



# Clearing Conditions of European Commodity Clearing AG

---

Datum / Date **01/04/2009**

Ort / Place **Leipzig**

Dokumentversion / Document Release **0007**

# TABLE OF CONTENTS

|  |           |
|--|-----------|
| <b>Preamble .....</b>  | <b>6</b>  |
| <b>1 Definition of Terms.....</b>  | <b>7</b>  |
| <b>2 License for Participation in Clearing on ECC.....</b>   | <b>11</b> |
| 2.1 Clearing Member .....  | 11        |
| 2.1.1 Clearing license .....   | 11        |
| 2.1.2 General preconditions to be fulfilled by a Clearing Member.....  | 11        |
| 2.1.3 Product-specific preconditions on the part of the Clearing Member .....                                    | 13        |
| 2.1.4 Disclosure requirements, right of inspection.....  | 13        |
| 2.1.5 Non-transferability .....  | 14        |
| 2.1.6 Termination and suspension of the clearing license.....  | 14        |
| 2.1.7 Restrictions of the clearing license .....   | 15        |
| 2.2 Non-Clearing Member .....  | 15        |
| 2.2.1 Preconditions for the participation of a Non-Clearing Member in clearing of a product ...                  | 15        |
| 2.2.2 Termination of the NCM agreement .....   | 16        |
| 2.3 Trading Participants .....   | 16        |
| 2.3.1 Precondition for approval as a Trading Participant.....  | 16        |
| 2.3.2 Revocation of an approval.....   | 17        |
| 2.4 Inclusion of products .....  | 17        |
| <b>3 General Provisions.....</b>   | <b>19</b> |
| 3.1 Legal relationships of the parties involved in clearing .....  | 19        |
| 3.1.1 Rights and obligations of the Clearing Member.....   | 19        |
| 3.1.2 Special agreements by the Clearing Members with their Non-Clearing Members .....                           | 20        |
| 3.1.3 Rights and obligations of the Non-Clearing Member .....  | 21        |
| 3.1.4 Rights and obligations of the Trading Participant.....   | 21        |
| 3.2 Legal relations in case of the inclusion of the Sub-CCP.....   | 21        |
| 3.2.1 General.....   | 21        |
| 3.2.2 Rights and obligations of the Sub-CCP .....  | 21        |
| 3.2.3 Rights and obligations of the Clearing Members of the Sub-CCP .....  | 22        |
| 3.2.4 Rights and obligations of the Non-Clearing Members of the Sub-CCP .....                                    | 22        |
| 3.3 Clearing of OTC transactions .....   | 22        |
| 3.4 General Clearing Conditions; Liability .....   | 22        |
| 3.4.1 Conclusion of transactions .....   | 22        |
| 3.4.2 Contract obligations arising from derivatives market transactions .....                                    | 23        |
| 3.4.3 Contract obligations from derivatives market transactions in case of the inclusion<br>of the Sub-CCP ..... | 24        |
| 3.4.4 Contract obligations from spot market transactions .....   | 25        |
| 3.4.5 Offsetting procedure .....   | 25        |
| 3.4.6 Business days .....  | 25        |
| 3.4.7 Objections .....   | 26        |
| 3.4.8 Assignment.....  | 26        |
| 3.4.9 Emergency measures.....  | 26        |

|          |  |           |
|----------|--|-----------|
| 3.4.10   | Liability .....  | 26        |
| 3.5      | Margins.....   | 28        |
| 3.5.1    | Obligation to furnish margins.....   | 28        |
| 3.5.2    | Supplementary margins to be furnished.....   | 28        |
| 3.5.3    | Margins in cash .....  | 29        |
| 3.5.4    | Margins in securities and stock loan securities .....  | 29        |
| 3.6      | Accounts.....  | 30        |
| 3.6.1    | Types of position accounts.....  | 30        |
| 3.6.2    | Proprietary position accounts .....  | 31        |
| 3.6.3    | Agent position accounts .....  | 31        |
| 3.6.4    | Market maker position accounts.....  | 31        |
| 3.6.5    | Account keeping .....  | 32        |
| 3.6.6    | Clearing accounts.....   | 34        |
| 3.6.7    | Securities clearing account.....   | 34        |
| 3.7      | Fees and price list .....  | 34        |
| 3.8      | Clearing fund .....  | 34        |
| 3.8.1    | Clearing fund .....  | 34        |
| 3.8.2    | Utilization of the clearing fund .....   | 35        |
| 3.8.3    | Replenishment of the contributions to the clearing fund.....   | 35        |
| 3.8.4    | Release of the contributions to the clearing fund .....  | 36        |
| 3.9      | Default .....  | 36        |
| 3.9.1    | Occurrence of default .....  | 36        |
| 3.9.2    | Technical default .....  | 36        |
| 3.9.3    | Position transfer, close-out and utilization of margins .....  | 37        |
| 3.9.4    | Other measures in case of default.....   | 38        |
| 3.9.5    | Non-application of the rules regarding default with regard to the Sub-CCP, its affiliated<br>Clearing Members and Non-Clearing Members .....   | 38        |
| 3.10     | Close-out netting provisions .....   | 38        |
| 3.10.1   | General provisions.....  | 38        |
| 3.10.2   | Termination of Derivatives Market transactions which have not been fulfilled<br>completely in case of the insolvency of a Clearing Member..... | 39        |
| 3.10.3   | Calculation of the uniform settlement claim in case of the insolvency<br>of a Clearing Member .....  | 39        |
| <b>4</b> | <b>Special provisions regarding Derivatives Market Transactions .....</b>  | <b>41</b> |
| 4.1      | Fundamental principles of the establishment of margins .....   | 41        |
| 4.2      | Settlement of the transactions.....  | 42        |
| 4.2.1    | Settlement of Phelix Base and Phelix Peak Futures .....  | 42        |
| 4.2.1.1  | General information .....  | 42        |
| 4.2.1.2  | Daily settlement .....   | 42        |
| 4.2.1.3  | Cascading of Phelix Base Quarter and Phelix Peak Quarter Futures .....   | 43        |
| 4.2.1.4  | Cascading of Phelix Base Year and Phelix Peak Year Futures .....   | 43        |
| 4.2.1.5  | Settlement of Phelix Base Month and Phelix Peak Month Futures .....  | 43        |
| 4.2.2    | Settlement of Base Load and Peak Load Futures.....   | 44        |
| 4.2.2.1  | General information .....  | 44        |
| 4.2.2.2  | Daily settlement .....   | 44        |

|          |   |           |
|----------|---|-----------|
| 4.2.2.3  | Cascading.....  | 45        |
| 4.2.2.4  | Physical delivery and purchase of power .....                       | 45        |
| 4.2.2.5  | Financial settlement in case of delivery .....                      | 45        |
| 4.2.2.6  | Treatment with regard to sales tax in case of delivery .....        | 46        |
| 4.2.3    | Settlement of Phelix Base Options .....                             | 46        |
| 4.2.3.1  | Option premium .....  | 46        |
| 4.2.3.2  | Margins to be furnished until exercising of the options.....        | 46        |
| 4.2.3.3  | Procedure in case the option is exercised.....                      | 47        |
| 4.2.3.4  | Particularities in the settlement of the futures position .....     | 47        |
| 4.2.4    | Settlement of European Carbon Futures.....                          | 48        |
| 4.2.4.1  | General information .....   | 48        |
| 4.2.4.2  | Daily settlement .....  | 48        |
| 4.2.4.3  | Financial settlement upon delivery .....                            | 48        |
| 4.2.4.4  | Treatment with regard to sales tax upon delivery.....               | 48        |
| 4.2.4.5  | Delivery and acceptance of EU emission allowances .....             | 49        |
| 4.2.5    | Settlement of European Carbon Options.....                          | 50        |
| 4.2.5.1  | General.....  | 50        |
| 4.2.5.2  | Option premium .....  | 50        |
| 4.2.5.3  | Margins to be furnished until exercising .....                      | 50        |
| 4.2.5.4  | Procedure upon exercising of the option .....                       | 50        |
| 4.2.5.5  | Particularities in the settlement of the futures position .....     | 51        |
| 4.2.6    | Settlement of CER Futures.....                                      | 51        |
| 4.2.6.1  | General.....  | 51        |
| 4.2.6.2  | Daily settlement .....  | 51        |
| 4.2.6.3  | Financial settlement for delivery .....                             | 51        |
| 4.2.6.4  | Sales tax treatment in case of delivery .....                       | 52        |
| 4.2.6.5  | Delivery and acceptance of the Certified Emission Reductions .....  | 52        |
| 4.2.7    | Settlement of Coal ARA and Coal RB Futures .....                    | 53        |
| 4.2.7.1  | General information .....   | 53        |
| 4.2.7.2  | Particularities in the settlement of coal futures .....             | 53        |
| 4.2.7.3  | Daily settlement .....  | 53        |
| 4.2.7.4  | Cascading of Coal Quarter Futures.....                              | 54        |
| 4.2.7.5  | Cascading of Coal Year Futures .....                                | 54        |
| 4.2.7.6  | Settlement of Coal Month Futures.....                               | 54        |
| 4.2.8    | Settlement of Natural Gas Futures .....                             | 55        |
| 4.2.8.1  | General information .....   | 55        |
| 4.2.8.2  | Daily settlement .....  | 55        |
| 4.2.8.3  | Cascading.....  | 56        |
| 4.2.8.4  | Physical delivery and acceptance of natural gas.....                | 56        |
| 4.2.8.5  | Financial settlement in case of delivery .....                      | 56        |
| 4.2.8.6  | Treatment in terms of sales tax in case of delivery .....           | 57        |
| <b>5</b> | <b>Special Provisions regarding Spot Market Transactions .....</b>  | <b>58</b> |
| 5.1      | Fundamental principles regarding the establishment of margins ..... | 58        |
| 5.2      | Special provisions regarding power trading .....                    | 58        |
| 5.2.1    | General information .....   | 58        |

|          |  |           |
|----------|--|-----------|
| 5.2.2    | Settlement of the transactions .....   | 58        |
| 5.2.3    | Physical delivery and purchase of power .....  | 58        |
| 5.2.4    | Measures to maintain network security .....  | 59        |
| 5.2.5    | Treatment of the transactions in terms of sales tax .....  | 59        |
| 5.2.6    | Trade limits for intra-day trading .....   | 59        |
| 5.3      | Special provisions regarding trading in EU emission allowances .....   | 60        |
| 5.3.1    | General information .....  | 60        |
| 5.3.2    | Settlement of the transactions .....   | 60        |
| 5.3.3    | Treatment of the transactions in terms of sales tax .....  | 60        |
| 5.3.4    | Delivery of EU emission allowances .....   | 61        |
| 5.3.5    | Special regulations regarding default .....  | 61        |
| 5.4      | Special provisions regarding natural gas trading .....   | 63        |
| 5.4.1    | General information .....  | 63        |
| 5.4.2    | Settlement of the transactions .....   | 63        |
| 5.4.3    | Physical delivery and purchase of natural gas .....  | 64        |
| 5.4.4    | Measures to maintain network security .....  | 64        |
| 5.4.5    | Treatment of the transactions in terms of sales tax .....  | 64        |
| <b>6</b> | <b>Final Provisions .....</b>  | <b>66</b> |
| 6.1      | Sovereign acts .....   | 66        |
| 6.2      | Forwarding of information .....  | 66        |
| 6.2.1    | Forwarding of information regarding Clearing Members and/or Non-Clearing Members to third parties .....                          | 66        |
| 6.2.2    | Forwarding of information regarding Clearing Members and/or Non-Clearing Members to supervisory and regulatory authorities ..... | 66        |
| 6.3      | Miscellaneous .....  | 67        |
| 6.4      | Applicable law, legal venue .....  | 67        |
| 6.5      | Amendments and supplements .....   | 67        |

## PREAMBLE

European Commodity Clearing AG (ECC) with registered offices in Leipzig is a central counter-party (CCP) and operates a system for collateralisation and settlement of the transactions concluded or registered on the markets approved by it. Currently, the exchanges European Energy Exchange (EEX), ENDEX European Energy Derivatives Exchange N.V. (ENDEX), EPEX Spot SE (EPEX) and Powernext SA (POWERNEXT) are licensed as markets.

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

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

# 1 DEFINITION OF TERMS

|                    |  |
|--------------------|--|
| Accounting cut-off | The time on every business day established by ECC for every spot product. Spot market trades concluded or registered after the accounting cut-off are considered concluded or registered on the next business day. In as far as no other provisions are made, the accounting cut-off shall correspond to the end of trading on every business day.   |
| Balance agreement  | All contractual agreements between the transmission system operator and the Trading Participant as well as between the transmission system operator and ECC regarding the settlement of power and natural gas deliveries.  |
| Batch processing   | Daily process of ECC carried out in the evening for daily settlement, position administration as well as calculation and booking of margins for all transactions for which ECC has taken over clearing.  |
| Business hours     | The business hours are from 7.30 am until 6.00 pm on every business day.   |
| Business day       | The days from Monday to Friday on which transactions are settled by ECC financially and/or physically.   |
| CCP                | Central Counter-party, central counter-party within the meaning of art. 1 paragraph 31 KWG [German Banking Act]  |
| Clearing           | Financial and physical settlement of transactions as well as collateralisation of transactions.  |
| Clearing account   | Accounts of the Clearing Members, the Sub-CCP and ECC, which are kept by ECC or a third party on behalf of ECC and to which payments are credited or from which such are debited in batch processing during settlement of the transactions in accordance with these Clearing Conditions. The daily balance of the clearing accounts is debited from the respective settlement account of the Clearing Member, the Sub-CCP and ECC or credited to such account. |
| Clearing house     | Central counterparty for the transactions included in clearing.  |
| Clearing Member    | Participant in the clearing procedure who has a clearing license. A Clearing Member can also be licensed by ECC as a Trading Participant for one of the products.  |

|                                |   |
|--------------------------------|---|
| Contract                       | Standardized unit of measurement for transactions. In the case of spot market contracts, this refers to the quantity of the commodity; in the case of derivatives market contracts, it refers to the quantity of the commodity and the maturity date of the delivery. The contract specifications determine the arrangements of any given contract. |
| Co-operation products          | Products which are traded on a market recognised by ECC and for which a Sub-CPP is included in the clearing process on the basis of an agreement.   |
| Derivatives market             | Market or sub-market on which transactions in products with a deferred settlement date (usually later than 2 business days) are concluded and/or registered .   |
| Derivatives market transaction | Transaction by a Trading Participant which has a deferred settlement date (futures or options).   |
| ECC                            | European Commodity Clearing AG. As the central counter-party ECC is the clearing house for all of the transactions included in clearing.  |
| EEX                            | European Energy Exchange. EEX is a market with various sub-markets on which spot market and derivatives market transactions are traded or registered in the framework of exchange trading.  |
| Emission right                 | Instruments which are to contribute to the reduction of global CO2 emissions through or on the basis of the Kyoto Protocol.   |
| ENDEX                          | ENDEX European Derivatives Exchange N.V. ENDEX is a market on which derivatives market transactions are traded or registered in the framework of exchange trading.  |
| EPEX                           | EPEX Spot SE, EPEX is a market on which spot market transactions are concluded or registered in the framework of exchange trading.  |
| Non-Clearing Member            | Participant in the clearing procedure who has concluded an NCM agreement with a Clearing Member and is approved as a Trading Participant for certain products by ECC.   |
| Position                       | Balance of several derivatives market transactions regarding the same contract which have not been settled yet.   |
| POWERNEXT                      | Powernext SA. POWERNEXT is a market on which derivatives and spot market transactions are traded or registered.   |



|                         |   |
|-------------------------|---|
| Pre-Trade Limit         | Arrangement for limiting of orders which can be entered into the system of EEX by a Non-Clearing Member which is technically provided within the system of EEX and agreed on by contract between the Clearing Member and the Non-Clearing Member.   |
| Primary-CCP             | ECC as the central counterparty in its legal relationship with the Sub-CCP  |
| Product                 | Spot market contract or all derivatives market contracts with the same underlying and different maturity dates which are traded in one market and have been included in clearing by ECC.  |
| Settlement account      | RTGS, BBK or CBF 6 Series accounts of the Clearing Members, the Sub-CCP and of ECC, to which the daily balance of their clearing accounts is credited or from which such is debited. ECC specifies for every product whether RTGS, BBK or CBF 6 Series accounts have to be used as settlement accounts. |
| Trade                   | A trade is a spot market or derivatives market transaction in one of the products approved by EEC which Trading Participants have concluded in a market or which they have registered and which is settled by ECC.  |
| Trading conditions      | Conditions passed by a market in accordance with which transactions are concluded and/or registered.  |
| Trading day             | The days specified by the respective market on which trading takes place or on which transactions can be registered.  |
| Trading Participant     | Company which is licensed as a Trading Participant in one market, which is approved as a Trading Participant for one product by ECC and which takes part in the clearing procedure on ECC as a Non-Clearing Member or as a Clearing Member.   |
| Spot market             | Market or sub-market on which transactions regarding products are concluded and/or registered which are settled within a period of two business days.   |
| Spot market transaction | Transaction by a Trading Participant which is fulfilled within two business days.   |
| Stop Button             | Application to EEX regarding the exclusion of a Non-Clearing Member and declaration no to execute any further transactions of this Clearing Member on the derivatives market of EEX which is provided technologically.  |

|         |  |
|---------|--|
| Sub-CCP | A central counterparty within the meaning of art. 1 paragraph 2 KWG [German Banking Act] which takes part in the clearing provided by ECC on the basis of a special agreement (CCP-Sub-CCP Agreement). |
|---------|--|

## 2 LICENSE FOR PARTICIPATION IN CLEARING ON ECC

### 2.1 Clearing Member

#### 2.1.1 Clearing license

- (1) A clearing license is required for participation in clearing as a Clearing Member. The clearing license is obtained by means of the conclusion of a corresponding clearing agreement (CM agreement) with ECC. A clearing license authorizes the holder to clear transactions in products which are currently approved by ECC or which will be approved by said party in the future. The clearing license can be restricted by ECC with regard to individual products in case the Clearing Member does not fulfil the preconditions which are specific for the respective product.
- (2) A clearing license can be granted as a general clearing license or as a direct clearing license. A general clearing license authorizes the holder to clear transactions on own account, customer transactions or transactions by Non-Clearing Members. A direct clearing license authorizes the member concerned to clear transactions on own account, customer transactions as well as transactions by affiliated Non-Clearing Members.

#### 2.1.2 General preconditions to be fulfilled by a Clearing Member

- (1) Only institutions fulfilling the following preconditions can be granted a clearing license:
  - (a) Institutions based in a member state of the European Union or in Switzerland provided they have been licensed by the authorities in charge within their countries of incorporation and the license comprises the banking transactions or financial services which are required for participation in clearing and the institutions are also subject to the supervision by the competent authorities within their countries of incorporation in accordance with the parameters of the directives of the European Union or, in case the company is based in Switzerland, of the Swiss bank commission.
  - (b) Branch offices and branch establishments within the meaning of articles 53, 53 b or 53 c of the German banking act (KWG) provided the branch office and/or the institution fulfil the preconditions as per lit. a and section 2.1.2.
  - (c) Branch establishments within the meaning of art. 2 paragraph 1 of the Swiss Federal Law regarding Banks and Savings Associations in conjunction with art. 1 et seqq. of the Ordinance of the Swiss Bank Commission regarding foreign banks in Switzerland provided the branch establishment fulfils the preconditions as per lit. a and section 2.1.2.
  - (d) Other branch offices based in a member state of the European Union ("receiving state") provided the respective main office (financial institution, securities trading company) with headquarters in a member state of the European Union ("country of origin") is licensed by its national supervisory authority and is supervised accordingly

and provided the license comprises the banking transactions or financial services required for clearing operations, there are no barriers to exit for branch establishments for institutions with headquarters in a member state of the European Union in the country of origin, a notification procedure has been carried out in the receiving country and the branch establishment and/or the institution fulfils the preconditions under section 2.1.2.

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

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

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

- (3) The calculation of the liable equity funds shall be effected in accordance with the legal provisions valid in the country of incorporation of the institution concerned. Evidence of the amount of the liable equity funds shall be furnished for ECC upon filing of the application as well as at any other time upon a request to that end after receipt of the clearing license. For the purpose of verification ECC shall be entitled to commission a final auditor at the expense of the institution filing the application.
- (4) In case the liable equity funds of the institution filing the application are not sufficient for granting of a clearing license, ECC shall be entitled to determine that the missing amount can be balanced by means of bank guarantees or collateral in cash or collateral in securities or loan stock rights subject to the provision contained in section 3.5.

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

- (5) Moreover, evidence of the following shall be furnished:
- (a) a pledged-securities account at Clearstream Banking AG or at SegalIntersettle AG.
  - (b) a settlement account at the central bank of a member state of the European Union which takes part in the settlement via the TARGET2 system (RTGS account),
  - (b) upon a request by ECC a settlement account at the German Bundesbank (BBK account),
  - (c) technical connection to the settlement system of ECC,
  - (d) the utilization of the adequate technological equipment (back office equipment) in order to ensure proper recording, booking and monitoring of all transactions as well as of the margins and the calculation of the required margins towards its customers in accordance with the minimum requirements by ECC (clearing obligations); in addition to that, the rules and regulations regarding the technical equipment of ECC shall apply accordingly.
  - (e) the employment of at least one sufficiently qualified member of staff for the proper discharge of the clearing obligations at the back office. At least one sufficiently qualified member of staff has to be present as well as available by phone, e-mail and fax at any time during any given business day.
  - (f) the contribution to the clearing fund as per section 3.8.

#### 2.1.3 Product-specific preconditions on the part of the Clearing Member

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

#### 2.1.4 Disclosure requirements, right of inspection

- (1) Every Clearing Member shall inform ECC forthwith as soon as the general and product-specific preconditions for its participation in clearing on ECC are not fulfilled any longer or in case other circumstances have arisen which might lead to the lapse of these preconditions.
- (2) Clearing Members shall be obliged to furnish evidence of the existence of the required liable equity funds to ECC within a period of six months after the end of any given business year of the Clearing Member concerned.
- (3) Evidence of the continued existence of the preconditions for granting of a clearing license shall be furnished to ECC at any time upon a request to that end. For the purpose of a further investigation ECC shall be entitled to commission an auditor within the meaning defined in the German banking act or comparable regulations at the expense of the Clearing Member.

### 2.1.5 Non-transferability

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

### 2.1.6 Termination and suspension of the clearing license

- (1) Every Clearing Member shall be entitled to terminate its clearing license by means of a written notice without specifying reasons for such move. Such termination shall only become effective once all those transactions for the clearing of which the Clearing Member concerned is responsible have been closed out or transferred to another Clearing Member and once all outstanding delivery obligations and purchase obligations as well as all obligations to effect payments on the part of the Clearing Member concerned and all outstanding obligations to take delivery and to purchase on the part of affiliated Non-Clearing Members have been fulfilled.
- (2) ECC shall terminate a clearing license in the following cases:
  - (a) the general preconditions for granting of a clearing license were not fulfilled in the first place, in particular if the clearing license was granted on the basis of incorrect or incomplete information furnished by the Clearing Member or
  - (b) the general preconditions for granting of a clearing license have subsequently ceased to exist or
  - (c) the Clearing Member violates an essential clearing condition and repeatedly transgresses such in spite of a warning being given; in this context, the non-existence of intention or negligence on the part of the Clearing Member shall be irrelevant insofar or
  - (d) measures according to art. 45 et seqq. KWG have been instituted against the Clearing Member or in case an application for insolvency proceedings has been filed. The measures as per art. 45 et seqq. KWG and the insolvency proceedings shall be equivalent to the corresponding measures and proceedings as per the legislation of the country in which the Clearing Member is based.
  - (e) the Clearing Member objects to an amendment of these Clearing Conditions within the period of time specified under section 6.5.

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

- (3) In case of the well-founded suspicion that the preconditions for a termination as per paragraph 2 have been fulfilled, ECC can order the suspension of the clearing license for a period of six months at most. For the purpose of examination, ECC shall be entitled to request all the necessary information and records from the Clearing Member concerned at the expense of said party. A suspension of the clearing license can also be ordered for the term of the default or technical default as per section 3.9.1 et seqq.
- (4) In case of the termination or suspension of a clearing license, the Clearing Member and its affiliated Non-Clearing Members are only allowed to conclude close-out transactions or risk minimizing position transfers upon approval by ECC as of such time. In as far as the provisions contained in section 3.10 are not applied in case of the insolvency of a Clearing

Member, all transactions which have not been fulfilled have to be closed out or transferred to another Clearing Member. The Clearing Member shall inform its Non-Clearing Members forthwith so that these can take precautions for a transfer to another Clearing Member. ECC shall monitor the close-out or the transfer.

- (5) In case the close-out procedure and/or the transfer is not concluded within a period to be specified for each individual case by ECC, ECC can have close-out or transfer effected.
- (6) The termination or suspension of the clearing license shall not affect the rights and obligations arising for the Clearing Member concerned from transactions which have not been fulfilled and for the clearing of which it is responsible.

#### 2.1.7 Restrictions of the clearing license

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

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

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

## 2.2 Non-Clearing Member

### 2.2.1 Preconditions for the participation of a Non-Clearing Member in clearing of a product

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

- (a) conclusion of a corresponding NCM agreement with the co-operating Clearing Member and ECC.
- (b) Moreover, the clearing license of the Clearing Member co-operating with said Non-Clearing Member has to comprise the product concerned.



## 2.2.2 Termination of the NCM agreement

- (1) ECC shall terminate an NCM agreement regarding a product in case the preconditions for licensing as a Non-Clearing Member for the product concerned have ceased to be fulfilled. This shall not affect the validity of the NCM agreement with regard to other products. In case ECC terminates an NCM agreement, the Non-Clearing Member is not allowed to enter new orders regarding this product any more. Furthermore, the Non-Clearing Member has to delete all outstanding orders regarding this product and it has to close out or transfer to another Clearing Member all transactions regarding this product which have not been fulfilled yet. The Clearing Member shall fulfil the obligations arising from the remaining transactions of the Non-Clearing Member.
- (2) ECC shall be entitled to terminate an NCM agreement in its entirety in case the Non-Clearing Member or the Clearing Member repeatedly infringe on essential provisions of the Clearing Conditions in spite of a warning being given. In case ECC terminates an NCM agreement, the Non-Clearing Member is not entitled to enter new orders any more. Moreover, it has to delete all outstanding orders and close out all transactions which have not been fulfilled yet or transfer such to another Clearing Member. The Clearing Member shall fulfil the obligations arising from the remaining transactions of the Non-Clearing Member.
- (3) A Clearing Member shall be entitled to terminate an NCM agreement in its entirety or with regard to individual products at any time in compliance with a period of notice of one month. Upon the expiry of this period of notice, the Non-Clearing Member shall delete all outstanding orders in the products concerned and close out all transactions regarding these products which have not been fulfilled yet or transfer such to another Clearing Member. After that the Non-Clearing Member is not entitled to enter any new orders regarding these products, which would have to be settled by this Clearing Member, any more. The Clearing Member shall fulfil the obligations arising from the remaining transactions of the Non-Clearing Member.
- (4) A Non-Clearing Member shall be entitled to terminate an NCM agreement in its entirety or with regard to individual products at any time; this shall be based on the precondition that it has closed out all of the transactions which have not been fulfilled or that it has transferred such, that it has deleted all orders with regard to these and that it has fulfilled all the obligations arising from these products towards the Clearing Member and ECC.
- (5) A termination of the NCM agreement shall only become effective once it has been received in writing by the other two parties concerned.

## 2.3 Trading Participants

### 2.3.1 Precondition for approval as a Trading Participant

- (1) A Trading Participant shall be a company which is approved as a Trading Participant by ECC. Approval by ECC as a Trading Participant regarding one product shall be based on the following preconditions:



- (a) participation in clearing regarding this product as a Clearing Member or as a Non-Clearing Member,
  - (b) licensing in the approved market on which the product is traded, as well as
  - (c) evidence of the capability for physical settlement of transactions regarding this product subject to the specifications by ECC or, as an alternative, for products on the Derivatives Market a covenant by the Trading Participant to exclude physical settlement of the transactions in this product by means of closing-out in due time in accordance with the rules of ECC provided ECC and the respective Clearing Member approve of such.
- (2) ECC shall communicate the approval as a Trading Participant for the respective product to the respective market and the Trading Participant as well as, if applicable, to the Clearing Member co-operating with the Trading Participant.

#### 2.3.2 Revocation of an approval

- (1) ECC shall revoke approval as a Trading Participant regarding one product in case the preconditions for said approval have ceased to exist. ECC shall inform the respective market and the Trading Participant as well as, if applicable, the supporting Clearing Member of the revocation in writing by specifying the reasons for such measure.
- (2) In case of a revocation of said approval, the Trading Participant shall only be entitled to conclude close-out transactions or risk minimizing position transfers upon approval by ECC regarding these products as of that time. All transactions regarding these products which have not been fulfilled shall be closed out or transferred to another Clearing Member. ECC shall monitor close-out or transfer.
- (3) In case close-out or transfer is not concluded within a period of time specified for each individual case by ECC, ECC can have closing out or transfer effected.
- (4) The revocation of the approval shall not affect the rights and obligations of the Trading Participant arising from transactions regarding these products which have not been fulfilled yet.

#### 2.4 Inclusion of products

- (1) ECC shall take a decision regarding the inclusion of products for products after consultation with the advisory board of ECC.
- (2) The following shall be preconditions for the inclusion of products:
  - (a) The product is traded on a market which is organized as an exchange, a multilateral trading facility or a similar institution, which is subject to a form of government or similar supervision or monitoring and in which proper trading or a proper establishment of the prices as well as of the daily settlement prices are ensured.
  - (b) ECC has concluded an agreement regarding the provision of clearing services for this product with the operator of the market which governs the co-ordination of the systems and processes between the market and ECC, co-ordinates the minimum requirements for licensing of participants for the markets and for clearing and en-

sure the required rights and authorizations of ECC towards the Trading Participants and the market subject to the provisions of these conditions.

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

## 3 GENERAL PROVISIONS

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

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

- (1) General Clearing Members are obliged to conclude a corresponding NCM agreement with Non-Clearing Members which fulfil the preconditions for a license to trade on a market.
- (2) A Clearing Member shall be obliged to fulfil all payment obligations arising from all transactions by Non-Clearing Members which take part in clearing on ECC via the Clearing Member.
- (3) Upon a request to that end by the supporting Clearing Member on ECC, a Non-Clearing Member can be excluded from trading on the markets in their entirety or in part for the duration of any non-performance in case:
  - (a) the Non-Clearing Member does not provide the margins specified by its Clearing Member, the daily settlement payments, in case it does not fulfil any delivery obligations and/or purchase obligations or obligations to effect payments, premiums or fees which are due or in case it does not provide or fulfil such when due or
  - (b) the Non-Clearing Member exceeds a trade limit specified by the Clearing Member or
  - (c) the Non-Clearing Member has failed to fulfilled any other obligation which might exist towards the Clearing Member even though a warning has been given by the Clearing Member.
  - (d) of the insolvency of the Non-Clearing Member within the meaning of section 3.10.1 paragraph 2.

A request by phone shall be confirmed in writing forthwith.

- (4) A Clearing Member can submit an application for the temporary exclusion of one of the Non-Clearing Members which it supports from the derivatives market of EEX also by means of a corresponding entry into the system of EEX (Stop Button) provided the Clearing Member concerned has concluded an agreement regarding the permissibility and toleration of such a measure with the Non-Clearing Member. At the same time, the Clearing Member declares that it is not prepared to execute further transactions of this Non-Clearing Member on the derivatives market of EEX. The Clearing Member can submit said declaration and application which is supported by the technology as a supplement to paragraph 3 if the Non-Clearing Member
  - (a) does not provide the margin established by its Clearing Member, daily settlement payments, if it does not perform delivery obligations or purchase obligations and obligations to make payments, if it does not pay premiums or fees which have fallen due and which are legally based on transactions on the derivatives market of EEX or in case it does not provide/ perform such when due or

- (b) does not take an order limit established by the Clearing Member or supported technically (Pre-Trade Limit) for the derivatives market of EEX into account or
- (c) has failed to fulfil its other or special obligations with regard to transactions on the derivatives market of EEX agreed on by contract towards the Clearing Member as per section 3.1.2.

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

- (5) Clearing Members must not exercise any options themselves or close out or transfer to another Clearing Member transactions which have not been fulfilled which have been concluded or registered by their Non-Clearing Members. In case a Non-Clearing Member is excluded from trading, ECC shall on request of the Clearing Member at ECC and in the requested extent close-out or transfer the transactions of this Non-Clearing Member which have not been fulfilled. Section 3.9.3 shall apply accordingly.
- (6) In case a Clearing Member does not provide a delivery and/or purchase or payment which has fallen due towards ECC, the Clearing Member as well as its affiliated Non-Clearing Members can be excluded from trading on the markets upon a request to that end by ECC for the duration of the default. Moreover, the transactions on all accounts which have not been fulfilled and for whose clearing the Clearing Member is responsible can be closed out or transferred to another Clearing Member. ECC shall not be liable for any losses which a Non-Clearing Member incurs in the case of the exclusion of its Clearing Member.
- (7) ECC shall inform the Clearing Member of all measures taken towards one of its Non-Clearing Members in as far as these might have an impact on the legal position of the Clearing Member or the risk evaluation of said party. The same shall apply in case position limits, which have been specified by the markets, have not been complied with by a Non-Clearing Member.

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

- (1) Clearing Members can conclude special agreements with their Non-Clearing Members in particular with regard to the settlement of derivatives market transactions on EEX. They are, in particular, entitled to agree technically supported order limits (Pre-trade Limits) as well as the obligation to tolerate procedures supported by the system of EEX for the temporary exclusion from trading on the derivatives market of EEX (Stop Button) in case of a violation of agreed obligations on the part of the Non-Clearing Member. The type and extent of the technically supported Pre-Trade Limits are described in art. 43 of the trading conditions of EEX.
- (2) Upon a request by the Clearing Members commissioned by them, the Non-Clearing Members are obliged to establish agreements regarding Pre-Trade Limits with these. In this case, the Clearing Members can store the Pre-Trade Limits agreed on with their respective Non-Clearing Members in the system of EEX.

- (3) The paragraphs herein above as well as section 3.1.1 paragraph 4 apply accordingly with regard to Clearing Members of the Sub-CCP with reference to co-operation products traded on the derivatives market of EEX.

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

- (1) A Non-Clearing Member can conclude an NCM agreement with a Clearing Member with a general clearing license or an NCM agreement with an affiliated Clearing Member with a direct clearing license and can also submit said agreement to ECC for signing. It can settle all of its transactions exclusively via this Clearing Member in this case.
- (2) At ECC, a Non-Clearing Member can apply for a change of its Clearing Member at any time. ECC shall effect the transfer of the transactions which have not been fulfilled in case the receiving Clearing Member confirms the request regarding such transfer and there is a valid NCM agreement between ECC, the Non-Clearing Member and the Clearing Member to which the transactions which have not been fulfilled can be transferred. The transfer shall not affect the rights and obligations arising from the transactions which have not been fulfilled.

#### 3.1.4 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 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.
- (2) A Trading Participant shall be obliged towards ECC to fulfil all delivery obligations and/or purchase and payment obligations arising from all transactions concluded, registered or accepted by them.

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

#### 3.2.1 General

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

#### 3.2.2 Rights and obligations of the Sub-CCP

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

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

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

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

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

## 3.3 Clearing of OTC transactions

In addition to clearing of the transactions concluded on the markets, ECC also carries out clearing of transactions concluded bilaterally (OTC transactions) provided these transactions correspond to the products included in clearing and have been registered in the respective trading systems of the markets in an admissible manner subject to the provisions of the corresponding trading conditions. The Clearing Conditions shall apply accordingly with regard to execution, securitization and settlement of the OTC transactions in terms of cash and commodities.

## 3.4 General Clearing Conditions; Liability

### 3.4.1 Conclusion of transactions

- (1) According to the closer definition in section 3.4.2, derivatives market transactions on the markets are concluded between ECC and a Clearing Member or such are concluded between ECC and the Sub-CCP according to the closer definition in section 3.4.3. In case a Trading Participant is not entitled to carry out clearing itself (Non-Clearing Member), transactions on the derivatives market are only concluded via the Clearing Member by means of whom the Trading Participant concludes its transactions. 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 an OTC transaction is registered in the system of the market, a transaction is concluded between this Non-Clearing Member and its Clearing Member and, at the same time, a corresponding transaction is concluded between this Clearing Member and ECC. In case an order regarding co-operation products entered into the system by a Non-Clearing Member of the Sub-CCP is matched with another order or in case an OTC transaction regarding co-operation products is entered into the system of the market, a transac-

tion is concluded between this Non-Clearing Member and its Clearing Member and, at the same time, a corresponding transaction is concluded between this Clearing Member and the Sub-CCP and, moreover, a corresponding transaction is also concluded between the Sub-CCP and ECC at the same time.

- (2) According to the more detailed definition provided in these Clearing Conditions, spot market transactions on the markets are concluded between ECC and the Trading Participant. If the Trading Participant is a Non-Clearing Member, the Clearing Member in charge of said Trading Participant guarantees financial settlement of these transactions and provides services in connection with the settlement for the Non-Clearing Member.

#### 3.4.2 Contract obligations arising from derivatives market transactions

- (1) Clearing Members are obliged to settle all obligations arising from matching of orders or registered OTC transactions which have been entered into the system of a market by them or by their Non-Clearing Members.
- (2) In case physical settlement of a future is effected in accordance with the trading conditions of the respective market concerned, only the Trading Participant shall be obliged to fulfil the obligations to deliver and/or the purchase obligations and the payment obligations. The legal relationships described in section 3.4.1 paragraph 1 arising from transactions by Trading Participants not licensed as Clearing Members (Non-Clearing Members) shall be modified as follows as of the time during which the obligations to deliver and/or the purchase obligations and the payment obligations arise: The Clearing Member shall assign the claims to delivery and/or the claims to a purchase and the claims to payment which exist towards ECC to its Non-Clearing Member and the Non-Clearing Member shall enter into the corresponding obligations to deliver and/or purchase obligations and payment obligations towards ECC in place of the Clearing Member. At the same time, the corresponding claims between the Clearing Member and the Non-Clearing Member shall cease to exist. On account of this, the Non-Clearing Member is directly obliged towards ECC to deliver and/or to purchase the commodity on which the future is based. The Clearing Member supporting said party shall only be liable as a guarantor – regardless of the right to deliver or to purchase – with regard to these obligations in terms of money in as far as ECC can demand the payment of money from the Clearing Member instead of the delivery or purchase and payment – in particular in case of a failure of the delivery. Financial settlement after the execution of the deliveries shall be effected by means of the Clearing Member as the paying agent via which the Non-Clearing Member settles its transactions.
- (3) Regardless of the regulations contained in paragraphs 1 and 2, a Clearing Member shall, moreover, also be obliged to fulfil all obligations resulting from the transactions which have been transferred to the Clearing Member in the framework of a trade or position transfer from another Trading Participant for the further settlement in his agent and proprietary position accounts.
- (4) The transaction fees of the Non-Clearing Member shall be exempt from the obligations referred to in the paragraphs herein above.



### 3.4.3 Contract obligations from derivatives market transactions in case of the inclusion of the Sub-CCP

- (1) The Sub-CCP is obliged to fulfil all liabilities arising from matching of orders (matching) or registered OTC transactions in co-operation products which have been entered into the system of a market by its Clearing Members as well as by its Non-Clearing Members.
- (2) If physical settlement of a future is provided in accordance with the trading conditions of the respective market, only the Trading Participant is obliged to fulfil the delivery obligations and/or the purchase obligations and obligations regarding payments. The legal relationships described in section 3.4.1 paragraph 1 arising from transactions concluded by the Trading Participants in co-operation products without a license as a Clearing Member at the Sub-CCP (Non-Clearing Member) are modified as follows as of the time at which the obligations to deliver and/or the purchase obligations or the obligations to effect payments arise: The Sub-CCP assigns the claims to delivery or the claims to purchase or payment which exist towards ECC to its Clearing Member and the Clearing Member in turn assigns the claims to delivery and/or the claims to purchase and the claims to payment to its Non-Clearing Member in turn and the Non-Clearing Member accedes to the corresponding obligations to deliver and/or the obligations to purchase and to effect payments towards ECC in place of the Sub-CCP and of its Clearing Member. At the same time, the corresponding claims between the Sub-CCP and the Clearing Member as well as between the Clearing Member and the Non-Clearing Member cease to exist. On account of this, the Non-Clearing Member is obliged directly towards ECC to deliver or purchase the commodity on which the future is based. Regardless of the right to deliver or purchase, the Sub-CCP shall only have a pecuniary liability towards ECC as a guarantor with regard to these obligations in as far as ECC can demand the payment of money from the Sub-CCP in place of delivery or purchase and payment – in particular in case of a failure of the delivery. Financial settlement after the execution of the deliveries is effected via the Sub-CCP and the Clearing Member as the paying agent via which the Non-Clearing Member settles its transactions.
- (3) In as far as physical settlement of a future is provided in accordance with the trading conditions of the respective market, only the Trading Participant shall be obliged to fulfil the obligations to deliver and/or purchase and to make payments. The legal relationships outlined in section 3.4.1 paragraph 1 from transactions by the Trading Participants in co-operation products with a license as a Clearing Member at the Sub-CCP are modified as follows as of the time at which the obligations to deliver and/or the obligations to purchase and to make payments arise: The Sub-CCP assigns the claims to delivery and/or the claims to purchase and payment existing towards ECC to its Clearing Member and the Clearing Member accedes to the corresponding delivery obligations and/or obligations to purchase and to effect payments towards ECC in place of the Sub-CCP. At the same time, the corresponding claims between the Sub-CCP and the Clearing Member cease to exist. On account of this, the Clearing Member is directly obliged towards ECC to deliver the commodity on which the future is based and/or purchase such. Regardless of the right to deliver or purchase, the Sub-CCP shall only have a pecuniary liability towards ECC as a guarantor with regard to these obligations in as far as ECC can demand the payment of money from the Sub-CCP in place of delivery or purchase and payment – in particular in



case of a failure of the delivery. Financial settlement after the execution of the deliveries is effected via the Sub-CCP as the paying agent.

#### 3.4.4 Contract obligations from spot market transactions

- (1) Clearing Members are obliged to fulfil all obligations arising through matching of orders or registered OTC transactions which they have entered into the system in one market. -
- (2) Clearing Members shall be liable for all financial obligations arising from matching of orders or registered OTC transactions, which have been entered into the system of a market by their Non-Clearing Members, subject to the provisions contained in section 3.4.1 paragraph. 2.
- (3) Provided physical settlement of transactions is effected subject to the provisions of the trading conditions on the respective market, only the Trading Participant shall be obliged to fulfil its delivery and/or purchase and payment obligations. Regardless of the right to deliver or purchase, the Clearing Member supporting such Non-Clearing Member shall only be liable in terms of money with regard to these obligations in as far as ECC is entitled to demand the payment of money from the Clearing Member instead of the delivery or purchase – in particular in case of a failure of the delivery. Financial settlement of the deliveries is effected via the Clearing Member as the paying agent via which the Trading Participant settles its transactions as a Non-Clearing Member.

#### 3.4.5 Offsetting procedure

- (1) In as far as no deviating provisions are made in the sections of these Clearing Conditions herein below, ECC shall net out all accounts receivable and accounts payable from spot market transactions which have not been fulfilled as well as from expired futures contracts and the clearing of which is effected by ECC in accordance with the following sections of the Clearing Conditions into a net account receivable and/or a net account payable towards every Clearing Member and towards the Sub-CCP on every business day during batch processing which has the consequence that only said net account receivable or account payable exists between ECC and the Clearing Member and the Sub-CCP with regard to a delivery and/or purchase and the payment of money. In addition to this, ECC nets out all the transactions regarding futures contracts and options contracts and other transactions to be cleared in accordance with these Clearing Conditions into one net position at the end of any trading day in accordance with sentence 1.
- (2) Towards a Clearing Member, offsetting as per paragraph 1 is effected separately with regard to the transactions on proprietary and agent position accounts of the respective Clearing Member in accordance with section 3.6.

#### 3.4.6 Business days

- (1) Business days of ECC are the days from Monday to Friday on which the transactions concluded or registered on a market are settled financially and/or physically. ECC publishes a list of the days from Monday to Friday which are not business days.
- (2) Those days specified by the respective market on which trading takes place or on which transactions can be registered are considered trading days.

- (3) The business hours are from 7:30 am until 6:00pm on every business day.

#### 3.4.7 Objections

Objections against a trade confirmation by ECC, including the items of the German Bundesbank (BBK), the Swiss National Bank (SNB), Clearstream Banking AG, Eurex Clearing AG and SegalIntersettle AG, have to be raised towards ECC, the Sub-CCP or the Clearing Member with whom the transaction was concluded in writing or via fax immediately after receipt and at the latest by 12:00 am on the next business day. Otherwise, the trade confirmations shall be considered approved.

#### 3.4.8 Assignment

An assignment of the rights arising from or on the basis of the Clearing Conditions by a Clearing Member or a Non-Clearing Member can only be effected with the approval by ECC or subject to the conditions of these Clearing Conditions. The provisions contained in art. 354a of the German Commercial Code (HGB) shall not be affected.

#### 3.4.9 Emergency measures

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

#### 3.4.10 Liability

- (1) ECC shall be entitled to take recourse to a Clearing Member with regard to cases of damage which it 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 on the part of a third party shall not be affected. ECC can assign its claims to damages which it has towards the Clearing Member which is in default or in technical default to third parties with a debt-discharging effect.
- (2) ECC shall not be liable for cases of damage which are caused by an interruption of its operations as a result of an event of force majeure, insurrection, acts of war and Acts of God or as a result of other events which do not fall within its sphere of responsibility (e.g. industrial action, lock-outs, disruption of traffic, interruption of the supply chain) or which are brought about by acts of authorities both from within the country and from abroad. The same shall also apply for cases of damage which a Clearing Member or the Sub-CCP suffers as a result of technical problems or as a consequence of a partial or complete impossibility of using the EDP devices or EDP systems of a market or of ECC 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 as a result of errors made during entering of data in the framework of settlement and the administration of margins for Clearing Members or the Sub-CCP, ECC shall 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 this case of slight negligence, the liability on the part of ECC shall be restricted in terms of the

amount to the damage which is typical of a contract of this type and was foreseeable at the time of granting of the clearing license or of the conclusion of the CCP-Sub-CCP Agreement. ECC 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 shall not be responsible for the technical equipments and systems of the markets.

- (3) ECC shall be entitled to commission third parties to discharge the tasks with which it is entrusted in their entirety or in part in its own name in case it deems such move justified also under consideration of the interests of the Clearing Members and of the Sub-CCP. In case ECC utilizes this right, its responsibility shall be restricted to the careful selection and instruction of the third party commissioned by it (art. 664 paragraph 1 BGB [German civil code]). However, ECC shall be obliged to assign any claims which might exist towards the third party upon a request to that end.
- (4) ECC shall not be held liable for any losses or cases of damage towards Clearing Members, the Sub-CCP or Non-Clearing Members in case said losses or cases of damage are not caused by premeditation or gross negligence on the part of ECC or from a violation of these Clearing Conditions towards these. Any liability for consequential damage shall be excluded.
- (5) ECC shall not accept any liability towards Clearing Members, the Sub-CCP or Non-Clearing Members or third parties for any cases of damage which might have occurred, for consequential damage, losses or lost profits in case it uses its rights subject to the provisions in section 3.9 of these Clearing Conditions (Default and penalties) or in case it initiates emergency measures in case of technical defaults.
- (6) ECC does not accept any liability towards Non-Clearing Members or third parties for any cases of damage, consequential damage or lost profits which might be caused if the Clearing Members make use of their rights according to section 3.1.1.
- (7) In as far as these Clearing Conditions do not expressly provide for a different regulation, ECC shall not be liable towards third parties who are not participants in market themselves, with regard to any losses which might be incurred, cases of damage, consequential damage or lost profits which have been incurred in connection with transactions concluded on the market or registered there in any case.
- (8) Any liability on the part of ECC in connection with the execution of the delivery and/or the purchase of power or natural gas shall be excluded in case errors or interruptions occur in the transmission system of the transmission system operator, which prevent feeding in of power or natural gas or which prevent the withdrawal of these, or in case a schedule report or a nominations is not possible for other reasons which do not fall within its sphere of responsibility.

## 3.5 Margins

### 3.5.1 Obligation to furnish margins

- (1) In order to secure its contract obligations or the obligations guaranteed by it, every Clearing Member shall deposit margins to an amount specified by ECC in cash or in securities or stock loan rights accepted by ECC on every business day. The margins shall be furnished until the time specified to that end by ECC; in exceptional cases and upon a separate request to that end by ECC, the margins shall be furnished during the same business day (intra-day), however. On any given business day ECC shall establish the amount of the margin to be furnished for the proprietary position and market maker position accounts taken together as well as separately for the agent position account until a specific time specified by it.
- (2) In case the margins already furnished do not cover the amount of the margin to be called for the next business day, the missing amount has to be remitted to the settlement account of ECC until a time on said business day to be specified by ECC. However, as a matter of principle, securities have to be furnished by 8:00 am on the next business day.
- (3) The method for the calculation of the margin to be furnished shall be established by ECC and the calculation shall be effected individually for each account in each case and separately for derivatives market transactions subject to the closer definition provided in section 4.1 and for spot market transactions subject to the closer definition provided in section 5.1. Credits established during these calculation procedures are taken into account with regard to the total margin to be furnished for an account. For the purpose of the establishment of the total margin to be furnished by a Clearing Member, the total margin of all accounts to be paid by the Clearing Member as well as by its affiliated Non-Clearing Member are summed up. Credits established in the course of these calculations are not taken into account across various accounts.
- (4) Non-Clearing Members shall deposit margins at its Clearing Member at least to the amount established on the basis of the calculation method of ECC. Upon a request, the Clearing Member has to disclose the calculation method to their Non-Clearing Members.
- (5) The default risk of a Clearing Member and of its Non-Clearing Members shall form the basis for the calculation of the margins. A default risk concerns the financial loss which ECC suffers in case a Clearing Member does not fulfil its obligations or the obligations of its Non-Clearing Members entered into or arising on account of the conclusion of spot market or derivatives market transactions entered into on of the markets.
- (6) The margins which have been deposited are used as collateral for all the obligations of the Clearing Member towards ECC arising from the participation of the Clearing Member in the markets. These shall be paid until a time specified by ECC; in exceptional cases and upon a special request to that end by ECC, they shall be paid in the course of the same exchange trading day (intra-day), however.

### 3.5.2 Supplementary margins to be furnished

ECC reserves the right to demand a supplementary margin in cash or in securities or stock loan securities accepted by ECC from a Clearing Member at any time on account of

the risk assessment which it carries out in the course of the business day. Supplementary margins have to be furnished immediately in the corresponding currency to the settlement account of ECC or to the pledged-securities deposit at Clearstream Banking AG or at SegalIntersettle AG. The Clearing Member shall be entitled to the same right towards a Non-Clearing Member with which it is affiliated.

### 3.5.3 Margins in cash

- (1) Margins in cash can be furnished in different currencies. ECC shall specify in which currencies margins can be deposited in cash.
- (2) Margins are furnished in EUR by the Clearing Member ensuring that the debit entries received from ECC to the debit of its settlement account can be cashed and that the respective amounts can be credited to the settlement account held by ECC. ECC shall credit the sum received in its settlement account to the clearing account (section 3.6.6) of the Clearing Member forthwith.
- (3) Margins in other currencies approved by ECC according to paragraph 2 are furnished by means of the payment of the respective sum by the Clearing Member concerned into the account of ECC. After the bank concerned has confirmed the payment to ECC, the amount in question is credited to the margin account (section 3.6.7) of the Clearing Member forthwith and the amount deposited is taken into account with regard to the margin call for the next business day, provided the confirmation pursuant to sentence 2 is received at ECC by a time specified by ECC at the latest.
- (4) In case the amount of the margin is not credited to the account of ECC within the period of time specified (section 3.5.1 paragraph 2), ECC shall be entitled to take measures according to sections 3.9.1 et seqq.
- (5) ECC shall be entitled to use the margins furnished in cash at its own discretion within the framework of its business activities in order safeguard its own working order as a clearing house and for investment purposes.
- (6) The repayment of the margins in cash which have been deposited shall be granted at the instance of ECC.

### 3.5.4 Margins in securities and stock loan securities

- (1) Margins in securities and in stock loan securities shall be deposited by each Clearing Member in the pledged-securities deposit account to be established by said member at Clearstream Banking AG or at SegalIntersettle AG.
- (2) ECC shall stipulate the securities and stock loan securities accepted by it as margins as well as their respective collateral value. Bonds with a residual term of 15 calendar days or less shall not be accepted as margins. The Clearing Member shall be in charge of administration of the securities and of the stock loan securities. Any security which is not accepted or not accepted anymore as collateral by ECC or any such stock loan security shall not be taken into account in the calculation of the required margins. ECC shall inform the Clearing Member with regard to the fact which securities or stock loan securities are not accepted as collateral or which are not accepted any more.

- (3) For the provision of the margin in accordance with paragraph 1 the Clearing Member shall create a lien regarding all the securities deposited in the pledged-securities deposit for ECC by concluding a corresponding pledging agreement. The Clearing Member shall notify Clearstream Banking AG or SegalIntersettle AG of the conclusion of said pledging agreement. In as far as Clearing Members furnish margins in stock loan securities, these are submitted to a fiduciary assignment; sentence 2 shall apply accordingly.
- (4) Depositing of the securities and of the stock loan securities shall be carried out by means of a timely instruction by the Clearing Member to Clearstream Banking AG or to SegalIntersettle AG to transfer the securities into the pledged securities account of the Clearing Member concerned held at Clearstream Banking AG or at SegalIntersettle AG. Clearstream Banking AG or SegalIntersettle AG respectively shall inform ECC of such transfer. After that, ECC shall credit the corresponding value or the quantity to the margin account (section 3.6.7) of the Clearing Member and shall, moreover, take the amount into consideration with regard to the margin call for the next margin calculation, provided the notification by Clearstream Banking AG or by SegalIntersettle AG respectively is issued until a time specified by ECC at the latest. In case the securities or stock loan securities not accepted as margin are transferred to the trust deposit, ECC shall arrange for a refund.
- (5) Clearing Members can request the release of the pledged securities or of stock loan securities 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 stock loan securities on that same business day, if ECC has received the request until to a time as specified by ECC. ECC shall carry out the release of the pledged securities or of stock loan securities by means of a corresponding booking on the margin account of the clearing member (section 3.6.7) and shall grant its approval to Clearstream Banking AG or SegalIntersettle AG. If compliance with such a request would render the remaining collateral inadequate for the next business day, ECC will only book on the margin account and notify Clearstream Banking AG or SegalIntersettle AG that it approves such release if the required collateral has been provided by the time specified by ECC.

## 3.6 Accounts

### 3.6.1 Types of position accounts

- (1) Within the system of ECC the transactions of Clearing Members and the transactions of their customers as well as the transactions of Non-Clearing Members are recorded in internal proprietary, agent and, if applicable, market maker position accounts of the Clearing Member commissioned by the respective Trading Participant.
- (2) With regard to each Clearing Member two proprietary position accounts, one customer position account and, in as far as required, two market maker position accounts are kept. Similar accounts are kept for the Non-Clearing Members of the respective Clearing Member.
- (3) Transactions by the Clearing Members and Non-Clearing Members of the Sub-CCP in co-operation products are recorded in internal Sub-CCP position accounts. A Sub-CCP position account is kept for the Sub-CCP.



### 3.6.2 Proprietary position accounts

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

### 3.6.3 Agent position accounts

- (1) Only the transactions of the customers and Non-Clearing Members of the Clearing Members are recorded on the client position account of said Clearing Member.
- (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 account subject to the provisions contained in section 3.6.5.
- (3) A short position of a client or of a Trading Participant has to be kept separately from a long position of another client in the same option series or in the same futures contract in the agent position account. A Clearing Member must not close an agent position with another agent position. Adjustments of opening and closing trades on the agent position account are only permissible for compliance with this account keeping or following an instruction by the client to that end in accordance with the provisions contained in section 3.6.5.
- (4) Closing position adjustments in the agent position account shall only be permissible for closing out of two opposite positions which are held by the same client subject to the provisions contained in section 3.6.5.
- (5) In case a transaction is referred to as a closing trade and in case sufficient positions are not available in the agent position account, a position shall be opened automatically in the 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 agent position account (trade separation).

### 3.6.4 Market maker position accounts

- (1) The transactions arising from quotes entered in accordance with the trading conditions of the respective markets are recorded on the market maker position accounts. Transactions

from own orders can be recorded in a market maker position account if such are labelled correspondingly.

- (2) Trade adjustments which change the assignment of a transaction from market maker position accounts to agent or proprietary position accounts (trade transfer) as well as position transfers between the position accounts are only permissible for correct recording of the transactions on the market maker position accounts subject to the provisions contained under section 3.6.5.

#### 3.6.5 Account keeping

- (1) Positions in the agent position account and in the proprietary position accounts of a Clearing Member as well as in the Sub-CCP position account of the Sub-CCP are kept in gross terms, i.e. long and short positions can exist at the same time. Positions in the market maker position accounts are kept in net terms, i.e. there can only be either a long position or a short position at any given time.
- (2) ECC monitors the position accounts of its Clearing Members and the position account of the Sub-CCP. ECC provides the balance as well as the details regarding the transactions for every individual position account to its Clearing Members and the Sub-CCP within its system.

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

- (3) All positions in options series are deleted automatically on the position accounts of a Clearing Member and/or on the position account of the Sub-CCP during batch processing on the last day of trading of the respective option contract. All short positions which have been assigned and all long positions which have been exercised shall be deleted on the position accounts of a given Clearing Member or the position account of the Sub-CCP once delivery for the exercises and for the assignments in connection with these positions has been effected.
- (4) Positions in futures contracts are deleted in the position accounts of the Clearing Members and/or the position account of the Sub-CCP once the delivery and/or the purchase 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 the preceding business day.

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

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



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

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

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

The system of ECC transfers the positions during batch processing. On principle, the payments of money or the credit notes to be effected in accordance with the functionality "Position transfer with transfer of money" shall be effected one business day after the use of this functionality. However, in the case of this functionality, the corresponding amount will only be transferred to the Clearing Member entitled or to the Sub-CCP for the entitled Clearing Member of the Sub-CCP once the Clearing Member liable to pay has furnished this contribution. There shall be no own obligation to perform for ECC and/or the markets involved towards the entitled Trading Participants in the framework of this transfer of money.

- (7) Trade transfers from the agent position account of a Clearing Member to client and proprietary position accounts of another Clearing Member (give-up trades) can be effected by the Clearing Member or the Non-Clearing Member of said party as a representative of the Clearing Member on the day of the conclusion of the respective transaction concerned and on the business day following said day provided:

- (a) a Clearing Member or his respective Clearing Member (executing broker) has executed a customer order and
- (b) provided the transaction concluded is an opening trade and
- (c) the other Clearing Member or Non-Clearing Member (clearing broker) has been notified of the transfer of the trade and
- (d) this Clearing Member or its Non-Clearing Member in its capacity as a representative of the Clearing Member concerned (clearing broker) has confirmed the take-up of the trade.

In case the trade transfer is ordered by one or several Non-Clearing Member(s), this transfer of the transaction with the consequence of a transfer of the transaction to the agent or proprietary position account of the Clearing Member and/or to the account of said party kept for the respective non Clearing Member shall require the approval by the respective Clearing Members of these two Non-Clearing Members.

- (8) In case the preconditions described in paragraphs 6 and 7 herein above are fulfilled, position or trade transfers are also permitted between a Clearing Member of ECC and a Clearing Member of the Sub-CCP.

#### 3.6.6 Clearing accounts

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

#### 3.6.7 Securities clearing account

ECC shall keep an internal securities clearing account for every Clearing Member on which the additions and disposals regarding the securities and loan stock rights submitted in fiduciary assignment and deposited in a pledged-securities deposit at Clearstream Banking AG or SegalIntersettle AG are taken into account as booked.

### 3.7 Fees and price list

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

### 3.8 Clearing fund

#### 3.8.1 Clearing fund

- (1) In accordance with the provisions specified herein below ECC shall administrate a clearing fund.
- (2) Regardless of other margins, every Clearing Member shall be obliged to provide a contribution to the clearing fund. The amount of the contribution to be provided in each case shall be established by ECC for each individual Clearing Member in accordance with the

calculation method announced. The adequacy of the contribution to the respective clearing fund shall be checked as required as well as at regular intervals - usually on a monthly basis.

- (3) The respective amount shall be furnished in cash, in securities or by means of bank guarantees. The contribution to the margin fund in cash or securities shall be furnished subject to the provisions contained in section 3.5, the contribution by means of a bank guarantee shall be furnished subject to the provisions contained in section 2.1.2 paragraph 4.

In case a bank guarantee has not been replaced by another bank guarantee, in cash or in securities by the Clearing Member concerned until 10 days before expiry of its effectiveness, ECC shall collect the contribution to the clearing fund from the Clearing Member concerned in the framework of the daily cash settlement. In case said collection of the contribution established is not possible for ECC or in case said collection fails, the Clearing Member concerned shall automatically default in accordance with section 3.9.

- (4) ECC shall form separate reserves for the clearing fund from its annual profits in order to be able to contribute to the fulfilment of the obligations of a Clearing Member which has defaulted if so required.

### 3.8.2 Utilization of the clearing fund

- (1) The contribution to the clearing fund made by a Clearing Member can be used in order to remove the financial consequences of a default (section 3.9) on the part of this or other Clearing Members.
- (2) In case of a compensation for cases of damage arising on account of a default, ECC shall utilize the margins in the order specified herein below:
  1. Other margins as such on the part of the Clearing Member which is subject to the obligation to perform in accordance with section 3.8.1 et seqq.
  2. Contribution to the clearing fund by the Clearing Member which is subject to an obligation to perform.
  3. Reserves for the clearing fund on the part of ECC,
  4. Contributions to the clearing fund by all other Clearing Members; in this context, the contributions shall be utilized to the same proportionate shares.
- (3) In case a Clearing Member in default provides the payments owed by said party after the contributions to this clearing fund by the other Clearing Members have been utilized to the full extent or in part, ECC shall use such payment in order to replenish the contributions of the other Clearing Members with a share amounting to the same percentage once again; however, such amounts shall only be replenished to the amount of the utilization which has taken place at maximum.

### 3.8.3 Replenishment of the contributions to the clearing fund

Utilized contributions to the respective clearing fund shall be replenished to their original amount by the Clearing Members within a period of ten business days after their utilization. This obligation shall not apply with regard to Clearing Members who terminate their

clearing license by means of a written notice towards ECC on the fifth business day following the utilization of said funds at the latest.

#### 3.8.4 Release of the contributions to the clearing fund

- (1) In case ECC or a Clearing Member terminate the clearing license, ECC shall release the contribution to the respective clearing fund by the Clearing Member concerned after a period of one month after the notice regarding the termination; however, it shall release said contribution at the earliest one month after the day on which all transactions have been settled whose clearing the respective Clearing Member is in charge of.
- (2) In case another Clearing Member is in default at the time of the termination of the clearing license or in case another Clearing Member defaults before such date on which a contribution to the clearing fund in question has to be released, such release shall only take place after the obligations of the other Clearing Member which has defaulted have been entirely fulfilled towards ECC in deviation to paragraph 1.

### 3.9 Default

#### 3.9.1 Occurrence of default

- (1) A Clearing Member shall be put in default even without a warning being given by means of a written notification or by means of a notification via the phone by ECC in case:
  - (a) the Clearing Member does not furnish the margin demanded by ECC on every business day, the daily settlement payments, premiums or fees in due time or
  - (b) the Clearing Member has omitted to fulfil other obligations to be fulfilled towards ECC in accordance with these Clearing Conditions.
- (2) Clearing Members shall inform ECC right away in case they cannot fulfil an obligation arising from the transactions on the markets, in particular an obligation regarding the provision of margins as well as the daily settlement payments.
- (3) ECC shall be entitled to have recourse to a Clearing Member for cases of damage which it or other Clearing Members sustains on account of a default caused by such Clearing Member. Regardless of the occurrence of a case of damage at ECC, the Clearing Member which has defaulted shall be obliged to pay liquidated damages to the amount of 0.5 per cent of the outstanding sum, and at least to the amount of EUR 500 per calendar day, however, plus an adequate interest rate on the outstanding sum to the amount of 5 per cent above the respectively valid base interest rate.

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

#### 3.9.2 Technical default

- (1) In case a Clearing Member furnishes evidence substantiating that one of the failures specified under section 3.9.1 paragraph 1 lit a is not based on insolvency and that the Clearing Member in question will fulfil his obligations forthwith, ECC shall be entitled to

dispense with the application of the provisions designed for a case of a default specified in 3.9.1. In this case, ECC shall only put the Clearing Member in technical default.

- (2) The Clearing Member concerned shall submit a written statement regarding the causes of its default to ECC immediately upon the occurrence of the technical default.
- (3) The Clearing Member affected by such technical default shall remove the causes of such default immediately.
- (4) In case there is a technical default according to paragraph 1 regarding a payment in a foreign currency, ECC shall be entitled to demand the immediate payment of the equivalent of the amount in a foreign currency which was not received within the period specified in EUR into the settlement account of ECC from the Clearing Member put in technical default. The amount in EUR shall be refunded without interest after receipt of the payment in the foreign currency. Paragraph 5 shall not be affected.
- (5) ECC can have recourse to a Clearing Member for cases of damage which have been caused to it or to other Clearing Members by a technical default caused by such Clearing Member. Regardless of the occurrence of a case of damage at ECC, the Clearing Member which is in technical default shall be obliged to pay liquidated damages in accordance with section 3.9.1 paragraph 3.

### 3.9.3 Position transfer, close-out and utilization of margins

In case a Clearing Member is in default, ECC shall close out or transfer to another Clearing Member all the transactions of the Clearing Member which have not been fulfilled in the sequence specified herein below – if required by including the respective markets - and it shall, moreover, utilize all the collaterals furnished by the Clearing Member and use contributions to the clearing fund in this context:

1. Transfer of all or particular open positions to other Clearing Members at the discretion of ECC and considering the overall risk for ECC.
2. Netting out of the remaining open positions, of the accounts receivable and liabilities arising from spot market transactions which have not been fulfilled and from the futures contracts which have fallen due in all of the accounts kept by the Clearing Member (proprietary accounts as well as accounts of the Non-Clearing Members supported) into one single net position and/or net account receivable or net liability.
3. Close out of the net position and/or net account receivable or net liability by ECC, the market or by a Trading Participant appointed by such.
4. Use of all securities of the Clearing Member which is in default including the contributions by said part to the clearing fund in accordance with dutiful discretion on the part of ECC.
5. Reimbursement of any possible surplus in case the revenue generated from the utilization as per no. 3 results in a higher amount than is required in order to cover all the liabilities of the Clearing Member which is in default.
6. Utilization of the reserves of ECC provided for the clearing fund in case the revenue from the utilization as per no. 3 and the margins as per section 2.1.2 paragraph 4 of the

Clearing Member concerned are not sufficient in order to fulfil all the liabilities on the part of the Clearing Member which has defaulted.

7. Proportionate use of the contributions to the clearing fund by the other Clearing Members in case the revenue generated from the utilization as per no. 3 and the utilization of the funds provided by ECC in accordance with no. 5 are not sufficient in order to cover all the liabilities of the Clearing Member which has defaulted.

#### 3.9.4 Other measures in case of default

- (1) In case of a default ECC can apply for the initiation of measures against the Clearing Member on the market concerned in accordance with the provisions of the applicable laws, rules and regulations as well as trading conditions of the respective market concerned. Before the execution of each measure which has been applied for, ECC or the market shall hear the Clearing Member. Such hearing can be dispensed with in case it is not required in consideration of the circumstances regarding the specific individual case.
- (2) In the selection of measures ECC shall take the interests of the Clearing Member concerned and of its Non-Clearing Members into account under consideration of the own interests of the Clearing Member and of the (general) interest in safeguarding proper trading on the exchange and of proper settlement of transactions.

#### 3.9.5 Non-application of the rules regarding default with regard to the Sub-CCP, its affiliated Clearing Members and Non-Clearing Members

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

### 3.10 Close-out netting provisions

#### 3.10.1 General provisions

- (1) The provisions specified herein below govern the proceedings in case of the insolvency of a Clearing Member. The Clearing Members shall be at liberty to conclude corresponding close-out netting agreements with their Non-Clearing Members. In as far as ECC has approved a close-out netting agreement, the provisions of these close-out netting agreements shall take precedence over these Clearing Conditions.
- (2) A case of insolvency is deemed to have arisen in case bankruptcy or other insolvency proceedings regarding the assets of one of the parties specified in paragraph 1 are instituted and in case said party itself or the Federal Financial Supervisory Authority (BaFin) or a comparable foreign authority has instituted such proceedings for it according to art. 46 b



paragraph 1 KWG [German Banking Act] or in case such party is insolvent or otherwise in a situation which justifies such proceedings to be instituted. The insolvency of one party shall correspond to the insolvency of a company which can exercise a controlling influence over said party within the meaning of art. 17 AktG [German stock corporation act] or of comparable national regulations (parent company).

- (3) The other provisions of the Clearing Conditions shall not be affected by the provisions contained in this section unless a different provision is expressly made herein.

### 3.10.2 Termination of Derivatives Market transactions which have not been fulfilled completely in case of the insolvency of a Clearing Member

- (1) ECC, with whom the Clearing Member has concluded a CM agreement regarding the settlement of Derivatives Market transactions, shall be entitled to terminate all Derivatives Market transactions which have not yet been fulfilled and which are included in clearing uniformly by means of a termination in the event of the insolvency of a Clearing Member. Partial terminations shall not be permissible. ECC shall be entitled to the same right in the case of instructions by the Federal Financial Supervisory Authority according to art. 46 a KWG [German Banking Act] or of a comparable measure by foreign supervisory authorities; such an instruction shall correspond to a case of insolvency to that extent. In the event of a termination, the parties shall no longer be obliged to make payments regarding terminated Derivatives Market transactions which would have fallen due on the same day or on a later day. These obligations shall be replaced with a uniform settlement claim between ECC and the Clearing Member according to section 3.10.3 paragraph 1.
- (2) In case ECC terminates all Derivatives Market transactions with the insolvent Clearing Member which have not been completely fulfilled according to paragraph 1, all corresponding transactions by the Clearing Member with its Non-Clearing Member shall terminate at the same time. The obligations shall be replaced with a uniform settlement claim between the respective Non-Clearing Member concerned and the Clearing Member according to section 3.10.3 paragraph 2.

### 3.10.3 Calculation of the uniform settlement claim in case of the insolvency of a Clearing Member

- (1) In the case of a termination on grounds of insolvency, all Derivatives Market transactions of the insolvent Clearing Member which have not been settled yet will be closed out or transferred to another Clearing Member forthwith according to section 3.9.3. The profits generated in the framework of closing-out or transfer are netted out with the losses incurred, the margins to be provided as well as the other expenses incurred into a uniform settlement claim. In as far as the amounts to be settled do not refer to EUR, they will be converted into EUR at the ECB currency reference price valid on the settlement day. ECC shall calculate the amount of the uniform settlement claim and communicate said sum to the Clearing Member forthwith. The uniform settlement claim shall fall due immediately.
- (2) On the basis of the settlement as per paragraph 1, ECC also calculates one uniform settlement claim each for every Clearing Member; in this process, the average price to be established on the basis of the closing-out or transfer measures carried out in accordance with section 3.9.3 shall constitute the basis for settlement.

- 
- (3) Open delivery and purchase obligations arising from Derivatives Market transactions between ECC and the Non-Clearing Members shall at first not be affected by the terminations. However, ECC shall be entitled to take all the measures required for safeguarding fulfilment, if required, by including the markets affected and, in particular, to request the Non-Clearing Members to furnish sufficient margins.



## 4 SPECIAL PROVISIONS REGARDING DERIVATIVES MARKET TRANSACTIONS

### 4.1 Fundamental principles of the establishment of margins

- (1) The establishment of the margins to be provided by a Trading Participant shall be effected separately for the proprietary position accounts (including market maker position accounts) and the agent position account.
- (2) The net positions in all option series and futures contracts as well as the netted-out receivables and liabilities arising from futures contracts which have fallen due shall form the basis for the establishment of the margins to be furnished. In each option series and in every futures contract the net position is established by setting off a long position with a short position with the same maturity. Option series and futures contracts can form a margin class. Several margin classes can form a margin group. In case ECC uses the possibility of summarizing in margin classes or margin groups, the provisions made herein below shall apply accordingly subject to the provision that the respective margin to be furnished is established for the margin class or margin group – if required by means of off-setting.
- (3) The Current Liquidation Margin takes possible profits and losses arising from close out of the netted-out receivables and liabilities from futures contracts which have fallen due into account; in this context the receivables and liabilities in terms of cash are treated separately from those in terms of commodities in the calculation of margins. In case profits arising from the close-out of existing netted-out receivables and liabilities of futures contracts which have fallen due result from the close-out at the final value of the day, these shall also form a credit established during calculation in the calculation of the margins to be furnished.
- (4) With regard to any possible further claims on the part of a transmission system operator on account of gas deliveries which have taken place margins shall be deposited as margins for these possible claims (Delivery Margin). The Delivery Margin shall be re-calculated and adjusted on a monthly basis in case the positions of the contracts which are under delivery are increased during a delivery.
- (5) ECC can charge further margins (Delivery Margin) for possible claims of ECC on account of delivery of EU emission allowances or Certified Emission Reductions to the account of ECC kept at the national registry, which is not effected in due time. The amount of this Delivery Margin is calculated and announced in due time before a due date.
- (6) With regard to net short positions in options, a margin for the costs of potential close-out at the value at the end of the day shall be furnished (Premium Margin). The Premium Margin is re-calculated on every business day. Net long positions in options form a credit in the course of the calculation for the margin to be furnished.
- (7) With regard to all net positions and/or netted-out receivables and liabilities established in accordance with paragraphs 1 to 3 a margin to be furnished (Additional margin) is calcu-

lated which covers the costs arising from the close-out in case of the emergence of the most unfavourable development of prices established by ECC until the next close-out possibility.

- (8) Net positions are formed over various maturities of a futures contract in case these form a margin class in accordance with paragraph 1 (non-spread position). The establishment of the margins to be furnished for these net positions corresponds to the procedure described in paragraph 6. With regard to the risk entailed in price developments which do not move entirely in the same direction in case of different terms, a spread margin is charged for those positions which have not been taken into account in netting-out in the establishment of the margins to be furnished so far (spread positions).
- (9) The total of the margins to be furnished in accordance with the paragraphs herein above corresponds to the total margins for derivatives market transactions for one account; in this context, a calculation credit comprising the Current Liquidating Margin and the Premium Margin is not taken into account with regard to the Delivery Margin; it is, however, taken into account in the calculation of the total margin to be furnished with regard to an account in accordance with section 3.5.1.

## 4.2 Settlement of the transactions

### 4.2.1 Settlement of Phelix Base and Phelix Peak Futures

#### 4.2.1.1 General information

- (1) Futures contracts on power with financial settlement whose cascading and fulfilment shall be effected uniformly in accordance with the provisions made in these Clearing Conditions regardless of the maturity of the respective contracts are traded on EEX.
- (2) These futures shall only be settled financially at the end of the respective current delivery month; this means quarter and year futures are cascaded in accordance with the provisions referred to herein above until they are settled financially in a final manner as monthly contracts.

#### 4.2.1.2 Daily settlement

- (1) With regard to every futures contract the change in the value of the position is established on every trading day during batch processing and credited to the clearing account or debited from said account. The change in the value is calculated on the basis of the difference in the daily settlement prices of the current and of the preceding business day. With regard to positions which have only be opened or closed in the course of the respective current business day, the change in the value shall be calculated on the basis of the difference between the price at which the transaction was concluded and the daily settlement price of the respective business day concerned.
- (2) The daily settlement price up until and including the last day of trading of a future shall be established by EEX in accordance with its Trading Conditions and determined by ECC. ECC can determine the daily settlement price in deviation to this.

- (3) Paragraph 1 shall apply accordingly with regard to the legal relationship between Clearing Members and their affiliated Non-Clearing Members.

#### 4.2.1.3 Cascading of Phelix Base Quarter and Phelix Peak Quarter Futures

- (1) After the execution of daily settlement on the last day of trading, the holders of Phelix Base Quarter Futures are assigned the three corresponding Phelix Base Month Futures, which taken together correspond to the delivery period of this Phelix Base Quarter Future, instead of these futures at the same daily settlement price.
- (2) After the execution of daily settlement on the last day of trading the holders of Phelix Peak Quarter Futures are assigned the three corresponding Phelix Peak Month Futures, which taken together correspond to the delivery period of the Phelix Base Quarter Future concerned, instead of these futures at the same daily settlement price on the same business day.
- (3) The positions assigned in accordance with paragraphs 1 and 2 shall take part in the clearing procedure as of the day of their assignment subject to the provisions which are relevant to them.

#### 4.2.1.4 Cascading of Phelix Base Year and Phelix Peak Year Futures

- (1) After the execution of daily settlement on the last day of trading the holders of Phelix Base Year Futures are assigned the corresponding three Phelix Base Month Futures for the following calendar months from January through to March as well as the corresponding three Phelix Base Quarter Futures for the second through to the fourth calendar quarter which taken together correspond to the delivery period of the Phelix Base Year Futures instead of these futures at the same daily settlement price on the same business day.
- (2) After the execution of daily settlement on the last day of trading the holders of Phelix Peak Year Futures are assigned the corresponding three Phelix Peak Month Futures for the following calendar months from January through to March and the corresponding three Phelix Peak Quarter Futures for the second through to the fourth calendar quarter, which taken together correspond to the delivery period of the Phelix Peak Year Futures, instead of these futures at the same daily settlement price on the same business day.
- (3) The positions assigned in accordance with paragraphs 1 and 2 shall take part in the clearing procedure subject to the provisions which are relevant for these as of the day of their assignment.

#### 4.2.1.5 Settlement of Phelix Base Month and Phelix Peak Month Futures

- (1) On the last day of trading, positions are balanced by means of a difference which is credited to the clearing account of the Clearing Member or which is debited from such. Said difference shall be calculated on the basis of the difference between the final settlement price and the daily settlement price of the previous day. With regard to positions which have only been opened in the course of the current trading day 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 for Phelix Base Month Futures shall correspond to the mean value of all auction prices of the hourly contracts traded on the Spot Market for the hours between 0:00am and 12:00 pm for all days of the delivery month.
- (3) The final settlement price for Phelix Peak Month Futures shall correspond to the mean value of all auction prices of the hourly contracts traded on the Spot Market for the hours between 08:00 am and 08:00 pm for all days from Monday through to Friday during the delivery month.
- (4) In case an establishment of prices in accordance with the provisions referred to herein above is not possible or in case the price established does not correspond to the actual conditions prevailing on the market, the final settlement price shall be established by EEX and determined by ECC. ECC shall also be entitled to specify a deviating final settlement price.

#### 4.2.2 Settlement of Base Load and Peak Load Futures

##### 4.2.2.1 General information

- (1) Futures contracts on power with physical settlement in the transmission system of various transmission system operators are traded on the markets the settlement of which is effected uniformly in accordance with the provisions made in these Clearing Conditions regardless of the maturity of the contract.
- (2) Physical delivery of futures shall be effected on a daily basis and only during the current delivery month. Quarter and year futures are cascaded in accordance with section 4.2.2.3 until these are delivered as month contracts.

##### 4.2.2.2 Daily settlement

- (1) With regard to each future contract the change in the value of the positions is established on each business day during batch processing and shall be debited from the clearing account or credited to such. This change in the value is calculated on the basis of the difference between the daily settlement prices of the current and of the previous business day. With regard to positions which were only opened or closed in the course of the current business day, the change in the value is established on the basis of the difference between the price at which the transaction was concluded and the daily settlement price of the business day concerned.
- (2) The daily settlement price up to and including the second trading day before the beginning of the delivery month shall be established by the market in which the product is traded in accordance with its rules and determined by ECC. ECC can also establish the daily settlement price in deviation to this.
- (3) As of the second trading day before the beginning of the delivery month the settlement price shall remain constant for the entire delivery month. It shall be established as the final settlement price by the respective market two trading days before the beginning of the delivery month and determined by ECC. ECC can also establish the final settlement price in deviation to this.

- (4) With regard to positions which have only been opened or closed in the course of the delivery month, the change in the value on the business on which the position was opened or closed shall be calculated under consideration of the current contract volume based on the difference between the price of the transaction and the final settlement price. Said change in the value shall be established during batch processing and credited to the clearing account or debited from it.
- (5) The paragraphs herein above shall apply accordingly with regard to the legal relationship between Clearing Members and their affiliated Non-Clearing Members.

#### 4.2.2.3 Cascading

- (1) Cascading of quarter futures shall also be effected on the last day of trading by means of the assignment of the corresponding three month futures as outlined under section 4.2.1.3.
- (2) Cascading of year futures shall also be effected by means of the assignment of the corresponding three month futures for the calendar months from January through to March as well as the corresponding three quarter futures for the second through to the fourth calendar quarter on the last day of trading as has been outlined under section 4.2.1.4.
- (3) The positions assigned in accordance with paragraphs 1 and 2 shall take part in the clearing procedure subject to the provisions of the conditions relevant for them as of the day on which they are assigned.

#### 4.2.2.4 Physical delivery and purchase of power

- (1) Settlement of the futures shall be effected directly by the Trading Participant towards ECC subject to the provisions contained in these Clearing Conditions and the respectively valid balance agreements.
- (2) Every Trading Participant shall communicate amendments of the balance agreements on which power trading is based, or the termination of such to ECC forthwith.
- (3) In case a Trading Participant has fallen into arrears with his obligation to deliver or to purchase or in case such party loses the capability for physical settlement as per section 2.3.1 paragraph 1 (c) or in case such violates a covenant as per section 2.3.1 paragraph 1 (c), ECC shall be entitled to take all the required measures in order to safeguard performance and the minimization of the damage with regard to the transactions entered into, if applicable, also by including the respective market in this process. Further consequences might arise from the provisions contained in the respective balance agreement.
- (4) If a transmission network provider undertakes necessary measures to maintain network security section 5.2.4 applies accordingly.

#### 4.2.2.5 Financial settlement in case of delivery

- (1) Settlement of the transactions is based on the volumes delivered in accordance with these Clearing Conditions, multiplied by the final settlement price established for the delivery month in total plus the statutory taxes incurred.

- (2) Financial settlement is effected by netting out the accounts receivable and accounts payable regarding all transactions clearing of which is carried out by ECC in accordance with these Clearing Conditions into one account receivable or one account payable.
- (3) All payments for one delivery day including the statutory taxes incurred are debited from the clearing account of the Clearing Member or credited to it during batch processing two business days before the delivery day.

#### 4.2.2.6 Treatment with regard to sales tax in case of delivery

- (1) The volumes which are introduced into delivery in accordance with these clearing conditions multiplied by the final settlement price established for the delivery month as a whole shall form the basis for the calculation of the sales tax. On this basis as well as under consideration of the information furnished by the Trading Participants regarding taxation treatment, ECC shall separately calculate the sales tax for the transactions which it has incurred.
- (2) The assessment basis for the sales tax shall be the volumes to be delivered multiplied by the final settlement price for the respective delivery month increased by the transaction fees charged in case of a purchase and/or reduced by the transaction fees charged in case of a sale.
- (3) The amount of the sales tax established in this way shall be charged or credited separately for every Trading Participant.
- (4) Financial settlement shall be effected to a netted out account receivable and/or account payable by means of the respective Clearing Members in charge as the paying agent in accordance with section 4.2.2.5.

#### 4.2.3 Settlement of Phelix Base Options

##### 4.2.3.1 Option premium

- (1) The option premium shall be debited from the clearing account of the Clearing Member or credited to it during batch processing of the trading day.
- (2) There shall be no daily booking of the change in the value of the option.
- (3) ECC shall set off the option premium with the Clearing Members; the Clearing Members in turn shall set off the premium with the Non-Clearing Members which are affiliated with them.

##### 4.2.3.2 Margins to be furnished until exercising of the options

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



unfavourable price development until the next calculation of margins established by ECC occurs.

#### 4.2.3.3 Procedure in case the option is exercised

- (1) In case an option is exercised, positions are opened for the buyer and for the seller in the futures with the same maturity underlying the option (underlying) in accordance with the provisions in the paragraphs herein below as follows:
  - a) Phelix Base Month Option Underlying: Phelix Base Month Futures
  - b) Phelix Base Quarter Option Underlying: Phelix Base Quarter Futures
  - c) Phelix Base Year Option Underlying: Phelix Base Year Futures
- (2) The seller of an option is assigned upon exercising on the exercise day by means of a procedure ensuring the neutrality of the assignment procedure. Partial assignments shall be permissible.
- (3) During batch processing on the exercise day a long position is opened in the underlying future contract at the exercise price agreed on for the Trading Participant who exercises a buy option.
- (4) During batch processing on the exercise day a corresponding short position is opened in the underlying future contract at the exercise price agreed on for the Trading Participant to whom exercising of a buy option is assigned.
- (5) During batch processing on the exercise day a corresponding short position is opened in the underlying future contract at the exercise price agreed on for the Trading Participant who exercises a sell option.
- (6) During batch processing on the exercise day a corresponding long position is opened in the underlying future contract at the exercise price agreed on for the Trading Participant to whom exercising of a sell option is assigned.
- (7) In case the Trading Participant is not a Clearing Member, section 3.6.1 paragraph 1 shall apply accordingly in exercising and assigning of an option with regard to the futures position which has been opened.

#### 4.2.3.4 Particularities in the settlement of the futures position

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



#### 4.2.4 Settlement of European Carbon Futures

##### 4.2.4.1 General information

- (1) Various futures contracts regarding EU emission allowances with physical settlement (European Carbon Futures) are traded on EEX clearing of which shall be effected uniformly in accordance with the provisions made in these Clearing Conditions regardless of the maturity of the contract.
- (2) European Carbon Futures are co-operation products.

##### 4.2.4.2 Daily settlement

- (1) On every business day the change in the value of the positions is established for every futures contract during batch processing and credited to the clearing account or debited from such. Said change in the value shall be established on the basis of the difference between the daily settlement prices of the current and of the previous business day. With regard to positions which have only been opened or closed in the course of the current business day, the change in the value shall be established on the basis of the difference between the price at which the transactions was concluded and the daily settlement price for the business day.
- (2) The daily settlement price up to and including the last trading day of any given future is established by EEX in accordance with its Trading Conditions and determined by ECC. ECC can determine the daily settlement price in deviation to this. The daily settlement price on the last day of trading shall also be the final settlement price at the same time.
- (3) The paragraphs herein above shall apply accordingly with regard to the legal relationship between Clearing Members and their affiliated Non-Clearing Members.

##### 4.2.4.3 Financial settlement upon delivery

- (1) The number of the EU emission allowances to be delivered multiplied by the final settlement price plus any taxes required by law shall form the basis of the settlement of transactions.
- (2) Financial settlement shall be effected by means of netting-out the accounts receivable and the liabilities arising from all transactions the clearing of which is effected by ECC subject to the provisions contained in these Clearing Conditions into one account receivable and/or liability.
- (3) All payments including the statutory taxes incurred are credited to the clearing account of the Clearing Member or the Sub-CCP or debited from it during batch processing of the last trading day.

##### 4.2.4.4 Treatment with regard to sales tax upon delivery

- (1) The EU emission allowances which are introduced into delivery subject to the provisions contained in the trading conditions multiplied by the final settlement price shall form the basis for the calculation of the sales tax. On this basis and under consideration of the in-

formation provided by the Trading Participants regarding the taxation treatment ECC shall calculate the sales tax incurred with regard to the transactions separately.

- (2) The EU emission allowances to be delivered multiplied by the final settlement price increased by the delivery fees charged in case of a sale or reduced by the delivery fees charged in case of a sale shall form the assessment basis for the sales tax.
- (3) The amount of the sales tax determined in this way shall be invoiced separately and/or credited separately for every Trading Participant on an exchange.
- (4) Financial settlement shall be effected subject to the provisions contained in section 4.2.4.3. netted out into one account receivable and/or liability by means of the respective Clearing Members in charge or, if applicable, the Sub-CCP as the paying agent.

#### 4.2.4.5 Delivery and acceptance of EU emission allowances

- (1) The first business day following the last day of trading shall be the delivery day.
- (2) Settlement of the futures regarding EU emission allowances shall be effected directly by the Trading Participant towards ECC subject to the provisions contained in these Clearing Conditions. At the latest upon the end of trading on the last day of trading, the Trading Participants shall ensure their capacity to deliver by means of corresponding stocks in the account kept in trust for all Trading Participants by ECC at the national register authority (DEHSt account).
- (3) ECC shall keep internal inventory accounts regarding the EU emission allowances which are booked on the DEHSt account of ECC for every Trading Participant. The disposals and additions regarding EU emission allowances shall be booked on said internal inventory accounts by means of sales and purchases and/or by means of the surrender and return of such.

The delivery of EU emission allowances shall be effected by means of recording on these internal accounts directly by the Trading Participants towards ECC and shall effect a corresponding change in the number of shares which the Trading Participant holds in the total stock kept in trust in the DEHSt account of ECC at the same time.

- (4) All deliveries of EU emission allowances shall be effected step by step directly between the Trading Participants selling and ECC as well as, accordingly, between ECC and the Trading Participants to be supplied on the delivery day.
- (5) Settlement with regard to the EU emission allowances to be delivered shall be considered effected as of the time at which the following preconditions are fulfilled:
  - all entries in the accounts from the inventory account of ECC to the inventory accounts of the Trading Participants to be supplied have been made and
  - corresponding cash settlement (section 4.2.4.3.) has been carried out.
- (6) In case a Trading Participant defaults with regard to its delivery obligations, the consequences of such default are specified in section 5.3.5.

## 4.2.5 Settlement of European Carbon Options

### 4.2.5.1 General

- (1) Various options on EU emission allowances whose underlying are European Carbon Futures are traded on EEX (European Carbon Option). Regardless of the term of these contracts, their fulfilment is effected according to the provisions made in these Clearing Conditions.
- (2) European Carbon Options are co-operation products.

### 4.2.5.2 Option premium

- (1) The option premium is credited to the clearing account of the Clearing Member or the Sub-CCP or debited from it in batch processing of the trading day.
- (2) Daily booking of the change of the value of the option is not effected.
- (3) ECC sets off the option premium with the Clearing Members or the Sub-CCP; the Clearing Members set off the premium with their respective Non-Clearing Members.

### 4.2.5.3 Margins to be furnished until exercising

- (1) First of all, the margin for the costs of potential closing-out at the settlement price has to be furnished for all positions on every business day (Premium Margin). The settlement price for an option contract is established by EEX and determined by ECC. ECC can determine a deviating settlement price.
- (2) In addition to the Premium Margin a further margin (Additional Margin) is established covering the change in the costs of closing-out of all option positions in case the least favourable price development established by ECC arises until the next calculation of margins.

### 4.2.5.4 Procedure upon exercising of the option

- (1) Upon exercising of a European Carbon Option positions in the European Carbon Futures (underlying securities) on which the option is based with the same maturity are opened for the buyer and the seller in accordance with the provisions of the following paragraphs.
- (2) The seller of an option is assigned upon exercising on the exercise day by means of a procedure ensuring the neutrality of the assignment procedure. Partial assignments shall be permissible.
- (3) During batch processing on the exercise day a long position is opened in the underlying future contract at the exercise price agreed on for the Trading Participant who exercises a buy option.
- (4) During batch processing on the exercise day a corresponding short position is opened in the underlying future contract at the exercise price agreed on for the Trading Participant to whom exercising of a buy option is assigned.
- (5) During batch processing on the exercise day a corresponding short position is opened in the underlying future contract at the exercise price agreed on for the Trading Participant who exercises a sell option.

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

#### 4.2.5.5 Particularities in the settlement of the futures position

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

#### 4.2.6 Settlement of CER Futures

##### 4.2.6.1 General

- (1) On EEX futures contracts on Certified Emission Reductions with physical settlement (CER futures) are traded. Settlement of these is uniformly effected in accordance with the provisions made in these clearing conditions regardless of the term of the contract.
- (2) CER Futures are co-operation products.

##### 4.2.6.2 Daily settlement

- (1) With regard to every futures contract the change in the value of the positions on every business day is established during batch processing and credited to the clearing account or debited from it. The change in the value shall be calculated on the basis of the difference between the settlement prices of the current and of the previous business day. With regard to positions which have only been opened or closed in the course of the current business day, the change in the value shall be established on the basis of the difference between the price at which the transaction was concluded and the daily settlement price of the business day concerned.
- (2) The daily settlement price up to and including the last trading day for a future shall be established by EEX in accordance with its trading conditions and specified by ECC. ECC can determine the daily settlement price in deviation to this. The daily settlement price on the last trading day is also the final settlement price at the same time.
- (3) The paragraphs herein above apply accordingly with regard to the legal relationship between Clearing Members and their respective Non-Clearing Members.

##### 4.2.6.3 Financial settlement for delivery

- (1) The settlement of the transactions is based on the number of the Certified Emission Reductions multiplied by the final settlement price plus the taxes.

- (2) Financial settlement shall be effected by means of netting out of receivables and liabilities for all transactions clearing of which is carried out by ECC subject to the provisions contained in these Clearing Conditions, into one account receivable or into one liability.
- (3) All payments including the statutory taxes incurred are credited to the clearing account of the Clearing Member or the Sub-CCP or debited from it during batch processing on the last trading day.

#### 4.2.6.4 Sales tax treatment in case of delivery

- (1) The calculation of the sales tax is based on the Certified Emission Reductions, which are delivered according to the trading conditions, multiplied by the final settlement price. ECC calculates the sales tax incurred for the trades separately on this basis and under consideration of the information furnished by the Trading Participants regarding taxation treatment.
- (2) The Certified Emissions Reductions to be delivered multiplied by the final settlement price and increased by the delivery fees charged in case of a purchase or reduced by these delivery fees charged in case of a sale constitute the assessment basis for the sales tax.
- (3) The sales tax amount established in this way is invoiced or credited separately for every Trading Participant.
- (4) Financial settlement is carried out by means of netting-out into one account receivable or liability via the respective competent Clearing Members or the Sub-CCP as the paying office in accordance with section 4.2.6.3.

#### 4.2.6.5 Delivery and acceptance of the Certified Emission Reductions

- (1) The first business day after the last trading day is the delivery day.
- (2) Settlement of the futures on Certified Emission Reductions is effected in accordance with these clearing conditions directly by the Trading Participant towards ECC. The Trading Participants shall ensure their ability to deliver at the latest upon the end of trading on the last trading day by means of corresponding inventories in the ECC account (DEHSt account) kept in trust by ECC for all Trading Participants at the national registry.
- (3) ECC keeps internal inventory accounts regarding the Certified Emission Reductions which are booked on the DEHSt account of ECC for every Trading Participant. Additions and disposals of Certified Emission Reductions by means of sale and purchase and/or by means surrender and return of such are recorded in the internal inventory accounts.

Delivery of the Certified Emission Reductions is effected by booking within these internal accounts directly by the Trading Participant towards ECC and, at the same time, it effects a corresponding change in the Trading Participants' share in the total inventory in the DEHSt account kept in trust by ECC.

- (4) All deliveries of Certified Emission Reductions shall be effected step by step directly between the Trading Participants selling and ECC as well as, accordingly, between ECC and the Trading Participants to be supplied on the delivery day.

- (5) Settlement with regard to the Certified Emission Reductions to be delivered shall be considered effected as of the time at which the following preconditions are fulfilled:
  - all entries in the accounts from the inventory account of ECC to the inventory accounts of the Trading Participants to be supplied have been made and
  - corresponding cash settlement (section 4.2.6.3.) has been carried out.
- (6) In case a Trading Participant defaults with regard to its delivery obligations, the provisions in section 5.3.5 shall apply accordingly.

#### 4.2.7 Settlement of Coal ARA and Coal RB Futures

##### 4.2.7.1 General information

- (1) Various futures contracts regarding coal (Coal ARA and Coal RB Futures, also referred to as coal futures herein after) with financial settlement are traded on EEX the cascading and settlement of which is uniformly effected in accordance with these Clearing Conditions regardless of the maturity of the contract.
- (2) Financial settlement of these futures is effected as of the end of the respective current month. Quarter and year futures are cascaded in accordance with the provisions specified herein above until they are finally fulfilled financially as month contracts.

##### 4.2.7.2 Particularities in the settlement of coal futures

- (1) Coal futures are quoted in USD and are settled as follows: The calculation and the payment of the change in the value in the course of daily settlement (section 4.2.7.3) and the calculation and payment upon the final settlement (section 4.2.7.6) shall be effected in USD.
- (2) The calculation of the margins required (section 4.1) shall be effected in EUR; there are no particularities with regard to the provision of the margins required compared with the provisions contained in section 3.5.

##### 4.2.7.3 Daily settlement

- (1) For every futures contract the change in the value of the positions is established on every business day during batch processing and credited to the USD clearing account or debited from such. The change in the value shall be calculated on the basis of the difference in the daily settlement prices of the business day and of the previous business day. With regard to positions which have only been opened or closed in the course of the current business day, the change in the value shall be calculated on the basis of the difference between the price at which the corresponding transaction was concluded and the daily settlement price of the business day concerned.
- (2) The daily settlement price up to and including the last day of trading of a future shall be established by EEX in accordance with its Trading Conditions and determined by ECC. ECC shall be entitled to determine the daily settlement price in deviation to this.
- (3) Paragraph 1 shall apply accordingly with regard to the legal relationship between Clearing Members and their affiliated Non-Clearing Members.



#### 4.2.7.4 Cascading of Coal Quarter Futures

- (1) After the execution of the daily settlement on the last day of trading the holders of Coal Quarter Futures are assigned the corresponding three Coal Month Futures, which taken together correspond to the delivery period of this Coal Quarter Future instead of these futures at the same daily settlement price still on the same business day.
- (2) The positions assigned in accordance with paragraph 1 shall take part in the clearing procedure as of the day of their assignment subject to the provisions applicable with regard to them.

#### 4.2.7.5 Cascading of Coal Year Futures

- (1) After the execution of the daily settlement on the last day of trading the holders of Coal Year Futures are assigned the corresponding three Coal Month Futures for the following calendar months from January through to March as well as the corresponding three Coal Quarter Futures for the second through to the fourth calendar quarter which taken together correspond to the delivery period of the Coal Year Future instead of these futures at the same settlement price on the same business day.
- (2) The positions assigned in accordance with paragraph 1 shall take part in the clearing procedure in accordance with the provisions applicable with regard to them as of the day of their assignment.

#### 4.2.7.6 Settlement of Coal Month Futures

- (1) On the last day of trading the positions are balanced by means of a difference which is credited to the USD clearing account of the Clearing Member or debited from said account. The difference shall be calculated on the basis of the difference of the final settlement price and the daily settlement price of the previous business day. With regard to positions which have only been opened during the last day of trading said 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 for Coal ARA Month Futures shall be the API 2\* (cif ARA) Monthly Index as published regularly on the last Friday of any given month in Argus/McCloskey's Coal Price Index Report.
- (3) The final settlement price for Coal RB Month Futures shall be the API 4\* (fob Richards Bay) Monthly Index as published regularly on the last Friday of any given month in Argus/McCloskey's Coal Price Index Report.
- (4) In case the establishment of an index is not possible in accordance with the provisions contained herein above or in case said index is not available or in case the index does not correspond to the actual situation prevailing on the market, EEX shall be entitled to establish the final settlement price and ECC shall be entitled to determine such. ECC shall be entitled to specify a deviating final settlement price



- \* API 2 and API 4 are used under licence from Argus Media Limited/The McCloskey Group Limited. All copyrights and database rights in the API 2 and API 4 indices belong exclusively to Argus Media Limited/The McCloskey Group Limited. All rights reserved

#### 4.2.8 Settlement of Natural Gas Futures

##### 4.2.8.1 General information

- (1) On the markets, futures contracts regarding natural gas with physical delivery in the transmission system of various transmission system operators are traded (,the settlement of which shall be effected uniformly in accordance with the provisions contained in the Clearing Conditions regardless of the contract maturity.
- (2) Physical settlement of the futures shall be effected on a daily basis and only during the current delivery month. Quarter, season and year futures are cascaded in accordance with section 4.2.2.3 until they are introduced into delivery as month contracts.

##### 4.2.8.2 Daily settlement

- (1) With regard to every futures contract the change in the value of the positions on every business day is established during batch processing and credited to the clearing account or debited from it. The change in the value shall be calculated on the basis of the difference between the settlement prices of the current and of the previous business day. With regard to positions which have only been opened or closed in the course of the current business day, the change in the value shall be established on the basis of the difference between the price at which the transaction was concluded and the daily settlement price of the business day concerned.
- (2) The daily settlement price up to and including the second trading day prior to the beginning of the delivery month shall be established by the respective market in which the product is traded in accordance with its rules and determined by ECC. ECC can determine the daily settlement price in deviation to this.
- (3) As of the second trading day prior to the beginning of the delivery month the settlement price shall remain constant for the entire delivery month. Two trading days prior to the beginning of the delivery month it shall be established by the respective market as the final settlement price and determined as such by ECC. ECC can determine the daily settlement price in deviation to this.
- (4) With regard to positions which have only been opened or closed in the course of the delivery month, the change in the value on the day on which the position is opened or closed shall be calculated on the basis of the difference between the price of the transaction and the final settlement price under consideration of the current contract volume. This change in value shall be established during batch processing and credited to the clearing account or debited from it.
- (5) The paragraphs herein above shall apply accordingly with regard to the legal relationship between Clearing Members and their affiliated Non-Clearing Members.

#### 4.2.8.3 Cascading

- (1) Cascading of physical quarter futures shall be effected as described in section 4.2.1.3 on the last day of trading by means of the assignment of the three corresponding month futures.
- (2) Cascading of year futures shall be effected as described in section 4.2.1.4 by means of the assignment of the three corresponding month futures for the following calendar months from January through to March as well as of the three corresponding quarter futures for the second through to the fourth calendar quarter on the last day of trading.
- (3) Cascading of season futures shall be effected by means of the assignment of the three corresponding month futures for the calendar months April / May / June (summer season) and/or October / November / December (winter season) as well as of the following quarter future.
- (4) The positions assigned in accordance with paragraphs 1 and 2 shall take part in the clearing procedure subject to the provisions applicable with regard to them as of the day of their assignment.

#### 4.2.8.4 Physical delivery and acceptance of natural gas

- (1) The delivery of the futures shall be effected subject to the provisions contained in these Clearing Conditions as well as the respectively valid balance agreements directly by the Trading Participant towards ECC.
- (2) Every Trading Participant shall communicate the change and/or the termination of the balance agreements on which natural gas trading is based to ECC forthwith.
- (3) In case a Trading Participant has defaulted with regard to its delivery or purchase obligation or in case such party loses the capability for physical settlement as per section 2.3.1 paragraph 1 (c) or in case such party violates a covenant as per section 2.3.1 paragraph 1 (c), ECC shall be entitled to take all measures which are required in order safeguard the performance or a reduction of the damage with regard to the transactions entered into, if required, by including the respective market in the process. Further consequences might arise from the provisions contained in the respective balance agreement.
- (4) If a transmission network provider undertakes necessary measures to maintain network security section 5.4.4 applies accordingly.

#### 4.2.8.5 Financial settlement in case of delivery

- (1) Settlement of the transactions is based on the volumes to be delivered in accordance with these Clearing Conditions, multiplied by the final settlement price established for the delivery month in total plus the statutory taxes incurred.
- (2) Financial settlement is effected by netting out the accounts receivable and accounts payable regarding all transactions clearing of which is carried out by ECC in accordance with these Clearing Conditions into one account receivable or one account payable.

- (3) All payments for one delivery day including the statutory taxes incurred are debited from the clearing account of the Clearing Member or credited to it during batch processing two business days before the delivery day.

#### 4.2.8.6 Treatment in terms of sales tax in case of delivery

- (1) The volumes which are introduced into delivery subject to the provisions contained in the Clearing Conditions multiplied by the final settlement price established for the delivery month in total shall form the basis of the calculation of the sales tax. On this basis and under consideration of the information provided by the Trading Participants regarding the treatment in terms of taxation, ECC shall calculate the sales tax for the transactions incurred separately.
- (2) The volumes to be delivered multiplied by the final settlement price for the respective delivery month as increased by the transaction fees charged in case of a purchase or reduced by the transactions fees charged in case of a sale shall form the assessment basis.
- (3) The amount of the sales tax established in this way shall be billed or credited to every Trading Participant separately.
- (4) Financial settlement shall be effected in a manner netted out into an account receivable and/or liability by means of the respective Clearing Members in charge as the paying agent in accordance with figure 4.2.8.5.

## 5 SPECIAL PROVISIONS REGARDING SPOT MARKET TRANSACTIONS

### 5.1 Fundamental principles regarding the establishment of margins

- (1) The establishment of the margins to be furnished shall be effected for every Trading Participant under consideration of its transactions concluded on all spot markets cleared by ECC without separation of the requirement for proprietary position accounts and the agent position account.
- (2) The margins are calculated on the basis of the historic or forecasted transactions of a Trading Participant.
- (2) The Initial Margin takes possible losses arising from the close-out of expected new transactions until the next accounting cut-off into account. It will be adjusted on a monthly basis or as required.

### 5.2 Special provisions regarding power trading

#### 5.2.1 General information

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

#### 5.2.2 Settlement of the transactions

- (1) The transactions as established in the trade confirmations by the markets plus the taxes as per the legal requirements form the basis for settlement.
- (2) Financial settlement shall be effected by means of netting out of receivables and liabilities for all transactions the clearing of which is carried out by ECC subject to the provisions contained in these Clearing Conditions, into one account receivable or into one liability.
- (3) The reports regarding the transactions concluded by the Trading Participants on a trading day shall be communicated to these by ECC forthwith, usually still on the same business day, or they are provided within the system of the market.
- (4) All payments including the taxes applicable as per the relevant laws are credited to the clearing account of the Clearing Member or debited from it during batch processing on the trading day.

#### 5.2.3 Physical delivery and purchase of power

- (1) Physical delivery of the spot market transactions is effected directly by the Trading Participant towards ECC subject to the provisions specified in these Clearing Conditions and the respectively valid balance agreements.

- (2) Every Trading Participant shall communicate an amendment and/or termination of the balance agreements on which power trading is based to ECC forthwith.
- (3) In case a Trading Participant has defaulted with regard to its delivery or purchase obligation or in case he loses the capability for physical settlement as per section 2.3.1 paragraph 1 (c) ECC shall be entitled to take all the required measures to safeguard the performance or reduction of the damage with regard to the transactions entered into if required by including the respective market. Further consequences might arise from the provisions contained in the respective balance agreement.

#### 5.2.4 Measures to maintain network security

- (1) Should a transmission network provider have to undertake necessary measures, such as the reduction of schedules in order to maintain network security due to network constraints, which have an effect on the schedule registration and deliveries in the application of these clearing conditions, then the reduced deliveries and/or purchases of power form the basis for settlement.
- (2) The affected Trading Participants are obliged to comply with necessary changes, such as the resending of schedules. They must abide by the measures of the transmission operator and therefore the respective measures of ECC. Settlements and schedule registrations which have already occurred shall lose their validity.
- (3) Liability of the ECC for measures occurred by the transmission system operator, or measure based on the operators measures, is excluded.

#### 5.2.5 Treatment of the transactions in terms of sales tax

- (1) The transactions as established in the individual trade confirmations shall form the basis for the calculation of the sales tax. On this basis and under consideration of the information provided by the Trading Participants regarding the taxation treatment, ECC shall calculate the sales tax payable with regard to the transactions separately.
- (2) The trade confirmations provided by the trading system increased by the transaction fees billed in case of a purchase or reduced by the transactions fees billed in case of a sale shall form the assessment basis for the sales tax.
- (3) The amount of the sales tax established in this way shall be invoiced or credited separately for every Trading Participant.
- (4) Financial settlement shall be effected subject to the provisions contained under section 5.2.2. in a manner netted out into an account receivable and/or liability by means of the respective Clearing Members in charge as paying agent.

#### 5.2.6 Trade limits for intra-day trading

- (1) Clearing Members of ECC can establish a trade limit for intra-day power trading with delivery in Germany for every Non-Clearing Member of which they are in charge. A trade limit is a limit established by means of an amount in terms of money within which the Non-Clearing Member can buy power in intra-day trading on a trading day. ECC shall monitor

compliance with the trade limits – if required, by including the market, and inform the Clearing Member concerned in case these are exceeded.

- (2) As soon as a Trading Participant enters sell orders in the system which exceed the trade limit, ECC shall apply to the market for a cancellation of the orders exceeding the trade limit.

## 5.3 Special provisions regarding trading in EU emission allowances

### 5.3.1 General information

- (1) On EEX, Spot Market transactions regarding EU emission allowances with physical settlement are traded the settlement of which is effected uniformly in accordance with the provisions made in these Clearing Conditions.

### 5.3.2 Settlement of the transactions

- (1) The transactions as communicated in the trade confirmations by EEX plus the taxes required by law shall form the basis of settlement.
- (2) Financial settlement shall be effected by means of netting out of accounts receivable and liabilities from all transactions whose clearing is executed by ECC subject to the provisions contained in these Clearing Conditions into one account receivable or one liability.
- (3) The reports regarding the transactions concluded by the Trading Participants shall be forwarded by ECC forthwith, usually still on the same day of trading, or they are provided within the system of EEX.
- (4) All payments including those of the taxes required by law are credited to the clearing account of the Clearing Member or debited from it during batch processing of the trading day.

### 5.3.3 Treatment of the transactions in terms of sales tax

- (1) The transactions as established in the individual trade confirmations shall form the basis for the calculation of the sales tax. On this basis and under consideration of the information provided by the Trading Participants regarding the taxation treatment, ECC shall calculate the sales tax payable with regard to the transactions separately.
- (2) The trade confirmations provided by the trading system increased by the transaction fees billed in case of a purchase or reduced by the transactions fees billed in case of a sale shall form the assessment basis for the sales tax.
- (3) The amount of the sales tax established in this way shall be invoiced or credited separately for every Trading Participant.
- (4) Financial settlement shall be effected subject to the provisions contained under section 5.3.1 in a manner netted out into an account receivable and/or liability by means of the respective Clearing Members in charge as paying agent.

#### 5.3.4 Delivery of EU emission allowances

- (1) ECC shall keep internal inventory accounts regarding the EU emission allowances, which are booked for all Trading Participants in the account of ECC kept in trust by ECC at the national registry (DEHSt account) for every Trading Participant. The additions and disposals regarding EU emission allowances by means of sale and purchase or by means of surrender and return shall be booked in these internal inventory accounts.

The delivery of EU emission allowances shall be effected subject to the provisions contained in these Clearing Conditions by means of recording in these internal accounts directly by the Trading Participant (towards ECC and at the same time this shall lead to corresponding changes in the proportionate shares of the Trading Participants in the total stock in the DEHSt account kept in trust).

- (2) All deliveries of EU emission allowances shall be effected step by step directly between the Trading Participants effecting the sale and ECC and accordingly between ECC and the Trading Participants to be supplied on the first business day after the respective conclusion of the transaction.
- (3) Performance with regard to the EU emission allowances to be delivered shall be considered effected as of the time at which the following preconditions are fulfilled in their entirety:
  - all transfers from the inventory account of ECC to the inventory accounts of the Trading Participants to be supplied have been effected and
  - the corresponding settlement in terms of money (section 5.3.1) has been implemented.
- (4) All Trading Participants shall safeguard the capacity to deliver prior to the conclusion of trades by means of corresponding stocks in the DEHSt account.

#### 5.3.5 Special regulations regarding default

- (1) In case the Trading Participant who is obliged to deliver is in default, in particular because such party has not submitted the EU allowances to be delivered by it to the DEHSt account of ECC in accordance with the instructions by ECC on the delivery day at the latest, ECC shall be entitled to take the following measures:
  - (a) ECC can carry out stocking up for the EU emission allowances which have not been delivered in exchange trading or in any other suitable manner as of the first business day after the delivery day at the earliest, in case it is convinced on account of extraordinary risks that the margins which have been deposited are not sufficient for securing these transactions any more or in case it deems a replacement of the EU emission allowances which have not been delivered on EEX or off the exchange by ECC to the account of the Trading Participant who is obliged to deliver required because of other serious reasons (stocking up). A serious reason shall be in particular an approaching date for the delivery of EU emission allowances pursuant to art. 6 TEHG (German law on greenhouse emissions trading).



(b) In case the EU emission allowances to be delivered by the Trading Participant obliged to deliver are not delivered to ECC on the 5th business day after the delivery day at the latest, ECC shall stock up the EU emission allowances which have not been delivered within a period of time established by it, which usually amounts to 5 business days. The right to deliver on the part of the Trading Participant who is in default shall be precluded for this period of time. Stocking up can be carried out in accordance with paragraph 1 lit. a or by means of an auction.

(c) With regard to stocking up by means of an auction the following shall apply:

EEC or EEX AG, which it has commissioned to that end, shall publish a maximum price for each EU emission allowance for the respective auction up to which it is prepared to accept bids. The maximum price for this auction is calculated on the basis of the value established by ECC for the corresponding EU emission allowances with a surcharge of 100 per cent.

Every Trading Participant who has been licensed to that end by ECC, can participate in these auctions.

(d) In case the measures provided for in paragraph 1 lit. a and b are not successful within the period of time established in accordance with lit. b, ECC shall be entitled to establish a cash settlement with regard to a transaction or the part of a transaction which has not been fulfilled so that the obligations to perform arising from this transaction on the part of the Trading Participant who is in default and of ECC cease to apply. The Trading Participant who is in default as well as the Clearing Member co-operating with him shall be obliged to pay a cash settlement to ECC instead. In this case the same shall apply with regard to trades with the same contents concluded between ECC and one or several other Trading Participants. The execution of a cash settlement shall be based on the precondition that two attempts at stocking up by means of one auction each according to lit. c have been executed by ECC or by EEX AG, which it has commissioned to that end, prior to that.

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

- The amount of the cash settlement to be paid is established by means of a comparison between the value established by ECC for the EU emission allowances concerned plus a surcharge to the amount of 100 per cent, the highest sales price of the trades concerned as well as of the highest purchase price of the trades concerned.
- The highest price established in the context of this comparison is then multiplied by the respective number of trades concerned. The sum resulting from this is set off with the respective final amounts of the trades concerned and hence yields the amount to be paid to ECC in the framework of cash settlement.

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

- (2) The Trading Participant which was not been supplied in due time has to allow the measures according to paragraph 1. In as far as ECC has initiated stocking up by means of an auction pursuant to paragraph 1 or in accordance with measures as per paragraph 1 lit. a, the Trading Participant obliged to deliver shall not be entitled to deliver the EU emission allowances which it owes to ECC on the day of the respective auction or of the measures according to paragraph 1 lit. a. In case stocking up of the EU emission allowances to be delivered has been achieved by means of an auction or in any other way, the obligations to deliver arising from the original trade in EU emission allowances shall expire on account of this.
- (3) The costs incurred on account of measures as per paragraph 1 shall be borne by the Trading Participant. Amongst other aspects, ECC shall charge a fee for each auction which has been carried out to the amount of EUR 250 for each delivery of EU emission allowances which is in default.
- (4) ECC can have recourse to the Trading Participant and the Clearing Member co-operating with said party in case of damage which it or other Trading Participants have suffered on account of a default caused by the Trading Participant. Regardless of the occurrence of a case of damage ECC shall be entitled to demand interest as well as liquidated damages. The liquidated damages shall be calculated as follows:

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

## 5.4 Special provisions regarding natural gas trading

### 5.4.1 General information

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

### 5.4.2 Settlement of the transactions

- (1) The transactions as established in the trade confirmations by the markets plus the taxes as per the legal requirements form the basis for settlement.
- (2) Financial settlement shall be effected by means of netting out of receivables and liabilities for all transactions the clearing of which is carried out by ECC subject to the provisions contained in these Clearing Conditions, into one account receivable or into one liability.

- (3) The reports regarding the transactions concluded by the Trading Participants on a trading day shall be communicated to these by ECC forthwith, usually still on the same business day, or they are provided within the system of the market.
- (4) All payments including the taxes applicable as per the relevant laws shall, on principle, be credited to the clearing account of the Clearing Member or debited from it during batch processing of the trading day. Payments of transactions, the delivery day of which occurs after the next business day, are credited to the clearing account of the Clearing Member or debited from it during batch processing of the business day before the delivery.

#### 5.4.3 Physical delivery and purchase of natural gas

- (1) Physical delivery of the spot market transactions is effected directly by the Trading Participant towards ECC subject to the provisions specified in these Clearing Conditions and the respectively valid balance agreements.
- (2) Every Trading Participant shall communicate an amendment and/or termination of the balance agreements on which natural gas trading is based to ECC forthwith.
- (3) In case a Trading Participant has defaulted with regard to its delivery or purchase obligation or in case he loses the capability for physical settlement as per section 2.3.1 paragraph 1 (c) ECC shall be entitled to take all the required measures to safeguard the performance or reduction of the damage with regard to the transactions entered into if required by including the respective market. Further consequences might arise from the provisions contained in the respective balance agreement.

#### 5.4.4 Measures to maintain network security

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

#### 5.4.5 Treatment of the transactions in terms of sales tax

- (1) The transactions as established in the trade confirmations of every trading day shall form the basis for the calculation of the sales tax. On this basis and under consideration of the information provided by the Trading Participants regarding the taxation treatment, ECC shall calculate the sales tax payable with regard to the transactions separately.

- (2) The trade confirmations provided by the market increased by the transaction fees billed in case of a purchase or reduced by the transactions fees billed in case of a sale shall form the assessment basis for the sales tax.
- (3) The amount of the sales tax established in this way shall be invoiced or credited separately for every Trading Participant.
- (4) Financial settlement shall be effected subject to the provisions contained under section 5.4.2. in a manner netted out into an account receivable and/or liability by means of the respective Clearing Members in charge as paying agent.

## 6 FINAL PROVISIONS

### 6.1 Sovereign acts

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

### 6.2 Forwarding of information

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

- (1) ECC shall treat all data and information referred to its Clearing Members as confidential. ECC shall only be entitled to forward information with regard to customers in case such is already part of the public domain or in case this is required by legal provisions or in case the Clearing Member concerned has approved of such forwarding of information.
- (2) Regardless of the provisions contained in paragraph 1, ECC shall be entitled to forward the following information to the markets for the transactions of which it has taken over clearing:
  - (a) granting of a clearing license (section 2.1.2)
  - (b) termination and suspension of the clearing license (section 2.1.6)
  - (c) restriction of a clearing license (section 2.1.7)
  - (d) default by the Clearing Member (section 3.9.1)
  - (e) licensing of a Clearing Member or of a Non-Clearing Member as a Trading Participant (section 2.3.1)
  - (f) revocation of a license as a Trading Participant (section 2.3.2)
  - (g) termination of the NCM agreement (section 2.2.2)
- (3) Regardless of the provisions contained in paragraph 1 ECC shall, moreover, be entitled to forward or request all of the data and information referring to the Clearing Member which is required for the proper execution of clearing and/or the settlement of the transaction in terms of money, to clearing and settlement institutions called in to that end which are subject to confidentiality provisions similar to those of ECC.

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

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

## 6.3 Miscellaneous

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

## 6.4 Applicable law, legal venue

- (1) These Clearing Conditions shall be governed exclusively by the applicable material law of the Federal Republic of Germany to the exclusion of the UN law on sales.
- (2) Leipzig shall be the exclusive legal venue for all conflicts arising in connection with these Clearing Conditions and Leipzig shall be the place of performance.

## 6.5 Amendments and supplements

Amendments and supplements to these Clearing Conditions will be announced to the clearing participants by ECC electronically by means of a circular letter or by means of a publication on the internet sites of ECC [www.eec.de](http://www.eec.de) and the markets at least 10 business days before such amendments take binding effect.