Trading Participant concerned cannot invoke force majeure or impossibility with regard to the underlying Agreements. In this case, ECC shall be entitled to take all required measures. It shall, in particular, be entitled to use the collateral provided by the Clearing Member in order to cover losses arising from such closing or transfer or deviations according to section 4.8.5. The Institution Clearing Member of the Trading Participant shall also be entitled to use the collateral provided by the Trading Participant provided losses incur as a result of measures in connection with the implementation of sanctions.
- (5) The revocation of the approval shall not affect the rights and obligations of the Trading Participant arising from Unsettled Trades regarding these products.

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

- (1) If the preconditions according to section 2.6.2 paragraph 1 are fulfilled or if there is a well-founded suspicion to assume that the preconditions for a revocation of the approval as a Trading Participant are fulfilled, ECC can order the suspension of the approval as a Trading Participant in its entirety or in part for a period of, at a maximum, six (6) months.

- (2) The legal consequences specified in section 2.6.2 paragraphs 2 to 5 shall apply throughout the term of such suspension.
- (3) Upon a request by the Trading Participant, ECC can order the suspension of the approval as a Trading Participant at its equitable discretion. The term of such suspension should not exceed a period of one (1) year beginning with receipt of the suspension according to paragraph 1. During the term of the suspension, the Trading Participant shall not incur any annual fees; technical fees shall only be incurred if corresponding connections are preserved. Section 2.6.2 paragraph 2 shall apply accordingly. Upon a request of the Trading Participant ECC shall revoke the suspension of the approval as Trading Participant before the end of the period ordered according to sentence 2 if the conditions for an approval according to section 2.6.1 paragraph 1 are fulfilled. After the end of the period ordered according to sentence 2 ECC should either revoke the suspension according to section 2.6.3 paragraph 1 or revoke the approval according to section 2.6.2.

## **2.7 Market Coupling Counterparty**

- (1) In the course of Market Coupling, ECC cooperates with Market Coupling Counterparties according to Article 68 CACM.
- (2) The rights and obligations in connection with the cooperation result from separate, bilateral agreements which ECC concludes with the respective Market Coupling Counterparties. In case a Market Coupling counterparty is not admitted as a Non-Clearing Member according to section 2.2, the rules on Margins Requirements and Collateral furnished laid down in these Clearing Conditions for a Clearing Member (section 3.4) apply subject to the condition that the Market Coupling Counterparty can also provide collateral in the form of guarantees. Market Coupling Counterparties are exempt from the requirement to make contributions to the Default Fund according to section 3.7.1.
- (3) In deviation from the rules on default of Clearing Members established in these Clearing Conditions, ECC may, in the event of a Default Event of a Market Coupling Counterparty, which is not admitted as a Non-Clearing Member according to section 2.2, take the necessary measures to ensure the orderly settlement of transactions. In particular, ECC may utilize the collateral provided by the Market Coupling Counterparty. If the collateral furnished is not sufficient to cover the financial consequences of a default or if the collateral cannot be utilized, ECC shall share the losses with the SDAC-Trading Participants. The loss sharing is pro rata to all SDAC-Trading Participants according to their net payments from their traded SDAC-Products on the day of the Default Event.
- (4) If the Market Coupling Counterparty is admitted by ECC as a Non-Clearing Member according to section 2.2, the Market Coupling Clearing Transactions shall, for the purposes of the NCM Agreement, be considered as matching of orders which the Market Coupling Counterparty enters into the ECC system as well as into the trading system of the markets using Market Coupling Contracts. The rules for Non-Clearing Members and Trading Participants in these Clearing Conditions shall apply to the Market Coupling Counterparty, unless otherwise provided for in

ECC's bilateral and separate agreement with the Market Coupling Counterparty and, in addition, in the Market Coupling provisions in these Clearing Conditions.

- (5) In the event that the Market Coupling Facilitator or a third party acting on its behalf is in payment delay, ECC shall share the losses with the SDAC-Trading Participants. The loss sharing is pro rata to all SDAC-Trading Participants according to their net payments from their traded SDAC-Products on the day of the Default Event. Performs the Market Coupling Facilitator or a third party such payments afterwards, ECC shall forward the payment received to the SDAC-Trading Participants in relation to their share of loss. In case ECC has to pay additional to the Market Coupling Facilitator, ECC will distribute such additional payment between the SDAC-Trading Participants according to the principle of sentence 2.

## **2.8 Cooperation with Clearing Entities for Spot Market Transactions**

### **2.8.1 Scope of the Cooperation**

- (1) ECC cooperates with clearing houses for Spot Market Transactions ("Clearing Entities"). These Clearing Entities only settle energy deliveries from Spot Market Transactions on markets for which ECC has assumed physical and/or financial settlement but on which it is not the central counterparty. Clearing Entities are admitted as Non-Clearing Members according to section 2.2.
- (2) Energy Clearing Counterparty a.s. ("EnCC") is the Clearing Entity.

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

The duty to assume liability on the part of ECC or the respective Settlement Entity is restricted towards the Trading Participants as follows in the case of Transactions as per section 2.8.1 paragraph 1: In the event of the default of a Clearing Entity, ECC shall utilise the collateral in accordance with the provisions in section 3.10. If the collateral furnished is not sufficient to cover the financial consequences of a default or is not liquidable, ECC shall proportionately reduce its payments to the Trading Participants in the corresponding markets until the financial consequences of the default are covered. Any further liability on the part of ECC or the respective Settlement Entity shall be excluded.

## **2.9 Inclusion of Products**

- (1) ECC shall take the decision regarding the inclusion of products for clearing. If an ECC advisory board in charge of this has been established, it shall be heard by ECC in advance.
- (2) The following shall be preconditions for the inclusion of products:
  - (a) The product is traded on a market in which proper trading, proper market supervision and the proper establishment of the prices as well as of the daily settlement prices are ensured.

- (b) ECC has concluded an agreement regarding the provision of clearing services for this product with the operator of the market which governs the coordination of the systems and processes between the market and ECC, coordinates 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.

## **2.10 Auctioneer for Guarantees of Origin**

- (1) Participation in Auctions of Guarantees of Origin as an Auctioneer for Guarantees of Origin requires recognition as an Auctioneer for Guarantees of Origin by ECC.
- (2) In order to be recognised as an Auctioneer for Guarantees of Origin, the legal entity must demonstrate to ECC that it is entitled to participate as an Auctioneer for Guarantees of Origin and to receive the proceeds of the auction and is admitted by the market as an Auctioneer for Guarantees of Origin and maintains a Settlement Account.
- (3) Auctioneers for Guarantees of Origin are only authorized to sell Guarantees of Origin at the markets cleared by ECC.
- (4) Sections 2.6.2, 2.6.3 and 4.6 shall apply mutadis mutandis.

## **2.11 nEHS Seller**

The nEHS Seller is the competent authority for the sale of nEHS Certificates on behalf of the Federal Republic of Germany pursuant to §§ 10 paragraph 1 sentence 1, 13 paragraph 1 BEHG.

## **2.12 Access to the Clearing System**

The conditions under which ECC grants access to the Clearing System are set out in the Implementation Regulation of European Commodity Clearing AG Concerning Technical Equipment ("Implementation Regulation Concerning Technical Equipment"), which forms part of these Clearing Conditions. They are binding for all Clearing Members, Non-Clearing Members and Market Coupling Counterparties. In the event of any conflict between the provisions of the Implementation Regulation Concerning Technical Equipment and the provisions of these Clearing Conditions, the latter shall prevail.

## 3. General Provisions

### 3.1 Legal Relationships of the Parties involved in Clearing

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

- (1) Institution Clearing Members with a General Clearing Member License according to section 2.1.1 paragraph 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) An Institution 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 Institution Clearing Member in accordance with the more detailed provisions in these Clearing Conditions on the basis of its own obligation or as the paying agent.

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

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

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

A request by telephone shall be confirmed in writing forthwith.

- (4) An Institution Clearing Member can submit an application for the temporary exclusion of one of its Non-Clearing Members from trading on some or all of its markets for, at a maximum, five (5) Business Days by means of corresponding entries in the clearing systems (Eurex Clearing System or ECC Self-Service Limit Maintenance System of ECC) of ECC (Emergency Member Stop).

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

The Emergency Member Stop must be activated in accordance with the provisions on the Emergency Member Stop in the ECC Risk Management Services Manual (see ECC website) in its respectively valid version. It can be carried out as follows within the system:

- (a) Use of the Stop Button within the Eurex Clearing System:

The Stop Button within the Eurex Clearing System can only be used during the ECC Business Hours and only by Non-Clearing Members that are or were admitted as Trading Participants in the Eurex Clearing System (Trading Participant at the European Energy Exchange ("EEX") or as Trading Participant of a partner exchange). The suspension from part or all of the EEX Markets is requested and carried out technically right away by using the Stop Button. ECC reserves the right to reject Derivatives Market Transactions in their entirety or in part in which Non-Clearing Members affected by the Emergency Member Stop but also Non-Clearing Members not affected are involved as counterparties and which are to be imported into the ECC Clearing System as early as after the activation of the Stop Button and under consideration of the overall risk for ECC. ECC will inform the affected markets of this fact forthwith. Furthermore, following the activation of the Stop Button, suspension requests will be sent to all other markets on which the Non-Clearing Member is admitted as a Trading Participant and the suspension of the Non-Clearing Member is also requested for these markets.

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

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

Every activation of the Emergency Member Stop according to lit. (a) or lit. (b) has to be confirmed by the activating Institution Clearing Member towards ECC via telephone forthwith.

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

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

Rules regarding the exclusion of the Non-Clearing Member from trading, the reverse Transactions of Trades and the liability of the markets are contained in the respective rules of the markets.

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

- (5) If a Non-Clearing Member is excluded from trading, its Institution Clearing Members may in respect to any Transaction concluded or registered by such Non-Clearing Member, to exercise any options itself or close out or transfer Unsettled Trades on behalf of the Non-Clearing Member to itself or another Institution Clearing Member. In case of section 2.6.2 paragraph 1 sentence 3-5, ECC may require the Institution Clearing Member to make use of the options under sentence 1. Section 2.6.2 paragraph 3 shall remain unaffected. If the Institution Clearing Member is not able to exercise options or to close out or to transfer Unsettled Trades due to technical reasons (e.g. missing approval as Trading Participant at a market), ECC may at its sole discretion - exercise - without acknowledgement of any obligation on written and irrevocable request

of the Institution Clearing Member and subject to the technical and operational feasibility – options and transfer Unsettled Trades on behalf of the Institution Clearing Member to another Institution Clearing Member. ECC will assign close out Transactions concluded by the Institution Clearing Member using a third party (e.g. broker) by using Trade transfers according to section 3.5.5 paragraph 7 to the Non-Clearing Member.

### **3.1.2 Limits and other special Agreements**

#### **3.1.2.1 Limits and other special Agreements between Institution Clearing Members and Non-Clearing Members**

- (1) Institution Clearing Members can conclude special agreements with their Non-Clearing Members and ECC can conclude special agreements with its Clearing Members with regard to the settlement of Transactions on the markets included in clearing by ECC. They are, in particular, entitled to agree technically supported order limits (“Trading Limits”) and other limits (“Clearing Limits”) as well as the consequences in case of a non-compliance with these limits. This includes, in particular, the obligation to tolerate procedures supported by the system regarding the temporary, fully or partially exclusion from trading at the markets cleared by ECC, the temporary inadmissibility or technically supported inadmissibility of entering further orders (“Trading Halt”), the limitation of the frequency with which orders can be entered and the deletion of orders which have already been entered. The measures mentioned above are carried out in accordance with the provisions of the ECC Risk Management Services Manual in its respectively valid version. The consequences of any non-compliance with the Trading Limits are described the rules and regulations of the markets.
- (2) The Non-Clearing Members are obliged to establish agreements regarding Trading or Clearing Limits, upon a request by its Institution Clearing Members. In this case and depending on the respective limit, the Institution Clearing Members can store the Trading and Clearing Limits agreed on with their Non-Clearing Members in the system of ECC or in the trading systems of the respective markets depending on their technical implementation. In case Non-Clearing Members enter further restricting Trading Limits, these limits entered are considered Trading Limits of the Institution Clearing Member in the relationship with ECC. More detailed provisions on the functionality of the supporting limits and on the liability of the Market operators with respect to the Trading Limits are specified in the Rules of the respective markets. ECC is not liable for the timely implementation and correct functioning of those limits. The rules contained in this paragraph 2 apply accordingly to the legal relationship between ECC and an Institution Clearing Member.
- (3) ECC supports the Clearing Members and Non-Clearing Members in submitting Trading Limits in the trading systems of the respective markets by forwarding the information on the Trading Limits provided by them to the Markets and coordinating the first transfer as well as the regular reconciliation of the Trading Limits with the respective markets at the times supported by the Market. The specifications regarding the time limits for the transmission of Trading Limits for each individual market can be found in the ECC Risk Management Services Manual. The Markets confirm to ECC that the Trading Limits have been provided in the trading system. ECC

provides this confirmation to the Clearing Members or the Non-Clearing Members in a timely manner. The Clearing Members and Non-Clearing Members are obliged to check the Trading Limits confirmed by the Markets for completeness and correctness and to correct errors by re-submitting the information. If the Clearing Member or Non-Clearing Member does not receive any confirmation that a Trading Limit has been deposited, it is obliged to contact ECC and obtain information on the status of depositing of the Trading Limit. More detailed provisions on the administration of Trading Limits are laid down in the ECC Technical Implementation Regulations on Trading Limits (see ECC Risk Management Services Manual).

### 3.1.2.2 Limits for Clearing Members and Trading Participants

- (1) ECC monitors and limits its risks vis-à-vis the Clearing Members to the extent necessary. For this purpose, it shall be entitled to set corresponding limits, which the Clearing Member shall be obliged to comply with at any time. ECC shall inform the Clearing Member of the amount of such limits and any adjustments thereto. If a Clearing Member exceeds the limits set by ECC, ECC may in particular take the following measures:
  - (a) ECC shall inform the Clearing Member of the limit overrun and request a reduction of the risk position (e.g. by limiting the onboarding of new Non-Clearing Members or by requiring the Clearing Member to close out Unsettled Trades or to transfer them to another Institution Clearing Member) within a reasonable period of time and to the extent necessary to remedy the relevant overrun.
  - (b) As long as the Clearing Member exceeds the limit set by ECC, ECC shall be entitled to require the provision of additional margin pursuant to section 3.4.5. ECC shall inform the Clearing Member concerned in writing, by telefax or e-mail of the obligation to provide additional margin and the amount thereof prior to the first collection of the additional margin.

If the Clearing Member fails to comply with the aforementioned measures of ECC in whole or in part or fails to comply with them in a timely manner, this shall constitute a breach of Essential Provisions of these Clearing Conditions.

- (2) In order to limit risks for ECC resulting from Spot Market Transactions of DCP Clearing Members, participation in clearing is only possible in the framework of Trading Limits for DCP Clearing Members. In this context, ECC has the right to unilaterally determine the amounts of the Trading Limits acceptable for it in consideration of the collateral furnished by the DCP Clearing Members, the ECC credit assessment regarding the DCP Clearing Member – which e.g. considers the equity and Collateral Replacing Equity of the DCP Clearing Member - and in consideration of further parameters and haircuts used by ECC as well as by including the amount and allocation to specific markets requested by the DCP Clearing Member.
- (3) In order to limit credit or liquidity risks for ECC resulting from Spot Market Transactions of a Trading Participant ECC may unilaterally determine a Trading Limit for individual or all products of this Trading Participant. If a Trading Participant violates the Trading Limit set by ECC, ECC may suspend the approval of such Trading Participant for the respective product or in general without further warning in accordance with section 2.6.3.

### 3.1.3 Rights and Obligations of the Non-Clearing Member

- (1) A Non-Clearing Member can conclude an NCM Agreement with an Institution Clearing Member with a general clearing license or an NCM Agreement with an affiliated Institution 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 sections 3.4.8 et seq. and that the legal consequences connected with this in these Clearing Conditions materialise. If such an option is chosen, the Non-Clearing Member becomes a Segregated Non-Clearing Member.
- (3) A Non-Clearing Member has to settle its Transactions in a market through a specific Institution 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 Institution Clearing Member. Regardless of sentence 1, a Non-Clearing Member may appoint a Back-Up Institution Clearing Member in accordance with section 2.1.10. In the event of a change of the Clearing Member with an accelerated position transfer, Transactions can be settled through two Institution Clearing Members by way of exception until final completion of the change of the Clearing Member.

### 3.1.4 Change of Institution Clearing Member and Position Transfer

- (1) A Non-Clearing Member or an Omnibus Representative may apply to ECC for a change of Institution Clearing Member at any time. Subject to an approval of ECC the change of Institution Clearing Member is effected by appointing a new Institution 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 Institution Clearing Member whereby the corresponding positions which have not yet been fully settled in the relationship between the transferring Institution Clearing Member and ECC cease to exist and, at the same time, are re-established between the receiving Institution Clearing Member and ECC (jointly referred to as the “Position Transfer”). The Position Transfer does not affect the rights and obligations of the Non-Clearing Member or of all Omnibus Clients concerned under the transferred positions. ECC may withdraw its approval until the day before the Transfer Day due to operational reasons and/or risk considerations.
- (2) ECC usually carries out the position transfer with a lead time of three (3) Business Days if the transferring Institution Clearing Member and the receiving Institution Clearing Member approve of the transfer and if there is a valid NCM Agreement or Omnibus Agreement between ECC, the Non-Clearing Member or all respective Omnibus Clients and the receiving Institution Clearing Member.
- (3) The transfer is limited to positions which have not yet been fully settled and which are kept in the Eurex Clearing System of ECC. Any other Transactions or positions (e.g. Spot Market Transactions and delivery, settlement and payment instructions from Derivatives Market positions which have fully or partly fallen due) remain with the transferring Institution Clearing Member until they are fully settled.

- (4) The transfer occurs on the day determined for the change of Clearing Member ("Transfer Day") at 12:00 a.m. (midnight). As of this moment the positions according to paragraph 3 sentence 1 are not considered positions with regard to the NCM Agreement or the Omnibus Agreement between the Non-Clearing Member or regarding all respective Omnibus Clients and the receiving Institution Clearing Member and these are no longer considered positions with regard to the NCM Agreement or the Omnibus Agreement between the Non-Clearing Member or regarding all respective Omnibus Clients and the transferring Institution Clearing Member. All Position Transfers are effected at the settlement price of the Business Day before the Transfer Day.
- (5) To ensure full collateralisation of the positions according to paragraph 3 sentence 1, ECC is entitled to request a supplementary margin from the receiving Institution Clearing Member according to section 3.4.5 paragraph 1 on the day before the Transfer Day. The receiving Institution Clearing Member is entitled to also request a supplementary margin according to section 3.4.5 paragraph 2 from the Non-Clearing Member, in respect of the positions according to paragraph 3 sentence 1.
- (6) Further provisions regarding the administration of Trading Limits in the course of the Change of an Institution Clearing Member are stipulated in the ECC implementing provisions for Trading Limits (see ECC Risk Management Services Manual).

### **3.1.5 Change of Clearing Member with accelerated Position Transfer**

- (1) Regardless of the provision contained in section 3.1.4 ECC shall carry out the position transfer to an Institution 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 by ECC provided the application is received at ECC on a given Business Day by 9:00 a.m. at the latest and provided the following preconditions are cumulatively fulfilled at this time:
  - (a) in as far as a Non-Clearing Member is concerned; there is an NCM Agreement between the Institution Clearing Member accepting the transfer and the Non-Clearing Member,
  - (b) if the request was submitted by an Omnibus Representative, there is an Omnibus Agreement between the Institution Clearing Member accepting the transfer and the Omnibus Representative, the Omnibus Clients and the ECC,
  - (c) the Institution Clearing Member accepting the transfer is technically set up within the ECC system,
  - (d) ECC has received the approval of the Institution Clearing Member accepting the transfer,
  - (e) the risk situation of the Institution 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 Institution Clearing Member of the transfer of all positions of the Non-Clearing Member or the Omnibus Account which have not been fully fulfilled to the accepting Institution Clearing Member is considered granted according to sentence 1. In this case, ECC is authorised to carry out the Position Transfer for the Non-Clearing

Member or the Omnibus Account without an examination of further preconditions in accordance with sentence 1.

- (2) If the preconditions referred to in paragraph 1 cannot be fulfilled in due time or in case the technical and operational feasibility of the change of the Institution Clearing Member on the part of ECC is not ensured on the Business Day concerned, the position transfer will only be carried out on the Business Day on which all preconditions have been fulfilled at the latest at 9:00 a.m. or on which the technical or operational feasibility of the change of the clearer on the part of ECC is ensured.

### 3.1.6 Transfer of Collateral upon the Change of the Clearing Member

- (1) The application by the Non-Clearing Member or the Omnibus Representative for a position transfer according to section 3.1.4 or 3.1.5 does not directly affect the collateral furnished by the Non-Clearing Member or by the Omnibus Clients represented by the Omnibus Representative. In this respect, the general provisions contained in these Clearing Conditions shall apply.
- (2) If there is a separate collateral account to the benefit of a Non-Clearing Member or the Omnibus Account according to section 3.5.7, the Non-Clearing Member or the Omnibus Representative can submit an application for the transfer of the collateral provided by its Institution Clearing Member on the Segregated Cash Account and the Segregated 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 Institution Clearing Member; this approval can also be granted in advance.
- (3) If the approval was granted in advance the transferring Institution Clearing Member commissions and authorises ECC to transfer the transferable collateral (as defined below), which is posted in the Segregated CBF Pledged-Securities Account and the Segregated Cash Pledge Account, to accepting Institution Clearing Member upon an instruction to this end by this Non-Clearing Member or by the Omnibus Representative in accordance with the following provisions if and in as far as the following preconditions are fulfilled:
  - (a) The Non-Clearing Member concerned or the Omnibus Representative has filed a request for a clearer change with an accelerated position transfer within the meaning of section 3.1.5 and the stated preconditions are fulfilled.
  - (b) The complete transfer of all positions which have not been fully fulfilled within the meaning of section 3.1.4 paragraph 1 of the position held by the transferring Institution Clearing Member for the Non-Clearing Member or the Omnibus Account to the Institution Clearing Member accepting the transfer has taken place.

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

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

### 3.1.7 Rights and Obligations of the Trading Participant

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

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

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

### 3.2 Clearing of Registered Transactions

- (1) In addition to clearing of the Transactions in order book trading concluded on the Markets, ECC also carries out clearing of Transactions registered at the Markets (Registered Transactions)

provided these Transactions correspond to products admitted by ECC and have been registered in the respective markets in an admissible manner subject to the provisions of the corresponding rules and regulations of this market. The confirmation of an entry for the registration on a Market is governed by the rules of the respective Market, which – in this respect – prevails over these Clearing Conditions.

Trades which are concluded on account of Default Management Auctions (section 3.11) 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 3.5.5 paragraph 7).
- (3) The registration of Trades at the markets, the submission for clearing and, if applicable, subsequent Trade transfers (section 3.5.5 paragraph 7) can be carried out by using straight-through processing systems (“STP systems”) in accordance with their functionalities. The STP systems accepted by ECC (at present: EFETnet eXRP and Trayport® Hosted Clearing Link<sup>SM</sup>, the Trigonal Trade Manager and KB Tech Ltd.) are offered and operated by external STP system providers.
- (4) The STP systems have the following uniform default standard configuration<sup>4</sup>:

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

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

- (5) Trading Participants are obliged to validate a registration at a market effected by using STP systems, the submission for clearing and the subsequent Trade transfer (section 3.5.5 paragraph 7) without undue delay, however, at the latest until the beginning of the next Business Day. In deviation from the above the following shall apply:

<sup>4</sup> This standard configuration will become effective with a separate information in text form (§ 126b BGB). Until then the current standard configuration will remain in place (document version 25a of the Clearing Conditions).

If the Contract expires after 12:00 p.m. (noon) on the Business Day of the registration, Trading Participants are obliged to conduct this validation without undue delay, however, at the latest four (4) hours before expiry.

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

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

### 3.3 General Clearing Conditions

#### 3.3.1 Conclusion of Transactions

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

Due to the diverging Business Hours of ECC and EEX Asia Pte Ltd ("EEX Asia"), Derivatives Market Transactions at EEX Asia are concluded under the condition precedent of acceptance by the Eurex Clearing System.

- (2) According to the more detailed definition provided in section 3.3.3 paragraphs 1 to 3, all Spot Market Transactions where ECC acts as Central Counterparty are concluded
  - between ECC and the Trading Participant in all Spot Market Transactions in Emission Rights and nEHS Certificates, whereby nEHS Seller are treated equally to Trading Participants with respect to Spot Market Transactions pursuant to section 3.3.1 paragraph 2,
  - between ECC and the respective Settlement Entity and between the respective Settlement Entity and the Trading Participant at the same time in any other Spot Market Transactions, whereby Auctioneers of Guarantees of Origin are treated equally to Trading Participants with respect to Spot Market Transactions pursuant to section 3.3.1 paragraph 2.

ECC does not act as Central Counterparty for Spot Market Transactions, concluded on the Power Exchange Central Europe, a.s. ("PXE"). These Transactions ("PXE Spot Market Transactions") are concluded between the Trading Participants and EnCC commissioned by PXE only. EnCC is a Clearing Entity according to section 2.8.

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

### **3.3.2 Contract Obligations arising from Derivatives Market Transactions**

- (1) Institution Clearing Members are obliged to settle all obligations arising from matching of orders ("Matching") or from Registered Transactions which have been entered into the system of a market by them or by their Non-Clearing Members.
- (2) According to the more detailed provisions contained in paragraph 1 and section 3.3.5 paragraphs 2 to 3, an Institution Clearing Member shall also be obliged to settle all obligations resulting from the Transactions which have been transferred to the Clearing Member in the framework of a Trade or position transfer from another Trading Participant for the further settlement in his agent and proprietary position accounts.
- (3) The Clearing fees of the Non-Clearing Member shall be exempt from the obligations referred to in the paragraphs herein above. However, these are settled via the Clearing Member as the paying agent of the Non-Clearing Member.

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

- (1) Clearing Members are obliged to settle all obligations arising from matching of orders ("Matching") or Registered Transactions which they have entered into the system on a market.
- (2) The Institution Clearing Member shall be liable as a guarantor for the Non-Clearing Member supported by it towards the respective Settlement Entity for all financial liabilities arising from matching of orders ("Matching") or Registered Transactions which are entered into the system of a market by its Non-Clearing Members. Irrespective of the right to deliver or to take delivery, the guarantee regarding this obligation shall only cover money in as far as the respective Settlement Entity can demand the payment of money instead of the delivery or the acceptance of such from the Institution Clearing Member – in particular in case of a failure of the delivery. Financial settlement is effected via the Institution Clearing Member as the paying agent.
- (3) In Spot Market Transactions in Emission Rights the Institution Clearing Member shall be liable as a guarantor for the Non-Clearing Member supported by it towards ECC for all financial liabilities arising from matching of orders ("Matching") or Registered Transactions which are entered into the system of a market by its Non-Clearing Members. Irrespective of the right to deliver or to take delivery, the guarantee regarding this obligation shall only cover money in as far as ECC can demand the payment of money instead of the delivery or the acceptance of

such from the Clearing Member – in particular in case of a failure of the delivery. Financial settlement is effected via the Clearing Member as the paying agent.

- (4) The Institution Clearing Member of the Market Coupling Counterparty shall be liable towards ECC as a guarantor for all financial liabilities resulting from the settlement of the Market Coupling Clearing Transactions and the Market Coupling Contracts between ECC and the Market Coupling Counterparty. Irrespective of the right to delivery or acceptance of delivery, the guarantee regarding these obligations shall only over a financial obligation of the Institution Clearing Member in as far as ECC can only demand the payment of money from the Institution Clearing Member instead of delivery or acceptance of delivery – in particular, in the event of a failure of delivery. Financial settlement after the execution of deliveries shall be effected via the Institution Clearing Member as the paying agent.
- (5) The Clearing fees of the Non-Clearing Member shall be exempt from the obligations referred to in the paragraphs herein above. These are settled via the Clearing Member as the paying agent of the Non-Clearing Member.

### **3.3.4 Financial Settlement of PXE Spot Market Transactions**

- (1) For PXE Spot Market Transactions ECC will solely provide services in connection with the financial settlement of transactions (collection and crediting of the values of the commodities, including 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 (“Matching”) or Registered Transactions which they have entered into the system of PXE.
- (3) The Institution Clearing Member shall be liable as a guarantor for the Non-Clearing Member supported by it towards ECC for all financial liabilities arising from matching of orders (“Matching”) or Registered Transactions which are entered into the system of PXE by its Non-Clearing Members. Financial settlement after the execution of the deliveries is effected via the Institution Clearing Member as the paying agent through which the Non-Clearing Member settles its Transactions.

### **3.3.5 Physical Settlement of Transactions - Central Delivery Point**

- (1) Settlement of Transactions with regard to which ECC has assumed clearing and which are physically settled according to the respective contract specifications of the Market is exclusively provided through a Settlement Entity with the effect that Trading Participants exclusively settle their delivery or acceptance of delivery obligations arising from Derivatives Market Transactions and Spot Market Transactions towards the respective Settlement Entity. The Settlement Entity assigns to ECC corresponding claims against the Trading Participant to protect the risk that a Trading Participant does not fulfil its contractual obligations towards the Settlement Entity. ECC guarantees the Trading Participants the fulfilment of these Transactions by the respective Settlement Entity in accordance with the Contract. The rules contained in sentences 1 and 2 do not apply with regard to Market Coupling Transactions and Transactions in Market Coupling Contracts. These are exclusively fulfilled towards ECC.

- (2) In the case of Derivatives Market Transactions by Trading Participants holding a license as Clearing Member, the legal relationships described in section 3.3.1 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) The respective Settlement Entity accedes to the contractual relationship as a new contractual partner by ECC assigning the claims to delivery and/or claims to acceptance of delivery and payment which it holds towards the Clearing Member to the respective Settlement Entity; at the same time, corresponding delivery obligations and/or acceptance of delivery and payment obligations towards ECC arise on the part of the respective Settlement Entity. At the same time, the Clearing Member assigns the claims to delivery and/or the claims to accept delivery and payment which it has towards ECC to the respective Settlement Entity, while at the same time, corresponding delivery obligations and/or acceptance of delivery and payment obligations towards the Clearing Member arise on the part of the respective Settlement Entity. As a result of this, the Clearing Member is obliged towards the respective Settlement Entity to deliver or accept delivery the commodity on which the future is based and the respective Settlement Entity, in turn, is obliged towards ECC to deliver and/or accept delivery of said commodity.
  - (b) In case of Derivatives Market Transactions in Emission Rights claims to delivery and/or claims to acceptance of delivery and payment arise directly towards ECC as the Settlement Entity.
- (3) In the case of Derivatives Market Transactions by Trading Participants without a license as Institution Clearing Member (Non-Clearing Members), the legal relationships described in section 3.3.1 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) The respective Settlement Entity accedes to the contractual relationship as a new contractual partner by ECC assigning the claims to delivery and/or claims to accept delivery and payment which it holds towards the Institution Clearing Member supporting the Non-Clearing Member to the respective Settlement Entity; at the same time, corresponding delivery obligations and/or acceptance of delivery and payment obligations towards ECC arise on the part of the respective Settlement Entity. At the same time, the Institution Clearing Member assigns the claims to deliver and/or the claims to accept delivery and payment which it has towards ECC to the respective Settlement Entity, while at the same time, the corresponding delivery obligations and/or acceptance of delivery and payment obligations towards the Institution Clearing Member arise on the part of the respective Settlement Entity. As a result of this, the Institution Clearing Member is obliged towards the respective Settlement Entity to deliver or accept delivery the commodity on which the future is based and the respective Settlement Entity, in turn, is obliged towards ECC to deliver and/or accept delivery of said commodity.
  - (b) The Institution Clearing Member then assigns the claims to delivery and/or claims to acceptance of delivery and payment which it holds towards the Non-Clearing Member to the

respective Settlement Entity and the respective Settlement Entity accedes to the corresponding delivery obligations and/or acceptance of delivery and payment obligations of the Institution Clearing Member towards the Non-Clearing Member in place of the Clearing Member. As a result of this, the Non-Clearing Member is directly obliged towards the respective Settlement Entity to deliver and/or accept delivery the commodity on which the future is based and the respective Settlement Entity, in turn, is obliged towards ECC with regard to this.

- (c) Regardless of the right to deliver or accept of delivery, the Institution Clearing Member supporting the Non-Clearing Member shall only have pecuniary liability as a guarantor towards the respective Settlement Entity with regard to these obligations in as far as ECC or the respective Settlement Entity can request the payment of money instead of the delivery or acceptance of delivery from the Institution Clearing Member – in particular, in the event of a failure of delivery. Financial settlement is effected by the Institution Clearing Member through which the Non-Clearing Member settles its Transactions as the paying agent.
  - (d) In case of Derivatives Market Transactions in Emission Rights claims to delivery and/or claims to acceptance of delivery and payment arise directly towards ECC as the Settlement Entity.
  - (e) ECC is entitled to take all measures to secure the fulfilment of the delivery obligations or the acceptance of delivery or payment obligations of the Trading Participant respectively. In particular, ECC may conclude replacement Transactions or request adequate collateral from the Trading Participant.
- (4) No fees are charged for the assignments.

### 3.3.6 Formation of net Receivable and/or Payable and Compression

- (1) Unless otherwise specified in these Clearing Conditions, ECC aggregates all receivables and liabilities of ECC which fall due towards a Clearing Member in the same currency under or in connection with clearing into a net account in the respective currency concerned in Batch Processing at the end of every Business Day. As a result of such aggregation, no party is obliged to fulfil its original liabilities which are included in the aggregation any longer. The receivables and liabilities are replaced by the respective net accounts formed in the aggregation. In this context, the aggregation is effected in principle regardless of whether Transactions on which these receivables and liabilities are based are recorded on client position accounts or proprietary position accounts of the Clearing Member. A Clearing Member can notify ECC of the fact that – with the exception of one of the legal consequences described in section 3.10 – individual or all of the client position accounts kept for it are to be exempt from the aggregation. ECC will decide on this at its sole discretion.

- (2) Unless otherwise specified in these Clearing Conditions, the Settlement Entity aggregates all receivables and liabilities of the Settlement Entity towards a Trading Participant or ECC in connection with clearing into net accounts as follows in Batch Processing at the end of every Business Day:
- (a) All receivables and liabilities in money in the same currency are aggregated into a net account in the respective currency concerned.
  - (b) All receivables and liabilities regarding the same physical delivery item are aggregated into one net account.

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

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

- (3) With regard to all Derivatives Market Transactions which are concluded on one Business Day and refer to the same Contract, a Compression is carried out at the time of Batch Processing at the end of every Business Day. In addition, in order to reduce risk, ECC may at its sole discretion conduct a Compression of Derivatives Market Transactions relating to the same Contract during each Business Day. The Compression effects that all of these Derivatives Market Transactions lapse and are replaced by a uniform new Derivatives Market Transaction whose payment and delivery obligations correspond to the balance of all payment and delivery obligations of the replaced Derivatives Market Transactions. Other rights than payment and delivery obligations resulting from the replaced Transactions lapse without replacement. In this context, such a Compression shall take place between ECC and a Clearing Member (a) for all Derivatives Market Transactions recorded in a proprietary position account in each case and (b) separately for all Derivatives Market Transactions which are recorded in client position accounts in each case.

- (4) With regard to all Derivatives Market Transactions which are concluded by an Intermarket Liquidity Provider and refer to Contracts of an Intermarket Spread Product the Compression is effected between ECC and the Clearing Member of the Intermarket Liquidity Provider in such a way that all of these Derivatives Market Transactions lapse immediately after the conclusion of the Derivatives Market Transactions concerned and are replaced by a uniform new Derivatives Market Transaction in a Contract of an Intermarket Spread Product whose payment and delivery obligations correspond to the balance of all payment and delivery obligations of the Derivatives Market Transactions replaced. Other rights than payment and delivery obligations resulting from the replaced Transactions lapse without replacement.
- (5) With regard to Derivatives Market Transactions entered into by a Trading Participant other than an Intermarket Liquidity Provider relating to Contracts of an Intermarket Spread Product, the Trading Participant or the supervising Clearing Member may request a Compression from ECC in order to reduce risk. If the applicant is a Non-Clearing Member, evidence of the consent of the supervising Clearing Member shall be provided. ECC will decide on the application of the Compression at its sole discretion. Unless otherwise notified by ECC, Compression occurs at the end of a Business Day. Compression is carried out in such a way that the affected Derivatives Market Transactions lapse and are replaced by a uniform new Derivatives Market Transactions in a Contract of the Intermarket Spread Product, whose payment and delivery obligations correspond to the balance of all payment and delivery obligations of the replaced Derivatives Market Transactions. Rights other than payment and delivery obligations arising from the replaced Derivatives Market Transactions lapse without replacement. Where the Trading Participant is a Clearing Member, such Compression shall take place between ECC and a Clearing Member (a) for all affected Derivatives Market Transactions recorded in a proprietary position account in each case and (b) separately for all affected Derivatives Market Transactions recorded in client position accounts. Where the applicant is a Non-Clearing Member, such Compression shall be carried out between ECC and the respective Clearing Member for all affected Derivatives Market Transactions whose Positions are recorded for the Non-Clearing Member in the relevant client position account.
- (6) For Derivatives Market Transactions relating to Contracts of Intermarket Spread Products, ECC may, at its sole discretion, carry out a Compression in accordance with paragraph 5 sentences 5 to 8 in order to reduce risk.
- (7) A Compression in accordance with paragraphs 3, 4, 5 and 6 is also carried out between a Clearing Member and a Non-Clearing Member.

### **3.3.7 Business Days, Trading Days, Business Hours and Time Specifications**

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

### 3.3.8 Objections

- (1) Objections against daily Trade Confirmations (reports) by ECC have to be raised towards ECC or the Institution Clearing Member with whom the Transaction was concluded in writing or via telefax immediately after receipt and at the latest by 12:00 p.m. (noon) on the next Business Day. Otherwise, the Trade Confirmations shall be considered as approved.
- (2) Objections against invoices or credit notes by ECC or the respective Settlement Entity have to be raised by specifying reasons in writing or via e-mail ([clearing@ecc.de](mailto:clearing@ecc.de)<sup>5</sup>) to ECC forthwith, however, at the latest within a period of ten (10) Business Days after receipt of such. Otherwise, an invoice by ECC or the respective Settlement Entity is considered approved.
- (3) Objections against position transfers from an agent or proprietary position account to another agent or proprietary position account (section 3.5.5 paragraph 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 p.m. (noon) of the next Business Day. Otherwise, the position transfer is finally effective.

### 3.3.9 Assignment

An assignment or pledge of the rights arising from or on the basis of the Clearing Conditions, including Shares in Collective Holdings booked currently or in the future within internal inventory accounts (sections 3.5.8 and 3.5.9) and all related rights (especially the current or future right against ECC Lux or ECC respectively to deliver the Trading Participants' Registry held Products to another registry account), by a Clearing Member or a Non-Clearing Member can only be effected with the approval by ECC or subject to the conditions of these Clearing Conditions. The provisions contained in § 354a German Commercial Code (HGB) shall not be affected. ECC Lux or ECC respectively is entitled to assign its rights arising under or on the basis of these Clearing Conditions to ECC.

### 3.3.10 Fulfilment of Payment Obligations

- (1) Every Clearing Member and every party participating in clearing that uses a T2-account as Settlement Account for its payment obligations to ECC in EUR shall be released from its payment obligation solely by making and crediting such payment to the T2-account of ECC. If ECC is obliged to make a payment in EUR to such Clearing Member or party participating in Clearing, it shall be released from its payment obligation by making and crediting such payment to the T2 Settlement Account of such Clearing Member or party participating in Clearing.
- (2) Every Clearing Member and every party participating in clearing that either uses a Settlement Account at a Correspondent Bank, Settlement Bank or Connected Bank or a CBF 6 series account or makes payments to the nEHS Recipient Account in the course of the nEHS Trans-

<sup>5</sup> In case of error messages during the delivery of the e-mail, the ECC website shall be searched for a suitable alternative e-mail address or another form of message transmission must be chosen.

action to fulfil its payment obligations in EUR shall solely be released from its payment obligation if a credit balance identified by ECC on the respective receiving Settlement Account or nEHS Recipient Account of ECC has been credited to the T2-account of ECC. ECC shall arrange for a credit balance identified by ECC on the respective receiving Settlement Account or nEHS Recipient Account to be transferred to ECC's T2-account without undue delay.

Every Clearing Member and every party participating in clearing that uses either an account with a Correspondent Bank, Settlement Bank or Connected Bank or a CBF 6 Series account to fulfil its payment obligations in a Foreign Currency shall be released from its payment obligation solely by making and crediting such payment to the Settlement Account of ECC with the Payment Bank (including the Forwarding Bank), Settlement Bank or the CBF 6 Series account of ECC. For each product, ECC determines the Payment Bank with which its Settlement Account is maintained and publishes this on the ECC website.

If, in the two cases referred to in this paragraph 2, ECC is obliged to make a payment to a Clearing Member or to a party participating in clearing, it shall be released from its payment obligation if it has instructed the Settlement Bank, Payment Bank (including the Forwarding Bank) or the T2-system to credit an amount covering the payment obligation from its Settlement Account to the Settlement Account designated by the Clearing Member or the party participating in clearing.

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

### 3.3.11 Emergency Measures

- (1) In case orderly clearing is obstructed on the side of a Clearing Member, in particular on account of technical delays, ECC may take all appropriate and necessary measures to ensure orderly clearing ("Emergency Measures")
- (2) To the extent necessary to ensure orderly clearing, ECC may request that Trading Participants be temporarily suspended from trading on one or more Markets (Emergency Member Stop in accordance with the procedure laid down in section 3.1.1 paragraph 4).
- (3) If proper clearing in one or more products is impaired, in particular by actions of a Market or incidents in a Market, ECC may take all appropriate and necessary Emergency Measures, taking into account the interests of the party participating in clearing and the overall risk to ECC.
- (4) ECC shall immediately inform the parties participating in clearing of the Emergency Measures taken under this paragraph. All Emergency Measures under this section 3.3.11 shall be binding

on all parties participating in clearing affected by the measures. ECC shall terminate an Emergency Measure and, in particular, allow trading to resume if the preconditions for the Emergency Measure are no longer met. Any liability of ECC for Emergency Measures taken in accordance with this section is excluded, otherwise limited to intent and gross negligence.

### 3.3.12 Liability

- (1) ECC and the Settlement Entities may take recourse to a Clearing Member with regard to cases of damage which they or other Clearing Members or Non-Clearing Members might have suffered on account of a default or technical default caused by the Clearing Member concerned. The right to assert a further damage both on the part of ECC as well as the respective Settlement Entity and on the part of a third party shall not be affected. ECC and the respective Settlement Entity may assign any claim for damages which they have towards the Clearing Member in default or in technical default to third parties.
- (2) ECC and the Settlement Entities shall not be liable for cases of damage which are caused by an interruption of its operations as a result of an event of force majeure, insurrection, acts of war and acts of god or as a result of other events which do not fall within its sphere of responsibility (e.g. industrial action, lock-outs, disruption of traffic, interruption of the supply chain) or by acts of authorities both from within the country and from abroad. In cases of damage which a Clearing Member or a Non-Clearing Member suffers as a result of technical problems or as a consequence of a partial or complete impossibility of using the EDP devices or EDP systems of a market or of ECC or of the respective Settlement Entity used by them or in case of interruptions in the data transfer as well as in case of trading outside the system of a market or of ECC or of the respective Settlement Entity or as a result of errors made during entering of data in the framework of settlement and the administration of margins for Clearing Members ECC or the respective Settlement Entity shall only be liable in case of premeditation and gross negligence unless the case of damage is caused by a culpable breach of essential obligations. However, in case of a slightly negligent violation of essential obligations, the liability of ECC and of the respective Settlement Entity shall be restricted in terms of the amount of the damage which is typical of a Contract of this type and was foreseeable at the time of granting of the clearing license to a Clearing Member or of admission as a Non-Clearing Member. ECC and the respective Settlement Entity shall commission the devices and systems in its sphere of responsibility including the application and communications software, in a manner sufficiently tested and shall maintain these; ECC and/or the respective Settlement Entity shall not be responsible for the technical equipment and systems of the markets.
- (3) ECC and the respective Settlement Entity shall be entitled to commission third parties to discharge the tasks with which they are entrusted in their entirety or in part in their own name in as far as this is permitted according to the applicable law. In case ECC or the respective Settlement Entity utilizes this right, their responsibility shall be restricted to the careful selection and instruction of the third party commissioned by them (§ 664 paragraph 1 BGB). However, ECC and/or the respective Settlement Entity shall be obliged to assign any claims which might exist towards the third party upon a request to that end.

- (4) ECC and the respective Settlement Entity shall only be held liable for losses or cases of damage towards Clearing Members or Non-Clearing Members in the event of premeditation and gross negligence unless such damage results from a culpable breach of essential obligations. In the event of a slightly negligent violation of essential obligations under these Clearing Conditions, the liability of ECC and the respective Settlement Entity shall be restricted to the amount of the damage which is typical of a contract of this type and was foreseeable at the time of granting of the clearing license or of admission as a Non-Clearing Member. Any liability for consequential damage and loss of profit shall be excluded.
- (5) If ECC uses its rights according to 3.8 or if it initiates Emergency Measures in case of technical defaults, it shall not accept any liability towards Clearing Members or Non-Clearing Members or third parties for any cases of damage which might have occurred, for consequential damage, losses or lost profits.
- (6) ECC and the respective Settlement Entity do not assume any liability towards Non-Clearing Members or third parties for any cases of damage, consequential damage or lost profits which might be caused if ECC complies with the request of a Clearing Member to exclude a Non-Clearing Member from trading on the markets in accordance with section 3.1.1 paragraphs 3 and 4.
- (7) In as far as these Clearing Conditions do not expressly provide for a different regulation, ECC and the respective Settlement Entity shall not be liable towards third parties who are not participants in market themselves, with regard to losses which might be incurred, cases of damage, consequential damage or lost profits which have been incurred in connection with Transactions concluded on the market or registered there in any case.
- (8) Any liability of ECC and the respective Settlement Entity in connection with the execution of the delivery and/or acceptance of delivery of Grid-bound Energy shall be excluded in the event of defects or breakdowns in the transmission system of the Transmission System Operator or on the hub of a hub operator or on interconnectors, which prevent feeding-in or the withdrawal of Grid-bound Energy or in case scheduling or forwarding schedule nominations to the Transmission System Operator ("nomination") is impossible because of other reasons which do not lie within its responsibility. In case a third party is involved in the scheduling or nomination process of a control area or on a hub, respectively, due to statutory or regulatory requirements for a market area, neither ECC nor the respective Settlement Entity shall be liable for errors or disturbances of the scheduling or nomination caused by that third party. ECC and the respective Settlement Entity shall not be liable in case scheduling or nomination is impossible due to that third party.

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

- within the market coupling systems of the NEMO and/or the Transmission System Operators,
- of other NEMOs or their respective central counterparty, or

- of Transmission System Operators, interconnectors or other shipping agents or shippers is limited to the extent of the damages received by ECC or the Settlement Entity from the third party responsible for the respective damage or to the assignment of the claims of ECC or the Settlement Entity towards such third party.
- (9) ECC does not assume any liability for the correctness, completeness and validity of the Transactions and declarations transmitted via the STP systems. ECC, in particular, does not assume any liability for the correctness of the Transactions registered via the STP systems in accordance with the rules and regulations of the respective market and of the give-ups initiated via the STP systems and the subsequent take-ups. The external system providers are responsible for the functionality of the STP systems. As a result, ECC is not liable for any loss of functionalities of the STP systems.
- (10) Regardless of the provisions on liability contained herein above, the liability of ECC for cases of damage which arise in one calendar year in connection with the settlement of a Parallel Claim (cf. section 3.4.1 paragraph 6) as a representative of the Known Participants with section 3.4.1 paragraph 6 shall be limited to six times the actual annual remuneration for this services ("Maximum Limit"). The total of all remuneration payments which Known Participants of ECC owed or would have owed for this service in the respective calendar year according to the contract constitutes the annual remuneration. The calendar year during which the breach of duty took place shall be decisive. As long as the annual remuneration for a calendar year has not been determined, settlement shall be effected provisionally based on the annual remuneration for the previous year. Cases of damage which are caused by ECC in the context of this service in an, at least, grossly negligent manner, are also compensated to the full extent.

### **3.4 Margins Requirements and Collateral**

#### **3.4.1 Obligation to furnish Collateral and Parallel Claim**

- (1) In order to secure all obligations which an Institution Clearing Member has towards ECC and the Settlement Entities arising out of 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 3.4.6 and 3.4.7 in cash, securities and/or book-entry securities.
- (2) ECC may in accordance with its policies and procedures for the valuation and monitoring of the assets accepted as collateral at its own discretion under consideration of ECC's overall risk, determine a minimum proportion of the margin to be provided in cash collateral pursuant to section 3.4.6 ("Minimum Cash Quota"). ECC will give due consideration to the legitimate interests of the affected Institutional Clearing Members. If circumstances arise or become known to ECC which justify a change in the assessment of ECC's risk situation, ECC may adjust the Minimum Cash Quota in accordance with its policies and procedures set out in sentence 1. ECC shall publish the current Minimum Cash Quota on the ECC website. ECC shall publicly

announce any change to the Minimum Cash Quota and give the Institutional Clearing Members a reasonable period of time to comply.

In order to collateralise all obligations of a DCP Clearing Member towards ECC under or in connection with its participation in ECC clearing, every DCP Clearing Member shall furnish collateral, at least, in the amount determined by ECC in cash or in the form of Trading Participant Collateral in accordance with section 3.4.12 with the exception of collateral regarding Emission Rights. This Trading Participant Collateral is taken into account with regard to the Margin Requirements regarding the Initial Margin Spot Market according to section 3.4.3.

- (3) ECC will establish the level of the collateral requirement (“Margin Requirement”) for the Clearing Members on each Business Day. The collateral must be furnished by every Clearing Member until 8:00 a.m. of the following Business Day.
- (4) In order to secure the settlement of all Spot Market Transactions, collateral for Spot Market Transactions shall be provided from the time of recognition as a Trading Participant on the Spot Market until, at least, the fifth day after the termination of recognition as a Trading Participant on the Spot Market.
- (5) If the amount of the collateral is not credited to ECC account in due time, ECC can take measures in accordance with section 3.8 or 3.9 et seq.
- (6) In addition to ECC’s claim for collateral specified in paragraph 1, each Institution Clearing Member shall grant ECC a separate and independent claim (“Parallel Claim”) to the benefit of the Known Participants by way of an abstract promise of debt. It authorises ECC to request performance of all obligations which the Institution Clearing Member has towards the Known Participants from the Institution Clearing Member by way of an unconditional promise to pay. “Collateral obligations” of an Institution Clearing Member comprise all the obligations which an Institution 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
  - (a) Retransfer and repayment, or
  - (b) 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 an Institution Clearing Member and a Known Participant which solely covers Transactions which are subject to clearing at ECC.

Obligations of the Institution Clearing Member with regard to collateral of Special Segregated Participants which have been passed through in accordance with section 3.4.8 shall be exempt from the collateral obligations in the meaning specified above. Securities which have been pledged by the Known Participant to its Institution Clearing Member as collateral are also exempted from the collateral obligation.

The Institution Clearing Member's collateral obligations towards the Known Participants shall not be affected. The Parallel Claim can be enforced by ECC regardless of the collateral obligations which the Institution 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 Claim shall be reduced accordingly. If performance is effected with regard to the Parallel Claim in accordance with the procedure outlined in sections 3.10.1 No. 1 sentence 6-7 and 3.10.3 lit. (b) (ii)-(iv), the scope of the collateral obligations shall be reduced accordingly.

### 3.4.2 Margin Requirement

- (1) The method for the calculation of the different Margin Requirements shall be established by ECC. The bases for the determination of the margins are laid down (i) for Institution Clearing Members for Derivatives Market Transactions in section 3.4.4 and for Spot Market Transactions in section 3.4.3.1 and (ii) for DCP Clearing Members in section 3.4.3.2. The Margin Requirement will be calculated separately for the following accounts and Transactions:
- the combined proprietary and market maker position accounts (P and M accounts) of a Clearing Member,
  - every agent position account (A-account) of the Clearing Member,
  - the Spot Market Transactions of the Clearing Member,
  - the combined proprietary and market maker position accounts (P and M accounts) of each Non-Clearing Member or of the Omnibus Account,
  - every agent position account (A-account) of each Non-Clearing Member,
  - the Spot Market Transactions of each Non-Clearing Member or regarding the Omnibus Account.

The Margin Requirement of a Clearing Member is the result of the sum of the separately determined Margin Requirements as stipulated above.

- (2) In the calculation of the amount of the Margin Requirements collateral provided by the Trading Participants – in case of Emission Rights also at the behest of the respective Institution Clearing Member (section 3.4.13) – can be taken into account at the respective collateral value determined by ECC in the respective case; ECC shall decide on this at its sole discretion upon a request by the Trading Participant or the respective Institution Clearing Member. A Non-Clearing Member's request requires approval by its Institution Clearing Member that is assigned to the internal inventory account within the meaning of section 3.5.8 paragraph 1 and section 3.5.9 paragraph 1. Trading Participant Collateral can be taken into account with regard to collateral requirements for the Initial Margin Spot Market according to section 3.4.3.1. Trading Participant Collateral of DCP Clearing Members are always taken into account with regard to the collateral requirements for the Initial Margin Spot Market according to section 3.4.3.2.

- (3) Institution 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 Institution Clearing Member has to disclose its calculation method to ECC and its Non-Clearing Members or Omnibus Clients.

### 3.4.3 Margins for Spot Market Transactions

#### 3.4.3.1 Margin Requirements for Institution Clearing Members

- (1) For risks resulting from Spot Market Transactions, ECC calculates a Margin Requirement in the amount of the net payment amounts from not or not completely settled Transactions (Current Exposure Spot Market) as well as a Margin Requirement in the amount of the statistically determined risk of potential future Transactions (e.g. by Initial Margin Spot Market or Pre-Auction Margin).
- (2) ECC may calculate a Margin Requirement (Delivery Margin) for possible risks of the respective Settlement Entity due to late delivery of Emission Rights or Certificates of Origin to a registry account of the respective Settlement Entity or a failure to procure Emission Rights in the inventory account of the Trading Participant obliged to deliver at the Delivery Time or may also take these risks into account in another suitable way in the calculation of the Margin Requirement.
- (3) In as far as Transmission System Operators for Grid-bound Energy are entitled to
- (a) assert claims against the respective Settlement Entity or ECC in the event of the non-delivery of commodities sold or of the non-acceptance of purchased commodities by the Trading Participants, or
  - (b) have the right to refuse or reduce the nomination of ECC,
- ECC may calculate a Margin Requirement for these potential claims (Delivery Margin) or take these risks into account in another suitable way in the calculation of the Margin Requirement.
- (4) In order to ensure liquidity, e.g. if a Settlement Entity or a Transmission System Operator requires the Settlement Entity or ECC to provide collateral as a precondition for the settlement of physical transactions, ECC shall be entitled to cover its liquidity need by charging additional cash collateral (cash margin) or setting a Minimum Cash Quota in accordance with section 3.4.1. The Cash Margin is collected from all Trading Participants in the respective market area.
- (5) ECC reserves the right to set off Margin-Requirements and margin credits from various margin types and not to report these separately in this respect.

#### 3.4.3.2 Margin Requirements for DCP Clearing Members

- (1) In order to maintain the Trading Limits granted by ECC in accordance with section 3.1.2.2 and to collateralise the risks resulting from trading within these Trading Limits in consideration of the effects and the functioning of these Trading Limits in the respective Trading System of the Markets, ECC calculates Margin Requirement covering the possible default of net payments to

ECC (including any taxes which might be incurred) and the default risks arising from the non-delivery or incomplete delivery under Transactions concluded or orders entered.

- (2) Margin Requirements for DCP Clearing Members are updated at least once per Business Day.

### 3.4.4 Margins for Derivative Market Transactions

- (1) For positions in futures and options, ECC calculates a Margin Requirement for the cost of a potential closing out. These include both current (e.g. accumulated Variation Margin since the last credit or debit) and potential future risks (e.g. changes in the value of a position during the liquidation period).
- (2) In addition to the Margin Requirement pursuant to paragraph 1 ECC shall calculate a Margin Requirement equal to the daily settlement price of the option (Premium Margin) for short positions in premium style options. The settlement price of an option is determined daily by the Markets and set by ECC. ECC can define the settlement price differently.
- (3) In addition to the Margin Requirement pursuant to paragraph 1 ECC shall calculate a margin credit in the amount of the daily settlement price of the option (Premium Margin) for long positions in premium-style options. This can be credited against all Margin Requirements.
- (4) If Transmission System Operators for Grid-bound Energy are entitled to
- (a) assert claims towards the respective Settlement Entity or ECC in the event of the non-delivery or of the non-acceptance of deliveries under futures which have fallen due by Trading Participants,
  - (b) refuse or reduce nominations of ECC,
- ECC may calculate a Margin Requirement with regard to these possible claims (Delivery Margin).
- (5) In order to ensure liquidity, e.g. if a Settlement Entity or a Transmission System Operator requires the Settlement Entity or ECC to provide collateral as a precondition for the settlement of physical transactions, ECC shall be entitled to cover its liquidity need by charging additional cash collateral (cash margin) or setting a Minimum Cash Quota in accordance with section 3.4.1. The Cash Margin is collected from all Trading Participants in the respective market area.
- (6) ECC reserves the right to offset Margin Requirements and margin credits from different types of margin against each other and therefore not to display them separately.
- (7) In order to secure claims of the respective Settlement Entity regarding a delayed submission of Emission Rights or Guarantees of Origin under due futures to the registry account of the respective Settlement Entity and/or regarding a failure to procure Emission Rights on the internal inventory account of the Trading Participant obliged to effect delivery in time, ECC may calculate a Margin-Requirement (Delivery Margin).
- (8) To cover further risks arising from the settlement of Derivative Market Transactions, ECC is entitled to calculate further Margin Requirements to the extent necessary based on its risk assessment (e.g. supplementary margin, margin for pre-opening limits).

### 3.4.5 Supplementary Margins

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

### 3.4.6 Collateral in Cash

#### 3.4.6.1 General Requirements, Currencies, Concentration Limits, Release of Cash Collateral, Utilisation, Parallel Claim

- (1) ECC shall specify in which currencies collateral can be deposited in cash. ECC may establish concentration limits or other criteria for the limitation of Foreign Currencies furnished as collateral at its own discretion. ECC may apply concentration limits on the Minimum Cash Quota according to section 3.4.1. Concentration limits will be published on the ECC website. The provisions contained in section 3.4.9 apply to collateral which is passed through by an Institution Clearing Member in accordance with section 3.4.8.
- (2) Margins are furnished in EUR by the Institution 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 Collateral Clearing Account (section 3.5.7) of the Institution Clearing Member forthwith.

For the furnishing of margins in Foreign Currencies the Institution Clearing Member must ensure that direct debits submitted to CBF or the Correspondent Bank by ECC are charged to the debit of the respective Settlement Account of the Institution Clearing Member and honoured and the respective amounts credited or paid into the Settlement Account of ECC at CBF or the Payment Bank by means of the payment of the respective sum by the Institution Clearing Member concerned into the account of ECC. After the Payment Bank concerned has confirmed the payment to ECC, the amount in question is credited to the Collateral Clearing Account (section 3.5.7) of the Institution Clearing Member forthwith and the amount deposited is taken into account with regard to the margin call for the next Business Day, provided the confirmation is received at ECC by a time specified by ECC at the latest.

An Institution Clearing Member acting as a Payment Bank must use another Payment Bank if to furnish own margins in a Foreign Currency.

- (3) ECC shall notify the Institution Clearing Member if it becomes aware that the Institution Clearing Member falls below the Minimum Cash Quota. ECC will give the Institution Clearing Member a reasonable period of time to provide or increase cash collateral in order to reach the Minimum Cash Quota. After the Institution Clearing Member has achieved the Minimum Cash Margin through the provision of cash collateral, ECC will, upon request of the Institution Clearing Member pursuant to section 3.4.7 paragraph 7, release collateral in excess of the Margin Requirement in securities and book-entry securities pursuant to section 3.4.7. If and to the extent that the Institution Clearing Member fails to provide the cash collateral required to meet the Minimum Cash Quota or fails to provide such collateral within the time period set by ECC, ECC shall be entitled to request additional cash collateral (section 3.4.5). ECC shall credit such additional cash collateral to the Collateral Clearing Account (section 3.5.7) of the Institution Clearing Member.
- (4) Institution 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 Institution Clearing Member. The release is effected by means of booking within the Collateral Clearing Account of the Institution Clearing Member (section 3.5.7) and the immediate payment to the Institution Clearing Member's Settlement Account or, in the case of collateral in other currencies than those approved by ECC according to paragraph 2, to the account of the Institution Clearing Member established to this end. If a request for the release of collateral is precluded by a deficient cover of the Margin Requirement from the Institution Clearing Member or shortfall in the Minimum Cash Quota, ECC will only comply with the release request to the extent that the deficit has been compensated by the time determined by ECC or the Minimum Cash Quota has been met.
- (5) The collateral provided in cash shall become part of the assets of ECC. The provision of collateral shall establish a conditional payment claim towards ECC in accordance with these Clearing Conditions. With the exception of the collateral passed through in accordance with section 3.4.8, the Institution Clearing Member pledges this conditional payment claim to ECC to secure all current and future liabilities of the Institution Clearing Member towards ECC. ECC accepts such pledge.

ECC shall be entitled to use the margins furnished in cash at its sole discretion within the framework of its business activities in order to safeguard its own working order as a central counterparty and for investment purposes.
- (6) In the event of a termination in accordance with section 3.9, 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 3.10. In as far as the total collateral furnished by the Institution Clearing Member exceeds the accounts receivable of ECC, ECC shall be entitled towards the Institution Clearing Member to proceed with any surplus amount as described in more detail in section 3.10.

- (7) The Institution Clearing Member and ECC agree that the cash collateral also serves to collateralise the Parallel Claim referred to in section 3.4.1 paragraph 6, which ECC has towards the Institution Clearing Member. The Institution Clearing Member and ECC agree that
- (a) the cash collateral should primarily be used to cover the claims which ECC has towards the Institution Clearing Member (except for ECC's Parallel Claim specified in section 3.4.1 paragraph 6) and that
  - (b) the cash collateral should only be used to cover ECC's Parallel Claim specified in section 3.4.1 paragraph 6 in the manner described in section 3.10.1 No. 1 sentence 6-7 and section 3.10.3 lit. (b) (ii) – (iv) in as far as the total collateral furnished by the Institution Clearing Member exceeds the claims of ECC referred to herein above.

#### **3.4.6.2 Allocation of Commercial Bank Losses and Investment Losses<sup>6</sup>**

- (1) Institution Clearing Member may hold funds for which ECC does not have central bank access ("Commercial Bank Cash Collateral") as cash collateral in a Foreign Currency<sup>7</sup> ("Commercial Bank Currency").
- (2) If any losses incurred by the default of the commercial bank, where funds are held, or incurred by a similar event leading to cash collateral not being available to ECC without triggering a Recovery Situation for ECC according to section 6.2.1 such losses ("Commercial Bank Loss") shall be allocated to Institution Clearing Members according to the following principles:
  - (a) Any Commercial Bank Loss will be allocated pro rata to all Institution Clearing Members who have furnished Commercial Bank Cash Collateral in the respective Commercial Bank Currency according to their respective share in the respective Commercial Bank Cash Collateral received from all Institution Clearing Members by ECC.

ECC shall participate in the Commercial Bank Loss on a pro rata basis ("Own Contribution") up to a maximum of 5,000,000 EUR ("Maximum Own Contribution"). The Maximum Own Contribution covers all past and future Commercial Bank Losses. In case of the occurrence of a Commercial Bank Loss, the Maximum Own Contribution shall be reduced by the relevant Own Contribution ("Available Own Contribution"). ECC shall publish the current Available Own Contribution on the ECC website.

If a Commercial Bank Loss occurs with respect to more than one Commercial Bank Currency on a Business Day, ECC shall allocate the Own Contribution to the Commercial Bank Currencies pro rata to the Commercial Bank Loss in the respective Commercial Bank Currency.

- (b) ECC shall determine the relevant Own Contribution with respect to each Commercial Bank Currency separately on the basis of the following formula: the product of (A) the Commercial Bank Loss and (B) the ratio of (i) the Available Own Contribution and (ii) the sum of the cash collateral in the relevant Commercial Bank Currency, which was paid by all Clearing Members to ECC plus the Available Own Contribution.

<sup>6</sup> Also occasionally referred to as non-default loss in relation to the scope of liability of the default waterfall.

<sup>7</sup> Currently all non-EUR currencies.

- (c) ECC shall determine the Institution Clearing Members' share in the Commercial Bank Loss with respect to each Commercial Bank Currency separately on the basis of the following formula: the product of (A) the Commercial Bank Loss and (B) ratio of (i) the cash collateral, in the relevant Commercial Bank Currency, which was paid by the relevant Institution Clearing Member to ECC and (ii) the sum of the cash collateral in the relevant Commercial Bank Currency, which was paid by all Institution Clearing Member to ECC plus the Available Own Contribution. ECC shall notify the Institution Clearing Member in writing, via telefax or e-mail, about the respective amount without undue delay.
  - (d) ECC shall be entitled to directly debit the Institution Clearing Member in accordance with the principles as stipulated in section 3.5.6 paragraph 2 on the same day after the delivery of the respective notice on the Institution Clearing Member related Commercial Bank Loss. If ECC receives an amount from the Insolvency Administrator settling the claim against the Commercial Bank it shall distribute the amount proportionately in accordance with the share of the Institution Clearing Member related Commercial Bank Loss in the total Commercial Bank Loss.
- (3) If a Recovery Situation according to section 6.2.1 occurs to ECC resulting from any Investment Loss incurred by ECC, ECC is entitled to demand a pro rata cash call to cover these Investment Losses. The Investment Losses shall be allocated to Institution Clearing Member according to the following principle:
- (a) ECC shall use at first its Second Skin in the Game according to section 3.7.3.
  - (b) Afterwards any Investment Loss will be allocated pro rata to all Institution Clearing Members who have furnished cash collateral or Default Fund contributions in the respective Currency according to their respective share in the respective cash collateral or Default Fund contribution received from all Institution Clearing Members by ECC.  
  
ECC shall notify the Institution Clearing Member in writing, via telefax or e-mail, about the respective amount without undue delay.
  - (c) ECC shall be entitled to directly debit the Institution Clearing Member on the Business Day after the delivery of the respective notice. If ECC receives an amount from third parties settling the claim, ECC shall distribute the amount proportionately in accordance with the above mentioned ratio on the Institution Clearing Member.

### 3.4.7 Collateral in Securities and book-entry Security

- (1) Margins in securities and in book-entry security shall be deposited by each Institution Clearing Member in a CBF Pledged-Securities 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 fifteen (15) calendar days or less shall not be accepted as margins. The accepted securities and book-entry securities are published on the ECC website. ECC can determine concentration limits for determining the share

of accepted issuers, certain countries or other criteria in relation to the total value of the securities and book-entry securities submitted by an Institution Clearing Member. The Institution Clearing Member shall be in charge of administration of the securities and of the book-entry security. Any security which is not accepted or not accepted anymore as collateral by ECC or any such stock loan security shall not be taken into account in the calculation of the required margins.

- (3) The Institution Clearing Member and ECC agree that ECC acquires a pledge in all securities which are in the CBF Pledged-Securities Account of the Institution Clearing Member established exclusively for ECC at present or will be posted in these in the future. For the purpose of pledging, the Institution Clearing Member assigns its claims towards Clearstream Banking AG with regard to the surrender of these securities to ECC. The Institution Clearing Member shall inform Clearstream Banking AG of the conclusion of the pledge agreement forthwith. If book-entry securities are posted to the CBF Pledged-Securities Account, these are assigned to ECC by way of fiduciary assignment; the foregoing provision shall apply mutatis mutandis. The Institution 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 Institution Clearing Member shall not permit such claims to arise without the approval of ECC.
- (4) In the event of a termination according to section 3.9, 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 Institution Clearing Member grants ECC the authority to request the removal of the registered shares assigned by way of security from the respective share register at Clearstream Banking AG in the event of an utilisation on its behalf.
- (5) The Institution Clearing Member and ECC agree that the pledge and the assignment by way of security according to paragraph 3 also serve the purpose of collateralising the Parallel Claim of ECC towards the Institution Clearing Member referred to in section 3.4.1 paragraph 6. The Institution Clearing Member and ECC agree
  - (a) that any revenue from the utilisation of the securities deposited in the CBF 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 Institution Clearing Member (with the exception of the Parallel Claim of ECC referred to under section 3.4.1 paragraph 6) and that
  - (b) such revenue should only be used to cover the Parallel Claim of ECC specified in section 3.4.1 paragraph 6 in the manner described in sections 3.10.1 No. 1 and 3.10.3 lit. (b) (ii) – (iv) in as far as total collateral furnished by the Institution Clearing Member exceeds the claims of ECC referred to above.

- (6) The transfer of securities and of book-entry securities to the CBF Pledged-Securities Account according to paragraph 3 shall be carried out by means of a timely instruction by the Institution Clearing Member to Clearstream Banking AG to transfer the securities or the book-entry securities to the CBF Pledged-Securities Account of the Clearing Member concerned held. Clearstream Banking AG shall inform ECC of such transfer. After that, ECC shall credit the corresponding value or the quantity to the Collateral Clearing Account (section 3.5.7) of the Institution 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 Institution Clearing Member at the latest. In case the securities or book-entry securities which are not accepted by ECC as margins are transferred to a CBF Pledged-Securities Account, ECC shall arrange for a refund.
- (7) Institution 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 Institution Clearing Member. ECC shall carry out the release of the pledged securities or of book-entry security by means of a corresponding booking on the Collateral Clearing Account of the Institution Clearing Member (section 3.5.7) and shall grant its approval to Clearstream Banking AG. If such a request is precluded by a Margin Requirement against the Institution Clearing Member, ECC will only book on the Collateral Clearing Account and notify Clearstream Banking AG that it approves such release if the required collateral has been provided by the time specified by ECC.

### **3.4.8 Passing-through of Collateral**

- (1) If the version of the collateral agreement "Individual Segregation" has been concluded as part of an NCM Agreement or if an Omnibus Agreement has been concluded, the following rules apply with regard to the collateral which a Special Segregated Participant has to provide to the Institution Clearing Member on the basis of the agreement under section 3.4.2 paragraph 3 and to collateral for clearing of the Special Segregated Participant on ECC exceeding this obligation.
- (2) In fulfilling the obligation as per section 3.4.2 paragraph 3, the Special Segregated Participant shall furnish collateral to the Institution Clearing Member in accordance with the following provisions. The collateral is used to collateralise all existing and future claims which the Institution Clearing Member has towards the Special Segregated Participant under the NCM Agreement concerned or under the Omnibus Agreement. The collateral is furnished by a transfer of securities collateral to the Institution Clearing Member's CBF Pledged-Securities Account at Clearstream Banking AG, which is exclusively set up for pledged securities collateral with regard to Transactions of the Special Segregated Participant and/or cash collateral to the Segregated Cash Account. The Special Segregated Participant can choose between the transfer of securities collateral and cash collateral.

- (3) In the case of securities collateral, the collateral furnished on the basis of paragraph 2 is transferred to the Institution Clearing Members property upon the transfer and in the case of cash collateral, the collateral is transferred to the Institution Clearing Member's assets. If the securities collateral comprises securities held abroad, the legal position to which the Special Segregated Participant as the party depositing the securities is entitled towards the depository shall be transferred instead of the property as such. The Institution Clearing Member is entitled to dispose of the collateral without any restrictions in accordance with these Clearing Conditions.
- (4) The Institution 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 3.4.11 paragraph 1 and
  - (b) the pledge to the benefit of the Segregated Non-Clearing Members and Omnibus Representatives according to section 3.4.11 paragraph 8.
- (5) The Institution Clearing Member is obliged to have all the collateral furnished by the Special Segregated Participants for Clearing on ECC (including any collateral which might exceed the amount of the Margin Requirements determined by ECC) credited to the Collateral Clearing Account of the Special Segregated Participants. The Institution Clearing Member shall arrange for the amount to be credited by transmitting a corresponding order for a retransfer to ECC or by transferring the said collateral to the Segregated Cash Account which is kept for the Special Segregated Participant.
- (6) If the amount of the collateral passed through by the Special Segregated Participants exceeds the amount of the collateral to be furnished by the Special Segregated Participant on account of section 3.4.2 paragraph 3 on any given Business Day, the Special Segregated Participant shall, at its choice, be entitled to the retransfer of sums of money or securities which have been passed through and which are similar to the cash or securities collateral furnished by it and whose value does not exceed the amount of the over-coverage from its Institution Clearing Member – unless this is precluded by deviating agreements between the Institution Clearing Member and the Special Segregated Participants. In the case of securities collateral, securities of the same category of securities are classified as being similar to it.
- (7) If ECC uses collateral which the Institution Clearing Member has pledged to ECC on the basis of the provisions in section 3.10 or if the Institution Clearing Member utilises collateral which was provided by a Special Segregated Participant on account of a termination of the close-out netting agreement between the Institution Clearing Member and the Special Segregated Participant, the following provisions shall apply:
  - (a) the claim to performance which the Institution Clearing Member has towards the Special Segregated Participant from Transactions which are settled on ECC via the Clearing Member expires to the corresponding amount and
  - (b) the claim to transfer which the Segregated Participant has towards the Institution Clearing Member as per paragraph 5

- (i) is exclusively aimed at the transfer of sums of money up to an amount corresponding to the utilisation proceeds and
    - (ii) the amount of such claim is reduced by the amount of the account receivable for which ECC or the Institution Clearing Member has utilised this collateral.
  - (c) in as far as the claim to performance which the Institution Clearing Member has towards the Special Segregated Participant under Transactions which are settled on ECC via the Institution Clearing Member has already ceased to apply before the utilisation as a result of performance or with the effect of performance, the amount of the Special Segregated Participant's claim to transfer according to paragraph 5 remains unaffected in contrary to lit. (b) (ii). Apart from this lit. (b) (i) shall apply.
- (8) In the event of a termination of the close-out netting agreement between the Institution Clearing Member and the Special Segregated Participant, the party entitled for compensation under the close-out netting agreement will forthwith assess all collateral which was furnished on the basis of these Clearing Conditions and for which the Institution Clearing Member has not yet transferred any assets of the same kind to the Special Segregated Participant in accordance with paragraph 6. The corresponding amounts are included in the uniform compensation claim to be established like outstanding payments of the Institution Clearing Member in accordance with the close-out netting agreement in conjunction with No. 9 paragraph 1 of the Master Agreement for financial derivatives Transactions. At the same time, all claims between the Special Segregated Participant and the Institution Clearing Member regarding the transfer of sums of money or securities according to paragraph 2 or paragraph 6 cease to apply.
- (9) Cash collateral is assessed at the nominal amount plus any interest accrued until the termination of the close-out netting agreement. Securities collateral is assessed at the revenue generated by the Institution 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 Institution Clearing Member could have received in such a sale observing the interests of the Special Segregated Participant immediately after the termination of the close-out netting agreement. In as far as the amounts specified above are not denominated in EUR, the party entitled to compensation under the close-out netting agreement shall convert such amounts into EUR 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 Institution Clearing Member pays an amount in the currency and in the amount of such payment for the holders of the collateral on account of the distribution to the Special Segregated Participant on the day of such distribution. If such a distribution is subject to a withholding tax or if it leads to a tax credit, the Institution Clearing Member owes the amount which would accrue to the Special Segregated Participant under consideration of the amount of its claims to reimbursement or offsetting which were previously communicated to the Institution Clearing Member if the said client were the owner of the respective security collateral including

- (a) the withholding tax in as far as the Special Segregated Participant could claim an exemption from this tax or its reimbursement and
- (b) any tax credit to which the Special Segregated Participant would be entitled under these circumstances.

The Institution 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 Institution Clearing Member accordingly have to be considered as cash collateral in the determination of a potential insufficient or excess cover.

- (11) In the event of passing-through of collateral, ECC shall keep a separate agent position account and a separate Collateral Clearing Account for every Special Segregated Participant in accordance with the more detailed provisions of these Clearing Conditions for the purpose of the separate calculation and administration of margins.
- (12) The Institution Clearing Members are obliged to conclude Close-Out Netting Agreements with their Special Segregated Participants.

### **3.4.9 Collateral in Cash in passing-through of Collateral**

- (1) In the event of passing-through of collateral, cash collateral can also be provided by an Institution Clearing Member by means of a payment into the Segregated Cash Account of the Institution Clearing Member in deviation from the provisions in section 3.4.6. The provision of cash collateral is only admissible in EUR.
- (2) ECC immediately credits the amount received on the Segregated Cash Account to the separate Collateral Clearing Account (section 3.5.7 paragraph 2) of the Segregated Non-Clearing Member or the Omnibus Account.
- (3) Under the precondition that the Institution Clearing Member is not in Default according to section 3.8 or there is cause for Termination according to section 3.9, upon a request by the Institution Clearing Member, ECC shall release collateral which is booked in the Segregated Cash Account. With regard to the release, section 3.4.6.1 paragraph 3 shall apply accordingly with the supplementary requirement that the release of the provided collateral in cash can only be requested in the amount in which the provided collateral on the Separate Collateral Clearing account exceeds the margin requirement vis-à-vis the Segregated Non-Clearing Member or the Omnibus Account. The release shall be effected by posting on the Separate Collateral Clearing Account of the Segregated Non-Clearing Member or the Omnibus Account, as the case may be, and immediate payment to a Settlement Account of the servicing Institution Clearing Member.

### **3.4.10 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 Segregated CBF Pledged-Securities Account in accordance with section 3.4.8. Only securities which fulfil the requirements in section 3.4.7 paragraph 2 and ownership of which has

been transferred to the Institution Clearing Member by the Special Segregated Participants in accordance with the provisions of in section 3.4.8 paragraph 3 shall be kept in the Segregated CBF Pledged-Securities Account.

- (2) ECC shall credit the corresponding value of the securities to the Segregated CBF Pledged-Securities Account of the Institution Clearing Member and to the separate Collateral Clearing Account of the Segregated Non-Clearing Member or the Omnibus Account and shall consider such amount credited in the next calculation of the collateral requirement for the Institution Clearing Member in accordance with the more detailed provision in section 3.4.1.
- (3) Under the precondition that the Institution Clearing Member is not in Default according to section 3.8 or there is cause for Termination according to section 3.9, upon a request by the Institution Clearing Member, ECC shall release collateral which is booked in the Segregated CBF Pledged-Securities Account. With regard to the release section 3.4.7 paragraph 7 shall apply accordingly with the supplementary provision that the release of the provided collateral in securities can only be requested in the amount in which the provided collateral on the Separate Collateral Clearing account exceeds the margin requirement vis-à-vis the Segregated Non-Clearing Member or the Omnibus Account. The release shall be effected by posting on the Separate Collateral Clearing Account of the Segregated Non-Clearing Member or the Omnibus Account, as the case may be, and granting of its approval to Clearstream Banking AG.

### 3.4.11 Pledges in Connection with passing-through of Collateral

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

- (3) The pledges granted in paragraph 1 lit. (a) to (c) are used as collateral for the performance of all obligations of an Institution Clearing Member towards ECC resulting from Trades of the Special Segregated Participants.
- (4) In the relationship with ECC, the Institution 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 Institution Clearing Member shall establish a further pledge with regard to the collateral according to paragraph 8 lit. (a) to (c) for the Non-Clearing Member or for the Omnibus Representative. The Institution Clearing Member shall not establish any further third-party rights which can arise on account of contractual agreements throughout the term of the pledge without ECC's approval.
- (6) In the event of a termination according to section 3.9, ECC can effect the sale of the pledged securities on the free market without any prior warning.
- (7) In the event of utilisation, the Institution Clearing Member grants ECC the authority to request the removal of the registered securities assigned by way of security from the respective share registers at Clearstream Banking AG, in its name.
- (8) With regard to the purpose of security specified in paragraph 10, the Institution Clearing Member pledges the following to the Segregated Non-Clearing Member or to the Omnibus Representative:
  - (a) all securities which are recorded in the Segregated CBF Pledged-Securities Account at present or which will be recorded in the said account in the future with the exception of securities held abroad. The Segregated Non-Clearing Member hereby accepts the pledge. For the purposes of pledging, the Institution Clearing Member assigns its claims towards ECC with regard to the return of the securities specified above after the expiry of the first-rank lien established with regard to these securities to the benefit of ECC to the Segregated Non-Clearing Member or Omnibus Representative in accordance with § 1223 BGB. The Segregated Non-Clearing Member accepts the assignment.
  - (b) its claims – primarily claims to delivery and surrender – to which the Institution 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 Segregated CBF Pledged-Securities Account at present or will be recorded therein in the future. The Segregated Non-Clearing Member accepts the pledge.
  - (c) all claims which the Institution Clearing Member has against ECC with regard to the Segregated Cash Account and which it will have in the future. The Segregated Non-Clearing Member accepts the pledge.
  - (d) with regard to the Omnibus Accounts the corresponding declarations pursuant to lit. (a) to (c) are made by the Omnibus Representative instead of by the Non-Clearing Member and they are made in the Omnibus Agreement.

- (9) The Institution Clearing Member shall notify Clearstream Banking AG, of the pending pledges with regard to the securities collateral forthwith.
- (10) The pledges created in paragraph 8 lit. (a) to (c) are used to collateralise all claims which the Segregated Non-Clearing Member or the Omnibus Clients has/have against the Institution Clearing Member (a) under the NCM Agreement or the Omnibus Agreement and (b) under the respective close-out netting agreement.
- (11) In as far as the collateral has an exchange or market price, the Segregated Non-Clearing Member or the Omnibus Representative attains ownership or legal ownership of the receivables without prior warning in accordance with § 1259 sentence 1 BGB
- (a) upon a termination in accordance with section 3.9.1 with regard to the Institution Clearing Member upon the settlement of the obligations of the Segregated Non-Clearing Member under the NCM Agreement or the Omnibus Client under the Omnibus Agreement or, if such time occurs earlier,
- (b) upon the maturity of the receivable to which the Segregated Non-Clearing Member or Omnibus Client is entitled from the Institution Clearing Member on the basis of the respective close-out netting agreement.
- (12) The following provisions apply in the relationship between ECC, the Institution Clearing Member and the Segregated Non-Clearing Member or the Omnibus Representative:
- (a) Subject to the provision in sentence 2, ECC may exclusively arrange the utilisation of the assets pledged by the Institution Clearing Member in accordance with paragraph 1 and 8. With ECC's approval, the Segregated Non-Clearing Member or the Omnibus Representative can take over the utilisation of the pledged assets in their entirety or in part.
- (b) Proceeds from the utilisation of the assets pledged by the Institution Clearing Member in accordance with paragraph 1 and 8 will first be used to satisfy ECC's claims arising from the obligations of an Institution Clearing Member to ECC from or in connection with its participation in clearing. Any remaining surplus will be used to satisfy all claims which the Segregated Non-Clearing Member or the Omnibus Clients has/have against the Institution Clearing Member (i) from the NCM Agreement or the Omnibus Agreement and (ii) from the respective close-out netting agreement.
- (c) The Segregated Non-Clearing Member and the Omnibus Clients are only entitled to an assignment of the receivables from the Institution Clearing Member which are collateralised by the pledge in as far as the distribution rule described under lit. (b) herein above does not affect the relationship between ECC and the Segregated Non-Clearing Member or the Omnibus Clients.

### **3.4.12 Trading Participant Collateral in Shares in Collective Holdings of Registry Based Products (except for Emission Rights kept in the Collateral Registry Account) and in Trading Participant Cash Collateral**

- (1) Every Trading Participant pledges to ECC all rights which are connected with Shares in Collective Holdings and Trading Participant Cash Collateral booked within the internal inventory accounts at present or in the future (sections 3.5.8 and 3.5.9) and, in particular, the right towards ECC Lux or ECC respectively regarding the delivery of the Registry Based Products to another registry account and the claim towards ECC regarding the repayment of the Trading Participant Cash Collateral. ECC accepts the pledge. The pledge in favour of ECC secures all existing and future claims against the Trading Participant which ECC is entitled to from the Trading Participant in accordance with these Clearing Conditions. In case the Trading Participant is a Non-Clearing Member, the pledge also secures claims that ECC is entitled to (by own or assigned right) against its Institution Clearing Member as a contracting party or guarantor for the Transactions of said Trading Participant.
- (2) If the Trading Participant is a Non-Clearing Member, it also pledges all rights which are connected with the Shares in Collective Holdings or Trading Participant Cash Collateral booked within its internal inventory accounts (sections 3.5.8 and 3.5.9) at present or in the future and, in particular, the claim towards ECC Lux or ECC respectively regarding the delivery of the Registry Based Products to another registry account and the claim towards ECC regarding the repayment of the Trading Participant Cash Collateral to its Institution Clearing Member or its Institution Clearing Members, in addition. The Institution Clearing Members accept the pledge. The pledge in favour of the Institution Clearing Member secures all existing and future claims against the pledging Trading Participant resulting from the utilisation of these Institution Clearing Members as guarantors or contracting parties of ECC with regard to the pledging Trading Participant's Transactions. The following provisions apply in the relationship between the Institution Clearing Members and ECC:
  - (a) Subject to the provision in the following sentence, ECC alone may arrange the utilisation of the rights pledged by a Non-Clearing Member. With the approval by ECC, an Institution Clearing Member can also take over the utilisation of the pledged assets in their entirety or in part.
  - (b) Any proceeds from the utilisation of rights pledged by a Trading Participant shall initially be used to satisfy the claims to which ECC is entitled from the Trading Participant in connection with these Clearing Conditions. Any remaining surplus shall be used to satisfy the rights of recourse or other rights of the Institution Clearing Members from the pledging Trading Participants as a result of recourse to these Institution Clearing Members as guarantors or contracting partners of ECC for the Transactions of the pledging Trading Participant.
  - (c) The Institution Clearing Members are only entitled to assign their claims which are collateralised by the pledge in as far as the distribution rule described above under lit. (b) in the relationship between the Institution Clearing Members and ECC is not affected.

- (3) The Trading Participant herewith notifies ECC in its capacity as the authorised receiving agent of ECC Lux and in its own capacity about the pledges in accordance with section 3.4.12 paragraphs 1 and 2.
- (4) Up to a default or a termination in the relationship between the Institution Clearing Member and a Non-Clearing Member or in the relationship between ECC and an Institution Clearing Member, (a) ECC Lux or ECC respectively is authorised and obliged to execute the Trading Participants' sell orders regarding the Registry Based Products and (b) ECC is authorised and obliged to pay out the Trading Participant Cash Collateral to the Trading Participant via its Clearing Member. In this respect, ECC and the Institution Clearing Member release the assets pledged pursuant to section 3.4.12 paragraphs 1 and 2 subject to the following condition: If the collateral values of Shares in Collective Holdings have been considered in calculating the amount of the Margin Requirement of ECC from the Clearing Member (section 3.4.2 paragraph 2), the Trading Participant is only entitled to delivery dispositions regarding Registry Based Products or to repayments of Trading Participant Cash Collateral to it if new Margin Requirements to be established on the basis of such dispositions and open liabilities of the Clearing Member towards ECC and ECC Lux or the Settlement Entity respectively are covered by the remaining collateral.
- In the case of Trading Participant Collateral with regard to Registry Based Products, the Institution Clearing Member can request ECC to suspend deliveries in accordance with section 3.5.9 paragraph 3 if this is required for the Institution Clearing Member to secure as yet unfulfilled liabilities of the Trading Participant.
- (5) If the Trading Participant or one of its Institution Clearing Members defaults towards ECC or a Settlement Entity with regard to collateralised liabilities, ECC or, with the approval of ECC, an Institution Clearing Member may, without prior warning, sell the Registry Based Products or satisfy the claims through the appropriation of such in accordance with § 1259 BGB and collect the claims towards ECC regarding the repayment of the Trading Participant Cash Collateral; sections 3.9 and 3.10 shall not be affected.
- If a Non-Clearing Member has defaulted on its collateralised liabilities towards its Institution Clearing Member, the Institution Clearing Member may, with the approval of ECC, sell the Registry Based Products without prior warning or it may satisfy its claims through the appropriation of such in accordance with § 1259 BGB and collect the claim towards ECC regarding the repayment of the Trading Participant Cash Collateral.
- (6) Any proceeds from the utilisation of pledges regarding Registry Based Products shall be distributed in such a way that the pledges specified above have a lower rank than the pledges which are provided for in section 4.9.2 paragraph 4.
- (7) The provisions made in this section shall not apply to the Shares in Collective Holdings kept in the Collateral Registry Account currently or in the future booked to internal inventory accounts as their treatment shall exclusively be determined in accordance with section 3.4.13. The provisions contained in this section shall also not apply to Allowances booked in the internal inventory accounts assigned to a Member State represented by its relevant Auctioneer at present or in the future.

- (8) Trading Participant Cash Collateral is provided by a DCP Clearing Member by ECC or the Connected Bank as the authorised representative of the DCP Clearing Member disposing of the account balances of the Settlement Account of this DCP Clearing Member for the benefit of the Settlement Account or ECC. ECC shall forthwith credit the amount received in its Settlement Account to the DCP Clearing Member's Cash Collateral Account. A DCP Clearing Member is obliged to ensure a balance in the Settlement Account the amount of which is sufficient to fulfil its obligations towards ECC at all times.

Trading Participant Cash Collateral becomes part of the assets of ECC and establishes a conditional payment claim of the Trading Participant towards ECC regarding repayment, whereat that claim is pledged to ECC in accordance with this section 3.4.12. ECC is entitled to use the Trading Participant Cash Collateral at its sole discretion in the framework of its business operations for investment purposes.

### **3.4.13 Trading Participant Collateral in Emission Rights held in the Collateral Registry Account**

- (1) Each Trading Participant may transfer Emission Rights to ECC's Collateral Registry Account in accordance with paragraphs 2 and 3 below. Emission Rights transferred to the Collateral Registry Account shall become property of ECC. The Trading Participant or, if the Trading Participant is a Non-Clearing Member, the respective Institution Clearing Member shall grant ECC collateral property in Emission Rights transferred to the Collateral Registry Account in accordance with the following provisions. ECC shall hold the Emission Rights transferred to the Collateral Registry Account for collateralisation purposes in accordance with the following provisions as trustee for the Trading Participant or, if the Trading Participant is a Non-Clearing Member, for the respective Institution Clearing Member.
- (2) If the Trading Participant is a Clearing Member and transfers Emission Rights from an external registry account or from another ECC registry account to the Collateral Registry Account, this shall give rise to a claim towards ECC for retransfer from the Collateral Registry Account. Emission Rights transferred to the Collateral Registry Account shall secure all current and future claims of ECC against the Trading Participant in connection with the Clearing Conditions.
- (3) If the Trading Participant is a Non-Clearing Member and transfers Emission Rights from an external registry account or from another ECC registry account to the Collateral Registry Account, it shall always do so at the behest of its Institution Clearing Member. This creates a claim of the Institution Clearing Member against ECC for retransfer from the Collateral Registry Account and a corresponding retransfer claim of the Non-Clearing Member against its Institution Clearing Member.

Emission rights transferred to the Collateral Registry Account shall secure the claims of ECC against the respective Institution Clearing Member with regard to transactions of its Non-Clearing Member. The retransfer claim of the Institution Clearing Member against ECC, the Emission Rights to be transferred thereon by ECC to the Institution Clearing Member or the proceeds of collateral realization to be distributed to the Institution Clearing Member shall secure the claims

of the Institution Clearing Member against the Non-Clearing Member resulting from a liability of the Institution Clearing Member towards ECC due to transactions of the Non-Clearing Member.

The Institution Clearing Member shall pledge to the Non-Clearing Member the claim vis-à-vis ECC for retransfer of the Emission Rights transferred by the Non-Clearing Member to the Collateral Registry Account as well as the payment claims replacing such claim in case of collateral realization. The pledge shall serve as security for all claims of the Non-Clearing Member against its Institution Clearing Member arising from the Non-Clearing Member's participation in the clearing of ECC, in particular for the retransfer of the Emission Rights and the payment claims replacing them. The Non-Clearing Member accepts such pledge; the Institution Clearing Member hereby notifies ECC of such pledge.

- (4) If the Trading Participant transferring Emission Rights to the Collateral Registry Account is an Institution Clearing Member, it may request the delivery of Emission Rights from its Share in Collective Holdings in the Collateral Registry Account until a default of the Institution Clearing Member (section 3.8) or a termination (section 3.9.1 paragraph 1 lit. (a)) if Margin Requirements to be newly determined after delivery as well as open claims of ECC against the Trading Participant remain covered by the remaining collateral. By delivery of the Emission Rights from the Collateral Registry Account ECC fulfils the retransfer claim of the Trading Participant.
- (5) If the Trading Participant transferring Emission Rights to the Collateral Registry Account is a Non-Clearing Member, it may – upon declaration of approval by its Institution Clearing Member – request the delivery of Allowances from the Institution Clearing Member's Share in Collective Holdings in the Collateral Registry Account until a default of the Institution Clearing Member (section 3.8) or a termination (section 3.9.1 paragraph 1 lit. (a)) between ECC and the Institution Clearing Member. The fulfilment of this request is subject to the condition that Margin Requirements to be newly determined after delivery as well as open claims of ECC vis-à-vis the Institution Clearing Member remain covered by the remaining collateral, excluding Margin Requirements or claims of ECC vis-à-vis the Institution Clearing Member which are not based on transactions of the Non-Clearing Member. The declaration of approval must be received by ECC on a Business Day in writing or by telefax in a form determined by ECC. The approval may only be refused by the Institution Clearing Member if Margin Requirements to be newly determined after delivery as well as open claims of the Institution Clearing Member vis-à-vis the Non-Clearing Member remain uncovered by remaining collateral held by the Institution Clearing Member. By delivering Emission Rights from the Collateral Registry Account to the Non-Clearing Member, ECC fulfils the retransfer claim of the Institution Clearing Member and, at the same time, the retransfer claim of the Non-Clearing Member against its Institution Clearing Member.
- (6) There is no obligation to provide collateral in Emission Rights by transfer to the Collateral Registry Account. The collateral value of the Emission Rights transferred to the Collateral Registry Account as determined by ECC may be taken into account in the calculation of the Margin Requirements pursuant to section 3.4.2 paragraph 2. If the Trading Participant is a Non-Clearing Member, the Emission Rights transferred to the Collateral Registry Account may – pursuant to section 3.4.2 paragraph 3 – also be taken into account in the calculation of the collateral demanded by the Institution Clearing Member from its respective Non-Clearing Member.

- (7) If the Trading Participant or the supervising Institution Clearing Member is in default with respect to secured claims (paragraph 2 sentence 2 or paragraph 3 sentence 3) vis-à-vis ECC, ECC may sell the Emission Rights transferred to the Collateral Registry Account without prior notice on its own initiative and for its own benefit or take them in possession effecting that the respective claims are deemed to be fulfilled in equivalence to the current exchange or market price. Such realization of Emission Rights which a Non-Clearing Member has transferred to the Collateral Registry Account at the behest of the Institution Clearing Member shall result in a corresponding fulfilment of the secured claims of ECC against its Institution Clearing Member. Sections 3.9 and 3.10 remain unaffected.

If the Non-Clearing Member is in default with secured claims (paragraph 3 sentence 4) vis-à-vis its Institution Clearing Member without the Institution Clearing Member being in default with the secured claims (paragraph 2 sentence 2) vis-à-vis ECC (section 3.8) or a termination (section 3.9.1 paragraph 1 lit. (a)), the Institution Clearing Member may demand from ECC the delivery of Emission Rights fulfilling the retransfer claim from the Collateral Registry Account or may set off the surplus resulting from realization to be paid by ECC instead, if the Margin Requirements against the Institution Clearing Member to be newly determined thereafter as well as open claims of ECC against the Institution Clearing Member due to the transactions of the Non-Clearing Member remain covered by the remaining collateral.

#### **3.4.14 Trading Participant Bank Guarantees as Trading Participant Collateral**

- (1) DCP Clearing Members and Non-Clearing Members can only use Trading Participant Bank Guarantees for consideration with regard to the collateral requirements towards the Clearing Member regarding the Initial Margin Spot Market (sections 3.4.3.1 and 3.4.3.2). The Trading Participant Bank Guarantee must be recognised by ECC as Trading Participant Collateral in each specific case. Recognition of the Trading Participant Bank Guarantee as Trading Participant Collateral shall require the approval of its Institution Clearing Member in the case of Non-Clearing Members. Such recognition can be revoked by the Institution Clearing Member with a period of one (1) month as of receipt of the revocation at ECC as well as the Non-Clearing Member.
- (2) ECC determines the collateral value of the Trading Participant Bank Guarantee as Trading Participant Collateral and it can specify that the Trading Participant Bank Guarantee is only considered to a certain extent with regard to the collateral requirements towards the Clearing Member regarding the Initial Margin Spot Market (sections 3.4.3.1 and 3.4.3.2). During the ten (10) Business Days preceding the expiry of a Trading Participant Bank Guarantee or the recognition of Trading Participant Bank Guarantee as Trading Participant Collateral, the Trading Participant Bank Guarantee has a collateral value of zero.

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

Upon a request to this end by a DCP Clearing Member or Non-Clearing Member, ECC releases a Trading Participant Bank Guarantee submitted as soon as the collateral requirements covered

by it are covered otherwise. If a Non-Clearing Member submits such an application, its Institution Clearing Member must approve the release. The Institution Clearing Member can only refuse approval for a period of six (6) calendar weeks following the submission of the request if the Institution Clearing Member has fulfilled payment obligations for the Non-Clearing Member in the capacity of its paying agent towards ECC and the Non-Clearing Member has not yet settled the recourse claims resulting from this. If the Institution Clearing Member has defaulted according to section 3.8, the provisions contained in these Clearing Conditions (sections 3.9 to 3.11) with regard to this shall be applicable as a matter of priority.

## **3.5 Accounts**

### **3.5.1 Types of Position Accounts**

- (1) Within the system of ECC the Transactions of Clearing Members and the Transactions of clients of Institution Clearing Members, including Omnibus Clients as well as the Transactions of Non-Clearing Members are recorded in proprietary, agent and, if applicable, market maker position accounts of the respective Clearing Member. Transactions of Institution Clearing Members' Indirect Clients are recorded in so-called Standard and/or Gross Omnibus Accounts which are kept as Client Position Accounts of the Institution Clearing Member or of the Non-Clearing Member.
- (2) With regard to each Institution Clearing Member two proprietary position accounts, and, in as far as required, two Market Maker position accounts and, upon request, further agent position accounts are kept. Equal accounts are kept for the Non-Clearing Members and, if applicable, for Omnibus Accounts of the Institution Clearing Member.

### **3.5.2 Proprietary Position Accounts**

- (1) Only the Transactions on own account transacted by the Clearing Member are recorded on the two proprietary positions accounts.
- (2) Adjustments of opening and closing Trades (opening and closing trade 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 relating to the same Contract or Contracts of an Intermarket Spread Product can be effected subject to the provisions in section 3.5.5.
- (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).

### 3.5.3 Agent Position Accounts

- (1) Only the Transactions of the clients (including Omnibus Clients and Indirect Clients) and Non-Clearing Members of the Institution Clearing Members and Non-Clearing Members of the Institution Clearing Member using this Institution Clearing Member as a Clearing Broker are recorded on the agent position accounts of said Institution Clearing Member. In the event of passing-through of collateral (section 3.4.8), a separate agent position account of an Institution Clearing Member is kept for every Segregated Non-Clearing Member or for every Omnibus Account for the purpose of the separate calculation and administration of collateral. Apart from this, this sub-position account is treated as a part of the agent position account. For Indirect Clients, the Standard and/or Gross Omnibus Accounts are also kept as Client Position Accounts of the Institution Clearing Member; however, they are treated as a part of the Client Position Account.
- (2) Trade adjustments which change the assignment of a Trade from agent to proprietary position or from proprietary position to agent position accounts (Trade Transfer) as well as corresponding position transfer are only admissible for correct recording of the Transactions on the agent position accounts subject to the provisions contained in section 3.5.5.
- (3) A short position of a client or of a Non-Clearing Member has to be kept separately from a long position of another client or a Non-Clearing Member in the same option series or in the same futures contract in the agent position accounts. A Clearing Member must not close a position of a client or a Non-Clearing Member with another position of the same customer or a Non-Clearing Member. Adjustments of opening and closing Trades on the agent position accounts are only permissible for compliance with this account keeping or following an instruction by the client or Non-Clearing Member to that end in accordance with the provisions contained in section 3.5.5.
- (4) Closing position adjustments in the agent position account shall only be permissible for closing out of two opposite positions relating to the same Contract or Contracts of an Intermarket Spread Product which are held by the same client or Non-Clearing Member subject to the provisions in section 3.5.5.
- (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).

### 3.5.4 Market Maker Position Accounts

- (1) The Transactions arising from quotes entered in accordance with the rules 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 3.5.5.

### 3.5.5 Account Keeping

- (1) Positions in agent position accounts and in the proprietary position accounts of a Clearing Member are kept in gross terms, i.e. long and short positions can exist at the same time. Positions in the market maker position accounts are kept in net terms, i.e. there can only be either a long position or a short position at any given time.
- (2) ECC monitors the position accounts of its Clearing Members. ECC provides the balance as well as the details regarding the Transactions for every individual position account to its Clearing Members within its system.
- (3) All positions in options series are deleted automatically on the respective position accounts of a Clearing Member during Batch Processing on the last day of trading of the respective option contract. All short positions which have been assigned and all long positions which have been exercised shall be deleted on the position accounts of a given Clearing Member once delivery for the exercises and for the assignments in connection with these positions has been effected.
- (4) Positions in futures contracts are deleted in the respective position accounts of the Clearing Members once the delivery and/or the acceptance of delivery and payment or the cash settlement or cascading has been effected in connection with these positions.
- (5) Trade adjustments can be entered either before, during or after trading on any given Business Day - depending on the functionalities of the system of ECC. These are permissible for the Transactions of the respective current Business Day and of two (2) subsequent Business Days.

Depending on the functionalities of the system of ECC, closing position adjustments can be entered before, during or after trading on any given Business Day. Closing position adjustments in respect of Contracts regarding an Intermarket Spread Product may be requested from ECC for risk reduction. ECC will decide on the admissibility of these closing position adjustments at its sole discretion.

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

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

A use of the functionality "Position transfer with transfer of money" shall only be possible in case the amount to be transferred displays a clear connection with one or several of the Transactions

recorded on a position account of the Clearing Member on account of a reference to be entered into the system of ECC.

The system of ECC generally transfers the positions intraday (External Position Transfer). On principle, the payments of money or the credit notes to be effected in accordance with the functionality "Position transfer with transfer of money" shall be effected one Business Day after the use of this functionality. However, in the case of this functionality, the corresponding amount will only be transferred to the Clearing Member entitled once the Clearing Member liable to pay has furnished this contribution. There shall be no own obligation to perform for ECC and/or the markets involved towards the entitled Trading Participants in the framework of this transfer of money.

- (7) Trade Transfers from an agent or proprietary position account to another agent and proprietary position account can be initiated by a Clearing Member or its Non-Clearing Member as a representative of the Clearing Member on the day of the conclusion of the Transaction and on the two (2) subsequent Business Days following said day (give-up) provided:
  - (a) the Transaction to be transmitted is an opening Trade,
  - (b) the Transaction to be transmitted was indicated as a give-up Trade and
  - (c) the person for whose account the Transaction was originally concluded remains identical after such transfer.
- (8) If the Trade Transfer is instructed by a Non-Clearing Member or by several Non-Clearing Members, the transfer of the Trade shall require the approval of their Clearing Members.
- (9) The Trade Transfer commissioned via a give-up is concluded if the accepting Clearing Member or – if this is the case – the Non-Clearing Member affected by the take-up has confirmed the take-up of the Transactions in its capacity as the representative of this Clearing Member.
- (10) Clearing Members and Non-Clearing Members are only allowed to perform position transfers and Trade Transfers (give-ups) if the resulting positions correspond to products and maturities tradable on the respective markets. The respective position transfer or trade transfer must be revoked if the above requirement is not fulfilled. If such revocation does not occur within the timeframe determined by ECC, ECC will itself perform the revocation of the transfer.

### 3.5.6 Clearing Accounts

- (1) ECC shall keep an internal Clearing Account in EUR for every Clearing Member, in which the net accounts receivable or payable established in EUR in accordance with section 3.3.6 in each case are booked in EUR:
  - (a) With regard to an Institution Clearing Member, the daily balance of this Clearing Account which results from the Batch Processing of a Business Day, shall usually be debited from the Settlement Account of the Clearing Member or credited to said account at around 8:00 a.m. of the following Business Day in case ECC does not claim an amount of money on such account as a margin.

- (b) With regard to a DCP Clearing Member, the daily balance of such internal Clearing Account which is established during Batch Processing for a given Business Day is determined starting at 5:00 p.m. of every Business Day and communicated to the DCP Clearing Member. Unless the DCP Clearing Member establishes a different provision within a period of thirty (30) minutes after the determination of the balance, ECC is entitled to initiate a disposition to the benefit or at the expense of the Settlement Account of the DCP Clearing Member at the Settlement Bank or the Connected Bank with effect before 8:00 a.m. on the following Business Day. ECC shall refrain from initiating such disposition to the benefit of the DCP Clearing Member's Settlement Account if it claims a balance as collateral. Sentences 2 and 3 of this section 3.5.6 paragraph 1 lit. (b) shall not apply to DCP Clearing Members exclusively participating in nEHS Transactions and depositing the purchase price to the nEHS Recipient Account.
  - (c) All Clearing Members shall ensure their financial solvency on the respective Business Day by means of a corresponding balance on their Settlement Account.
- (2) In addition, ECC shall keep for each Foreign Currency one internal Clearing Account for every Clearing Member on which the net accounts receivable or payable formed in a Foreign Currency are settled in each case in accordance with section 3.3.6. The daily balances of these internal Clearing Accounts, which are established on the basis of Batch Processing for a Business Day, shall be debited from the respective Settlement Account of the Institution Clearing Member at the respective Correspondent Bank or the DCP Clearing Member's Settlement Account kept in the respective Foreign Currency at the Settlement Bank or the Connected Bank or credited to said account on the following Business Day (USD around 8:00 a.m., GBP around 9:00 a.m.) unless ECC claims a balance as collateral. All Clearing Members shall ensure their financial solvency on the respective Business Day by means of a corresponding balance on the respective Settlement.
  - (3) The amount credited to or debited from Institution Clearing Member's Settlement Account in accordance with paragraph 1 lit. (a) and paragraph 2 shall be credited to or debited to the respective Non-Clearing Members by the Institution Clearing Member or – separately with regard to every Non-Clearing Member – offset against other accounts receivable and payable unless the Institution Clearing Member claims a balance as collateral.

### 3.5.7 Collateral Clearing Account

- (1) For every Institution 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 3.4.6,
  - (b) additions and disposals of the securities collateral deposited in the CBF Pledged-Securities Account,
  - (c) if applicable, revenue from the utilisation of collateral and

- (d) the amounts which might be credited to the separate Collateral Clearing Account of this Institution Clearing Member according to paragraph 3, if applicable, are considered.
- (2) With regard to every Standard Collateral Clearing Account for every Institution Clearing Member ECC shall keep the following separate Collateral Clearing Accounts as sub-accounts of the Standard Collateral Clearing Accounts for the purpose of the separate calculation and administration of collateral in accordance with the following provisions:
- (a) with regard to Special Segregated Participants separate Collateral Clearing Accounts for every (i) Special Segregated Non-Clearing Member and (ii) Omnibus Account in accordance with paragraphs 3 and 4,
  - (b) with regard to General Omnibus Participants a separate Collateral Clearing Account (“General Omnibus Collateral Clearing Account”) in accordance with paragraphs 5 to 7 in as far as this was requested by the Institution Clearing Member and
  - (c) with regard to Simple Omnibus Participants one or several separate Collateral Clearing Accounts (“Simple Omnibus Collateral Clearing Accounts”) in accordance with paragraphs 5 to 7 in as far as this was requested by the Institution Clearing Member.
- (3) In the event of passing-through of collateral (sections 3.4.8 et seq.), a separate Collateral Clearing Account is kept as a sub-account of the Standard Collateral Clearing Account of the Institution Clearing Member for every Segregated Non-Clearing Member or every Omnibus Account for the purpose of the separate calculation and administration of collateral. On such a separate Collateral Clearing Account the followings funds shall be taken into account
- (a) The respective amount credited to the Segregated Cash Account of the respective Special Segregated Non-Clearing Member or to the respective Omnibus Account,
  - (b) the value of the securities transferred to the Segregated CBF Pledged-Securities Account of the Special Segregated Non-Clearing Member or to the Omnibus Account and
  - (c) if applicable, revenue from the utilisation of collateral
- Apart from this, the separate Collateral Clearing Accounts are treated as a part of the Collateral Clearing Account of the Institution Clearing Member.
- (4) The value of the collateral entered in the separate Collateral Clearing Account of a Special Segregated Non-Clearing Member or Omnibus Account is only taken into account with regard to the collateral requirements of ECC towards the Institution Clearing Member with regard to this Special Segregated Non-Clearing Member or Omnibus Account.
- (5) An Institution Clearing Member can request that for the purpose of separate calculation and administration of collateral for Non-Clearing Members and Clients
- (a) a separate Collateral Clearing Account (“General Omnibus Collateral Clearing Account”),  
or

- (b) one or more separate Collateral Clearing Accounts (“Simple Omnibus Collateral Clearing Account”)

are kept as a sub-account of the Standard Collateral Clearing Account. On these separate Collateral Clearing Accounts

- (a) the amounts credited to the respective Segregated Cash Account and
- (b) the value of the securities transferred to the CBF Pledged-Securities Account for the corresponding securities Clearing Account and
- (c) if applicable, revenue from the utilisation of collateral

shall be considered. Otherwise, these separate Collateral Clearing Accounts shall be treated as part of the Institution Clearing Member’s Standard Collateral Clearing Account.

- (6) Sums of an amount which also offset any potential shortfalls in the separate Collateral Clearing Accounts of the Special Segregated Participants and Simple Omnibus Collateral Clearing Accounts must be booked within the Standard Collateral Clearing Account or the General Omnibus Collateral Clearing Account – without consideration of the sums in the separate Collateral Clearing Accounts of the Special Segregated Participants and the Simple Omnibus Collateral Clearing Accounts. The amounts which are not recorded in separate Collateral Clearing Accounts are liable for all shortfalls. The amounts booked within the General Omnibus Collateral Clearing Account are liable for the General Omnibus Participants and any possible shortfalls in the Margin Requirement of Special Segregated Participants and Simple Omnibus Participants.
- (7) The requirements of Article 39 EMIR in conjunction with Article 48 EMIR are complied with as follows:
  - (a) The assets corresponding to positions of the Special Segregated Participants consist of:
    - the sum of the amounts booked on the separate Collateral Clearing Accounts for the Special Segregated Participants,
    - Trading Participant Collateral of a Non-Clearing Member which were pledged according to section 3.4.12 or section 4.9.2 paragraph 4,
    - Trading Participant Collateral in Emission Rights delivered by a Non-Clearing Member at the behest of its Institution Clearing Member pursuant to section 3.4.13,
    - the share of the amounts booked in the General Omnibus Collateral Clearing Account which corresponds to the insufficient cover of the Margin Requirement through the separate Collateral Clearing Account of this Special Segregated Participant with insufficient coverage of the General Omnibus Collateral Clearing Account being distributed proportionately to agent position accounts and the accounts of the Non-Clearing Members in accordance with the Margin Requirements,
    - the share of the amounts booked on the Standard Collateral Clearing Account which corresponds to the Margin Requirement from the separate Collateral Clearing Account of this Special Segregated Participant in as far as no General Omnibus Col-

lateral Clearing Account with an insufficient cover of the Standard Collateral Clearing Accounts first having an effect on agent position accounts and accounts of the Non-Clearing Members (without making the share negative as a result) and then being distributed proportionately to agent position accounts and accounts of the Non-Clearing Members in accordance with the Margin Requirements.

- (b) The assets corresponding to positions of the Simple Omnibus Participants consist of:
- a Non-Clearing Member's Trading Participant Collateral pledged according to section 3.4.12 or section 4.9.2 paragraph 4 or Trading Participant Collateral in Emission Rights delivered by a Non-Clearing Member at the behest of its Institution Clearing Member pursuant to section 3.4.13, as well as
  - the share of the amounts recorded in the Simple Omnibus Collateral Clearing Account which correspond to the ratio of the Margin Requirement of a single agent position account or Non-Clearing Member to the sum of the Margin Requirements of all agent positions accounts or Non-Clearing Member which are allocated to the Simple Omnibus,
  - the share of the amounts recorded in the General Omnibus Collateral Clearing Account, which corresponds to the shortfall of the Margin Requirement by the separate Collateral Clearing Account of this Simple Omnibus Participant, whereas shortfalls in the General Omnibus Collateral Clearing Account are distributed proportionally to the respective Margin Requirements to the agent position accounts and the accounts of the Non-Clearing Members,
  - If no General Omnibus Collateral Clearing Account is established, the share of the amounts booked in the Standard Collateral Clearing Account which corresponds to the shortfall in the Margin Requirement from the separate Collateral Clearing Account of this Simple Omnibus Participant with an insufficient cover of the Standard Collateral Clearing Accounts, whereas shortfalls of the Standard Collateral Clearing Account first having an effect on agent position accounts and accounts of the Non-Clearing Members (without making the share negative as a result) and then being distributed proportionately to agent position accounts and accounts of the Non-Clearing Members in accordance with the Margin Requirements.
- (c) The assets, which are assigned to the respective position accounts of the General Omnibus Participants, consist of:
- a Non-Clearing Member's Trading Participant Collateral pledged according to section 3.4.12 or section 4.9.2 paragraph 4 or Trading Participant Collateral in Emission Rights delivered by a Non-Clearing Member at the behest of its Institution Clearing Member pursuant to section 3.4.13, as well as
  - the share of the General Omnibus Collateral Clearing Account which corresponds to the Margin Requirement of the General Omnibus Participant with the insufficient

cover of the General Omnibus Collateral Clearing Account being distributed proportionately to agent position accounts and to Non-Clearing Members in accordance with the Margin Requirement,

- In as far as a General Omnibus Collateral Clearing Account has not been established, the assets consist of the share of the Standard Collateral Clearing Account which corresponds to the Margin Requirements of the General Omnibus Participants with insufficient coverage first having an effect on agent position accounts and accounts of Non-Clearing Members (without making their share negative as a result) and being distributed proportionately to agent position accounts and accounts of Non-Clearing Members in accordance with the Margin Requirements.
- (d) In the event that a General Omnibus Collateral Clearing Account has been established, the assets which correspond to positions of the proprietary position accounts of the Institution Clearing Members consist of the value of the Standard Collateral Clearing Account without consideration of the sums in the separate sub-accounts of the Special Segregated Participants, of the General Omnibus Collateral Clearing Account and the Simple Omnibus Collateral Clearing Account; in the event that a General Omnibus Collateral Clearing Account has not been established, they consist of the share of the Standard Collateral Clearing Account corresponding to the Margin Requirement of the proprietary position accounts with insufficient coverage of the Standard Collateral Clearing Account having an effect on agent position accounts and accounts of Non-Clearing Members first (without making the share negative as a result). Furthermore, if the Institution Clearing Member is a Trading Participant, the Trading Participant Collateral is assigned to its proprietary position account.
- (8) The Standard and Gross Omnibus Accounts are kept as separate Collateral Clearing Accounts of the Institution Clearing Member for Indirect Clients, while they are treated as part of the Collateral Clearing Account in which the collateral of the Indirect Clearing Service Provider is booked.

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

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

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

If the Trading Participant is a DCP Clearing Member, ECC shall initiate the resulting amount to be credited or debited to the relevant Settlement Account of the DCP Clearing Member. Once crediting to the Settlement Account of ECC or to the Settlement Account of the DCP Clearing Member, respectively, has been completed successfully, ECC shall concurrently effect an inventory change in the corresponding amount in the Cash Collateral Account of the DCP Clearing Member.

### 3.5.9 Internal Inventory Accounts for Registry Based Products

- (1) ECC keeps an internal inventory account for the inventory of each Trading Participant and for each Registry Based Product for the holding of Registry Based Products which are booked to the respective registry accounts of ECC Lux or ECC. Every internal inventory account of a Non-Clearing Member is connected to its Institution Clearing Member and is exclusively used for Transactions which the Non-Clearing Member carries out via this Institution Clearing Member. Disposals and additions by means of sales and purchases and/or by means of the surrender and return on the internal inventory account are exclusively booked on said internal inventory accounts. The Registry Based Products booked in an internal inventory account substantiate the claim for proportionate delivery which the Trading Participant has towards ECC Lux or ECC respectively with regard to the total stock kept in the respective fiduciary registry account. If with regard to Trading Participant Collateral in Emission Rights passed through pursuant to section 3.4.13 the Trading Participant is a Non-Clearing Member, the Emission Rights booked in the internal inventory account shall substantiate the claim for proportionate delivery which the Institution Clearing Member has towards ECC with regard to the total stock kept in the Collateral Register Account and a corresponding claim of the Trading Participant towards its Institution Clearing Member.
- (2) Trading participants may dispose of the Registry Based Products booked on their internal inventory account from the time of booking; this shall be without prejudice to section 3.4.12 paragraph 4 and section 3.4.13 paragraph 4 and 5.
- (3) Upon a written request or a request via telefax or e-mail ([clearing@ecc.de](mailto:clearing@ecc.de)<sup>8</sup>) to ECC by the Institution Clearing Member to which the respective internal inventory account is assigned according to section 3.5.9 paragraph 1 sentence 2, the delivery of Registry Based Products to another registry account can be suspended temporarily. The request for the Institution Clearing Member's suspension is only possible within the period bindingly communicated to the Institution Clearing Member by ECC in advance and shall also apply to subsequent requests by the

<sup>8</sup> In case of error messages during the delivery of the e-mail, the ECC website shall be searched for a suitable alternative e-mail address or another form of message transmission must be chosen.

Non-Clearing Member with regard to the delivery of Registry Based Products until the suspension is revoked by the Institution Clearing Member. The Institution Clearing Member shall only demand such a suspension if this is necessary to secure unsettled claims against a Non-Clearing Member or an Institution Clearing Member; ECC will not verify this precondition.

- (4) The provisions of this section 3.5.9 do not apply to Capacity Guarantees, Guarantees of Origin and nEHS Certificates.

### **3.6 Fees and Price List**

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

### **3.7 Default Fund**

#### **3.7.1 Default Fund**

- (1) In accordance with the provisions specified herein below ECC shall maintain a Default Fund. The Default Fund consists of funds by the Clearing Members (Institution Clearing Members and DCP Clearing Members) which ECC can utilise in accordance with section 3.7.3 in case of a Default Event.
- (2) Every Clearing Member shall be obliged to furnish a contribution to the Default Fund. The amount of the contribution to be furnished by each Clearing Member is calculated by ECC in accordance with the respective calculation method ("Default Fund Contribution"). ECC will adjust the Default Fund Contribution on a monthly basis or ad-hoc if required by ECC's risk assessment. If the Clearing Member uses the possibility of passing through collateral in accordance with sections 3.4.8 et seq., ECC is entitled to demand an increased amount of Default Fund Contribution. The claim of ECC against the respective Clearing Member to furnish a Default Fund Contribution shall be due for the first time upon granting of the Clearing License and thereafter with each adjustment pursuant to paragraph 2. Section 2.1.2 paragraph 5 lit. (f) shall not be affected.
- (3) In order to secure the obligation of a Clearing Member towards ECC to make the respective Default Fund Contribution, the Clearing Member shall furnish collateral in accepted collateral according to the provisions contained in section 3.4

#### **3.7.2 Dedicated Own Resources of ECC**

ECC identifies own funds ("Skin in the Game", short "SITG") which are used in case of a Default Event before the Default Fund Contributions of non-defaulting Clearing Members. The amount of SITG takes account of the regulatory requirements; the respective current amount is published on the ECC website.

### 3.7.3 Second Skin in the Game

- (1) ECC identifies additional own funds (“Second Skin in the Game”, short “SSITG”) which are used in case of a Recovery Situation based on a Default Event or a Non-Default Event according to section 6.2.1. The SSITG is used before any Recovery Measures like the measures of loss allocations under section 3.4.6.2, the request for Additional Contributions under section 3.7.4 paragraph 5, the allocation of positions under section 3.11.8 and the cash settlement under section 3.11.9 are taken. The amount of the SSITG takes account of the regulatory requirements; the respective current amount is published on the ECC website.
- (2) If the SSITG has been used, ECC shall replenish this amount to the regulatory required amount no later than twenty (20) Business Days after the use. In the event of a further Recovery Situation due to an Default Event or a Non-Default Event during this period, ECC shall use the SSITG available at that time before taking the Recovery Measures referred to in paragraph 1.

### 3.7.4 Utilisation of the Default Fund

- (1) The Default Fund Contribution of a Clearing Member can be used in the amount determined in accordance with section 3.7.1 paragraph 2 to remedy all damage caused by the default of this or other Clearing Members (“Default Damage”) except loss of future profit (“Entgangener Gewinn”). With regard to the utilisation, ECC distinguishes between the Default Fund Contributions of Institution Clearing Members and DCP Clearing Members.
- (2) Upon a default of an Institution Clearing Member, ECC shall utilise the available assets in the order specified herein below:
  1. Margin collateral provided by the defaulting Institution Clearing Member,
  2. Other collaterals of the defaulting Institution Clearing Member than those pursuant to sections 3.7.1 et seq.,
  3. Default Fund Contribution by the Institution Clearing Member which has defaulted,
  4. SITG of ECC to the current amount,
  5. Default Fund Contributions by all other Institution Clearing Members; in this context, the contributions shall be utilised to the same proportionate shares,
  6. Default Fund Contributions by DCP Clearing Members whereby contributions shall be utilised to the same proportionate shares,
  7. SSITG of ECC in the respective current amount, unless the SSITG has already been used earlier in accordance with section 3.7.3,
  8. Additional Contributions to the Default Fund in accordance with paragraph 5 as well as additional contributions of ECC to the SITG according to paragraph 7.
- (3) In case of a default of a DCP Clearing Member, the collateral and the Default Fund Contributions are used according to the provisions in paragraph 2 with regard to No. 5 and 6 in such

way that the contributions of the DCP Clearing Members will be utilised before the contributions of the Institution Clearing Members.

- (4) If a Clearing Member in default provides the payments due after the other Clearing Members' Default Fund Contributions have already been used in their entirety or in part, ECC shall restock the contribution in reverse order as outlined in paragraph 2; in particular, the Additional Contributions and Default Fund Contributions by the other Clearing Members shall be restocked with a corresponding share, however, at maximum, up to the amount to which the Default Fund Contributions have been used.
- (5) If the assets listed in paragraph 2 No. 1 to 6 above have been used and are not sufficient to cover the Default Damage, ECC shall be entitled to request additional contributions to the Default Fund ("Additional Contribution") from non-defaulting Clearing Members to cover the remaining Default Damage ("Remaining Default Damage").
- (6) The Clearing Members shall provide the Additional Contribution by the next Business Day in the form of cash collateral in accordance with section 3.4.6 in the amount indicated by ECC in the request for Additional Contribution.
- (7) Together with the request for Additional Contribution, ECC shall also furnish a further contribution to the SITG according to section 3.7.2 ("ECC's Additional Contribution"). ECC's Additional Contribution to be furnished corresponds to the product of the Remaining Default Damage and the proportion of the respective current amount published as SITG of ECC to the sum of the Default Fund Contributions of the non-defaulting Clearing Members. ECC's Additional Contribution is for a period of ninety (90) days limited to the amount published at the moment of the Default Event. If ECC replenishes its SITG or SSITG within this period of ninety (90) days, ECC's Additional Contribution shall be reduced by the respective replenishment amounts. The current amount of ECC's Additional Contribution is published on the ECC website.
- (8) For multiple consecutive Default Events, the total Additional Contributions for each Clearing Member within the Cool-Down Period are limited by the Cool-Down Cap.
- (9) The Additional Contribution of each Institution Clearing Member corresponds to the product of the Remaining Default Damages according to section 3.7.3 paragraph 5 less the Additional Contribution of ECC and the share of the individual Institution Clearing Member's contribution on all Default Fund Contributions of the Institution Clearing Members not in default. If applicable, ECC shall reduce the required Additional Contribution of an Institution Clearing Member by the excess amount furnished by this Clearing Member above the required Default Fund Contribution established by ECC according to section 3.7.1 paragraph 2, if any.
- (10) In as far as Default Damage remains after the utilization of the Additional Contributions of ECC and the remaining Institution Clearing Members, ECC shall request Additional Contributions from the DCP Clearing Members. The amount of the Additional Contribution of any DCP Clearing Member corresponds to the product of the Remaining Default Damages according to section 3.7.3 paragraph 5, less the additional contribution of ECC, less the additional contributions of the Institution Clearing Members according to section 3.7.3 paragraph 9 and the share of each

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

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

### 3.7.5 Replenishment of the Default Fund Contributions

After the utilisation of the Default Fund according to section 3.7.3, ECC shall re-calculate the amount of the required Default Fund Contributions of the Clearing Members in accordance with section 3.7.1 paragraph 2 and request replenishment of the Default Fund Contribution (“Replenishment”). In its calculation, ECC takes into account, if applicable, a current Cool-Down Cap, unused Default Fund Contributions and unused Additional Contributions.

Each Clearing Member shall be obliged to furnish accepted collateral according to the provisions stipulated in section 3.4 to fulfil the Replenishment upon notice of ECC (“Replenishment Notice”). The Replenishment shall cover future Default Events occurring after the relevant Replenishment Notice has been sent.

If the Cool-Down Cap prevents the full Replenishment of the Default Fund, ECC may request margins in form of cash collateral in accordance with section 3.4.6 from the relevant Clearing Members until the end of the Cool-Down Period.

### 3.7.6 Contributions to the Default Fund in case of a Termination of the Clearing Membership

- (1) In case ECC or a Clearing Member terminate the clearing license, ECC shall release the respective Default Fund Contribution furnished by the Clearing Member concerned one (1) month after the termination of the clearing license becomes effective in accordance with section 2.1.8 or at the end of the Cool-Down Period whatever happens later.
- (2) A Clearing Member shall not be obliged to provide Additional Contributions or Replenishment if a termination of its clearing license has become effective before the start of a Cool-Down Period.
- (3) If a Clearing Member has notified the termination of its clearing license at the latest within ten (10) days after a Default Event and such termination has become effective within the Cool-Down Period established by the relevant Default Event, the Clearing Member shall not be obliged to provide Additional Contributions or Replenishment Contributions after the end of the Cool-Down Period established by the relevant Default Event.
- (4) ECC may require a terminating Clearing Member to conduct only risk-reducing position changes and/or Transactions resulting from the Clearing Member’s obligations under these Clearing Conditions (i.e. participation in or support of ECC’s Default Management).

## 3.8 Default

### 3.8.1 Occurrence of Default

- (1) A Clearing Member shall be in default even without a warning in case:
  - (a) the Clearing Member does not furnish the margin demanded by ECC, contributions and other payments according to section 3.7, the daily settlement payments (Variation Margin), premiums or fees in due time or
  - (b) the Clearing Member has omitted to perform other obligations (e.g. due deliveries, acceptance of delivery or payments) to be fulfilled towards ECC or the respective Settlement Entity in accordance with these Clearing Conditions.
- (2) Clearing Members shall inform ECC right away in case they cannot perform an obligation arising from the Transactions on the markets, in particular an obligation regarding the provision of margins as well as the daily settlement payments.
- (3) ECC and the respective Settlement Entity may take recourse to a Clearing Member for cases of damage which they, other Clearing Members or Non-Clearing Members sustain on account of a default caused by such Clearing Member. Regardless of the occurrence of a case of damage at ECC or the respective Settlement Entity, the Clearing Member which has defaulted shall be obliged to pay liquidated damages to the amount of 0.5% of the outstanding sum, and at least to the amount of 500 EUR, per calendar day, plus an adequate interest rate on the outstanding sum to the amount of 5% above the respectively valid base interest rate.

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

### 3.8.2 Technical Default

- (1) In case a Clearing Member furnishes evidence substantiating that one of the failures specified under section 3.8.1 paragraph 1 lit. (a) is not based on insolvency and that the Clearing Member in question will fulfil his obligations forthwith, ECC may dispense with the application of the provisions designed for a case of a default specified in section 3.8.1 and in sections 3.9 and 3.10. 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 EUR or in a Foreign Currency, ECC may demand the immediate payment of the equivalent of the amount which was not received in consideration of haircuts and within the period specified in EUR or a Foreign Currency 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 EUR or in the Foreign Currency. ECC is entitled to exchange the required amount in the respective Foreign Currency at its sole discretion and to use it for Foreign Currency settlement. Paragraph 5 shall not be affected.

- (5) ECC can have recourse to a Clearing Member for cases of damage which have been caused to it or to other Clearing Members by a technical default caused by such Clearing Member. Regardless of the occurrence of a case of damage at ECC, the Clearing Member which is in technical default shall be obliged to pay liquidated damages in accordance with section 3.8.1 paragraph 3.

### **3.8.3 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 rules of the respective market. Before the execution of each measure which has been applied for, ECC or the market should hear the Clearing Member. Such hearing can be dispensed in case it is not required in consideration of the circumstances regarding the specific individual case.
- (2) In the selection of measures ECC shall take the interests of the Clearing Member concerned and of its Non-Clearing Members into account under consideration of the own interests of the Clearing Member and of the (general) interest in safeguarding proper trading on the exchange and of proper settlement of Transactions.
- (3) In case of a default according to section 3.8 or a termination according to section 3.9, ECC can use, in particular, the Emergency Member Stop process as outlined in section 3.1.1 paragraph 4 towards the Clearing Member concerned as well as towards all Non-Clearing Members of this Clearing Member as a measure according to paragraph 1. As a result of the use of the Stop Button, the suspension of the concerned Clearing Member as well as of all Non-Clearing Members of this Clearing Member from the EEX Markets is requested and carried out technically right away. ECC reserves the right to fully or partially reject Derivatives Market Transactions which involve the Clearing Member concerned and its Non-Clearing Members as a counterparty and are to be imported into the ECC Clearing System from the activation of the Stop Button onwards and under consideration of the overall risk for ECC. It will inform the markets concerned of this fact forthwith. Furthermore, after the activation of the Stop Button, suspension requests will be sent to all other markets to which the Non-Clearing Member is admitted as a Trading Participant and the suspension also requested for these markets. With the activation of the Stop Button, ECC also declares at the same time that, for the time being, it is no longer willing to settle further Trades of this Institution Clearing Member and of all Non-Clearing Members of this Clearing Member which are concluded on the markets. Unsettled Trades of all accounts for the clearing of which the Clearing Member is responsible may also be closed or transferred to another Clearing Member or, with the consent of the Institution Clearing Member of such Non-Clearing Member, to another Non-Clearing Member. ECC is not liable for losses incurred by a Non-Clearing Member in the event of its suspension from trading in the markets.

- (4) A default can result in a termination according to section 3.9 as determined by ECC.

### 3.9 Termination and Close-out Netting Provisions

#### 3.9.1 Termination in the Relationship between a Clearing Member and ECC

- (1) In the event that
- (a) default of a Clearing Member as per section 3.8.1 (except for a technical default as per section 3.8.2) or (ii) any other circumstance arises giving ECC the right to terminate the Clearing Agreement with this Clearing Member for good cause, or
  - (b) (i) 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 3.9.1 to ECC at least ten (10) Business Days prior to such termination or (ii) in relation to ECC other circumstance arise giving the Clearing Member the right to terminate the Clearing Agreement with ECC for good cause,

the following shall apply: The rules in No. 7 paragraph 1 sentence 1 and 4 (right to terminate for a material reason and exclusion of the right to a partial termination),<sup>9</sup> No. 7 paragraph 3 (termination, compensation claims),<sup>10</sup> No. 8 (claims to damages and compensation for benefits received)<sup>11</sup> and No. 9 paragraph 1 (unpaid amounts)<sup>12</sup> of the template text of the Master Agree-

<sup>9</sup> No. 7 paragraph 1 sentence 1 and 4 of the Master Agreement has the following wording: "Where transactions have been entered into and not yet fully settled, the Agreement can only be terminated by either party for material reason. (...) A partial termination, in particular, a termination of some and not all transactions is excluded."

<sup>10</sup> No. 7 paragraph 3 of the Master Agreement has the following wording: "In the event of termination in accordance with paragraph 1 (hereinafter called "Termination"), neither party shall be obliged to make any further payment or perform any other obligation under No. 3 paragraph 1 which would have become due on the same day or later; the relevant obligations shall be replaced by compensation claims in accordance with No. 8 and 9."

<sup>11</sup> No. 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 No. 9 paragraph 4 or, where agreed, No. 12 paragraph 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 paragraph 1 as to the calculation of damages shall apply mutatis mutandis."

<sup>12</sup> No. 9 paragraph 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 EUR, for which purpose a money equivalent in EUR shall be determined, in accordance with the principles set forth in No. 8 paragraph 1 Sentences 2 to 4, in respect of claims to the performance of such other overdue obligations."

ment for Financial Derivatives Transactions (2001 version), in the version in which it was published by Bundesverband deutscher Banken e.V. [Federal Association of German Banks, registered association] ("Master Agreement"), shall apply subject to the following conditions:

- References to the "Contract" in the rules of the Master Agreement referred to above (1) shall be read as references to the Clearing Agreement with the Clearing Member concerned and to Transactions covered by it, while references to a "Party" (2) shall be read as references to the Clearing Member concerned or to ECC.
- For the purposes of the provisions of the Master Agreement referred to herein above every Derivatives Market Transaction, every open delivery or acceptance obligation from Derivatives Market Transactions which have not been fully settled yet and from every Spot Market Transaction which has not yet been fully fulfilled is considered a separate Transaction within the meaning of the Master Agreement.
- The following provision will be added to No. 7 paragraph 1 sentence 1 of the Framework Agreement: The term "good cause" used herein includes the following circumstances: An event of insolvency, where an application for the commencement of insolvency proceedings or any other comparable proceedings is filed in respect of the assets of a party, and such party has either (i) filed the application itself or an authority or public entity which is entitled to file for such proceedings in relation to this party has filed for such proceedings, or (ii) the relevant party is generally unable to pay its debts or is otherwise in a situation that justifies the commencement of such proceedings or (iii) a competent supervisory authority applies for bankruptcy or other insolvency proceedings to be initiated with regard to a party or if such authority takes a measure which is likely to prevent the party from performing its payment obligations under Transactions on account of provisions under bankruptcy or insolvency law or similar provisions which are material for the Party's business operations; the insolvency of a company which can exercise control over a party within the meaning of § 17 AktG or of comparable national rules (ultimate parent company) shall correspond to a "good cause" regarding a Clearing Member. For US-Clearing Members a "good cause" shall also be constituted, if (a) insolvency proceedings are involuntarily commenced against a US-Clearing Member (i.e. by a creditor or regulator) but not dismissed within thirty (30) days, or (b) if a receiver is appointed for all or a substantial portion of a US-Clearing Members assets; or (c) if an assignment occurs for the benefit of a US-Clearing Members' creditors.
- In No. 8 paragraph 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 section 3.9.1 paragraph 1 lit. (a) and with the phrase "without undue delay; however, at the latest on the fifth Business Day after the opening of the insolvency proceedings" in the cases as per section 3.9.1 paragraph 1 lit. (b). In No. 8 paragraph 1 sentence 4 the words "or knowledge of the insolvency case" shall be deleted.
- If ECC is the party giving notice, replacement Transactions shall be concluded pursuant to No. 8 of the Master Agreement in as far as this is provided for in section 3.10.

- In deviation to No. 9 paragraph 1 of the Master Agreement unpaid amounts and any other unperformed obligations and the damages which are payable ("Payable Amount") shall be determined in USD for US-Clearing Members and in DKK for DCP Clearing Members domiciled in Denmark. ECC shall use fair market conditions to determine the exchange rate for the conversion of the Payable Amount.
- (2) Regardless of the termination of the Clearing Agreement with a Clearing Member according to paragraph 1, the rights and obligations of this Clearing Member, of Non-Clearing Members, of ECC and the respective Settlement Entity shall continue to apply according to section 3.3.5 paragraph 3.

### **3.9.2 Termination in the Relationship between the Non-Clearing Member and the Institution Clearing Member**

- (1) Subject to the provisions below and to the provisions in section 3.4.8 paragraph 12 the Institution 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 Institution 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 Institution Clearing Member or the Non-Clearing Member according to section 2.2.2 paragraph 6.
- (2) If no close-out netting agreement between an Institution Clearing Member and a Non-Clearing Member has been concluded all corresponding Transactions of the Institution Clearing Member with the Non-Clearing Members that settle their Transactions via this Institution Clearing Member shall be terminated at the same time in the event of the termination of the clearing agreement as per section 3.9.1 paragraph 1 lit. (a). These obligations shall be replaced by a uniform compensation claim between the respective Non-Clearing Member and the Institution Clearing Member, the amount of which shall be calculated by ECC pursuant to section 3.9.1 paragraph 1 on the basis of the calculation as per section 3.10 and communicated by ECC to the Non-Clearing Member and the Institution Clearing Member.
- (3) If a close-out netting agreement between the Institution Clearing Member and a Non-Clearing Member exists, the rights of ECC under these Clearing Conditions shall remain unaffected by this close-out-netting-agreement.
- (4) In the event of the termination of the Clearing Agreement according to section 3.9.1 paragraph 1 lit. (b) or (c), all corresponding Transactions between the Institution Clearing Member and the Non-Clearing Members who settle Transactions via this Institution Clearing Member shall terminate at the same time. These obligations under these Transactions shall be replaced by a uniform compensation claim between the Non-Clearing Member and the Institution Clearing Member, the amount of which shall be calculated by the Institution Clearing Member on the basis of the settlement with ECC.

If a close-out netting agreement has been concluded between an Institution Clearing Member and a Non-Clearing Member or a Client, the termination of the Clearing Agreement pursuant to section 3.9.1 paragraph 1 lit. (b) or (c) shall constitute a cause for termination within the meaning

of this close-out netting agreement between an Institution Clearing Member and a Non-Clearing Member or customer. The uniform compensation claim between the Institution Clearing Member and the Non-Clearing Member or client shall be calculated by the Institution Clearing Member on the basis of this close-out netting agreement in this case.

### **3.10 Legal Consequences upon Termination**

#### **3.10.1 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 3.9.1, ECC shall take the measures outlined herein below in the sequence specified below, in particular, in order to safeguard the fulfilment of the requirements under Article 48 EMIR – if necessary by including the respective markets:

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

In as far as the positions of Special Segregated Participants have been transferred according to No. 1 sentence 1-3, ECC shall initiate the transfer of the assets of these Special Segregated Participants which are not allocated to ECC for the fulfilment of the claims to an account at the new Clearing Member specified by the respective Special Segregated Participant in accordance with section 3.10.3 lit. (a) upon a request by these participants. In this context, the transfers of assets only refer to those assets which are allocated to the corresponding separate Collateral Clearing Accounts.

In as far as all position in a Simple Omnibus or in the General Omnibus have been transferred to the same new Clearing Member or in as far as positions of Special Segregated Participants have been transferred, ECC shall initiate the transfer of assets which are not needed for the fulfilment of own claims to the new Clearing Member by transferring cash collateral and proceeds of the utilisation of security collateral upon a joint request by all clients and Non-Clearing Members concerned to an account specified by these at the new Clearing Member in accordance with the procedure outlined in section 3.10.3 lit. (b) (ii) – (iv) settling the Parallel Claim referred to in section 3.4.1 paragraph 6. Trading Participant Collateral as well as Registry Based Products shall not be affected by the transfer.

2. Aggregating of the accounts receivable or payable from the position transfer according to No. 1 which might exist and of all other accounts receivable and payable which have fallen

due into one net account receivable or payable in accordance with section 3.3.6 paragraphs 1 and 2 subject to the condition that such summary is effected across currencies.

3. Netting out of the positions not transferred according to No. 1 into a net position regardless of whether the underlying Derivatives Market Transactions are booked on agent position accounts or proprietary position accounts. Afterwards, closing-out of this net position by ECC, the Market or by a Trading Participant determined by ECC and aggregating of the amount resulting from closing-out with the net account receivable or net account payable into an offsetting claim according to section 3.9.1.
4. If the Clearing Member has a net account receivable from ECC, the surplus shall be refunded to the Clearing Member.
5. Use of the collateral provided by the Clearing Member (including the collateral provided according to section 3.4.11) and of the collateral provided by the Non-Clearing Members in Trading Participant Collateral according to sections 3.4.12, 3.4.13 and 4.9.2 paragraph 4 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 3.10.2.

In as far as necessary, the contributions by the Clearing Member to the Default Fund according to section 3.7.3 and Collateral Replacing Equity (section 2.1.2 paragraph 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 equitable discretion.

6. Refunding of collateral to the respective beneficiaries according to 3.10.3 in as far as the collateral has not been used.

### 3.10.2 Utilisation of Collateral

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

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

by proportionally allocating, at maximum, an amount which would result if transferring, netting-out and closing-out were exclusively effected with regard to this account according to section 3.10.1 No. 1 to 3 to these accounts:

- (i) the assets allocated to this account according to section 3.5.7 paragraph 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 3.9.1.

- (ii) in as far as the amount allocated to an account is not covered by the allocated assets according to section 3.5.7 paragraph 6, the assets allocated to the Clearing Member's proprietary position account according to section 3.5.7 paragraph 6 can be used as collateral.
- (iii) in as far as, in the case of position accounts of Simple or General Omnibus Participants, the amount allocated to the agent position account or the accounts of a Non-Segregated Non-Clearing Member is not covered by the assets allocated to the account according to section 3.5.7 paragraph 6, assets (except Trading Participant Collateral of the Non-Clearing Members) allocated to other agent position accounts of the same Simple or General Omnibus according to section 3.5.7 paragraph 6 can also be used as collateral.
- (iv) if the amount allocated to a position account is not covered by the assets allocated to the account according section 3.5.7 paragraph 6 and if this position account is not allocated to a General Omnibus Participant, assets booked within the Standard Collateral Clearing Account or the General Omnibus Collateral Clearing Account (except for Trading Participant Collateral of the Non-Clearing Members) which are allocated to other agent position accounts or accounts of Non-Segregated Non-Clearing Members according to section 3.5.7 paragraph 6 can be used as collateral. In this context, assets which are booked in the separate Collateral Clearing Accounts of the Special Segregated Participants and the Simple Omnibus Collateral Clearing Accounts are not taken into account.

### 3.10.3 Transfer/Distribution and Return of unused Collateral

For the purpose of the fulfilment of its obligations under Article 48 paragraph 7 EMIR, ECC shall effect the distribution of assets allocated according to section 3.5.7 paragraph 6 which were not needed to satisfy claims (except for the claim according to section 3.4.1 paragraph 6) of ECC as follows:

- (a) With regard to assets on separate Collateral Clearing Accounts of a Special Segregated Participant ECC shall initiate the return to the Segregated Non-Clearing Member or the Clearing Member or the Omnibus Representative by ECC releasing the collateral pledged to it according to section 3.4.11 paragraph 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 3.5.7 paragraph 1 or the General and Simple Omnibus Collateral Clearing Account which were not needed to satisfy the claims of ECC (with the exception of the Parallel Claim according to section 3.4.1 paragraph 6) are used in the following manner:
  - (i) Assets which are allocated to positions of Clients according to section 3.5.7 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 3.4.8) ECC shall request the Insolvency Administrator 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 3.4.1 paragraph 6 without undue delay without these assets becoming part of the bankruptcy estate. If a corresponding confirmation is provided by the Insolvency Administrator, ECC shall return the assets which have not been used according to section 3.10.1 or which have not been returned according to section 3.10.3 lit. (a) to the Insolvency Administrator upon the express request by the Known Participant for its account. The Parallel Claim shall expire upon the return to the Clearing Member, while any obligations of the Clearing Member to the Known Participant which might exceed section 3.4.1 paragraph 6 shall remain unaffected. If there is no Insolvency Administrator or if an Insolvency Administrator has not been appointed yet, ECC shall act directly towards the Clearing Member pursuant to this paragraph.
- (iii) If a Known Participant does not wish the fulfilment of the collateral obligations of its Clearing Member via the Insolvency Administrator (e.g. because the Insolvency Administrator has not submitted the confirmation according to section 3.10.3 lit. (b) (ii) within the period specified by ECC), ECC will – in order to settle the Parallel Claim as referred to in section 3.4.1 paragraph 6 – use the collateral furnished by the Clearing Member, in as far as a utilisation has not been taken place according to section 3.10.2 or a distribution of assets according to section 3.10.3 lit. (b) (i) has not taken place. Proceeds of the utilisation of collateral will be distributed to the Known Participants subject to the conditions outlined below:
- In order to determine the amount of the Parallel Claim according to section 3.4.1 paragraph 6, 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 Insolvency Administrator within a period set by ECC in the respective individual case.
  - If such a confirmation by the Insolvency Administrator 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 should 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 3.5.7 paragraph 6.
  - ECC shall allocate assets of the Standard Collateral Clearing Account or of the General Omnibus Collateral Clearing Account or the Simple Omnibus Collateral Clearing Account (without considering the assets in the separate Collateral Clearing Accounts of the Special Segregated Participants and in the Simple Omnibus Collateral Clearing Accounts) which have not been used according to section 3.10.2 or which have not been distributed according to section 3.10.3 lit. (b) (i) which are allocated to accounts of Known Participants according to section 3.5.7 paragraph 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 paragraph 1 BGB).
  - After such payment, the Parallel Claim under section 3.4.1 paragraph 6 shall also be considered fulfilled.
- (iv) ECC shall re-transfer any residual amount or residual collateral which might remain of assets allocated to the Known Participants (section 3.5.7 paragraph 6) (with the exception of Trading Participant Collateral of a Non-Clearing Member which were pledged according to section 3.4.12 and section 4.9.2 paragraph 4 or passed through according to section 3.4.13). In as far as there are liabilities which the Clearing Member has towards these Known Participants under these Clearing Conditions with regard to these assets which have not already been fulfilled by section 3.10.3 lit. (b) (iii), the return shall be effected for the account of the Known Participants.

The Parallel Claim 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 3.4.1 paragraph 6 shall remain unaffected.

ECC shall re-transfer to the Clearing Member any residual amount or collateral remaining thereafter.

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

### **3.11 Default Management Auctions**

- (1) Positions can be closed out according to section 3.10.1 No. 3 in the framework of OTC auctions (Default Management Auctions). ECC is authorised to auction Spot Market products in accordance with the following rules as well. In this case, the rules regarding positions apply accordingly for Spot Market products.
- (2) Participation in Default Management Auctions is voluntary in principle; however in accordance with the provisions regarding its default management process ECC can also require a Non-Clearing Member or Clearing Member to take part in Default Management Auctions (Mandatory Auctions). ECC will only order a Mandatory Auction after it has taken all measures in accordance with the rules of its default process which it considers required and reasonable for closing out, in particular, at least conduct one Default Management Auction on voluntary basis.
- (3) The following rules apply to Default Management Auctions.

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

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

### 3.11.2 Special Provisions for the Mandatory Auction

- (1) If Trading Participants were requested by ECC by an auction letter (Auction Letter) to take part in Mandatory Auctions, they are obliged to submit bids in these auctions in accordance with the more detailed provisions in the Auction Letter (in particular in respect of Auction Unit, Auction Format and minimum bid size, cf. section 3.11.7).
- (2) With the approval of ECC, Trading Participants can appoint a third party towards ECC, in particular, their Institution Clearing Member, to take part in a Mandatory Auction for them. If the appointed third party confirms the appointment, it assumes all rights and obligations under the auction, including the provisions in section 3.11.7, on behalf of the Trading Participant. The third party must be entitled to take part in the ECC Default Management Auctions and it must be admitted to trading on the partner exchanges in, at least, the same product groups as the respective Trading Participant concerned. Unless otherwise specified in writing, the third party is appointed until the appointment is revoked by ECC or the Trading Participant.
- (3) Instead of participating in future Mandatory Auctions ECC offers Trading Participants, to apply for an exemption and to pay a non-participation fee in each event. Such request will only be approved if the Trading Participant demonstrates to ECC that legal provisions, bylaws or other provisions prohibit participation in an auction or the holding of open positions in general or overnight. The request must be submitted at the latest four (4) weeks before a potential Mandatory Auction. ECC does not have to render a decision on delayed requests. Unless otherwise specified in the approval letter, the approval of the request is valid until it is revoked by ECC or by the Trading Participant.
- (4) The method for calculating the non-participation fee is determined by ECC and published on the ECC website. The non-participation fee is charged at the time at which ECC carries out a Mandatory Auction. To the degree to which the losses caused by the default of a Clearing Member exceed the collateral furnished by it, the non-participation fee is used to cover these losses. The remaining amounts of the non-participation fee are distributed proportionately (based on trading volume) to those Trading Participants whose bids ECC has accepted.

### 3.11.3 Execution of the Default Management Auction

- (1) Before every auction, ECC informs all invited Trading Participants of the Auction Units to be auctioned and the Auction Format in an Auction Letter sent out via e-mail. The Auction Letter includes a request for the Trading Participants to submit Bids for the Auction Units to be auctioned using the auction form specified by ECC (invitatio ad offerendum).
- (2) The Auction Letter specifies a deadline for the submission of bids (Bidding Period). Bids which are submitted after the expiry of this deadline are generally not considered. At the same time, the Auction Letter also specifies a deadline for the execution of the auction after the end of the Bidding Period (Auction Period). Bids remain valid until the end of the Auction Period.

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

#### **3.11.4 Submission of Bids**

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

### 3.11.5 Acceptance of Bids

- (1) During the Auction Period, ECC carries out the auction per product in accordance with the principles specified in paragraph 2. Auctions are carried out as “pay-as-bid”<sup>13</sup> - auctions. Trades are concluded by ECC accepting bids subject to the condition precedent of a successful registration according to section 3.11.6.
- (2) Bids are first sorted by price for each Auction Unit with the respective better bid taking priority. If the price is the same, the chronological order of the submission of the bids shall be decisive with the respective earlier bid having priority (price-time priority). ECC shall only accept orders until the respective quantity to be auctioned has been sold. Therefore, bids can also be accepted in part. Bids which according to ECC’s assessment deviate significantly from the current fair market value or – outside of Mandatory Auctions – the acceptance of which increases the risk in the remaining portfolio to be closed out, can remain unconsidered. If the bids are not sufficient to sell the entire volume to be auctioned, a sale of partial quantities is also possible.
- (3) At the latest upon the end of the Auction Period the successful bidders are informed by ECC of the bids which ECC accepts. ECC is not obliged to inform bidders of the non-acceptance of bids.

### 3.11.6 Registration and Settlement of the Trades

- (1) With the successful registration of the Trade in accordance with the rules of the respective market, a binding contract regarding the position to be auctioned is concluded between ECC and the Trading Participant.
- (2) The Trades of the successful bidders are registered at the respective bid price. Registration is effected by ECC in the name and on behalf of the successful bidder immediately after acceptance of the bids according to section 3.11.5 paragraph 3. ECC may also use trading-on-behalf services of the respective market for registration. With their participation in the auction the Trading Participants authorise ECC and, if applicable, the respective market to register the Trades concluded in their name and undertake to provide all other acts of cooperation which are required for the registration. The Trading Participants will be informed by ECC of registrations without undue delay.

### 3.11.7 Minimum Bid Size

- (1) ECC can allocate individual minimum bid sizes per position to be auctioned to every Trading Participant in a Mandatory Auction. The minimum bid size of a Trading Participant corresponds to his share in the position to be auctioned and is rounded up to a full contract. The share per Trading Participant and position to be auctioned corresponds to the share of the current net position of a Trading Participant without observing the algebraic sign on the net open interest

<sup>13</sup> “Pay-as-bid” auctions are auctions in which the successful bidder receives the offered Auction Unit of a certain product at the price offered by the bidder. There is no uniform pricing on the basis of all bids submitted.

of all Trading Participants<sup>14</sup> in a mandatory auction at the last Business Day before the auction. The positions to be auctioned are adjusted for cascading carried out during Batch Processing and booked-out maturities and for successfully allocated bids to all participants from preliminary auctions. However, the minimum bid size corresponds, at a maximum, to the net position of this Trading Participant in this contract. Moreover, in determining the shares and the minimum bid sizes of the Trading Participants, ECC will fully consider the bids accepted for these positions in previous auctions for closing-out of the positions of the same Clearing Member.

- (2) If – in a Mandatory Auction – a Trading Participant does not submit a bid or submits a bid regarding a number of contracts below the minimum bid size or submits a bid at prices which, in the opinion of ECC, deviate significantly from the fair market value, ECC can carry out an allocation of positions remaining after the Default Management Auction in accordance with section 3.11.8. ECC will agree on this opinion - as far as economically reasonable within the specified deadlines – with the market operations department (or equivalent function) of the markets where the corresponding products are traded.

### 3.11.8 Allocation of Positions after Default Management Auctions

- (1) If positions to be closed out remain after a Mandatory Auction (“Remaining Positions”), ECC may allocate these Remaining Positions to the Trading Participants in the Mandatory Auction in the following order of priority:
- (a) Level 1: All Trading Participants that have not taken part in the auction. Within level 1, Remaining Positions are allocated on a pro rata basis in accordance with the share of the minimum bid sizes of a Trading Participant in proportion to the total of the minimum bid sizes of all Trading Participants within this level.
  - (b) Level 2: All Trading Participants that have not bid the minimum bid size for the position to be auctioned according to section 3.11.7. Within level 2, Remaining Positions are allocated on the basis of the difference between the bid size submitted and the minimum bid size.
  - (c) Level 3: Trading Participants that have submitted bids on the minimum bid sizes allocated to them in these positions at prices which, in the opinion of ECC, deviate significantly from the fair market value. Within level 3 Remaining Positions are allocated based on the difference between the respective bid prices and the fair market value or – if available – at the daily settlement price.
- (2) The allocation is effected to the Trading Participants at a maximum up to the amount of the minimum bid size according to the order of priority stipulated in paragraph 1 for every Remaining Position for closing-out at this point in time. Positions are only assigned to a certain level if Remaining Positions exist after the allocation within a preceding priority. In the event of an allocation within level 2 and 3, only those bids/missing bids of the Trading Participant (bid or

<sup>14</sup> The sum of net long and short positions in a single contract per Trading Participant observing the algebraic sign, summed over all Trading Participants without observing the algebraic sign.

ask) which were relevant for the position to be auctioned (bid or ask side) are considered. Remaining Positions remaining after the calculation of the share (including rounding) are allocated at random.

- (3) The price at which a Remaining Position is allocated to the Trading Participants corresponds to the daily settlement price established by the partner exchanges on the day of the auction.
- (4) Trading Participants which Remaining Positions were allocated to according to the above provisions will be informed of the allocation by ECC forthwith. The Trades are registered in accordance with section 3.11.6.

### 3.11.9 Cash Settlement

- (1) In case of any Remaining Positions after at least one Default Management Auction, ECC may terminate and settle in cash, in whole or in part, such Remaining Transactions with opposing positions ("DMP Cash Settlement Transactions") of a non-defaulting Clearing Member in accordance with the following provisions.
- (2) ECC shall inform the Clearing Member about the cash settlement without undue delay by submitting a written notice ("Cash Settlement Notice") specifying (i) each DMP Cash Settlement Transaction which shall be terminated and cash settled and (ii) the date and time as of which the termination and cash settlement shall become effective (such date being the "Cash Settlement Date" and such time being the "Cash Settlement Time"). ECC shall inform of the price of each DMP Cash Settlement Transaction ("Cash Settlement Price") without undue delay after its determination according to paragraph 6. ECC shall notify the Non-Clearing Member concerned.
- (3) ECC shall determine the respective number of allocated DMP Cash Settlement Transactions with the relevant Clearing Members per Contract pro rata to their share in the Remaining Positions of offsetting net positions across all Proprietary Position Accounts and Agent Position Accounts of such Clearing Member in the sum of such net positions of all remaining Clearing Members.
- (4) The DMP Cash Settlement Transaction shall be booked on the Proprietary Position Accounts and Agent Position Accounts of the Clearing Member in proportion to the share of the net position of the respective Position Account in the net position of the Clearing Member in the respective contract.
- (5) As of the Cash Settlement Time, ECC and the relevant Clearing Member shall be released from their obligations to each other under the relevant DMP Cash Settlement Transaction (provided that any outstanding obligations relating to payments and deliveries that have become due but have not been paid or delivered on or before the Cash Settlement Time shall continue to exist).
- (6) ECC shall determine a Cash Settlement Price for each Contract terminated by a DMP Cash Settlement Transaction in the currency of that Contract, which shall become due and payable as of the Business Day following the Cash Settlement Date. The Cash Settlement Price shall be determined on the basis of the following equal methodologies:

- (a) in case a Default Management Auction was at least partially successful in regard of a Remaining Position, this is the weighted average price of successful bids,
- (b) the last available Daily Settlement Price in the relevant Contract,
- (c) the last available Exchange or Market Price, or
- (d) the price determined by ECC based on a model for the valuation of the market value which considers inter alia market risk, volatility and liquidity.

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

- (1) Trading Participants that are final energy consumers within the meaning of the EEffG are obliged to register with ECC in as far as they have purchased volumes of energy for the final consumption of energy according to the EEffG since 01 January 2014 or intend to purchase energy for the final consumption of energy from ECC Lux. The registration must be made in writing before acceptance of the first delivery of energy for the final consumption. With regard to periods in the past, registration must be effected subsequently within a period of one (1) month after these Clearing Conditions take effect. A higher annual fee is charged for Trading Participants registered as final energy consumers in order to cover the costs of the measures by ECC connected with EEffG (details are specified in the respectively valid price list of ECC). Trading Participants that do not register with ECC as final energy consumers within the meaning of EEffG assure ECC that they have not purchased any volumes of energy from ECC Lux for the final consumption of energy (within the meaning of § 5 paragraph 1 No. 1 EEffG) and that they do not purchase energy from ECC Lux for the final consumption of energy without a prior registration.
- (2) The Trading Participant is obliged to report the energy purchased from ECC Lux for the final consumption of energy within the meaning of EEffG from 01 January 2014 to ECC. These reports shall be submitted on an ongoing basis, at the latest, on the third Business Day of every delivery month. The reports for reporting months which have already expired must be submitted within a period of four (4) weeks after these Clearing Conditions take effect. In addition, the Trading Participants are obliged to submit an annual report on the final energy consumption volumes within the meaning of EEffG to ECC by 15 January of the following year. ECC then forwards this report to ECC Lux.
- (3) ECC shall collect an energy efficiency payment margin in the amount of the statutory compensation amount from the Trading Participant via its Clearing Member as the paying agent for the entire sales volumes (total spot and derivatives sales volumes of the corresponding delivery invoice) of energy to Trading Participants in Austrian market areas registered as final energy consumers. In addition, ECC will collect a margin to secure future energy efficiency payments by the Trading Participant before the beginning of delivery.
- (4) Once it has been determined with binding legal effect that the compensation amount under EEffG can be calculated with regard to net deliveries or based on monthly reports according to paragraph 2, ECC shall adjust the calculation of the energy efficiency payment margin and the

margins according to paragraph 3 forthwith. Amounts or margins overpaid are refunded or released in accordance with paragraph 6 sentence 2.

- (5) ECC Lux shall determine the due compensation amounts according to EEffG on the basis of the reports specified in paragraph 2 and invoice these amounts to the Trading Participants by 14 February of the following year. The energy efficiency payment margin for the past years withheld by ECC shall be offset in this respect. If the amount withheld by ECC does not cover the statutory compensation amount, the remaining amount shall be collected via the Clearing Member as the paying agent.
- (6) If Trading Participants that contribute to a situation in which the compensation amount does not have to be paid by ECC or by ECC Lux because of their own or purchased efficiency measures, ECC or ECC Lux can refund the compensation amount saved by means of these efficiency measures in as far as these efficiency measures were recognised by the monitoring office and the amount of such and effectively transferred to ECC Lux. The same shall apply if it has been established with binding legal effect that ECC or ECC Lux is not obliged to pay the compensation amount in its entirety or with regard to individual participants or volumes.
- (7) If the data reported by the Trading Participant on the energy volumes for final consumption do not comply with the actual or officially determined final energy consumption volumes, if the final energy consumption volumes are reported too late or if the compensation amount changes, ECC or ECC Lux shall subsequently determine the compensation amount to be paid by the Trading Participant and shall invoice these to the Trading Participant. Compensation amounts incurred with regard to Trading Participants that have failed to register shall subsequently be charged to the respective Trading Participant together with the higher annual fee. In cases of incorrect or delayed reporting of energy consumption volumes or of a missing registration, ECC or ECC Lux respectively can charge a non-refundable surcharge of 50% on all subsequent payments. This surcharge, e.g. serves to cover the increased processing and administrative efforts of ECC and ECC Lux as well as the lump-sum settlement of the risk arising from delayed registration or incorrect reporting which has not been settled yet. In addition, ECC shall be entitled to suspend Trading Participants in the event of violations of reporting and registration requirements. A violation of the reporting requirements arises, in particular, if the monthly and annual reports do not comply with the final energy consumption volumes actually procured from ECC Lux or if registration is not effected or not effected in due time.
- (8) The provisions contained in this section can be suspended by ECC for Transactions on markets which assume the commercial and legal risk of the settlement payment to the satisfaction of ECC. In this case, ECC shall separately communicate the non-applicability of this section.
- (9) Moreover, the markets can also reduce the financial burden on the Trading Participants through their own or purchased measures. In this case, ECC shall request the Trading Participants in these markets to communicate the final energy consumption volumes relevant for such efficiency measures to ECC in a legally binding manner (“relevant final energy consumption volumes”) in as far as these Trading Participants have made energy efficiency payments for certain final energy consumption volumes but have not carried out sufficient own efficiency measures which can be taken into account according to paragraph 6. ECC will not effect any refunding

according to paragraph 6 for the relevant final energy consumption volumes. Markets taking part in this can purchase recognised efficiency measures coordinated with ECC based on the relevant final energy consumption volumes. A reduction in the settlement payments of ECC resulting from this shall be proportionally credited to the Trading Participants on the basis of the reported final energy consumption volumes.

- (10) ECC or ECC Lux can withhold a deduction of 10% for savings through own or purchased efficiency measures of the Trading Participants according to paragraph 6 or of the markets according to paragraph 9 in order to settle the risk of the possible disqualification of efficiency measures by the monitoring body on a lump-sum basis within a two-year review period and to cover the processing and administrative costs connected with this risk. ECC or ECC Lux reserve the right not to consider individual efficiency measures or not to consider such in their entirety with regard to the reduction of the settlement payment.
- (11) All payments and credits in connection with the rules in this section are settled via the Trading Participant's Clearing Member as the paying agent. If the Clearing Member is not available as a paying agent (e.g. because the Trading Participant has been suspended or because the NCM Agreement has been terminated), the respective payment recipient shall designate a different paying agent.
- (12) The rules of this section 3.12 shall apply irrespective of any actual liability on the part of ECC Lux under EEffG regarding covering of risks. If it is established with binding legal effect that ECC Lux does not have an obligation under EEffG, ECC shall adjust the rules accordingly and refund energy efficiency payments which have already been made. Should regulatory requirements or the actual costs of ECC or ECC Lux respectively necessitate an increase in the deduction as outlined in paragraph 10, ECC or ECC Lux respectively can make the required adjustments also with retroactive effect.
- (13) The provisions in this section remain applicable beyond a termination of the NCM Agreement or a revocation or suspension of the approval of a Trading Participant until settlement of the statutory compensation amounts by ECC towards the monitoring office has been effected or until the energy efficiency measures for the reduction of the compensation amount have been recognised by the monitoring office in a legally binding manner.

## 4. Settlement of Transactions

### 4.1 Daily Settlement of Future Contracts – Variation Margin

- (1) With regard to every futures contract the change in the value of the position is established on every Business Day (“Variation Margin”) during Batch Processing depending on the currency of the Future Contract and credited to the respective Clearing Account or debited from said account of the Clearing Member. The change in the value is calculated based on 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) If the daily settlement price for a futures contract is negative, the display of the daily settlement price in the Clearing System shall deviate from the daily settlement price determined for technical reasons. In this case, the settlement of the change in value is initially based on the minimum technically available price. In general, the difference between the minimum technically available price and the actual settlement price (difference amount) is settled in the daily settlement of the following Business Day. However, ECC reserves the right to charge the difference amount on the respective Business Day separately or to demand collateral in respect of the difference amount. The ECC will inform the customer in advance of the exercise of these rights.
- (3) 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. In case the daily settlement price is changed by the market afterwards, ECC shall use best endeavours to adapt the settlement price used afterwards.
- (4) Paragraph 1 shall apply accordingly with regard to the legal relationship between Clearing Members and their Non-Clearing Members. In the case of Special Segregated Participants, the Clearing Member is obliged to forward the Variation Margin to these forthwith or to collect the Variation Margin from these.

### 4.2 Daily Settlement of grid-bound Energy Futures during the Delivery Period – Variation Margin

- (1) Unless otherwise specified in the contract specification of the Markets, the daily settlement price shall remain constant for the entire Delivery Period. It shall be established as the final settlement price by the respective market in the respective contract at the latest two (2) Business Days prior to the commencement of the delivery and be determined by ECC.
- (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 daily 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 regarding the legal relationship between Clearing Members and their Non-Clearing Members.

### **4.3 Daily Settlement of Option Premium**

#### **4.3.1 Premium Style Option**

- (1) The option premium for premium style options shall be debited from the Clearing Account of the Clearing Member or credited to it during Batch processing of the Trading Day ("Premium Style Option").
- (2) There shall be no daily settlement of the change in the value of the Premium Style Option.
- (3) ECC shall set off the option premium of Premium Style Options with the Clearing Members; the Clearing Members in turn shall set off this premium with their Non-Clearing Members.

#### **4.3.2 Future Style Option**

- (1) The option premium for future style options is not due for payment until the option is exercised or expires in the amount of the settlement price determined on that day for the option premium.
- (2) The difference between the agreed option premium and the option premium to be paid shall be settled by daily payment of the change in value of the option premium on each Business Day during the holding period of the option in accordance with the provisions in section 4.1 ("Future Style Option"). The change in value is calculated as the difference between the daily settlement prices of the current and previous Business Day. For options that were opened or closed on the current Business Day, the change in value is calculated from the difference between the price at which the transaction was concluded and the daily settlement price of the Business Day.

The daily settlement may also result in an interim charge to the seller (writer) of the Future Style Option.

- (3) Section 4.1 paragraphs 1, 3 and 4 shall apply mutatis mutandis to the compensating for the change in value of the option premium; paragraph 1 shall apply additionally to the option premium to be paid.

### **4.4 Settlement of Options on Futures**

#### **4.4.1 Procedure in Case the Option is exercised**

- (1) Options on futures are settled after exercise by booking a corresponding futures position at the respective exercise price. If the buyer exercises an option on the exercise date, a seller of the option is assigned using a procedure that ensures the neutrality of the assignment process. Partial assignments shall be permissible. All assignments made to the Client position account

of a Trading Participant must be assigned by the Trading Participant to the positions of its clients in accordance with a procedure that ensures the neutrality of the assignment process. ECC informs the participants and the Clearing Members in charge on the exercise day about the assignment.

- (2) During Batch Processing on the exercise day a long position is opened in the underlying future contract at the agreed exercise price for the buyer of the call option.
- (3) During Batch Processing on the exercise day a corresponding short position is opened in the underlying future at the agreed exercise price for the seller of the call option.
- (4) During Batch Processing on the exercise day a corresponding short position is opened in the underlying future at the agreed exercise price for the buyer of a put option.
- (5) During Batch Processing on the exercise day a corresponding long position is opened in the underlying future at the agreed exercise price for the seller of a put option.

#### **4.4.2 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.

### **4.5 Financial Settlement of Financial Futures**

#### **4.5.1 Financial Settlement**

- (1) On the day on which the final settlement price is established, positions are balanced by means of a difference depending on the currency of the Futures Contract which is credited to the respective Clearing Account of the Clearing Member or which is debited from such. Said difference shall be calculated based on the difference between the final settlement price and the daily settlement price of the previous Business Day. With regard to positions which have only been opened in the course of the day on which the final settlement price is established the difference shall be calculated on the basis of the difference between the final settlement price and the price of the transaction.
- (2) The final settlement price is calculated by the respective market according to the more detailed provisions in the Contract Specification for the respective products.
- (3) If the final settlement price for the settlement of a contract is negative, the presentation of the final settlement price in the settlement system deviates from the final settlement price actually established. Also in this case, the final settlement price shall be established in accordance with the principles laid down in the Contract Specifications for the respective product.

#### **4.5.2 Settlement of Grid-bound Energy futures with a Delivery Period of one Month or more (Cascading)**

- (1) Grid-bound Energy futures are only settled financially according to section 4.5.1 if their Delivery Period does not exceed one calendar month. Futures on Grid-bound Energy whose Delivery Period exceeds one calendar month are fulfilled by cascading as described below.
- (2) After performing of daily settlement on the last day of trading, the holders of positions in quarter futures are assigned the three (3) corresponding month futures, which taken together correspond to the Delivery Period of this quarter future, instead of these futures on the same Business Day.
- (3) After performing daily settlement on the last day of trading the holders of positions in 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 on the same Business Day.
- (4) After performing daily settlement on the last day of trading the holders of year futures are assigned the corresponding three (3) month futures for the following calendar months from January to March as well as the corresponding three (3) quarter futures for the second to the fourth calendar quarter which taken together correspond to the Delivery Period of the year futures instead of these futures on the same Business Day.
- (5) Futures with a Delivery Period deviating from paragraphs 2 to 4 will be settled accordingly as long as the Delivery Period is more than one (1) month.
- (6) The positions assigned in accordance with paragraphs 2 to 4 shall take part in the clearing procedure subject to the provisions which are relevant for these as of the day of their assignment.

#### **4.5.3 Payments**

- (1) All payments including the statutory incurred taxes 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 a Business Day, on the next Business Day.
- (2) The paragraph above apply to the legal relationship between the Clearing Members and their Non-Clearing Members accordingly.

#### **4.6 Financial Settlement of physically settled Transactions**

- (1) The basis for the financial settlement of the transactions are:
  - for Spot Market Transactions the delivery volumes and prices established in the trade confirmations of the markets plus the applicable statutory taxes.

- for Grid-bound Energy futures the volumes delivered in accordance with these Clearing Conditions, multiplied by the final settlement price established for this Delivery Period in total plus the applicable statutory taxes.
  - For Registry Based Products the number of the Registry Based Products to be delivered multiplied by the final settlement price plus any applicable statutory taxes.
- (2) Settlement takes place on each Business Day after the time specified for each product (accounting cut-off) as published on the ECC website as part of Batch processing. Transactions concluded or registered after the accounting cut-off will be settled on the next Business Day. In detail, the following applies beyond the provisions for the accounting cut-off:
- (a) For Spot Market Transactions the settlement takes place on the later of the following dates:
    - on the current Trading Day, if this is a Business Day,
    - on the following Business Day, if the Trading Day is no Business Day.
  - (b) For futures (except Registry Based Products futures) with physical settlement (BoM-Settlement), the settlement takes place on the later of the following dates:
    - on the Delivery Day, if this is a Business Day,
    - on the following Business Day, if the Delivery Day is no Business Day.
  - (c) Registry Based Products futures managed in the Eurex Clearing System are settled two (2) Business Days before commencement of delivery.
  - (d) For Derivatives Market and Spot Market Transactions with delivery in the Spanish Gas Transmission System ECC may withhold financial settlement payments for sell transactions in accordance with the Spanish gas market regulation (Articles 24 and 25 of the Circular de Balance 2/2020 of 09 January 2020 of the Spanish regulatory authority, "Circular") in respect of so-called economic amounts ("cantidades económicas"). Financial settlement will be included in the next spot payment booking cut with payment on the Business Day following the respective authorisation of such payment by the Spanish Transmission System Operator Enagás S.A. ("Enagas"). Based on Article 25 of the Circular Enagas may request ECC to pay out the economic amounts to Enagas. ECC will comply with this request in fulfilment of its payment obligations towards the Trading Participant.
- (3) All payments including the applicable statutory taxes are credited to the Clearing Account of the Clearing Member or to an account at a different paying agent as defined by the Trading Participant and approved by ECC on its sole discretion as a paying agent or debited from it during Batch processing of the Trading Day. Payments are generally made on the Business Day following settlement, in the case of futures on Emission Rights on the second Business Day following settlement. In deviation from this, payment in Foreign Currencies (not EUR) may only be made on the respective following Business Day due to national holidays.

- (4) In case the Trading Participant has not defined a paying agent, the above-mentioned provisions will apply to the legal relationship between the Clearing Member and their Non-Clearing Members.
- (5) ECC shall transfer the purchase price to the nEHS Seller promptly on the first Business Day following a sales date, subject to the receipt of payment of the purchase price in accordance with section 3.3.10.

Payment takes place without any deductions (net) as well as without charging any fees to the designated account of the nEHS Seller.

DCP Clearing Members participating exclusively in the nEHS Transaction and paying the purchase price to the nEHS Recipient Account shall make their payment to the account designated by ECC no later than 11:00 a.m. on the day of the respective next but one sales date. For the last sales date in a calendar year, this deadline may deviate as determined by ECC. For all other Trading Participants, payments shall be settled on the Business Day following the respective sales date. The purchase price credited in full to the nEHS Recipient Account shall be held by ECC in escrow for the nEHS seller.

ECC is entitled to refuse improper payments, especially meaning (but not limited to) insufficient and excess payments, late payments, payments transferred under an incorrect reference or transfers from an account other than the designated nEHS Payment Account. Concerning the nEHS Transaction, ECC has no obligations to deliver nEHS Certificates or make a payment of ECC due to an improper payment. An improper payment will not fulfil any obligation of the DCP Clearing Member. ECC will reverse the improper payment transaction without prior notice. The DCP Clearing Member will compensate ECC for any costs and damages that were caused by the improper payment.

## **4.7 Treatment of Value added Tax**

### **4.7.1 Value Added Tax on Delivery or Transfer of Rights or other Services in Case of negative Prices (Spot Market, physically settled Derivatives Market Transactions)**

- (1) As far as legally applicable, volumes to be delivered or transferred in accordance with the trade confirmations and these Clearing Conditions multiplied by price established for the Delivery, the transfer of rights or other services shall form the assessment basis for the value added tax.
- (2) The clearing fees charged are part of the assessment basis for the value added tax. In case of the delivery, transfer of rights or other services in case of negative prices by a Non-Clearing Member to the Settlement Entity or ECC the assessment basis is decreased by the clearing fees charged. In case of delivery or transfer of rights by the Settlement Entity or ECC to a Non-Clearing Member the clearing fees charged increase the assessment basis.
- (3) The Settlement Entity or ECC shall issue invoices or credit notes in accordance with the above provisions and the provisions in the respectively price list.

## **4.7.2 Value Added Tax on Derivatives Markets Transactions and other Services in Payment Transactions**

- (1) As far as legally applicable and in case of exercising the options according to Article 137 Directive 2006/112/EC on the common system of value added tax (VAT Directive - MwStSystRL) the clearing fees charged by ECC from the Non-Clearing Members shall form the assessment basis for the value added tax. The Derivatives Market Transactions themselves, as financial contracts for differences, are not subject to value added tax.
- (2) ECC shall issue invoices in accordance with the before mentioned provisions and the provisions in the respectively valid price list.

## **4.8 Physical Settlement of Grid-bound Energy Contracts**

### **4.8.1 General Information**

Futures with a Delivery Period that exceeds one (1) calendar month, will be fulfilled by cascading in accordance with section 4.5.2. A physical settlement (delivery) is only possible in the current calendar month.

### **4.8.2 Delivery and Acceptance of Delivery**

- (1) Physical settlement of the Spot Contracts and Grid-bound Energy future Contracts shall be effected by nominations directly by or for the Trading Participant towards the respective Settlement Entity and at the same time between the respective Settlement Entity and ECC subject to the provisions contained in these Clearing Conditions and the respectively valid Balancing Agreements. Transactions with a Delivery Period of more than one day shall be effected on a daily basis. The delivery is effected by submitting a nomination or schedule in accordance with the requirements of the respective Balancing or Hub Agreement, which comprises the underlying delivery Transaction as agreed 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 Balancing Agreements on which Grid-bound Energy trading is based, or the termination of such to ECC forthwith.
- (3) In case a Trading Participant is in default with his obligation to deliver or to accept delivery or in case such party loses the capability for physical settlement as per section 2.6.1 paragraph 1 lit. (c) or in case such violates a covenant as per section 2.6.1 paragraph 1 lit. (c), ECC shall be entitled to take all the required measures in order to safeguard performance and the minimization of the damage with regard to the Transactions entered into, if applicable, also by including the respective market or the respective Settlement Entity in this process. Further consequences might arise from the provisions contained in the respective Balancing Agreement.
- (4) If deviations occur in the physical settlement, the rules contained in section 4.8.5 shall apply.

- (5) The provisions stipulated in this section shall not apply to PXE Spot Market Transactions.

### **4.8.3 Special Rules for the Delivery of physically settled OTF Futures**

For the physical fulfilment of OTF futures EEX will in the name and on behalf of the Trading Participant submit during the entire Delivery Period of the contract daily position-reflecting and non-price related orders (market orders) for day-ahead hourly contracts at EPEX SPOT SE ("EPEX SPOT"). The order submission at EPEX SPOT takes place automatically and mandatory during the entire Delivery Period and is not subject to the control of the Trading Participant. These orders are binding for the Trading Participants, will be accounted for during the auction process at EPEX SPOT and are executed at the market price determined by EPEX SPOT. The settlement is effected according to the rules for the settlement of Spot Market Transactions. If the orders of the Trading Participants are not executed at EPEX SPOT the obligation to physical delivery ceases. This does not preclude that the contract will be treated as physically delivered according to Annex I section C No. 6 of Directive 2014/65/EU.

### **4.8.4 Special rules for Market Coupling Contracts**

#### **4.8.4.1 General Information**

- (1) Within the framework of day-ahead or intraday auctions of the partner exchanges cross-border transmission capacities are traded as products specified by the markets (Market Coupling Contract), the settlement of which is carried out in accordance with the specifications made in these Clearing Conditions.
- (2) As part of intraday power trading the settlement of power deliveries as per section 4.8.2 can also be effected cross border between different market areas by using capacity rights ("Physical Transmission Rights").

#### **4.8.4.2 Settlement of Market Coupling Contracts**

- (1) Market Coupling Contracts shall be settled through the use of Physical Transmission Rights by ECC in accordance with these Clearing Conditions and the respectively valid agreements of ECC and the respective partner exchange, the coupled markets and Transmission System Operators included on the basis of separate agreements or representatives of the Transmission System Operators directly by the Trading Participant towards ECC.
- (2) Settlement of the Market Coupling Contracts is effected through the use of the Physical Transmission Rights by ECC towards the Transmission System Operators included and/or their representatives in the direction from the exporting transmission system to the importing transmission system. The financial settlement of Market Coupling Contracts shall be carried out in accordance within section 4.6.
- (3) If the use of Physical Transmission Rights cannot be ensured by the Transmission System Operators included, ECC is entitled, according to the more detailed provisions in section 4.8.5,

to take all the measures required to secure the performance or to reduce any damage with regard to the Transactions entered into.

#### 4.8.4.3 Settlement of Market Coupling Clearing Transactions

The physical settlement of the Market Coupling Transactions is effected directly by the Market Coupling Counterparty towards ECC in accordance with these Clearing Conditions and the respectively valid Balancing Agreement according to section 4.8.2.

### 4.8.5 Deviations in the physical Settlement of Grid-bound Energy Contracts

#### 4.8.5.1 Deviations, ECC Measures and Trading Participants' Duties to cooperate

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

- (e) A deviation having an impact on other Trading Participants: In the event of the incorrect nomination of a Trading Participant, deliveries by ECC to other Trading Participants can also be affected. A Transmission System Operator can e.g. reduce or refuse further nominations by ECC with third-party Trading Participants in the event of insufficient collateralisation of ECC in the event of unbalanced nominations. In order to prevent this measure by the Transmission System Operator, ECC will take precautions to a commercially reasonable extent, e.g. by providing collateral.
- (f) Technical errors: Deviations can arise in the nomination of transactions as a result of technical problems at ECC, the exchanges, the Transmission System Operators or telecommunications service providers.
- (g) Incorrect nomination by ECC: Deviations can also be caused by incorrect ECC nominations.

Deviations arising on account of other circumstances than those listed under lit. (a) to (f) are also treated in accordance with the provisions of this section 4.8.5.

- (2) The allocations of the Fallback Coordinator in the Nordic market areas for the implementation of the Nordic Fallback, which form the basis for the nominations, are equivalent to the deviations pursuant to paragraph 1.
- (3) ECC informs the Trading Participants concerned of the existence of and the reasons for a deviation in as far as information with regard to this is available to it. ECC is, in particular, entitled to communicate the result of its own examinations regarding the responsibility of one or several Trading Participants and the settlement amounts connected with the event to the Trading Participants in an aggregated and anonymised form. ECC will immediately inform all Trading Participants affected by this section of the measures taken hereunder. ECC reserves the right to specify the measures taken under this section on the ECC website.
- (4) If, in the framework of such a measure by the involved Transmission System Operator/s, the transmission rights are reduced towards ECC, it can pass on these reductions to the Trading Participants in the framework of energy deliveries within the market areas concerned. In the event that the trading relationships connected with this reduction cannot be identified without doubt, ECC can effect a proportionate reduction of the deliveries of all Trading Participants within the concerned spot and intra-day markets.
- (5) The Trading Participants concerned are obliged to carry out any cooperation activities which might be required, such as e.g. scheduled re-nominations. They have to accept the measures of the Transmission System Operator or of the Fallback Coordinator as well as the measures of ECC based on it. ECC can instruct the Trading Participant to use the ECC values as the basis for its nomination and to re-nominate.
- (6) In the event that a deviation is attributable to the Trading Participant, ECC may withhold payments to the Trading Participant or charge a Margin until the deviation has been rectified or possible payment obligations of the Trading Participant vis-à-vis ECC pursuant to sections 4.8.5.2 and 4.8.5.3 have been effected.

- (7) Measures by the Transmission System Operator are not attributed to ECC or the Trading Participant; any liability of ECC or of the respective Settlement Entity for measures taken by the Transmission System Operator or the Fallback Coordinator or for own measures based on such is excluded for this reason. This applies, in particular, to such measures which ECC adopts in order to pass on own balance deviations to the Trading Participants.
- (8) A termination or suspension of participation in clearing with ECC shall not affect the obligations or liabilities of the Trading Participant concerned under this section 4.8.5 until fourteen (14) days after such termination or suspension became effective.

#### **4.8.5.2 Settlement Principles in the Event of Deviations**

- (1) If a deviation in the context of the locally applicable market rules cannot be remedied in due time, the following shall apply:
  - (a) The settlement is initially based on the delivery volumes established and on the basis of the trade confirmations of the markets, and prices plus the applicable statutory taxes. This does not apply in the case of the Nordic Fallback, where the allocation of the Fallback Coordinator does not constitute a trade confirmation of the market.
  - (b) Deviations are settled separately in accordance with the provisions contained in the following rules.
  - (c) Unless agreed otherwise below, the price for the calculation of deviations corresponds to the price of balancing energy ("Settlement Price") for the respective aggrieved trading participant as published by the Transmission System Operator, verifiably communicated to ECC or determined by ECC itself, each calculated on the basis of the smallest nominated volume unit (1/4 hour, hour, day). If a balancing energy price is not established by the end of the delivery day of the deviation, ECC can determine the settlement price itself. This is usually effected on the basis of the provisional balancing energy price or of the market prices within the respective market area. If several companies are involved in a deviation and if there is no clearly identifiable party that has caused the deviation and if there is no uniform settlement price for deviations for these, the applicable settlement price is the mean value of all applicable settlement prices.
  - (d) In deviation to lit. (c) above, in case of a Nordic Fallback, the volume and prices plus any applicable taxes and fees for the settlement of the deviations are identical to the allocations determined by the Fallback Coordinator.
  - (e) The deviation is settled, at the latest, fourteen (14) days after the establishment of the settlement price. The settlement amount is due immediately without deduction. ECC can correct invoices which have already been prepared for deviations if it has received corresponding invoices for balancing energy from the Transmission System Operator.
- (2) The Trading Participants' right to assert claims to damages is excluded.

#### 4.8.5.3 Allocation of Remaining Damages and Remaining Revenues

- (1) In as far as differences remain after the settlement at ECC (“Remaining Damage” or “Remaining Revenue”), these are balanced as follows in a second invoice within a period of one (1) month after the settlement of the deviations:
- (a) In as far as ECC is not responsible for the deviation, any damage of ECC which remains in addition to the deviations in section 4.8.5.2 is settled with the Trading Participants. The settlement is effected on a proportionate basis for all Trading Participants in accordance with the amount of the volumes delivered or accepted in the respective market area and during the respective Delivery Period regardless of whether or not the Trading Participants themselves were affected by the deviations.
- In the case of the Nordic Fallback, the relevant market area is the entirety of all SDAC-Market Areas and settlement is made pro rata to all SDAC-Trading Participants according to the respective amounts delivered or purchased on the last day on which the SDAC-Products were orderly traded in the entire SDAC-Market Area.
- (b) In as far as, at least, one Trading Participant is responsible for a deviation, only that party shall be invoiced for the Remaining Damage of ECC in proportion with the deviation for which it is responsible in deviation from the provision in paragraph 1 lit. (a).
- (c) If ECC is responsible for the deviation, ECC shall compensate the damage caused for the Trading Participants affected by the deviation at the settlement price for balancing energy within the scope of liability as stipulated in section 3.3.12.
- (d) In as far as ECC obtains Remaining Revenues, these are credited to the Trading Participants affected by a deviation on a proportionate basis up to the amount of the loss incurred.
- (2) Remaining Damage with the meaning of paragraph 1 above means all types of damage and expenses which ECC incurs in connection with the settlement of deviations. Remaining Damages also means such damages which ECC or the Settlement Entity incurs in connection with the performance of the European market coupling (such as shipping) for example the following damages due to errors
- within the market coupling systems of the NEMO and/or the Transmission System Operators,
  - of other NEMOs or their respective central counterparty, or
  - of Transmission System Operators, interconnectors or other shipping agents or shippers.

## 4.9 Physical Settlement of Registry Based Products

### 4.9.1 General Information

- (1) The following provisions for Registry Based Products apply with regard to Emission Rights to all transactions with the exception of the Primary Auction in accordance with the Auctioning Regulation, to which chapter 5 applies.
- (2) The respective Delivery Day for the different Registry Based Product Contracts is determined according to the Contract Specifications.
- (3) All deliveries of Registry Based Products are effected in concurrent performance (Zug um Zug) in return for the payment of the purchase price on the delivery day. Payment of the purchase price is effected by means of offsetting in accordance with the provision in section 3.3.6 in conjunction with section 3.5.6.
- (4) Unless otherwise provided for in these Clearing Conditions, the Trading Participant may request delivery of the Registry Based Products to its registry account. ECC shall execute such delivery, provided that no colliding rights exist under these Clearing Conditions with respect to such delivery.

### 4.9.2 Delivery and Acceptance of Delivery of Emission Rights

- (1) Delivery and acceptance of delivery of Emission Rights shall be effected directly by the Trading Participant towards ECC as Settlement Entity subject to the provisions contained in these Clearing Conditions.

For trading on the Spot Market, Trading Participants obliged to deliver Emission Rights shall ensure their capacity to deliver prior to the conclusion of trades by means of corresponding stocks in the registry account of ECC kept fiduciary (treuhänderisch) for this purpose for all Trading Participants. Missing stocks to the internal registry account of ECC for delivery from Spot Market Transactions must be delivered from an external registry account or the Collateral Registry Account by the end of the business hours of the Union Registry on the day on which the transaction is concluded at the latest, missing stocks to the internal registry account of ECC for delivery from Derivatives Market Transactions must be delivered from an external registry account or the Collateral Registry Account by the end of the business hours of the Union Registry on the Business Day after the Derivatives Market Transaction expires at the latest. Delivery and acceptance of Emission Rights shall not be made to or from the Collateral Registry Account.

In order to ensure delivery in due time, the Trading Participants are obliged to set up the delivery account of ECC as a so-called "Trusted Account" within the meaning of the Commission Regulation (EU) No. 389/2013.

- (2) Deliveries of Emission Rights shall be effected by means of recording in the internal inventory account kept for this purpose and shall effect a corresponding change in the number of shares which the Trading Participant holds in the total stock kept fiduciary (treuhänderisch) in the registry accounts of ECC at the same time. Through recording of these changes within the internal

inventory accounts (section 3.5.9), the delivery by the selling Trading Participant to ECC and the delivery by ECC to the purchasing Trading Participant are effected at the same time.

- (3) The obligation to deliver an Emission Right shall be considered fulfilled at the time at which the following preconditions are fulfilled:
- corresponding cash settlement (section 3.3.6 in conjunction with section 3.5.6) has been carried out and
  - all entries in the in the internal inventory accounts kept by ECC, which are required for the transmission of the Emission Rights, have been effected.
- (4) The purchasing Trading Participant pledges to ECC the rights purchased from a Spot Market Transactions which are related to the shares in the collective holding booked in its internal inventory accounts and, in particular, the right towards ECC for the delivery of the Registry Based Products to another registry account. The pledge in favour of ECC secures the purchase price claims of ECC against the Trading Participant from the Spot Market Transaction.

If the purchasing Trading Participant is a Non-Clearing Member, it also pledges all rights purchased from a Spot Market Transactions which are related to the shares in the collective holding booked in its internal inventory accounts and, in particular, the claim towards ECC regarding the delivery to another registry account secondarily to its Institution Clearing Member to secure the right to reimbursement of the purchase price for those Emission Rights.

ECC and the Institution Clearing Member accept the pledge. The Trading Participant hereby notifies the pledge to ECC. The aforementioned pledges shall take precedence over the general security interests (section 3.4.12). In the relationship between the Institution Clearing Member and ECC section 3.4.12 paragraph 2 lit. (a) to (c) shall apply mutatis mutandis.

### 4.9.3 Delivery and Acceptance of Delivery of Capacity Guarantees

- (1) Delivery and acceptance of delivery of Capacity Guarantees shall be effected directly by the Trading Participant towards ECC Lux and the delivery by ECC Lux to ECC at the same time subject to the provisions contained in these Clearing Conditions. Trading Participants obliged to deliver Capacity Guarantees shall ensure their capacity to deliver prior to the conclusion of trades by means of corresponding stocks in the registry accounts of ECC Lux kept fiduciary (treuhänderisch) for all Trading Participants according to ECC's specifications.
- (2) Deliveries of Capacity Guarantees shall be effected by means of recording in the internal inventory accounts and shall effect a corresponding change in the number of shares which the Trading Participant holds in the total stock kept fiduciary (treuhänderisch) in the registry accounts of ECC Lux at the same time. Through recording of the changes within the internal inventory accounts (section 3.5.9), the delivery by the selling Trading Participant to ECC Lux and the delivery by ECC Lux to ECC as well as the delivery by ECC to ECC Lux and the delivery by ECC Lux to the purchasing Trading Participant are carried out at the same time.
- (3) The obligation to deliver Capacity Guarantees shall be considered fulfilled at the time at which the following preconditions are cumulatively fulfilled:

- corresponding cash settlement (section 3.3.6 in conjunction with section 3.5.6) has been carried out.
  - all entries in the internal inventory accounts kept by ECC, which are required for the transmission of the Capacity Guarantees have been effected,
- (4) ECC transfers Capacity Guarantees purchased or not sold by the Trading Participant to the registry accounts of the Trading Participants by 10:00 a.m. of the second Business Day following the end of the respective auction at the latest.

#### **4.9.4 Special Regulations regarding Default of Registry Based Products**

- (1) If ECC or ECC Lux cannot use existing Registry Based Products for the settlement of Trades as a result of circumstances for which the Trading Participant required to submit these is responsible, ECC or ECC Lux can request the Trading Participant required to submit these rights or its Clearing Member in the capacity of the guarantor to pay the current exchange or market price, which shall fall due for payment immediately instead of the Registry Based Products which are required for delivery. With regard to this request, ECC or ECC Lux can use the rights pledged also in accordance with section 3.4.12 upon the maturity of the pledge.
- (2) If a Trading Participant is in default, in particular, on account of the non-delivery of Emission Rights to be delivered to the registry account of ECC, at the latest, by 10:30 a.m. on the delivery day ECC or ECC Lux can carry out the following measures, in addition to charging margins:
- (a) ECC or ECC Lux can effect a replacement purchase of the Registry Based Products not submitted at its equitable 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 or ECC Lux announces or effects a replacement purchase in accordance with paragraph 2 lit. (a), deliveries by the Trading Participant in default are no longer taken into account with a redemptive effect upon the delivery of the due Registry Based Products. However, ECC or ECC Lux shall be free to forego the continuation of the replacement purchase procedure and to consider the Registry Based Products delivered with a delay in the settlement of the delivery obligation.
  - (c) In as far as the replacement purchase and the delivery of the Registry Based Products to be delivered have been effected, the delivery obligations resulting from the original Transaction cease to apply with redemptive effect. The costs caused by the replacement purchase carried out or, at least, begun shall be assumed by the Trading Participant that has violated the obligation to deliver these Registry Based Products in due time.
  - (d) If a replacement purchase is not successful in its entirety or in part after two (2) Business Days after the delivery day, ECC or ECC Lux shall specify a compensation amount which shall replace the Registry Based Products not delivered or not acquired through a replacement purchase (cash settlement) instead of fulfilment. The Trading Participant in default and its Clearing Member as the guarantor are obliged to pay this compensation amount. The compensation amount which ECC or ECC Lux sets off against the purchase

price to be paid for the Capacity Guarantees not delivered is established on the basis of the sales price at the time of the conclusion of the Trade or – if these are higher than the sales price – on the basis of the margins called by ECC or ECC Lux for the Trades concerned.

- (3) ECC or ECC Lux can have recourse to a Trading Participant, without its Institution Clearing Member guaranteeing this, with regard to cases of damage which ECC or ECC Lux or other Trading Participants have sustained as a result of the default. Regardless of the occurrence of damage, ECC or ECC Lux 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 3.8.1 paragraph 3. The outstanding amount within the meaning of section 3.8.1 paragraph 3 corresponds to the amount used for the replacement according to paragraph 2 lit. (a) or to the compensation amount according to paragraph 2 lit. (d).
- (4) Moreover, in the event of cash settlement according to paragraph 2 lit. (d), ECC or ECC Lux is entitled to liquidate damages as a contractual penalty in the amount of 100% of the sales price without its Clearing Member providing a guarantee with regard to this. In as far as the margins collected were higher than the sales price and in as far as this results in a compensation amount according to paragraph 2 lit. (d), the liquidated damages shall be reduced by the amount exceeding the sales price.
- (5) ECC or ECC Lux does not assume any delivery guarantee and procurement risk with regard to Registry Based Products. Registry Based Products can only be delivered to the buyer if corresponding stocks are available from the Trading Participant who is required to submit these. Any default caused by the Trading Participant required to submit the Registry Based Products in the form of impossibility or defaults with the consequences as per paragraphs 1 and 2 must be accepted by the buyer of the Capacity Guarantees. With regard to any possible damage sustained by the buyer affected by the default, ECC or ECC Lux shall
  - (a) compensate this primarily by forwarding liquidated damages realised in accordance with paragraph 4
  - (b) and, at its option, assert the damage against the Trading Participant in default on behalf of the buyer concerned or assign corresponding claims to the buyer concerned in as far as the damage exceeds this amount or in as far as the liquidated damages cannot be realised.

There are no further claims against ECC or ECC Lux on the part of the buyer of the Registry Based Products affected by this.

#### **4.10 Physical Settlement of Guarantees of Origin**

- (1) Delivery shall be effected concurrently against payment of the purchase price exclusively and finally by instruction of ECC to the Register Administrator. With the instruction, ECC instructs the Register Administrator to transfer the Guarantees of Origin in the accounts of the respective

Trading Participants held by the respective Register Administrator on behalf of the Trading Participants.

- (2) In case of auctions of Guarantees of Origin on the market of EEX the instruction pursuant to paragraph 1 shall simultaneously effect the delivery of the Auctioneer for Guarantees of Origin to the Settlement Entity and the delivery of the Settlement Entity to ECC as well as the delivery of ECC to the Settlement Entity and the delivery of the Settlement Entity to the acquiring Trading Participant. With the instruction pursuant to paragraph 1, the obligations of ECC or the Settlement Entity to deliver the Guarantees of Origin are fulfilled.
- (3) In the case of trading in Guarantees of Origin on the market of EPEX SPOT, the Settlement Entity shall hold the Guarantees of Origin in escrow for the Auctioneer for Guarantees of Origin or the selling Trading Participant from the time of their deposit into the Settlement Entity's account with the Registry Administrator until delivery to the acquiring Trading Participant. The instruction pursuant to paragraph 1 shall simultaneously effect the delivery of the Auctioneer for Guarantees of Origin or the selling Trading Participant to the Settlement Entity and the delivery of the Settlement Entity to ECC as well as the delivery of ECC to the Settlement Entity and the delivery of the Settlement Entity to the acquiring Trading Participant. With the instruction pursuant to paragraph 1, the obligations of ECC or the Settlement Entity to deliver the Guarantees of Origin are fulfilled.
- (4) Except for the obligation under paragraph 1, ECC and the Settlement Entity shall not assume any guarantee of supply or any procurement risk for Guarantees of Origin. ECC and the Settlement Entity shall not be liable for any action or omission of the Auctioneer for Guarantees of Origin or the Register Operator, in particular not for the timely, complete and correct execution of the book entry by the Register Operator or in cases where the Auctioneer for Guarantees of Origin delivers less Guarantees of Origin to the Register Operator than are auctioned in Auctions of Guarantees of Origin; corresponding claims of the acquiring Trading Participant against ECC and the Settlement Entity are excluded.

#### 4.11 Physical Settlement of nEHS Transactions

- (1) The delivery and acceptance of nEHS Certificates shall be effected in accordance with these Clearing Conditions directly by the nEHS Seller towards ECC. The nEHS Seller obliged to deliver nEHS Certificates shall ensure the ability to deliver prior to the closing of the transactions by maintaining corresponding holdings on the nEHS Disposal Account. If the nEHS Certificates on the nEHS Disposal Account are not sufficient to fulfil the delivery obligations towards Trading Participants, the nEHS Seller is obliged to immediately deliver the quantity of nEHS Certificates required to fulfil these delivery obligations to the nEHS Disposal Account.
- (2) ECC shall hold the nEHS Certificates in escrow for the nEHS Seller from the time of their deposit into the nEHS Disposal Account pursuant to paragraph 1 until delivery to the acquiring Trading Participant.
- (3) Delivery of nEHS Certificates to the acquiring Trading Participant shall be made upon receipt of payment of the purchase price in accordance with section 3.3.10. For the delivery of nEHS

Certificates, ECC shall initiate the national Emissions Trading Registry to account for the nEHS Certificates in accordance with the account specified in the nEHS Transaction.

- (4) By the initiation pursuant to paragraph 3 sentence 2, the delivery of the nEHS Seller to ECC as well as the delivery of ECC to the acquiring Trading Participant shall be carried out simultaneously. With the initiation according to paragraph 3 sentence 2, the obligations of ECC to deliver the nEHS Certificates are fulfilled.
- (5) nEHS Certificates can only be delivered to the acquiring Trading Participant if corresponding stocks are available. Insofar as the nEHS Seller delivers fewer nEHS Certificates to the nEHS Disposal Account at the Register Operator than are sold on a sales date, delivery to the acquiring Trading Participants shall only take place after delivery of the nEHS Certificates to the nEHS Disposal Account. ECC shall not be liable for any action or omission of the nEHS Seller or the Register Operator, in particular regarding the timely, complete and correct execution of the booking by the Register Operator in cases where the nEHS Seller delivers less nEHS Certificates to the nEHS Disposal Account at the Register Operator than are sold in the nEHS Transactions; corresponding claims of the acquiring Trading Participant against ECC are excluded.

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

This chapter shall provide dedicated rules concerning the auctioning of Allowances pursuant to the Auctioning Regulation. These rules shall apply to the Spot Market auctions performed by EEX as the auction platform pursuant to the Auctioning Regulation ("Primary Auctions") and represent the implementation of the Auctioning Regulation with regard to clearing and settlement of Primary Auctions of Allowances, for which ECC is the Clearing System connected to the auction platform in accordance with Article 27 paragraph 2 Auctioning Regulation acting as the sole central counterparty for the primary auction.

The Primary Auction is conducted for the Member States that have concluded a contract or any other contractual arrangements with EEX<sup>15</sup> for appointing it as auction platform pursuant to Articles 26 paragraph 1, 30 paragraph 1 Auctioning Regulation or making use of it pursuant to Article 30 paragraph 7 Auctioning Regulation (the "Service Contract"), for the Innovation Fund and for the Modernisation Fund established respectively pursuant to Article 10a paragraph 8 and Article 10d of Directive 2003/87/EC as well as the Recovery and Resilience Facility according to Article 10e of Directive 2003/87/EC.

In relation to Member States participating in the joint action pursuant to Article 26 Auctioning Regulation, for the Innovation Fund and for the Modernisation Fund as well as the Recovery and Resilience Facility, the rules in this chapter are to be construed together with the relevant escrow agreement and custody agreement concluded and available on <https://www.ecc.de/en/about-ecc/rules> (the "Escrow Agreement" and the "Custody Agreement"). In case of contradictions between the special provisions of this chapter 5 and the provisions of the Escrow Agreement and/or the Custody Agreement, the provisions of the Escrow agreement and/or the Custody Agreement shall prevail.

In relation to the Member States not participating in the joint action pursuant to Article 26 Auctioning Regulation Allowances will be held in escrow for such Member State by ECC acting as a custodian for the Member States represented by their respective Auctioneer according to Articles 46 et seq. Auctioning Regulation and as stipulated in these Clearing Conditions until delivery of the allowances is effected to the successful bidders in accordance with section 5.4.7.

In case of contradictions between the special provisions of this chapter 5, and the rules or provisions in any other sections, annexes, schedules, forms or side letters of or to these Clearing Conditions, the dedicated rules of this chapter 5 shall prevail.

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

#### 5.1.1 Participation as a Bidder

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

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<sup>15</sup> ECC acting as the Clearing System for the auctioning of Allowances may also be a party of the contract.

## 5.1.2 Participation as Institution Clearing Member of a Bidder

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

## 5.1.3 Participation as Auctioneer

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

Pursuant to Article 22 paragraph 1 and 2 Auctioning Regulation, each Member State shall appoint an Auctioneer who will represent the appointing Member State(s) by auctioning the Allowances on its (their) behalf. In addition, the EIB is the Auctioneer for the Innovation Fund and the Modernisation Fund, appointed pursuant to Article 24 paragraph 1 Auctioning Regulation as well as the Recovery and Resilience Facility according to Article 10e Directive 2003/7/EG. The Member States are participating in the auctioning of Allowances at EEX and in the clearing and settlement of the auctioned Allowances at ECC through the admission of their appointed Auctioneers which shall only be admitted in their capacity as representatives of the appointing Member States. The EIB shall also be admitted as auctioneer pursuant to Article 24 Auctioning Regulation. Auctioneers of Allowances can take part in clearing without a clearing license or the conclusion of an NCM Agreement. The admission by ECC to participate as an Auctioneer in Primary Auctions requires the following conditions to be fulfilled:

- (a) The Auctioneer must be a public or private entity appointed as an Auctioneer pursuant to Article 24 Auctioning Regulation or by the contracting Member State that it represents, pursuant to Article 22 paragraph 1 Auctioning Regulation with a mandate to auction Allowances and receive the auction proceeds on its behalf pursuant to Article 23 lit. a) and lit. b) Auctioning Regulation. The EIB, as Auctioneer for the Innovation Fund and the Modernisation Fund pursuant to Article 24 Auctioning Regulation or the Recovery and Resilience Facility according to Article 10e Directive 2003/7/EG, respectively, as well as the Auctioneers of the Member States as representatives of its appointing Member State(s) must be admitted at EEX, exclusively for the purpose of auctioning the Allowances and receiving the auction proceeds respectively for the Innovation Fund and the Modernisation Fund pursuant to Articles 23 and 24 Auctioning Regulation, or on behalf of that Member State pursuant to Article 23 lit. a), lit. b) and lit. c) Auctioning Regulation or the Recovery and Resilience Facility according to Article 10e Directive 2003/7/EG, respectively.
- (b) The entity appointed by the relevant contracting Member State(s) or pursuant to Article 24 Auctioning Regulation to act as Auctioneer must be a “participant” within the meaning of Article 2 lit. f) of the SFD, which means that it shall either be:
  - an institution within the meaning of Article 2 lit. b) SFD;
  - a central counterparty within the meaning of Article 2 lit. c) SFD;
  - a settlement agent within the meaning of Article 2 lit. d) SFD;

- a clearing house within the meaning of Article 2 lit. e) SFD; or
  - a system operator within the meaning of Article 2 lit. p) SFD.
- (c) The Auctioneer must provide a suitable Settlement Account (T2-account) which is also recognised by ECC and to which ECC can pay out the auction proceeds after the execution of the auction (“Nominated Bank Account” according to Article 44 paragraph 1 Auctioning Regulation).

### 5.1.3.2 Scope of Admission as Auctioneer; Applicable Rules

- (1) The Auctioneer may only operate within the scope of its appointment pursuant to Article 22 paragraph 1 Auctioning Regulation and with a mandate to auction the volume of Allowances to be auctioned by each Member State appointing it and to receive and to disburse the auction proceeds due on behalf of the Member State by which it has been appointed, pursuant to Article 23 lit. a), lit. b) and lit. c) Auctioning Regulation; or in case of the EIB according to Article 23 and 24 Auctioning Regulation.
- (2) Upon admission by ECC, the Auctioneer is exclusively permitted to participate in Primary Auctions in the capacity of a seller.
- (3) In accordance with Article 50 paragraph 1 Auctioning Regulation, the Auctioneer is required to provide Allowances as collateral prior to the opening of the bidding window for a Primary Auction. These pre-delivered Allowances shall be held in escrow by ECC as a security trust (“Sicherungstreuhand”) acting as custodian and escrow agent, pending their delivery. No other collateral or contributions can be requested from the Auctioneers for the purpose of their participation in the ECC system.
- (4) The rules regarding Trading Participants contained in these Clearing Conditions shall apply to the Auctioneers except the provisions in chapter 3, sections 3.1.1 (Rights and Obligations of the Clearing Member), 3.1.2 (Limits and other special Agreements), 3.1.3 (Rights and Obligations of the Non-Clearing Member), 3.1.4 (Change of Institution Clearing Member and Position Transfer), 3.1.5 (Change of Clearing Member with accelerated Position Transfer) and 3.1.6 (Transfer of Collateral upon the Change of the Clearing Member), 3.2 (Clearing of Registered Transactions), 3.3.1 paragraph 1, 2 and 3 (Conclusion of Transactions), 3.3.2 (Contract Obligations arising from Derivatives Market Transactions), 3.3.3 paragraph 2 and 4 (Contract Obligations arising from Spot Market Transactions), 3.3.4 (Financial Settlement of PXE Spot Market Transactions), 3.3.5 paragraph 2 and 3 (Physical Settlement of Transactions - Central Delivery Point), 3.3.6 (Formation of net Receivable and/or Payable and Compression), 3.3.8 paragraph 2 and 3 (Objections), 3.3.9 (Assignment), 3.3.11 (Emergency Measures), 3.3.12 (Liability), 3.4 (Margins Requirements and Collateral), 3.5.1 (Types of Position Accounts), 3.5.2 (Proprietary Positions Accounts), 3.5.3 (Agent Position Account), 3.5.4 (Market Maker Position Accounts), 3.5.5 (Account Keeping), 3.5.6 (Clearing Accounts), 3.5.7 (Collateral Clearing Account), 3.5.8 (Cash Collateral Account for Trading Participant Cash Collateral), 3.5.9 (Internal Inventory Accounts for Registry Based Products), 3.6 (Fees and Price List), 3.7 (Default Fund), 3.8 (Default),

3.9 (Termination and Close-out Netting Provisions), 3.10 (Legal Consequences upon Termination), 3.11 (Default Management Auctions), 3.12 (Measures for the Implementation of the Austrian Energy Efficiency Act (EEffG)) and chapter 4 (Settlement of Transactions).

- (5) Any participation by an Auctioneer in a Primary Auction shall be excluded if the Allowances to be auctioned have not been submitted to ECC's Auction Collateral Delivery Account in due time before the beginning of the auction concerned.
- (6) ECC is entitled to revoke or suspend admission as an Auctioneer at any time if the preconditions for the admission as Auctioneer have ceased to be fulfilled or if to the Auctioneer is in a material breach of its obligations under these Clearing Conditions which is not capable of being remedied or is not remedied within twenty (20) Business Days of being required by ECC to do so.
- (7) Each Auctioneer shall be entitled to unilaterally terminate its admission as an Auctioneer at any time, by means of a written notice, without specifying the reason for such termination.
- (8) Any termination, revocation or suspension of an admission as an Auctioneer as from the opening of the bidding window (as defined in Article 3 No. 6 Auctioning Regulation) shall not affect the rights and obligations of ECC and of that Auctioneer arising from the respective Primary Auctions of Allowances for which the relevant Auctioneer is responsible pursuant to Articles 22 paragraph 1, 23 and 24 Auctioning Regulation, until such Primary Auctions of Allowances are settled with finality, i.e. until the relevant Allowances have been delivered on the custody accounts of the successful bidders and the corresponding auction proceeds have been credited to the Nominated Bank Account, alternative account or notary trust account of the relevant Auctioneer.
- (9) In case a new Auctioneer is appointed pursuant to Article 24 Auctioning Regulation or by a Member State pursuant to Article 22 paragraph 1 Auctioning Regulation, and that new Auctioneer complies with the conditions of section 5.1.3.1, the admission of the previous Auctioneer appointed pursuant to Article 24 Auctioning Regulation or representing that Member State shall be automatically terminated upon the admission of such newly appointed Auctioneer without changing the rights and obligations under these Clearing Conditions in relation to Article 24 Auctioning Regulation or the Member State/States represented by the Auctioneer that has been replaced.

## 5.2 Settlement of Disputes and Liability

The provisions of the related and valid Service Contract between the Member States and ECC shall exclusively apply with regard to the settlement of disputes and the Court of Jurisdiction.

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

## 5.3 Settlement Finality

The settlement finality provisions applicable to the Primary Auctions of Allowances are stipulated under chapter 7.

## 5.4 Clearing and Settlement of Primary Auctions of Allowances

### 5.4.1 Transfer of Allowances to be auctioned

- (1) Pursuant to Article 13 Registry Regulation, ECC keeps separate Auction Collateral Delivery Accounts in the Union Registry to hold Allowances on behalf of Member States not participating in a joint action as provided in Article 30 Auctioning Regulation, as well as a single Auction Collateral Delivery Account for the Allowances to be auctioned for the Innovation Fund and the Modernisation Fund pursuant to Article 24 Auctioning Regulation or the Recovery and Resilience Facility according to Article 10e Directive 2003/7/EG, respectively, and on behalf of Member States participating in a joint action as provided in Article 26 Auctioning Regulation. These Auction Collateral Delivery Accounts can be used for Primary Auctions only.
- (2) ECC and EEX shall determine the Auction Table in accordance with the Auction Calendar pursuant to Articles 52 and 53 Registry Regulation.
- (3) In accordance with Article 54 Registry Regulation, the Allowances to be auctioned will be transferred for the Auctioneers into the nominated Auction Collateral Delivery Account held by ECC according to the respective valid Auction Tables, in due time before the auction. If no transfer has occurred in due time before the beginning of the auction, ECC will request EEX to cancel the respective auction.
- (4) For each Auction Collateral Delivery Account held by ECC in the Union Registry on an omnibus basis, ECC keeps separate internal inventory accounts for each Member State represented by its relevant Auctioneer and for the EIB separately for the Innovation Fund and for the Modernisation Fund as well as the Recovery and Resilience Facility as custody accounts on which the Allowances are credited. Upon each transfer of the Allowances into the Auction Delivery Account held by ECC in the Union Registry, ECC proceeds to matching book entries of the Allowances in the custody accounts of each Member States represented by its relevant Auctioneer or of the Innovation Fund and the Modernisation Fund pursuant to Article 24 Auctioning Regulation or the Recovery and Resilience Facility according to Article 10e Directive 2003/7/EG, respectively. The Allowances credited to the custody accounts are held in escrow by ECC acting as custodian and escrow agent, in accordance with Article 50 Auctioning Regulation. These Allowances held by ECC are off-balance sheet of ECC and constitute collateral security provided into the system within the meaning of Article 2 lit. m) SFD, benefitting from the protection of Article 9 paragraph 1 SFD and in particular of § 166 paragraph 3 InsO. ECC holds the Allowances as collateral provided by the Auctioneer to the benefit of ECC to cover its potential exposures as a result of ECC's obligation to deliver the auctioned Allowances to the successful bidders after the payment of the auction proceeds has been effected.

The Auction Collateral Delivery Account kept by ECC at the Union Registry, the custody accounts provided by ECC, as well as the escrow arrangements and rights and obligations of ECC with respect to the appointment of ECC as custodian and escrow agent pursuant to Article 46 Auctioning Regulation are governed by the separate Custody and Escrow Agreements.

## 5.4.2 Conclusion of a Transaction

Contractual relations resulting from the Primary auctions (Transactions) are concluded between the Member State or for the Innovation Fund and the Modernisation Fund or the Recovery and Resilience Facility, respectively, represented by its respective Auctioneer as the seller and ECC as the buyer and at the same time between ECC as the seller and the bidder as the buyer at the moment of determination of the auction clearing price by EEX in accordance with Article 7 paragraph 2 Auctioning Regulation.

## 5.4.3 Contractual Obligations arising from Transactions in Primary Auctions

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

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

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

## 5.4.5 Financial Settlement (Payment and Transfer of the Auction Proceeds)

### 5.4.5.1 Transactions of Bidders

All payments including the statutory incurred taxes are debited from the Clearing Account of the Clearing Member during Batch Processing of the Trading Day.

### 5.4.5.2 Transactions of Auctioneers

- (1) ECC will transfer the auction proceeds in accordance with Article 44 paragraph 2 Auctioning Regulation, immediately after cash collection from the Clearing Members of the successful bidders has taken place on the first Business Day following the day of the auction (T+1) around 8:15 a.m. (but not later than at the end of the respective Business Day) to the respective Nominated Bank Account of the Auctioneer without any deductions (net) and without charging any fees. All payments will be effected in EUR.

- (2) In the event of a failure of cash collection by ECC from one or more Clearing Members, ECC shall effect the transfer of the auction proceeds by applying its default provisions and utilising collateral and Default Fund Contributions as stipulated in sections 3.7 to 3.11.
- (3) Where transfer of the auction proceeds to the Nominated Bank Account of a given Auctioneer is unsuccessful due to circumstances outside ECC's control, ECC shall meet its payment obligation by transferring the amount payable to an alternative account if the relevant Auctioneer has nominated such account. Where such alternative account is not provided or payment to that account is also unsuccessful, ECC shall effect its payment obligation by transferring the amount payable to a notary trust account (Notaranderkonto) in cleared funds for the benefit of the relevant Auctioneer. In the case of a transfer to such notary trust account, any cost and possible damages pertaining to the holding of the funds on such notary trust account shall be incurred by the relevant Auctioneer. If the inability to pay to the Nominated Bank Account falls within the scope of responsibility of ECC, ECC shall be liable for the costs and potential damages. The arrangements entered into between ECC and the notary shall provide that the notary shall use its best endeavour to execute without delay the transfer of the amount payable to any account identified and notified by the Auctioneer.
- (4) The amount transferred to each Auctioneer shall be equal to the number of Allowances auctioned by that Auctioneer multiplied by the auction clearing price announced in the results of the auction.
- (5) With the transfer of the auction proceeds by ECC according to paragraph 1 to 4 above ECC shall be released from its payment obligations.

#### **5.4.6 Treatment of the Transactions in Terms of Value Added Tax**

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

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

- (1) Upon payment of the auction proceeds to the Auctioneers, the auctioned Allowances are released from escrow and delivered to the successful bidders in accordance with Article 47 Auctioning Regulation by:
  - debiting them from the custody accounts of the Member State represented by its respective Auctioneers and crediting them to the internal inventory accounts kept by ECC as

custody accounts for the successful bidders on the first Business Day following the day of the Primary Auction; and

- confirming the transfers of the relevant Allowances from the Auction Collateral Delivery Account to the trading account of ECC at the Union Registry in the meaning of Article 35 paragraphs 1 and 2 Registry Regulation. ECC will start the execution of the necessary steps for such confirmation of the transfers of the relevant Allowances from the Auction Collateral Delivery Account to the trading account of ECC at the Union Registry immediately after crediting the internal inventory accounts kept by ECC as custody accounts for the successful bidders referred to in the previous paragraph. The confirmation shall be concluded without delay. After its confirmation, the transfer will be finalised in accordance with the twenty-six (26) - hour delay as laid down in Article 35 paragraph 3 Registry Regulation.
- (2) In case of failure of cash collection by ECC from one or more Clearing Members ECC shall take delivery of the Allowances pursuant to Article 45 paragraph 4 lit. a) Auctioning Regulation. In such case the Allowances are delivered to ECC by:
- debiting them from the custody accounts of the Member State represented by its respective Auctioneers and crediting them to the internal inventory account kept by ECC on the first Business Day following the day of the Primary Auction; and
  - confirming the transfers of the relevant Allowances in the meaning of Article 35 paragraphs 1 and 2 Registry Regulation from the Auction Collateral Delivery Account to the relevant account of ECC at the Union Registry as stipulated under paragraph 1 second indent.
- (3) This delivery takes place in fulfilment of the obligation of the Member States or for the Innovation Fund and the Modernisation Fund or the Recovery and Resilience Facility, respectively, represented by their respective Auctioneers to deliver the Allowances to ECC as an equitable consideration ("gleichwertige Gegenleistung" in the meaning of § 142 InsO) in return of the payment of the auction proceeds effected by ECC to the Auctioneers, and, at the same time, in fulfilment of the obligation of ECC to deliver the Allowances to the successful bidders as an equitable consideration ("gleichwertige Gegenleistung" in the meaning of § 142 InsO) in return of the payment of the auction proceeds effected by successful bidders to ECC.
- (4) The delivery by crediting of the internal inventory accounts of the successful bidders and the delivery by crediting of the internal inventory accounts of ECC shall be conditional on the confirmation, in the meaning of Article 35 paragraphs 1 and 2 Registry Regulation, of the transfers of the relevant Allowances from the Auction Collateral Delivery Account to the relevant account of ECC at the Union Registry and the relevant incoming credits of Allowances on the internal inventory accounts of the successful bidders or ECC shall only be available to them when they are finally settled upon confirmation in the Union Registry.
- (5) In the relationship between ECC and the Auctioneers representing Member States participating in a joint action according to Article 26 Auctioning Regulation or for the Innovation Fund and the

Modernisation Fund or the Recovery and Resilience Facility, respectively, the delivery shall additionally be effected in accordance with the Custody Agreement and Escrow Agreement.

In the relationship between ECC and the successful bidders the delivery shall additionally be effected in accordance with section 4.9.2.

- (6) After delivery has been effected in accordance with section 4.9.2, the successful bidder may request a transfer of the auctioned Allowances from the ECC trading account to the nominated registry account of the bidder. ECC will perform such transfer if no conflicting rights to such transfer exist under these Clearing Conditions.
- (7) If ECC fails to deliver the whole or part of the auctioned Allowances due to circumstances outside its control, ECC shall deliver the Allowances at the earliest opportunity and the successful bidders shall accept delivery at that later date. This shall be the sole remedy to which a successful bidder shall be entitled to in such case (see Article 48 paragraphs 1 and 2 Auctioning Regulation).

## 6. Final Provisions

### 6.1 Sovereign Acts

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

### 6.2 General Provisions in accordance with the Recovery and Resolution Regulation

#### 6.2.1 Recovery Planning

- (1) Pursuant to Article 9 CCPRRR ECC is obliged to establish and maintain a recovery plan. Such recovery plan includes processes, indicators and measures which ECC plans to take in case a Default Event or a Non-Default Event jeopardises ECC's financial or operational survivability.
- (2) Pursuant to Article 9 paragraph 1 and paragraph 6 CCPRRR ECC is entitled to
  - (a) take measures provided for in its recovery plan in case the relevant indicators are met,
  - (b) take measures provided for in its recovery plan despite the fact that the relevant indicators have not been met, or
  - (c) refrain from taking measures provided for in its recovery plan despite the fact that the relevant indicators have been met.

ECC shall notify its supervisory authority about any decision taken on the Recovery Situation pursuant to this paragraph.

Recovery Measures are in particular the measures of loss allocations under section 3.4.6.2, the request for Additional Contributions under section 3.7.4 paragraph 5, the allocation of positions under section 3.11.8 and the cash settlement under section 3.11.9.

ECC publishes on the ECC website an overview on the Recovery Measures and their potential impact on the Clearing Member and their Non-Clearing Member and Clients.

- (3) The obligation of Additional Contributions under section 3.7.4 paragraph 5 does not apply to institutions defined in Article 1 paragraph 4 and 5 of EMIR.
- (4) The Clearing Member acknowledge that, pursuant to Article 54 CCPRRR any Recovery Measure taken by ECC does not constitute a termination event or shall not be deemed to be insolvency proceedings in regard of ECC.

## 6.3 Forwarding of Information

### 6.3.1 Forwarding of Information regarding Clearing Members and/or Non-Clearing Members to third Parties

- (1) ECC and the respective Settlement Entity shall treat all data and information referring to its Clearing Members and their Non-Clearing Members as confidential. ECC and the respective Settlement Entity may 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, in case the Clearing Member concerned has approved of such forwarding of information or the following provisions allow it.
- (2) Regardless of the provisions contained in paragraph 1, ECC shall be entitled to forward all necessary information on the following events to the markets for the Transactions of which it has taken over clearing as well as to others, that take part in the Clearing of ECC:
  - (a) granting of a clearing license (section 2.1.2)
  - (b) termination and suspension of the clearing license (section 2.1.8)
  - (c) restriction of a clearing license (section 2.1.9)
  - (d) default by the Clearing Member (section 3.8.1)
  - (e) licensing of a Clearing Member or of a Non-Clearing Member as a Trading Participant (section 2.6.1)
  - (f) revocation of a license as a Trading Participant (section 2.6.2)
  - (g) termination of the NCM Agreement (section 2.2.2)
  - (h) the information necessary for the performance of a Default Management Auction.
- (3) ECC shall 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.
- (4) ECC shall be entitled to provide data and information to the Trading Surveillance Offices of the markets cleared by ECC, provided that such data and information are necessary for the surveillance of trading and position limits and the Trading Surveillance Offices are subject to confidentiality rules comparable to those of ECC.
- (5) ECC shall be entitled to disclose to entities of Deutsche Börse Group which are subject to confidentiality regulations comparable to those of ECC, all data and information relating to Clearing Members or Client which are relevant for the admission and trading at markets of Deutsche Börse Group as well as the identification, monitoring and management of risks resulting from arrangements of the entities of Deutsche Börse Group with the respective Clearing Members, Non-Clearing Members or Clients.
- (6) Under the conditions set out in Article 38 paragraph 5 EMIR, ECC shall make public any violations by Clearing Members of the requirements set out in Article 38 paragraph 1 EMIR.

### **6.3.2 Forwarding of Information regarding Clearing Members and/or Non-Clearing Members to Supervisory and regulatory Authorities**

ECC and the respective Settlement Entity shall be entitled to forward data and information to competent supervisory authorities or other third parties entitled to such both within the country and abroad, which are subject to provisions regarding confidentiality similar to those of ECC, as part of the legal provisions applicable with regard to its Clearing Members as well as to ECC and/or the respective Settlement Entity.

### **6.3.3 Exclusion of commercial use of Data**

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

## **6.4 Data Protection / Obligation to pass on Data Protection Declarations**

- (1) The ECC shall have the right to process personal data of persons working for Clearing Members, Non-Clearing Members and Auctioneers if this is necessary to protect the legitimate interests of ECC and if the interests of the persons concerned do not prevail (Article 6 paragraph 1 lit. f) of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation – GDPR)).
- (2) Clearing Members, Non-Clearing Members and Auctioneers are obliged to expressly inform the persons concerned about the information provided by ECC on the ECC website (<https://www.ecc.de/en/privacy-policy>) about this data processing (“Data Protection Declaration”).

## **6.5 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.

## 6.6 Applicable Law, Legal Venue

- (1) These Clearing Conditions shall be governed exclusively by the applicable material law of the Federal Republic of Germany to the exclusion of the UN law on sales. The material law of the place at which physical settlement is actually provided and/or, in the case of Grid-bound Energy, the material law applicable to the Transmission System Operator within whose transmission system delivery is effected shall govern the execution of the physical settlement of Transactions.
- (2) The exclusive place of jurisdiction, to the extent permitted by law, shall be for all conflicts arising out of or in connection with these Clearing Conditions Leipzig, Germany. The place of performance shall be Leipzig, Germany.

## 6.7 Amendments and Supplements

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

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

## 7. System Agreement

### 7.1 Payment System within the meaning of the SFD

#### 7.1.1 System

- (1) ECC provides the clearing and settlement of transfer orders (“orders”) within the meaning of section 7.1.2 for Clearing Members and Settlement Banks in accordance with these Clearing Conditions as the operator (system operator within the meaning of § 1 paragraph 16a KWG, Article 2 lit. p) SFD) of a system within the meaning of §§ 1 paragraphs 16, 24b KWG, § 675p paragraph 5 BGB and Article 2 lit. p) and lit. a) SFD and is legally responsible for operating the ECC system. The ECC system is governed by German law and has been reported as a designated system to the European securities and market supervisory authorities by the German Bundesbank in accordance with § 1 paragraph 16 sentence 1 KWG and Article 2 lit. a) SFD. ECC as the central counterparty and clearing house, the Clearing Members, the Auctioneers according to section 5.1.3 and the Settlement Banks (“System Participants”) are participants in the system.
- (2) The system operated by ECC is governed by various protective provisions according to which specifically
  - (a) Transfer orders and set offs (including Compression and aggregation) are legally binding and also effective towards third parties and may not be reversed in the event of insolvency proceedings against a Clearing Member or a Settlement Bank (§§ 96 paragraph 2, 116 sentence 3, 147 paragraph 1 sentence 2 InsO; cf. Article 3 SFD) as from the moment of entry into the system as specified in sections 7.2 and 7.3 below,
  - (b) Transfer orders cannot be revoked by Clearing Members or Settlement Banks or by third parties after the time specified in section 7.2 or for Primary Auctions as from the moment of irrevocability as specified in section 7.3 lit. (b) (§ 675p paragraph 5 BGB, cf. Article 5 SFD),
  - (c) The rights of ECC as the system operator or of another participant (including Auctioneers for the Member States, for the Innovation Fund and the Modernisation Fund or the Recovery and Resilience Facility) regarding provided real collateral which is furnished to it on account of these Clearing Conditions shall not be affected by insolvency proceedings against a Clearing Member, ECC, a Settlement Bank, or any third party which provided the collateral (§ 166 paragraph 3 No. 1 InsO, cf. Article 9 paragraph 1 SFD); this includes pre-delivered Allowances held in escrow by ECC as a security trust (“Sicherungstreuhand”) under the Escrow Agreement or under these Clearing Conditions to cover exposures of ECC as a result of ECC’s obligation to deliver the Allowances to the successful bidders, and
  - (d) The effects of insolvency proceedings on the rights and obligations of the Clearing Members or Settlement Banks as participants in the system are exclusively governed by Ger-

man law as the legislation of the country which is applicable to the system (§ 340 paragraphs 1 and 3 InsO, Article 9 paragraph 1 Regulation (EC) No. 1346/2000 regarding Insolvency Proceedings, cf. Article 8 SFD).

### 7.1.2 Transfer Orders

- (1) A transfer order which can be submitted to the system operated by ECC is an instruction which entails the assumption or fulfilment of a payment obligation in accordance with these Clearing Conditions. The time at which the transfer order is submitted to the system and the time at which it becomes irrevocable is listed in sections 7.2 and 7.3.
- (2) Regardless of the legal reason for such – payment instructions result from the conclusion or registration of a Transaction by Trading Participants in a market as well as from the conclusion of subsequent measures, in particular, resulting from the Formation of net accounts receivable and/or Payable and Compressions (section 3.3.6), Trade transfers (section 3.5.5 paragraph 7), position transfers (sections 3.1.4, 3.5.4 and 3.5.5 paragraph 6) as well as from the formation of net positions (section 3.10) and offsetting claims (section 3.9.1). Furthermore, transfer orders result from requesting, transferring, returning and using collateral as well as commitments by the Settlement Bank to accept liability for certain financial liabilities towards ECC.

### 7.1.3 System Collateral

The collateral provided to ECC as system operators according to section 3.4.1 constitutes system collateral within the meaning of § 166 paragraph 3 No. 1 InsO, which is used to cover claims of ECC from the system.

### 7.1.4 Obligation of a Settlement Bank

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

### 7.1.5 System Agreement

- (1) In as far as the Clearing Conditions were part of an agreement between a Clearing Member and ECC, chapter 7, the provisions in chapter 6 as well as all provisions and definitions of terms in these Clearing Conditions referring to Clearing Members together form an independent contractual agreement (“System Agreement”).
- (2) In as far as the Clearing Conditions are part of an agreement between a Settlement Bank and ECC, only this chapter 7 as well as the definitions of Settlement Bank, Settlement Account and DCP Clearing Member in the Clearing Conditions are part of this independent contractual agreement (“System Agreement”).

- (3) The entirety of the System Agreements according to paragraphs 1 and 2 constitutes a formal agreement within the meaning of Article 2 lit. a) SFD which forms a system within the meaning of the SFD.

## 7.2 Time of the Submission and irrevocability of Transfer Orders

- (1) Transfer orders are submitted to the ECC system by the System Participants and, hence, are irrevocable, as of the point of time at which
- (a) an order entered into the trading system of a market is matched with another order in accordance with the rules and regulations of this market or
  - (b) a Trade is registered with the rules and regulations of a market and/or in the case of registration using STP systems (section 3.2 paragraph 3) or in the case that the trade is accepted by the ECC interface or
  - (c) in case of a payment of the Settlement Bank to ECC, a Settlement Bank has initiated a transfer order against the Settlement Account of the DCP Clearing Member and for the benefit of ECC or has confirmed in a manner previously agreed between the parties that a financial liability, as previously revealed to the Settlement Bank, does exist and will be fulfilled. The Settlement Bank is liable to ECC for the fulfilment of this financial liability (section 7.1.4).
- (2) In deviation from paragraph 1, all other transfer orders by System Participants and, in particular, those which result from the Formation of net accounts receivable and/or Payable and Compression (section 3.3.6), Trade transfers (section 3.5.5), position transfers (sections 3.1.4, 3.5.4 and 3.5.5) and from the formation of net positions (section 3.10) as well as offsetting claims (section 3.9.1) or from requesting, transferring, returning and using of collateral are considered submitted to the ECC system and irrevocable as of the time at which ECC identifies or records the respective transfer orders in the Clearing System.

## 7.3 Time of Entry into the System and irrevocability of Transfer Orders and Finality of Transfers in relation to Primary Auctions of Allowances

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

- (a) the moment of entry into the system according to Article 3 paragraph 3 SFD (**Settlement Finality 1**) shall be the moment, when EEX and ECC submit the auction tables to the European Commission in accordance with Articles 52 to 53 Registry Regulation. If the auction tables should be amended at a later stage, the moment of entry into the system shall remain to be the moment of submission of the initial auction table,
- (b) the Transfer Order shall be irrevocable (**Settlement Finality 2**) as of the moment of determination of the auction clearing price by EEX,

- (c) each Transfer of Allowances on behalf of the Member States, for the Innovation Fund and the Modernisation Fund or the Recovery and Resilience Facility to ECC and payment of the auction proceeds by ECC to the Member States or to the Auctioneer of the Innovation Fund and the Modernisation Fund or the Recovery and Resilience Facility, respectively, shall be final and irrevocable immediately and automatically (**Settlement Finality 3**) upon fulfilment of the following three conditions:
- the crediting of the related auction proceeds to the Nominated Bank Account of the Auctioneer or a respective alternative account according to section 5.4.5.2 paragraph 3, and
  - the release of the Allowances from escrow in accordance with section 5.4.7 paragraphs 1 or 2, and crediting of the Allowances to the internal inventory account of the successful bidders or, in case of failure of collection of the auction proceeds from the successful bidders, crediting the Allowances to the internal inventory accounts of ECC and
  - the confirmation, in the meaning of Article 35 paragraphs 1 and 2 Registry Regulation, of the transfers of the relevant Allowances from the Auction Collateral Delivery Account to the relevant account of ECC at the Union Registry.

The delivery of the Allowances on behalf of the Member States or for the Innovation Fund and the Modernisation Fund or the Recovery and Resilience Facility, respectively, to ECC by releasing the escrow is final and irrevocable if and only if the payment of the corresponding auction proceeds to the bank account of ECC is final and irrevocable and vice-versa.

- (d) each Transfer of Allowances by ECC to the successful bidders and payment of the auction proceeds by the successful bidders to ECC shall be final and irrevocable immediately and automatically (**Finality**) upon fulfilment of the following three conditions:
- the crediting of the related auction proceeds to the bank account of ECC,
  - the crediting of the Allowances to the internal inventory accounts which are kept by ECC as custody accounts of the successful bidders in accordance with section 5.4.7, and
  - the confirmation of the transfers of the relevant Allowances from the Auction Collateral Delivery Account to the trading account of ECC at the Union Registry, in the meaning of Article 35 paragraphs 1 and 2 Registry Regulation.

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