

Recommended Model Contract

Close-Out Netting Agreement between a Clearing Member and a Non-Clearing Member

Close-Out Netting Agreement

between

as Clearing Member on the ECC (hereinafter "CM")

and

as Non-Clearing Member on the ECC (hereinafter "NCM")

1. The CM, the NCM and European Commodity Clearing AG ("ECC AG") have entered into an NCM Agreement dated _____ ("NCM Agreement").
2. As regards all the transactions admitted to clearing on the ECC (together the "Derivatives Market Transactions" and each individual transaction a "Derivatives Market Transaction"), the CM and the NCM, with the approval of ECC AG, hereby enter into the Close-Out Netting Agreement set out below, provided that each of these transactions is a Derivative Transaction (as defined below). "Derivative Transactions" within the meaning of sentence 1 are futures or options transactions which involve the purchase or exchange of, or which are otherwise related to, an underlying instrument and the value of which is determined by the underlying instrument and can change in future as a consequence of the deferred performance date for at least one of the contracting parties, including contracts for difference. The underlying instrument within the meaning of sentence 2 may also be a Derivative Transaction.
3. In the event that
 - the NCM fails to perform under a Derivatives Market Transaction or other circumstances arise with respect to the NCM that entitle the CM to terminate for serious cause, or
 - bankruptcy or other insolvency proceedings are filed against the assets of the CM or the NCM and the CM or the NCM either has filed the application itself or is

generally unable to pay its debts as they become due or is otherwise in a situation which justifies the commencement of such proceedings,

the following is agreed between the CM and the NCM:

- a. As between the CM and the NCM the provisions set out in no. 7 para. 1 sentences 1 and 4 (right of termination for serious cause and exclusion of partial termination), no. 7 paras. 2 and 3 (insolvency; compensation claim), no. 8 (claims for damages and compensation for benefits received) and no. 9 para. 1 (unpaid amounts) of the sample text of the Master Agreement for Financial Derivatives Transactions (*Rahmenvertrag für Finanztermingeschäfte*) (2001 version) as published by the Association of German Banks (*Bundesverband deutscher Banken e.V.*) (the “Master Agreement”) and attached to this Agreement by the CM and the NCM shall apply, subject to the following:
 - References made in the above-mentioned provisions of the Master Agreement (i) to the “Agreement” shall be read as references to this Close-Out Netting Agreement and the Derivatives Market Transactions covered by it and (ii) to a “party” shall be read as references to the CM or the NCM, as applicable.
 - For the purposes of the above-mentioned provisions of the Master Agreement, each individual Derivatives Market Transaction shall be deemed a Transaction within the meaning of the Master Agreement.
- b. In the event that any provisions of the ECC Clearing Conditions or any provisions of the NCM Agreement contradict or conflict with provisions in this Close-Out Netting Agreement, the provisions of this Close-Out Netting Agreement shall prevail.
4. This Agreement shall be governed by the laws of the Federal Republic of Germany. The place of performance and jurisdiction shall be Frankfurt am Main, Germany.

Place and date

For the Clearing Member

For the Non-Clearing Member

We approve the above Close-Out Netting Agreement between the Clearing Member and the Non-Clearing Member and consent that the provisions of this Close-Out Netting Agreement shall prevail should any provisions of the ECC Clearing Conditions or provisions of the NCM Agreement contradict or conflict with the provisions in this Close-Out Netting Agreement.

Place and date

For European Commodity Clearing AG