

DRAFT FOR CONSULTATION  
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# Cboe Clear Europe N.V. Clearing Rule Book

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## 1. Definitions

1.1 The following capitalised terms shall, unless specifically defined otherwise, have the respective meanings set out below:

**“Account”** means Position Account and/or Collateral Account;

**“Account Structure”** means all Accounts registered in the Clearing System in the name of one Clearing Participant;

**“Aggregate Margin”** means the aggregate of all Margin amounts for all Position Accounts of a Clearing Participant;

**“Applicable Law”** means, without limitation, all provisions of any and all laws, statutes, ordinances, rules, regulations, permits, certificates, judgements, decisions, decrees or order of any governmental or regulatory authority that are applicable to such legal or natural person;

**“Applicant”** means a legal entity that wishes to be recognised as a Clearing Participant;

**“Auction Portfolio”** has the meaning as set out in article 12.1.2;

**“Bankruptcy Act”** means the Dutch Bankruptcy Act (*Faillissementswet*);

**“Breach”** has the meaning as set out in article 11.1;

**“Buyer”** means in relation to (i) an Options Contract, the party which has the right to exercise the contract in accordance with the Contract Terms, and (ii) in relation to a Futures Contract, the party that has the obligation to pay the pre-determined price under the Contract Terms to the Seller, and **Buys** shall be construed accordingly;

**“Capital”** means the shareholders’ equity determined in the most recent audited annual account prepared in accordance with the accounting principles of the Clearing Participant;

**“Cash Settled Obligation”** means in relation to (i) an Options Contract, the obligation of the Buyer to pay cash to the Seller which obligation comes into existence upon exercise of the contract, and (ii) a Futures Contract, the obligation of either the Buyer or the Seller to pay cash which obligation exists every Clearing Day during the lifetime of the contract, and at Expiry of the contract;

**“Cboe Clear”** means Cboe Clear Europe N.V.;

**“CET”** means Central European Time or Central European Summer Time, when applicable;

**“Clearing Agreement”** means the agreement referred to in article 4.8.1 which is to be entered into between a General Clearing Participant and a Trading Participant;

**“Clearing Day”** means any day as set out in the Regulation Clearing Days published by Cboe Clear at least annually;

**“Clearing Fund”** means the clearing fund set up pursuant to article 8;

**“Clearing Participant”** means either a General Clearing Participant or a Direct Clearing Participant, recognised as such by Cboe Clear under the conditions set out in article 4;

**“Clearing Participant Agreement”** means the written agreement entered into between Cboe Clear and a Clearing Participant pursuant to article 4.1.1;

**“Clearing Participant Settlement Bank”** means a bank or other credit institution, including a central bank, approved by Cboe Clear from time to time for the provision of settlement services in connection with settlements on behalf of a Clearing Participant;

**“Clearing Rule Book”** means this document, as may be amended from time to time;

**“Clearing Rules”** means the rules set out in this Clearing Rule Book, including all Regulations hereto, as may be amended from time to time;

**“Clearing Services”** means any and all of the services provided by Cboe Clear pursuant to article 5;

**“Clearing System”** means the system operated by Cboe Clear and designated as mentioned in article 2.12;

**“Clearing Termination Notice”** has the meaning as set out in article 4.12.7;

**“Client”** means any Person which has opened accounts with respect to the trading of one or both Product Classes in the books of a Clearing Participant, other than a Trading Participant;

**“Collateral”** means cash or such approved Financial Instruments as set out in the Regulation Collateral deposited in a Collateral Account or transferred to Cboe Clear by way of a title transfer financial collateral arrangement (*financiële zekerheidsovereenkomst tot overdracht*) in accordance with the Regulation Collateral;

**“Collateral Account”** means House Collateral Account, Omnibus Client Collateral Account, Individual Client Collateral Account and Omnibus Indirect Client Collateral Account;

**“Collateral Directive”** means Directive 2002/47/EC of 6 June 2002 on financial collateral arrangements;

**“Competent Authority”** means any body by which the Clearing Participant, a Co-operating Clearing House or Cboe Clear is supervised pursuant to any law, regulation or agreement;

~~**“Completed Posting”** means the receipt of an Electronic Message containing the details of a Posting by Cboe Clear. The Electronic Message is deemed not to be received by Cboe Clear if that Electronic Message is Corrupt;~~

**“Contract Terms”** means in relation to a Derivatives Contract the terms determined by an Exchange as being the obligations under such contract (as may be amended from time to time);

**“Contribution”** has the meaning as set out in article 8.2.1;

**“Cooling-Off Period”** has the meaning as set out in article 8.6.1;

**“Co-operating Clearing House”** means a Person which entered into a Link Agreement with Cboe Clear with approval from the Competent Authority of Cboe Clear;

**“Corporate Action”** means any corporate event in respect to any of the Securities listed in Regulation Securities. These events include, but are not limited to, dividends or other cash distributions, stock dividends, splits, share capitalisations or other elective or non-elective mandatory events, as well as rights subscriptions, options and offers;

**“Correction”** means the modification by an Exchange or, in accordance with a Link Agreement by a Co-operating Clearing House or another Person, in each case of a ~~Posted~~ Trade the particulars of which were submitted in an Electronic Message to Cboe Clear, including the cancellation of a Trade;

**“Corrupt”** means that an Electronic Message does not meet the technical requirements in order for Cboe Clear to process such Electronic Message;

**“Credit Institution”** means any credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms;

**“CSD”** means any central securities depository or securities settlement system designated as such by Cboe Clear in the Regulation Settlement;

**“Daily Settlement Price”** means the daily closing price determined in accordance with the Contract Terms;

**“Default Handling Period”** means the period from the issuance of a Notice of Default until the issuance of a Default Handling Completion Notice. Where additional Notices of Defaults are issued during a prevailing Default Handling Period, the Default Handling Period shall be deemed as continuing as from the first Notice of Default issued at the commencement of the prevailing Default Handling Period;

**“Default Handling Completion Notice”** means a notification of Cboe Clear to the non-defaulting Clearing Participants to the effect that it has completed the management of all outstanding defaults of Clearing Participants by way of publication according to article 3.6;

**“Deposit”** has the meaning as set out in article 7.2.1;

**“Derivative”** means a financial instrument within the meaning of Annex I, Section C (4) of MiFID which is traded on or off an Exchange and which is eligible for clearing as set out in the Regulation Derivatives;

**“Derivatives Contract”** means a Futures Contract and/or an Options Contract between the Clearing Participant and Cboe Clear arising in accordance with the Clearing Rules;

**“Direct Clearing Participant”** means a Clearing Participant authorised to clear Trades which have been dealt for its own account or have been concluded for the account of its Clients;

**“Dutch Civil Code”** means *Burgerlijk Wetboek*;

**“DVP”** or **“Delivery versus Payment”** means the settlement of a Trade Leg relating to a Security by way of simultaneous delivery of Securities and payment of cash or by way of simultaneous receipt of Securities and payment of cash (RVP or Receipt versus Payment), as the case may be;

**“Electronic Message”** means a message sent by fax, email, FIX message or a SWIFT message or by any other electronic means;

**“EMIR”** means Regulation (EU) No 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as amended from time to time;

**“Equal Bid”** has the meaning as set out in article 12.1.8;

**“EU Regulation R&R”** means Regulation (EU) No 2021/23 of 16 December 2020 on a framework for the recovery and resolution of central counterparties, as amended from time to time;

**“EUR”** mean the euro, or any other lawful currency that is a successor to it;

**“Exchange”** means any regulated market, multilateral trading facility or other trading venue within the meaning of the MiFID or a Platform, for which Cboe Clear provides the clearing and settlement of Trades;

**“Exchange Delivery Settlement Price”** or **“EDSP”** means expiry price determined in accordance with the Contract Terms;

**“Expiry”** means the date and time on which the Futures Contract or Options Contract will expire as specified in the Electronic Message;

**“Fail”** means any Open Position that has not given rise to a full cash payment or full delivery of Securities during the last settlement windows of the Settlement Date;

**“Fee”** means such fee as referred to in article 4.6.1;

**“Financial Instrument”** has the meaning ascribed to it in the Collateral Directive;

**“Force Majeure”** means any extraordinary event or events independent of either of the parties’ will that cannot be foreseen or avoided by them, being beyond their control which prevents the Parties from complying with their obligations undertaken in the Clearing Rules or in the Clearing Participant Agreement such as hurricanes, earthquakes, international conflicts, strokes of lightning and war or any other event referred to by article 6:75 Dutch Civil Code;

**“Futures Contract”** means a contract by which the Buyer and the Seller agree to exchange the difference between the future price as specified in the Electronic Message and the spot price of the agreed-upon underlying on a daily basis up to and including the Expiry of such contract;

**“GDPR”** means Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation);

**“General Clearing Participant”** means a Clearing Participant authorised to clear Trades which have been dealt for its own account or have been concluded for the account of Clients or for Trading Participants;

**“Gross Omnibus Client Collateral Account”** means an Account opened by Cboe Clear in the name of the Clearing Participant, holding Collateral deposited by the Clearing Participant to cover the Margin for the corresponding Gross Omnibus Client Position Account;

**“Gross Omnibus Client Position Account”** means an Account opened by Cboe Clear in the name of the Clearing Participant, for registration of Trade Legs held for the joint account of Clients of the Clearing Participant, where Trade Legs are margined on a gross basis;

**“Gross Omnibus Indirect Client Collateral Account”** means an Account opened by Cboe Clear in the name of the Clearing Participant, holding Collateral deposited by the Clearing Participant to cover the Margin for the corresponding Gross Omnibus Indirect Client Position Account;

**“Gross Omnibus Indirect Client Position Account”** means an Account opened by Cboe Clear in the name of the Clearing Participant, for registration of Trade Legs held for the joint account of Indirect Clients of the Clearing Participant, where Trade Legs are margined on a gross basis;

**“Gross Trade”** means Trades the particulars of which are submitted in an Electronic Message which are Posted to Cboe Clear;

**“Home State”** means the Member State in which a Person has its registered office, if any, or its head office;

**“House Collateral Account”** means an Account opened by Cboe Clear in the name of the Clearing Participant, holding Collateral deposited by the Clearing Participant to cover the Margin for the corresponding House Position Account;

**“House Position Account”** means an Account opened by Cboe Clear in the name of the Clearing Participant, for registration of Trade Legs held for the account of the Clearing Participant;

**“Individual Client Collateral Account”** means the Collateral Account holding Collateral to cover the Margin for the Individual Client Position Account and on which collateral for that individual client will be posted;

**“Individual Client Position Account”** means an Account opened by Cboe Clear in the name of the Clearing Participant, for registration of Trade Legs held for the account of an individual Client;

**“Initial Margin”** means the margins collected by Cboe Clear from the Clearing Participant to cover potential future exposure to such Clearing Participant and, where relevant, Co-operating Clearing House in the interval between the last Margin collection and the liquidation of Open Positions following a default of a Clearing Participant or an Co-operating Clearing House;

**“Interoperability Fund”** means the interoperability fund set up pursuant to article 7;

**“In-the-Money”** means, in the case of a call Options Contract, where the spot price of the agreed-upon underlying asset is higher than the strike price specified in the Electronic Message, and in the case of a put Options Contract, where the spot price of the agreed-upon underlying asset is lower than the strike price specified in the Electronic Message;

**“Investment Firm”** means an investment firm as defined in point (1) of article 4 (1) of MiFID;

**“Investment Losses”** has the meaning as set out in article 10.1.1;

**“Investment Losses Cash Call”** has the meaning as set out in article 10.1.4;

**“Invited Bidder”** has the meaning as set out in article 12.1.2;

**“Link Agreement”** means any agreement between Cboe Clear and a Co-operating Clearing House relating to an interoperable central counterparty structure between them;

**“Liquidation Amount”** means the liquidation amount as described in article 11.4.2(d);

**“Liquidation Date”** means the liquidation date as described in article 11.4.2;

**“Margin”** means the margins calculated by Cboe Clear to be paid by the Clearing Participant to Cboe Clear as referred to in clause 41 of EMIR which may include Initial Margin and Variation Margin;

**“MiFID”** means Directive 2014/65/EU of 15 May 2014 on markets in financial instruments;

**“Minimum Deposit Value”** has the meaning as set out in article 7.2.2;

**“Member State”** means any of the member states of the European Economic Area;

**“Net Omnibus Client Collateral Account”** means an Account opened by Cboe Clear in the name of the Clearing Participant, holding Collateral deposited by the Clearing Participant to cover the Margin for the corresponding Net Omnibus Client Position Account;

**“Net Omnibus Client Position Account”** means an Account opened by Cboe Clear in the name of the Clearing Participant, for registration of Trade Legs held for the joint account of Clients of the Clearing Participant, where Trade Legs are margined on a net basis;



**“Net Omnibus Indirect Client Collateral Account”** means an Account opened by Cboe Clear in the name of the Clearing Participant, holding Collateral deposited by the Clearing Participant to cover the Margin for the corresponding Net Omnibus Indirect Client Position Account;

**“Net Omnibus Indirect Client Position Account”** means an Account opened by Cboe Clear in the name of the Clearing Participant, for registration of Trade Legs held for the joint account of Indirect Clients of the Clearing Participant, where Trade Legs are margined on a net basis;

**“Notice of Default”** means a notice of default as referred to in article 11.3.1;

**“Omnibus Client Collateral Account”** means Net Omnibus Client Collateral Account and Gross Omnibus Client Account;

**“Omnibus Client Position Account”** means Net Omnibus Client Position Account and Gross Omnibus Client Position Account;

**“Omnibus Indirect Client Collateral Account”** means Net Omnibus Indirect Client Collateral Account and Gross Omnibus Indirect Client Collateral Account;

**“Omnibus Indirect Client Position Account”** means Net Omnibus Indirect Client Position Account and Gross Omnibus Indirect Client Position Account;

**“Opening Hours”** means such hours as set out in the Regulation Clearing Days by Cboe Clear from time to time;

**“Open Position”** has the meaning as set out in article 5.7;

**“Options Contract”** means a contract by which the Buyer has the right to receive payment from the Seller if, at Expiry, the contract is In-the-Money;

**“Payment Transfer Order” means:**

- (a) an instruction by means of an Electronic Message given by Cboe Clear to a CSD, a Settlement Service Provider or a bank or credit institution by means of an Electronic Message to pay to or receive from a Clearing Participant or other party an amount of money from a nominated account held or provided by that CSD, Settlement Service Provider, bank or credit institution, as applicable;
- (b) an instruction given by means of an Electronic Message to a CSD, a Clearing Participant Settlement Bank or a bank or credit institution to pay to or receive from Cboe Clear an amount of money from a nominated account held by that Clearing Participant at such CSD, Clearing Participant Settlement Bank or that bank or credit institution, as applicable; or
- (c) an instruction for the transfer of an amount of money in the form of an Electronic Message containing data constituting particulars of a Trade that is submitted by an Exchange or by or on behalf of a Clearing Participant to Cboe Clear for registration in accordance with the Clearing Rules;

**“Person”** means any individual, legal entity, corporation, partnership, association or entity as the context admits or requires;

**“Platform”** means any system that facilitates or provides execution or matching of Trades, which system is not a regulated market, multilateral trading facility or other trading venue within the meaning of the MiFID;

~~**“Posting”** means the process whereby an Exchange submits an Electronic Message containing all information of a Trade to Cboe Clear or whereby a Clearing Participant submits all information of a Trade to Cboe Clear in a manner agreed with Cboe Clear. And **“Post”** and **“Posted”** will have corresponding meanings;~~

**“Position Account”** means House Position Account, Omnibus Client Position Account, Individual Client Position Account and/or Omnibus Indirect Client Position Account;

**“Premium Payment”** has the meaning as set out in article 5.6;

**“Products”** means Securities and Derivatives Contracts;

**“Product Class”** means either Securities or Derivatives Contracts;

**“Recovery CF Cash Call”** has the meaning as set out in article 16.1(a);

**“Recovery Liquidity Cash Call”** has the meaning as set out in article 16.1;

**“Recovery Plan”** means the recovery plan established and maintained by Cboe Clear pursuant to EU Regulation R&R;

**“Regulation”** means any document issued as such by Cboe Clear, as amended from time to time, whereby the provisions of this Clearing Rule Book are interpreted, implemented or executed and which binds the Clearing Participants generally or any category of Clearing Participants in particular. A list of the current Regulations is set out in Appendix 1;

**“Resolution Action”** means the exercise of any Resolution Powers by the Resolution Authority;

**“Resolution Authority”** means the resolution authority designated by the Netherlands under EU Regulation R&R;

**“Resolution CF Cash Call”** has the meaning as set out in article 16.1;

**“Resolution Powers”** means any action in respect of the assets, contracts, rights, obligations and liabilities of a Clearing Participant existing from time to time under, and exercised in compliance with, any law or regulation in effect in The Netherlands, relating to EU Regulation R&R and including the application of articles 28, 32, 55, 56 and 57 of EU Regulation R&R.

**"RTS 152/2013"** means Commission Delegated Regulation (EU) No 152/2013 of 19 December 2012 with regard to regulatory technical standards on capital requirements for central counterparties;

**"Securities Transfer Order" means:**

(a) an instruction, given by Cboe Clear on its own behalf or on behalf of a Clearing Participant, to a CSD to transfer the title to or interest in securities to a Clearing Participant, Cboe Clear or other person by means of a book entry on the register maintained by that CSD, or otherwise;

(b) an instruction given to a CSD to transfer the title to or interest in securities to Cboe Clear by means of a book entry on the register maintained by that CSD, or otherwise; or

(c) an instruction for the transfer of title to or interest in securities in the form of an Electronic Message containing data constituting particulars of a Trade that is submitted by an Exchange or by or on behalf of a Clearing Participant to Cboe Clear for registration in accordance with the Clearing Rules;

**"Security"** means a transferable security within the meaning of Annex I, Section C (1) of MiFID which is traded on or off an Exchange and which is eligible for clearing as set out in the Regulation Securities;

**"Seller"** means in relation to (i) an Options Contract, the party against which the contract can be exercised in accordance with the Contract Terms, and (ii) a Futures Contract, the party to which the Buyer needs to pay the pre-determined price under the Contract Terms, and **Sells** shall be construed accordingly;

**"Settlement Address"** means an account or sub-account in a CSD and/or an account in a central bank/Credit Institution, as the case may be, notified by the Clearing Participant to Cboe Clear as the account in which settlement will take place. This can be the own account of the Clearing Participant, the account of the settlement agent of the Clearing Participant or the account of the settlement agent designated by a Trading Participant as the case may be;

**"Settlement Date"** means the date on which (i) a DVP and/or (ii) the Cash Settled Obligation is intended to take place, as set out in the Regulation Settlement;

**"Settlement Exposure Add-on"** has the meaning as set out in the Regulation Liquidity Measures;

**"Settlement Finality Directive"** means Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems;

**"Settlement Prefunding Requirement"** has the meaning as set out in the Regulation Liquidity Measures;

**"Settlement Service Provider" means an entity appointed by Cboe Clear from time to time for the provision to Cboe Clear of settlement services in connection with specific markets;**

**“Statement of Authority”** means a statement of a Clearing Participant to Cboe Clear that it authorises a specified Trading Participant to conclude Trades in the name of the Clearing Participant, in the form as set out in the Regulation Statement of Authority;

**“Trade”** means a matched order for the purchase or sale of Products, whether on or off an Exchange, between two Clearing Participants, or between a Clearing Participant and a clearing member of a Cooperating Clearing House;

**“Trade Date”** means the day on which a Clearing Participant executes a Trade;

**“Trade for Novation”** means a Trade in respect of which one party is a Clearing Participant and the other is also a Clearing Participant or a clearing member or clearing participant (however described) of a Co-operating Clearing House that clears that Trade using novation;

**“Trade for Open Offer”** means a Trade in respect of which one party is a Clearing Participant and the other is also a Clearing Participant or is a clearing member or clearing participant (however described) of a Co-operating Clearing House that clears that Trade using open offer;

**“Trade Leg”** means

- (a) in respect of a Clearing Participant and a Trade for Novation, the contract between Cboe Clear and the Clearing Participant which is created pursuant to article 5.4 on the same terms (except parties and the Trade Leg being subject to the provisions of the Clearing Rules) as the Trade;
- (b) in respect of a Clearing Participant and a Trade for Open Offer, the contract between Cboe Clear and the Clearing Participant which is created pursuant to article 5.5 on the same terms (except the Trade Leg being subject to the provisions of the Clearing Rules) as the Trade; and
- (c) in respect of a Co-operating Clearing House and a Trade, the contract between Cboe Clear and the Co-operating Clearing House which is created pursuant to the relevant Link Agreement on the same terms (except parties and the Trade Leg being subject to the provisions of the Link Agreement) as the Trade;

**“Trade Validation System”** means Cboe Clear’s system where Electronic Messages containing the particulars of a Trade are received, validated and accepted for clearing.

**“Trading Participant”** means any Person which has been and is admitted by an Exchange as a participant of that Exchange as a broker and/or dealer;

**“Trading Rules”** means the rules set out by an Exchange for trading on that Exchange;

**“Transfer Order”** means a Payment Transfer Order or a Securities Transfer Order;

**“Transfer Time”** means the time specified by Cboe Clear at which the transfer of the Trade Leg from the sending Clearing Participant to the receiving Clearing Participant takes place;

**“UK Time”** means Greenwich Mean Time or British Summer Time, when applicable;

**“Variation Margin”** means margin collected or paid out by Cboe Clear to reflect current exposures resulting from actual changes in market price;

**“VAT”** means any applicable value added tax imposed by a government or taxing authority.

## 2. General Provisions

- 2.1 Cboe Clear acts as a multilateral clearing facility for the clearing and settlement of Trades.
- 2.2 This Clearing Rule Book sets out the principles and general conditions governing the organisation and operation of the clearing activities of Cboe Clear.
- 2.3 The Clearing Rule Book shall be implemented and interpreted through Regulations, issued and published by Cboe Clear. In the event of any conflict between the provisions of the Clearing Rule Book and the Regulations, the provisions in the Clearing Rule Book will prevail.
- 2.4 References to a law or directive include any (i) amendment or modification thereto, and any rules or regulations issued thereunder, (ii) replacement (with or without modification) or extension thereof, (iii) any re-enactment and (iv) restatement or consolidation of or any subordinate legislation or regulation made under such law.
- 2.5 References to articles are to articles of this Clearing Rule Book, unless indicated otherwise.
- 2.6 Titles or article headings are for ease of reference only.
- 2.7 Words and expressions defined or used herein imparting the singular shall where the context permits or requires, include the plural and vice versa.
- 2.8 Capitalised terms used in this Clearing Rule Book and not defined in Regulations or in other communications of Cboe Clear shall have the meaning as set out in this Clearing Rule Book.
- 2.9 References to the use of Collateral and Contribution also include the enforcement of Collateral and Contribution.
- 2.10 Where reference is made in the Clearing Rules to a time or deadline, it shall be understood to mean CET unless indicated otherwise.
- 2.11 The Clearing Rules shall be governed by the laws of the Netherlands.
- 2.12 The Clearing System operated by Cboe Clear and Cboe Clear as operator, have been designated by the Dutch Minister of Finance pursuant to the [Bankruptcy Act and the Settlement Finality Directive](#). If the designation of Cboe Clear as a system (operator) pursuant

to the Settlement Finality Directive is withdrawn, Cboe Clear will inform the Clearing Participants as soon as reasonably possible.

~~2.13 Any Completed Posting qualifies as an entry into a settlement finality system and is irrevocable in the sense of article 212b of the Bankruptcy Law (Faillissementswet) provided the requirements of article 5.3.1 are fulfilled.~~

2.13 A Payment Transfer Order qualifies as an entry into the Clearing System and is irrevocable in the sense of article 212b of the Bankruptcy Law, in accordance with the following:

(a) A Payment Transfer Order of the types set out under (a) in the definition of Payment Transfer Order takes effect and enters the Clearing System when the relevant Electronic Message is sent by Cboe Clear.

(b) A Payment Transfer Order of the type set out under (b) in the definition of Payment Transfer Order takes effect and enters the Clearing System when the Electronic Message is sent by the relevant party.

(c) A Payment Transfer Order of the type set out under (c) in the definition of Payment Transfer Order takes effect and enters the Clearing System when such particulars satisfy the requirements of article 5.3.1 and are accepted by Cboe Clear in its Trade Validation System.

2.14 A Securities Transfer Order qualifies as an entry into the Clearing System and is irrevocable in the sense of article 212b of the Bankruptcy Law, in accordance with the following:

(a) A Securities Transfer Order of the type set out under (a) in the definition of Securities Transfer Order takes effect and enters the Clearing System when the relevant Electronic Message is sent by Cboe Clear.

(b) A Securities Transfer Order of the type set out under (b) in the definition of Securities Transfer Order takes effect and enters the Clearing System when the relevant Electronic Message is sent by the relevant party.

(c) A Securities Transfer Order of the type set out under (c) in the definition of Securities Transfer Order takes effect and enters the Clearing System when the particulars thereof satisfy the requirements of article 5.3.1 and are accepted by Cboe Clear in its Trade Validation System.

### 3. Changing the Clearing Rule Book and Regulations

3.1 The Clearing Rules may be modified from time to time by Cboe Clear. If any material modification of the Clearing Rules, (other than a modification required by EU or relevant national law), adversely affects the rights or obligations of the Clearing Participants generally or of any category of Clearing Participants, then any Clearing Participant so affected may

terminate its relationship effective immediately by written notice given to Cboe Clear, provided that such notice is given within one (1) month from the date of publication of the relevant modification.

- 3.2 A change in the Clearing Rule Book may include such transitional provisions as Cboe Clear considers appropriate.
- 3.3 Subject to article 3.5, Clearing Participants shall be invited to contribute to a consultation to a proposed change to the Clearing Rule Book and may make their opinions known to Cboe Clear on the change. The consultation period shall be at least thirty (30) calendar days. Administrative or editorial changes or other non-substantial changes shall not be subject to consultation. Cboe Clear shall give due consideration to such opinions before adopting the change.
- 3.4 Subject to article 3.5, Clearing Participants will receive notice of each proposed change to the Clearing Rule Book at least fourteen (14) calendar days prior to the date of entry into force. Cboe Clear shall provide explanation on the intended purpose and effect of the change.
- 3.5 Cboe Clear is not under the obligation to consult the Clearing Participants as set out in article 3.3 and/or to notify the Clearing Participants within the timeframe as set out in article 3.4 when the change is needed because of changes in laws, regulations or other regulatory requirements or as a matter of urgency to protect the interest of the Clearing System, Cboe Clear or the Clearing Participants. However, Cboe Clear shall make best efforts to notify or consult the Clearing Participants to the extent permitted by the circumstances.
- 3.6 Cboe Clear shall publish the Clearing Rule Book, Regulations and other decisions of general application to its Clearing Participants or to the relevant category of Clearing Participants by publishing them on its website or by issuing individual notifications as appropriate. Cboe Clear will notify the Clearing Participant of any publication by email.
- 3.7 Except in cases of emergency, such publications shall become effective and binding on all Clearing Participants or to the relevant category of Clearing Participants on the Clearing Day following the day of publication or at a later date as specified in such publication.
- 3.8 Cboe Clear will notify the Clearing Participants whenever a new Link Agreement has been agreed in accordance with article 3.6. A copy of each Link Agreement will be available on request.

## **4. Participation**

### **4.1 Clearing Participant Status**

- 4.1.1 A Clearing Participant is a legal entity recognised as such by Cboe Clear and authorised, subject to the Clearing Rules, to authorise the relevant Exchange(s) to submit Electronic Messages containing the particulars of Post-Trades, pursuant to a Clearing Participant Agreement between Cboe Clear and itself.

4.1.2 The following entities are eligible to become a Clearing Participant:

- (a) Credit Institutions and banks established or authorised in a jurisdiction that is not considered by the European Commission and Council as having strategic deficiencies in its national anti-money laundering and counter financing of terrorism regime that poses significant threats to the financial system of the European Union;
- (b) Investment Firms established or authorised in a jurisdiction that is not considered by the European Commission and Council as having strategic deficiencies in its national anti-money laundering and counter financing of terrorism regime that poses significant threats to the financial system of the European Union;
- (c) legal entities established or authorised in a jurisdiction that is not considered by the European Commission and Council as having strategic deficiencies in its national anti-money laundering and counter financing of terrorism regime that poses significant threats to the financial system of the European Union, whose members or shareholders have unlimited joint and several liability for their debts and obligations, provided that such members or shareholders are institutions or firms mentioned under (a) and/or (b) above; and
- (d) legal entities established or authorised in a jurisdiction that is not considered by the European Commission and Council as having strategic deficiencies in its national anti-money laundering and counter financing of terrorism regime that poses significant threats to the financial system of the European Union, whose principal or sole object is the clearing of financial instruments.

4.1.3 A Clearing Participant can operate as a:

- (a) Direct Clearing Participant; or
- (b) General Clearing Participant.

## 4.2 **Application and Membership Requirements**

4.2.1 The items to be included in the recognition application are specified in the 'clearing participant information and application form' as disclosed on Cboe Clear's website.

4.2.2 In order to be recognised as a Clearing Participant, the following conditions shall be satisfied by an Applicant, and shall be maintained by the Clearing Participant:

- (a) be validly incorporated;
- (b) accept the Clearing Rules by executing the Clearing Participant Agreement;
- (c) meet the financial requirements as set out in article 4.4 and as specified by Cboe Clear from time to time, and also meet any further requirements as to liquidity and/or solvency as may be set by Cboe Clear;



- (d) provide a list with the persons competent to take decisions;
  - (e) submit details of the relevant Settlement Addresses;
  - (f) where it is incorporated outside the EEA, satisfy Cboe Clear, by providing a legal opinion from a local counsel, that its domestic law system will not inhibit the ability of Cboe Clear to act effectively under these Clearing Rules. Cboe Clear can request the Clearing Participant to update such legal opinion. Cboe Clear can request the same legal opinion from any Applicant which is incorporated inside the EEA;
  - (g) satisfy the IT requirements as set by Cboe Clear (including but not limited to adhering to any IT security protocols and have the requisite controls, systems and procedures to maintain an adequate level of (cyber) security and prevent cyber incidents from impacting their networked counterparts); and
  - (h) satisfy such other requirements as may be imposed by Cboe Clear generally or for a category of Clearing Participants, as set out in a Regulation.
- 4.2.3 Cboe Clear shall examine the information in the recognition application and inform the Applicant of its recognition decision in writing within one (1) month following the date of receipt of all documents to be included in the application. Should the information contained in the application be incomplete or unsatisfactory, Cboe Clear may request additional information from the Applicant. The period within which the applicant must be informed of the decision of Cboe Clear shall run from the receipt of the complete recognition application, including any additional information required by Cboe Clear.
- 4.2.4 Whilst the application is pending, the Applicant must notify Cboe Clear in advance in writing of every change in the data supplied with the application and of the facts and circumstances concerning the Applicant which may be of importance in the context of the application or of the ability of the Applicant to perform its obligations under the Clearing Rules and the orderly conduct of its activities as a Clearing Participant.
- 4.2.5 Cboe Clear may refuse recognition if it considers that such recognition may adversely affect the operation of the Clearing System, or when the applicant does not comply with its obligations resulting from its recognition to another clearing house or central securities depository. Such a refusal of recognition will be justified in writing to the applicant and shall be based on a comprehensive risk analysis.
- 4.2.6 If the Applicant has been recognised as a Clearing Participant, before commencing operations it shall:
- (a) return the signed Clearing Participant Agreement signifying its acceptance of the Clearing Rules as a contracting party;
  - (b) pay to Cboe Clear its admission fee; and
  - (c) pay its Contribution as set out in article 8.2 to the Clearing Fund.

- 4.2.7 A Clearing Participant must commence operations within six (6) months of its recognition, unless Cboe Clear grants an extension. Failing this, the recognition decision shall be automatically revoked and any new recognition will require compliance with the provisions of this article.
- 4.2.8 If an application is approved, Cboe Clear may impose conditions or limitations on the exercise of certain rights under these Clearing Rules provided that such conditions or limitations are imposed without discrimination.
- 4.2.9 Clearing Participants shall at all times comply with Applicable Laws and any additional conditions and limitations imposed upon recognition.
- 4.2.10 A Clearing Participant may request Cboe Clear in writing to designate the Clearing Participant as inactive. Cboe Clear may comply with such request in writing provided that no Open Positions and no Statements of Authority are outstanding. Such designation by Cboe Clear of the Clearing Participant as inactive only suspends (i) the obligation to make a Contribution as set out in article 8.2.1, (ii) the obligation to make a Deposit as set out in article 7.2.1 and (iii) the access requirement as set out in article 4.2.15.
- 4.2.11 A Clearing Participant may request Cboe Clear in writing to terminate the designation of the Clearing Participant as inactive. Cboe Clear shall comply as soon as reasonably possible with such request in writing provided that the Clearing Participant complies with the Clearing Rules.
- 4.2.12 Clearing Participants shall send Cboe Clear a copy of all injunctions, formal notifications or sanctions imposed on them by any Competent Authority regarding any event that could be relevant for Cboe Clear.
- 4.2.13 Cboe Clear may furnish any information provided to it to Competent Authorities.
- 4.2.14 Cboe Clear may furnish any information to a Co-operating Clearing House in such form as agreed under the Link Agreement.
- 4.2.15 During Opening Hours on every Clearing Day, the Clearing Participant and sufficient persons competent to act on behalf of the Clearing Participant will be accessible to Cboe Clear.
- 4.2.16 Clearing Participants shall, upon reasonable request of Cboe Clear, participate in, and make available sufficient staff for, any fire drill or default simulation exercises.

#### **4.3 Notification of Changes**

- 4.3.1 A Clearing Participant must notify Cboe Clear in advance in writing of every change in the data supplied in its application for recognition and of any facts and circumstances concerning the Clearing Participant which may materially affect the exercise of its duties or the orderly conduct of its activities as a Clearing Participant. Such developments include, but are not limited to:

- (a) those which could or are likely to result in the Clearing Participant no longer being able

to comply with its obligations under these Clearing Rules;

- (b) any significant change in its financial situation, in particular where shareholders' equity has decreased by more than ten per cent (10%) compared with the amounts previously reported or if shareholders' equity falls below the amount specified in article 4.4;
- (c) any other change which has or could have a significant impact on their financial position, reliability or operations;
- (d) any change in their legal status or structure, including change of address, office or object under their constitutional documents;
- (e) changes in the power of control (shareholders) over their business with respect to the appointment and dismissal of their personnel, changes in the composition of their management or executive bodies, in their accounting system or organisation, in the holders of a ten per cent (10%) or more participating interest in their business, in the participating interests they hold or the joint ventures or alliances they have entered into; and
- (f) any event occurring between the reporting dates set out in article 4.5.1 that would significantly reduce the Clearing Participants' interim balance sheet or shareholders equity.

- 4.3.2 The obligation to notify becomes effective at the time the Clearing Participant anticipates or becomes aware of the events, or, if earlier, at the time at which the Clearing Participant ought reasonably to have anticipated or become so aware.

#### **4.4 Financial Requirements**

- 4.4.1 In order to clear Trades, a Direct Clearing Participant must at all times maintain such capital that is the higher of:

- (a) EUR 7,5 million Capital; or
- (b) 20% of 30-day average Aggregate Margin requirement; or
- (c) 20% of 250-day average Aggregate Margin requirement.

- 4.4.2 In order to clear Trades, a General Clearing Participant must at all times maintain such capital that is the higher of:

- (a) EUR 25 million Capital; or
- (b) 20% of 30-day average Aggregate Margin requirement; or
- (c) 20% of 250-day average Aggregate Margin requirement.

- 4.4.3 In deviation to articles 4.4.1 and 4.4.2, for Direct Clearing Participants or General Clearing

Participants that want to clear Trades that are not concluded on an Exchange the minimum capital requirements as set out in articles 4.4.1(a) and 4.4.2(a) will be as indicated in the Regulation Trade Refusal.

4.4.4 In the case of business combinations, the minimum Capital shall be determined by adding the Capital of each Person in such combination which is jointly and severally liable, and subtracting any cross-shareholdings between such Persons. The total Capital must at all times be at least equivalent to the minimum amounts set forth in these Clearing Rules.

4.4.5 A Clearing Participant whose Capital at any point falls below the required amount is obliged to immediately ensure that it is brought back up to the minimum requirement.

## 4.5 Financial Information

4.5.1 Clearing Participants must send or provide access to the following information to Cboe Clear:

(a) Annually ultimately two (2) weeks after they become available:

- (i) audited financial statements – balance sheet, profit and loss account, and notes to the annual financial statements; and
- (ii) audited consolidated financial statements - balance sheet, profit and loss account, and notes to the financial statements.

(b) At the intervals required by the Competent Authority or by the regulations of the Home State or at other more frequent intervals than under article 4.5.1(a) required by Cboe Clear:

- (i) interim balance sheet;
- (ii) profit and loss account;
- (iii) documents concerning prudential supervision of market risks, prepared on a consolidated or unconsolidated basis; and
- (iv) statements concerning core capital (tier 1) and supplementary capital (tier 2) as defined by the said authority or regulations.

## 4.6 Fees

4.6.1 Clearing Participants shall pay to Cboe Clear the Fees as set out in the Regulation Fees and Penalties.

4.6.2 The Fees (including applicable VAT) incurred by a Clearing Participant in a calendar month will be invoiced on or before the day as set out in the Regulation Fees and Penalties of the following calendar month by Cboe Clear in Euros or any other currency as approved by Cboe Clear and will be direct debited on the due date.

- 4.6.3 If the Clearing Participant does not pay the amounts due or if the designated account cannot be debited for the amounts due within the time stipulated in the Regulation Fees and Penalties, the Clearing Participant will pay a penalty as set out in the Regulation Fees and Penalties. Cboe Clear may use the Collateral, the Contribution and the Deposit provided in cash to satisfy any Fees as they become payable.
- 4.6.4 Cboe Clear shall determine in the Regulation Securities and Regulation Derivatives the currency in which Products are cleared.

#### 4.7 Clearing Participant as Principal

- 4.7.1 The Clearing Participant shall be a principal to, and not an agent in respect of, any Trade Leg registered in his name by Cboe Clear. In performing its obligations and exercising its rights under the Clearing Rules, Cboe Clear shall take no account of any right or interest which any person other than the Clearing Participant may have in any Collateral furnished by such Clearing Participant to Cboe Clear, save for arrangements as foreseen in the Regulation Portability.
- 4.7.2 Except with regard to the collateral deposit form and the collateral withdrawal form as attached to the Regulation Collateral and the Statement of Authority, a Clearing Participant cannot refuse to acknowledge the acts or omissions of any person acting on its behalf on the basis that such person was not duly authorised.
- 4.7.3 At the request of Cboe Clear, a Clearing Participant shall provide Cboe Clear with information on its (Indirect) Clients and Trading Participants and the criteria and arrangements it adopts to allow its Clients and Trading Participants to access the services of Cboe Clear.

#### 4.8 Trading Participants

- 4.8.1 A General Clearing Participant which clears Trades for one or more Trading Participants must have concluded an agreement (the **Clearing Agreement**) with each such Trading Participant. The Clearing Participant will send to Cboe Clear one or more Statements of Authority with regard to each Trading Participant with which it has concluded a Clearing Agreement, after which Cboe Clear will admit the Trading Participant. Cboe Clear will confirm the admittance of the Trading Participant to the Clearing Participant.
- 4.8.2 As soon as the Clearing Participant suspends or terminates any Statement of Authority the Clearing Participant will give notice to that effect to Cboe Clear and the relevant Exchange(s), if any, immediately. If there is a Statement of Authority for Trades concluded off an Exchange, Cboe Clear will confirm to the Clearing Participant that the Statement of Authority is suspended or terminated, as the case may be, and subsequently will refuse to clear and settle any Trades entered into by that Trading Participant. If there is a Statement of Authority for Trades concluded on an Exchange, upon receipt by Cboe Clear of a notification from the relevant Exchange(s) that it has taken appropriate measures in its systems to procure that such Trading Participant can no longer conclude Trades on the relevant Exchange(s) in the name of the Clearing Participant, Cboe Clear will confirm to the Clearing Participant that the Statement of Authority is suspended or terminated, as the case may be, and subsequently will

refuse to clear and settle any Trades entered into by that Trading Participant. Until the time of each such confirmation, the relevant Statement of Authority will remain in full force and effect as between Cboe Clear and the Clearing Participant.

- 4.8.3 Cboe Clear shall not be liable for any damage arising from the Clearing Agreement, whether incurred by the General Clearing Participant or by a third party.

#### **4.9 Location of Offices, On-site Inspections**

- 4.9.1 As far as permitted by applicable laws and regulations, Cboe Clear may carry out on-site inspections at the offices of the Clearing Participant in order for Cboe Clear to determine whether the Clearing Participant is compliant with the Clearing Rules and the Clearing Participant Agreement.

- 4.9.2 A Clearing Participant may locate the human and technical resources needed to carry on its clearing and back office activities wherever it chooses, provided that such activities are carried out in a country in which on-site inspections by or on behalf of Cboe Clear are practicable and permitted by applicable laws and regulations.

#### **4.10 Subcontracting**

- 4.10.1 A Clearing Participant may subcontract all or part of its clearing activities, to another Clearing Participant, or to a company in the same group as the Clearing Participant, provided that such arrangements shall not relieve the subcontracting Clearing Participant of any of its obligations under these Clearing Rules.

- 4.10.2 Prior to the subcontracting, Cboe Clear requires a written undertaking by the subcontractor which will include a provision authorising Cboe Clear and any Person acting on behalf of Cboe Clear to request the same information as may be required from a Clearing Participant pursuant to these Clearing Rules and a provision authorising to perform inspections at the premises in which the clearing activities actually take place.

#### **4.11 Record Keeping and Provision of Data**

- 4.11.1 The Clearing Participant is required to keep such data regarding its clearing activities as is necessary to ensure compliance with the Clearing Rules and the applicable laws and regulations of the jurisdiction of the Competent Authority of the Clearing Participant for such period as required under the applicable laws and regulations. If there is no such period under the applicable laws and regulations, the period to keep the aforementioned data will be five (5) years.

- 4.11.2 On first request of Cboe Clear the Clearing Participant shall provide Cboe Clear, within the time period specified in such request, with data as set out in article 4.11.1.

- 4.11.3 The Clearing Participant understands that Cboe Clear may process personal data in the course of its activities within the meaning of GDPR which processing is necessary for compliance with legal obligations to which Cboe Clear is subject. When providing personal data to Cboe Clear,

the Clearing Participant shall ensure that it complies with GDPR or other personal data protection legislation applicable to it.

## 4.12 Suspension and Termination of Membership

- 4.12.1 Without prejudice to the possible application of the provisions set out in article 11, if Cboe Clear is of the opinion that any event could or is likely to result in a situation in which a Clearing Participant no longer satisfies one or more of the requirements set out in article 4, or endangers the proper functioning of the Clearing System, or can no longer comply with its obligations under these Clearing Rules, or is consistently in breach and failure with the Clearing Rules, Cboe Clear may:
- (a) suspend its relationship with the Clearing Participant; or
  - (b) terminate its relationship with the Clearing Participant as stated in the Clearing Participant Agreement; and
  - (c) refuse registration as Trade Legs; or
  - (d) submit registration as Trade Legs to specific conditions, or impose additional conditions which Cboe Clear deems appropriate in the circumstances and notifies in writing to the Clearing Participant.
- 4.12.2 Before exercising any such power, Cboe Clear may, but is not obliged to, enter into consultations with the Clearing Participant, which may result in Cboe Clear specifying the latest date and time limit on which the Clearing Participant must have remedied the situation.
- 4.12.3 In any event and at any time, Cboe Clear can decide to temporarily suspend the Clearing Participant's activities or terminate its relationship with the Clearing Participant under the conditions set out in the Clearing Participant Agreement. The Clearing Participant shall inform its clients accordingly. Such Clearing Participant is informed in writing of the reasons for termination or suspension. The termination is subject to the period of notice set out in the Clearing Participant Agreement.
- 4.12.4 When a Clearing Participant's relationship with Cboe Clear is suspended, Cboe Clear shall inform the relevant Exchange(s) immediately, after which the relevant Exchange(s) will not submit any new Trades on behalf of the Clearing Participant and Cboe Clear shall refuse the registration of any new Trade Legs in the Clearing Participant's name. However, Cboe Clear may decide, in view of the particular circumstances, to only refuse the registration of a new Trade Leg increasing the Clearing Participant's aggregate Margin. The Clearing Participant will continue to be required to provide Collateral and settle Open Positions as they fall due.
- 4.12.5 When a Clearing Participant's relationship with Cboe Clear is terminated, Cboe Clear shall discontinue registration of any new Trade Legs in the Clearing Participant's name. Cboe Clear shall inform the relevant Exchange(s) immediately, after which the relevant Exchange(s) will not Post-submit any new Electronic Messages containing the particulars of Trades on behalf of the Clearing Participant.

- 4.12.6 Suspension or revocation of the recognition of a Clearing Participant as such shall be promptly notified to the other Clearing Participants. Cboe Clear will also promptly notify the Competent Authorities and the relevant Exchange(s).
- 4.12.7 A Clearing Participant shall have the right to terminate its relationship with Cboe Clear by giving notice of termination (a **Clearing Termination Notice**) in accordance with the Clearing Participant Agreement, subject to the following provisions:
- (a) Termination of a Clearing Participant Agreement shall be conditional on a resigning Clearing Participant holding no remaining Open Positions;
  - (b) On the issuance of a Notice of Default, any Clearing Termination Notice that has not yet concluded in effective termination at the time of such issuance shall be deemed null and void; and
  - (c) Any Clearing Termination Notice issued during a Default Handling Period shall be deemed null and void.

## 5. Clearing and Settlement of Trades

### 5.1 General Provisions

- 5.1.1 Trades will be cleared by Cboe Clear and Open Positions will be settled on DVP-basis or cash settled in accordance with the Clearing Rules.
- 5.1.2 Cboe Clear can refuse to clear Trades on grounds as set out in the Regulation Trade Refusal.
- 5.1.3 In the interests of the proper functioning of the Clearing System, Cboe Clear may take any measure it reasonably deems necessary in relation to the organisation and the operation of the Clearing System, whether or not these measures are set out in the Clearing Rules.
- 5.1.4 Without prejudice to the generality of the foregoing, Cboe Clear may suspend the settlement of Open Positions where Cboe Clear deems it reasonably necessary in relation to the organisation and the operation of the Clearing System.
- 5.1.5 Clearing Participants shall bear the risk of any instructions which are given incorrectly or late to Cboe Clear.
- 5.1.6 During Opening Hours on every Clearing Day, Cboe Clear and sufficient persons competent to act on behalf of Cboe Clear will be accessible to the Clearing Participant.

### 5.2 Accounts

- 5.2.1 The Clearing Participants may request Cboe Clear to facilitate a certain Account Structure.
- 5.2.2 Cboe Clear registers each Trade Leg in one of the Position Accounts based on the information



contained in the Electronic Message containing the particulars ~~Posting~~ of a Trade. Trade Legs can be registered in the following Position Accounts:

- (a) House Position Account;
- (b) Omnibus Client Position Account; which can either be a:
  - (i) Net Omnibus Client Position Account;
  - (ii) Gross Omnibus Client Position Account;
- (c) Individual Client Position Account;
- (d) Omnibus Indirect Client Position Account; which can either be a:
  - (i) Net Omnibus Indirect Client Position Account
  - (ii) Gross Omnibus Indirect Client Position Account

5.2.3 Cboe Clear shall open any of the following Collateral Accounts for each of the Position Accounts within the Account Structure of the Clearing Participant:

- (a) House Collateral Account;
- (b) Omnibus Client Collateral Account; which can either be a:
  - (i) Net Omnibus Client Collateral Account;
  - (ii) Gross Omnibus Client Collateral Account;
- (c) Individual Client Collateral Account;
- (d) Omnibus Indirect Client Collateral Account; which can either be a:
  - (i) Net Omnibus Indirect Client Collateral Account;
  - (ii) Gross Omnibus Indirect Client Collateral Account.

5.2.4 Per Account, Cboe Clear opens at least one sub-account for trade booking, settlement, and administrative purposes. Reports with Open Positions and Margin relating to the sub-accounts are provided by Cboe Clear for information purposes only.

## 5.3 Registration

5.3.1 Application of article 5.4 in relation to a Trade for Novation and of article 5.5 in relation to a Trade for Open Offer is conditional on the requirements:

- (a) that no measure has been taken under article 5.1.3;

(b) that Cboe Clear receives the particulars of a Trade in the form of an Electronic Message ~~Completed Posting occurs~~ on the day of conclusion of such Trade; and

(c) that there is no ground for refusal under Regulation Trade Refusal.

5.3.2 Notwithstanding article 5.3.1(b), Cboe Clear ~~can~~ may novate or accept a Trade under open offer as provided in articles 5.4 and 5.5, respectively, if Cboe Clear receives the particulars of a Trade in the form of an Electronic Message ~~a Completed Posting occurs~~ on the Clearing Day immediately following the Trade Date; provided however, that the requirements set out in articles 5.3.1(a) and (c) have been met and no Breach as referred to in article 11.1.2(j) through (o) in respect of the relevant Clearing Participant has occurred.

## 5.4 Registration - Novation

5.4.1 This article 5.4 applies to Trades for Novation.

5.4.2 Subject to article 5.3.1;

(a) from the conclusion of a Trade on an Exchange, Cboe Clear guarantees that such Trade will be novated by Cboe Clear; and

(b) pursuant to a Completed Posting receipt by Cboe Clear of the particulars of a Trade in the form of an Electronic Message, a Trade will be novated by Cboe Clear as a Trade Leg in the name of the selling Clearing Participant and a Trade Leg in the name of the buying Clearing Participant. As a result of novation, Cboe Clear becomes the counterparty to the relevant Clearing Participant and therefore both become subject to the rights and obligations arising from the Trade Leg registered in the name of each Clearing Participant.

5.4.3 The Clearing Participant accepts that novation will occur upon registration by Cboe Clear of a Trade as two Trade Legs, based on the information contained in the Posting-Electronic Message received by Cboe Clear containing the particulars of a Trade.

5.4.4 Novation takes place per Gross Trade.

## 5.5 Registration - Open Offer

5.5.1 This article 5.5 applies to Trades for Open Offer.

5.5.2 Subject to article 5.3.1:

(a) Cboe Clear makes an offer to each Clearing Participant to enter into a Trade Leg with that Clearing Participant; and

(b) that offer is accepted by a Clearing Participant in respect of a Trade when that Trade is concluded on an Exchange, whereupon a Trade Leg will arise between Cboe Clear and that Clearing Participant as a selling or buying Clearing Participant. As a result, Cboe Clear becomes the counterparty to the relevant Clearing Participant and therefore both

become subject to the rights and obligations under the Trade Leg registered in the name of the Clearing Participant.

5.5.3 The Clearing Participant accepts that a Trade Leg will arise based on the information contained in the [Electronic Message received by Cboe Clear containing the particulars](#) ~~Posting~~ of a Trade.

5.5.4 Creation of a Trade Leg takes place per Gross Trade.

## 5.6 Premium Payment

5.6.1 The Buyer of an Options Contract shall pay a premium to Cboe Clear in relation to that Options Contract in accordance with the Contract Terms. Cboe Clear shall pay a premium to the Seller of an Options Contract in accordance with the Contract Terms.

## 5.7 Open Positions

5.7.1 The calculation of Open Positions per sub-account of a Clearing Participant is:

- (a) with respect to payment of cash and/or delivery of Securities, based on the net aggregated balance of Trade Legs registered in such sub-account per ISIN code, per CSD code, per Settlement Date and per currency;
- (b) with respect to Derivatives Contracts, where position netting is specified as an attribute of the relevant Clearing Participant sub-account, based on the net aggregated balance of Derivative Trade Legs registered in such sub-account per contract symbol, per maturity date, per strike price, per put/call indicator, and per currency; and
- (c) with respect to Derivatives Contracts, where position netting is not specified as an attribute of the sub-account of the relevant Clearing Participant, based on the net aggregated balance of Derivative Trade Legs registered in such sub-account per contract symbol, per maturity date, per strike price, per put/call indicator, per currency, and per Buyer or Seller designation.

5.7.2 Depending on the position netting attribute specified for a House Position Account or Omnibus (Indirect) Client Position Account, each Open Position in a relevant sub-account is recorded as (a) a single net value, being either a net Buy value or a net Sell value, or (b) two net values, being a net Buy value and a net Sell value.

5.7.3 Where position netting is applied to Derivatives Contracts pursuant to article 5.7.1(b), the latent rights and obligations attached to such Open Positions shall reduce or terminate accordingly.

5.7.4 When calculating Open Positions, Cboe Clear can make adjustments in accordance with the Regulation Corporate Actions to reflect Corporate Actions on Securities.

5.7.5 Cboe Clear will provide an overview to the Clearing Participant of its Open Positions at the end

of each Clearing Day.

## 5.8 Corrections

- 5.8.1 An Exchange may send Corrections to Cboe Clear on the Trade Date until thirty (30) minutes after close of trading on the relevant Exchange. A Correction may also be sent to Cboe Clear by a Co-operating Clearing House or another Person pursuant to a Link Agreement, (i) when both Cboe Clear and the Co-operating Clearing House agree to the Correction under or as required by the rules of an Exchange and (ii) if a Co-operating Clearing House is required to send a Correction by a Competent Authority or an equivalent body by which it is supervised.
- 5.8.2 Cboe Clear shall amend the corresponding Trade Leg in accordance with the received Correction.
- 5.8.3 Cboe Clear may reject Corrections submitted in respect of a Clearing Participant which has been declared in default.
- 5.8.4 The Clearing Participant agrees and accepts the amendment of the Trade Leg as set out in 5.8.1.

## 5.9 Transfer of Derivative Trade Legs

- 5.9.1 A Clearing Participant may request Cboe Clear to transfer Trade Legs to (i) another Account within the Account Structure or (ii) to another Clearing Participant, under the conditions set out in Regulation Position Management.
- 5.9.2 The rights and obligations of a Clearing Participant pursuant to a Trade Leg may only be transferred to another Clearing Participant with the agreement of the sending Clearing Participant, the receiving Clearing Participant and the consent of Cboe Clear.
- 5.9.3 The sending Clearing Participant releases and discharges Cboe Clear from any obligations of Cboe Clear towards the sending Clearing Participant pursuant to the Trade Leg that is transferred and from all claims whatsoever arising out of the Trade Leg that is transferred whether arising prior to, on or subsequent to the transfer.
- 5.9.4 The Trade Leg transfer shall not affect any disciplinary, legal or other proceeding commenced against the sending Clearing Participant by Cboe Clear prior to the Transfer Time or the right of Cboe Clear to bring disciplinary, legal or other proceedings against the sending Clearing Participant in relation to any matter connected to the Trade Leg arising prior to the Transfer Time.
- 5.9.5 The sending Clearing Participant and the receiving Clearing Participant shall ensure compliance with the segregation obligations of clause 39(4) of EMIR when requesting a transfer.

## 5.10 Open/Close Rectifications

- 5.10.1 A Clearing Participant may send a request to Cboe Clear to rectify erroneous open/close designations in accordance with Regulation Position Management.

## **5.11 Settlement of Securities and Fails**

- 5.11.1 Each Clearing Participant shall arrange in respect of its Open Positions that, at the latest during the last settlement window of the Settlement Date:
- (a) the requisite delivery or payment instructions to the relevant Settlement Addresses are submitted, in accordance with Regulation Settlement; and
  - (b) the requisite Securities and funds are available for settlement.
- 5.11.2 Cboe Clear may require the Clearing Participant to grant a power of attorney to Cboe Clear for payment or delivery instructions to a CSD, the settlement agent of the Clearing Participant or the settlement agent of a Trading Participant, as applicable.
- 5.11.3 Cboe Clear undertakes to fulfil its obligations to deliver or to pay each Clearing Participant on the basis of Open Positions registered in the name of the Clearing Participant. The fulfilment by Cboe Clear of its obligations towards a certain Clearing Participant is conditional on the timely performance by such Clearing Participant of its own obligations.
- 5.11.4 If Cboe Clear or a Clearing Participant is unable to deliver or take delivery of certain Securities due to market conditions, Cboe Clear may settle the relevant delivery obligations or remaining parts thereof in cash. The basis for a cash settlement will be the latest available closing price of the primary exchange. Cash settlement shall take place in the currency as specified by Cboe Clear.
- 5.11.5 Where required following a Corporate Action, Cboe Clear may deliver other Securities or settle the relevant delivery obligations in cash in accordance with the Regulation Corporate Actions. Cash settlement shall take place in the currency as specified by Cboe Clear.
- 5.11.6 Cboe Clear may perform its delivery or payment obligation at a later time than the Settlement Date originally specified for the relevant Open Positions
- 5.11.7 In case of a Fail, Cboe Clear may settle the relevant delivery obligation or remaining parts thereof in cash or commence the buy-in procedure as set out in the Regulation Buy-in Procedure, at the risk and expense of the defaulting Clearing Participant.
- 5.11.8 Cboe Clear may, but is under no obligation to, start the buy-in procedure as set out in the Regulation Buy-in Procedure, if a Clearing Participant does not deliver Securities on time to the relevant Settlement Address. In the event no buy-in procedure is started or in the event a Clearing Participant fails to provide funds on time to the relevant Settlement Address, the provisions of the Regulation Fees and Penalties shall apply.
- 5.11.9 Fails are subject to fee for late delivery or payment, charged to the failing Clearing Participant by Cboe Clear.

- 5.11.10 In the case of Fails, Cboe Clear continues to call Margin for the failed Open Positions.
- 5.11.11 When the buy-in or sell-out procedure is not successfully completed as set out in the Regulation Buy-in Procedure due to market conditions or other conditions, the Securities that needed to be delivered or received, will no longer be required to be delivered or received and the Trade Leg will be settled for a cash amount as specified in the Regulation Buy-in Procedure.

## **5.12 Exercise, Expiry and Settlement of Derivatives**

- 5.12.1 With respect to Options Contracts, upon exercise of an Options Contract in accordance with the Clearing Rules, a Cash Settled Obligation will arise. Such Cash Settled Obligation shall be settled in accordance with the Regulation Settlement.
- 5.12.2 If an Options Contract is In-the-Money at Expiry, the Options Contract shall be deemed to have been exercised automatically by the Buyer.
- 5.12.3 If an Options Contract is not exercised or not deemed to be exercised at Expiry in accordance with article 5.12.2, the right to exercise such Options Contract shall terminate automatically.
- 5.12.4 With respect to Futures Contracts, as of the end of the Trade Date of a Futures Contract, a Cash Settled Obligation will arise. Such Cash Settled Obligation shall be settled in accordance with the Regulation Settlement.

## **6. Margin Requirements and Risk Supervision**

### **6.1 Margin**

- 6.1.1 Margin is called each Clearing Day to protect Cboe Clear against Clearing Participant default. Margin shall be calculated per Position Account.
- 6.1.2 Based on the Open Positions of Clearing Participants at any time during the day, Cboe Clear shall have the right during the day to re-determine and, if necessary according to Cboe Clear, to call Margin from Clearing Participants and to inform them accordingly as set out in the Regulation Margin.
- 6.1.3 Cboe Clear shall at all times have the right to impose upon a Clearing Participant an additional Margin as it reasonably deems useful or necessary, in accordance with Regulation Margin.
- 6.1.4 Margin shall be covered by sufficient Collateral. Cboe Clear shall publish in the Regulation Margin the principles used to calculate Margin. Cboe Clear shall publish in the Regulation Collateral the type of Financial Instruments approved as Collateral to cover Margin and any haircut to be applied to the market value of such Collateral.
- 6.1.5 Once the Margins have been communicated, the Margins become immediately payable without further notice. The Regulation Collateral specifies the maximum time limit for

providing Collateral to cover the required amount of Margin.

## **6.2 Collateral**

- 6.2.1 A Clearing Participant shall provide sufficient Collateral as security for the performance of the obligations of the Clearing Participant. The minimum amount of Collateral per Position Account is determined by Cboe Clear.
- 6.2.2 Cboe Clear may determine that Collateral shall consist of a minimum percentage of cash.
- 6.2.3 Cboe Clear may amend the percentage as referred to in article 6.2.2 by giving fifteen (15) Clearing Days prior written notice. Cboe Clear will endeavour to give thirty (30) Clearing Days' notice if circumstances permit.
- 6.2.4 Cboe Clear is allowed to invest the Collateral deposited in cash by the Clearing Participant. If Cboe Clear invests the Collateral, Cboe Clear will adhere to the investment guidelines as set out in the Regulation Investment Policy.
- 6.2.5 The Clearing Participant shall provide security in accordance with the Regulation Collateral.
- 6.2.6 The Clearing Participant shall at all times be the sole beneficial owner of the Collateral and all Collateral provided by the Clearing Participant shall be free and clear of any liens or other encumbrances.
- 6.2.7 Any Collateral required to be provided by a Clearing Participant must be provided not later than the time set by Cboe Clear in accordance with the Regulation Collateral.
- 6.2.8 Where Collateral is due to Cboe Clear, Cboe Clear reserves the right to exclude certain collateral and may accept other assets on the terms specified by Cboe Clear in the Regulation Collateral.

## **6.3 Risk Supervision and Accounting**

- 6.3.1 Cboe Clear may define Open Position limits and limits on risk exposure applicable to Clearing Participants.
- 6.3.2 When these limits are reached, Cboe Clear can increase the Margin requirements in respect of Clearing Participant's Open Positions.
- 6.3.3 In addition, Cboe Clear may order a Clearing Participant to reduce its Open Positions within a time limit stipulated by Cboe Clear by written notice.

## **7. Interoperability Fund**

### **7.1 Establishment of the Interoperability Fund**

- 7.1.1 Cboe Clear shall establish and maintain the Interoperability Fund, in order for Cboe Clear to be able to meet the margin requirements of any Co-operating Clearing House.
- 7.1.2 The assets of the Interoperability Fund shall be the property of Cboe Clear. Cboe Clear shall have the authority to transfer and to grant security over the assets of the Interoperability Fund to one or more Co-operating Clearing Houses.

## 7.2 Deposits by Clearing Participants

- 7.2.1 Each Clearing Participant that clears Securities with Cboe Clear shall transfer to the Interoperability Fund of Cboe Clear cash and/or securities to an account of Cboe Clear within the timeframes as specified in the Regulation Interoperability Fund. This cash and/or securities will constitute the deposit of such Clearing Participant (the **Deposit**).
- 7.2.2 The value of the Deposit (as calculated by Cboe Clear) shall be at least the minimum amount as calculated in accordance with this article 7 and the Regulation Interoperability Fund (the **Minimum Deposit Value**).
- 7.2.3 The Minimum Deposit Value of each Clearing Participant that is required to make a Deposit shall be calculated daily as the sum of the following amounts:
  - (a) a base amount, as specified in the Regulation Interoperability Fund;
  - (b) where applicable, a variable amount determined in accordance with the Regulation Interoperability Fund; and
  - (c) where applicable, a supplementary amount determined in accordance with the Regulation Interoperability Fund.
- 7.2.4 If a Co-operating Clearing House requests Cboe Clear intra-day for additional margin, Cboe Clear will recalculate the Minimum Deposit Value as set out in articles 7.2.3(b) and 7.2.3(c). If the value of the Deposit of the relevant Clearing Participant is less than the recalculated Minimum Deposit Value, such Clearing Participant shall, upon request of Cboe Clear, transfer the necessary additional amount to Cboe Clear within the timeframe as specified in the Regulation Interoperability Fund.
- 7.2.5 If the value of the Deposit of a Clearing Participant is more than the Minimum Deposit Value, such Clearing Participant may request Cboe Clear to transfer (part of) such surplus to the Clearing Participant.
- 7.2.6 If a Deposit or any part of it is not available to Cboe Clear to use as security to meet the margin requirements of any Co-operating Clearing House as a consequence of bankruptcy, insolvency or comparable proceedings of the credit institution or CSD, a Force Majeure or for whatever other reason, Cboe Clear will raise the Minimum Deposit Value by the amount which is not available. The relevant Clearing Participant shall deposit the additional Minimum Deposit Value on the account, and within the time period, as notified by fax and/or email by Cboe Clear. The risk that the Deposits are not available to Cboe Clear or will not be recovered is the risk of such Clearing Participant. Cboe Clear shall use its reasonable efforts to recover any cash



and/or securities from the credit institution or CSD. Transfer or assignment by Cboe Clear of its claim on the credit institution or CSD to the relevant Clearing Participant will be deemed to be a reasonable effort. If Cboe Clear recovers any cash and/or securities, it will return such cash and/or securities to the Clearing Participants on a pro rata basis of the Deposits made by the Clearing Participants in the account of Cboe Clear relating to the Interoperability Fund with that credit institution or CSD.

7.2.7 The base amount as mentioned in article 7.2.3(a) can be different for a Direct Clearing Participant and a General Clearing Participant.

7.2.8 At the end of each calendar year and additionally at any time if the circumstances on the relevant markets or regulatory requirements so require, Cboe Clear will review the numbers, amounts and percentages set out in the Regulation Interoperability Fund. Cboe Clear may make changes thereto in its reasonable discretion having regard to developments on comparable markets and observing a reasonable period between the publication of new numbers, amounts and/or percentages in the Regulation Interoperability Fund and their coming into force, except when regulatory requirements require their coming into force at an earlier date.

### 7.3 Form of Deposits

7.3.1 A Clearing Participant shall provide its Deposit in such form as specified in the Regulation Interoperability Fund.

### 7.4 Application of the Interoperability Fund

7.4.1 Cboe Clear will apply the Interoperability Fund if the security granted over the assets of the Interoperability Fund is enforced by a Co-operating Clearing House. The Minimum Deposit Value of each Clearing Participant will be reduced pro rata. The security granted over the assets of the Interoperability Fund may be enforced by a Co-operating Clearing House to make good all losses suffered by a Co-operating Clearing House as a result of a Default Event (as defined in the Link Agreement) of Cboe Clear.

7.4.2 Cboe Clear will apply a Deposit made by a Clearing Participant from the Interoperability Fund to make good all losses suffered by Cboe Clear as a result of a Breach by such Clearing Participant.

7.4.3 If the Interoperability Fund is applied by Cboe Clear pursuant to article 7.4.1 or article 7.4.2, Cboe Clear shall not reimburse the Interoperability Fund or any Clearing Participant.

### 7.5 Return of Deposits

7.5.1 If the Minimum Deposit Value of a Clearing Participant is zero, Cboe Clear will return the remaining Deposit of that Clearing Participant as soon as reasonably possible after having deducted all amounts under or pursuant to the Clearing Participant Agreement that are in the reasonable opinion of Cboe Clear required to cover the remaining obligations of the relevant Clearing Participant, whether contingent or not. If Cboe Clear makes a deduction, Cboe Clear

will provide the Clearing Participant with the reason for such deduction.

- 7.5.2 Cboe Clear will repay a deduction as set out in article 7.5.1 to the relevant Clearing Participant promptly when the reason for such deduction no longer exists, as reasonably determined by Cboe Clear.

## 8. Clearing Fund

### 8.1 Establishment of Clearing Fund

- 8.1.1 Cboe Clear shall establish and maintain the Clearing Fund, in order to mitigate the risks of all participants in the event of a default by one of the Clearing Participants or a Co-operating Clearing House under the Clearing Rules and/or relevant the Link Agreement.
- 8.1.2 The assets of the Clearing Fund shall be the property of Cboe Clear.
- 8.1.3 The Clearing Fund shall consist of the Contributions (as defined below).
- 8.1.4 The purpose of the Clearing Fund is not commercial and not for profit.
- 8.1.5 The investment guidelines of Cboe Clear in relation to the Contributions are set out in the Regulation Investment Policy.

### 8.2 Contributions by Clearing Participants

- 8.2.1 Each Clearing Participant shall pay to Cboe Clear such amounts as set out in the Regulation Clearing Fund and in articles 8.2.4 and 16.1(a) as contribution to the Clearing Fund (the **Contribution**). The Contributions shall be made per Product Class.
- 8.2.2 Subject to articles 8.2.3 and 8.2.4, the Contribution of each Clearing Participant shall be calculated daily as the sum of the following amounts:
- (a) the base amounts applicable to each Product Class, as specified in the Regulation Clearing Fund; and
  - (b) a variable amount applicable to each Product Class as determined in accordance with the Regulation Clearing Fund.
- 8.2.3 From the commencement of a Default Handling Period until completion of a relevant Cooling-Off Period, article 8.2.2 shall not apply, and the Contribution of each non-defaulting Clearing Participant as at the commencement of such Default Handling Period shall remain unaffected, subject to such Contributions:
- (a) being reduced by any amounts applied pursuant to article 8.5; and
  - (b) being increased by any amounts received pursuant to article 16.1(a).

- 8.2.4 If, during a Cooling-Off Period, the Contribution of any non-defaulting Clearing Participant as determined in accordance with article 8.2.3 is less than its applicable base deposit as specified in the Regulation Clearing Fund, the Clearing Participant shall pay to Cboe Clear an amount so as to reinstate its Contribution to no less than its applicable base deposit.

### 8.3 Form of Contributions

- 8.3.1 A Clearing Participant shall provide its Contribution in such form as specified in the Regulation Clearing Fund.

### 8.4 Time of Payment of Contributions

- 8.4.1 Clearing Participants shall pay any amounts required by Cboe Clear as Contributions or as a top-up to Contributions, promptly within one (1) Clearing Day after the date of the written notice from Cboe Clear requiring such payment, or within such other period as may from time to time be determined by Cboe Clear.
- 8.4.2 Cboe Clear shall be entitled to charge interest, as specified in the Regulation Clearing Fund, on any amount payable by a Clearing Participant as its Contribution or as a top-up to its Contribution in the event that such Clearing Participant does not pay the required amount in accordance with this Clearing Rule Book.

### 8.5 Application of Contributions

- 8.5.1 On issuance of a Notice of Default with respect to a Clearing Participant, the Clearing Fund shall be treated as having been reduced by the amount of the Contributions made by that defaulting Clearing Participant, regardless of whether Cboe Clear has applied part or all of that Contribution pursuant to article 9.1.2.
- 8.5.2 Cboe Clear shall notify a Clearing Participant in writing whenever its Contribution (or any part thereof) is applied pursuant to article 9.1.2.

### 8.6 Cooling off period

- 8.6.1 On completion of a Default Handling Period, a thirty (30) calendar day period will commence (a "**Cooling-Off Period**").
- 8.6.2 If a non-defaulting Clearing Participant notifies Cboe Clear within ten (10) business days after the commencement of a Cooling-Off Period that it wishes to resign as a Clearing Participant and assuming all other requirements for termination of its membership have been satisfied in accordance with article 4.12.7, such Clearing Participant shall cease to be treated as a Clearing Participant for the purpose of article 16.1(a), and its remaining Contribution shall be repaid by Cboe Clear in accordance with the Clearing Rules. A Clearing Participant which has notified its wish to resign remains liable under article 16.1(a) until notified by Cboe Clear.
- 8.6.3 On the thirtieth (30<sup>th</sup>) calendar day of the Cooling-Off Period Cboe Clear shall calculate the

Contribution of each Clearing Participant once again pursuant to article 8.2.2 and each Clearing Participant is to pay its Contribution on the immediately following Clearing Day.

- 8.6.4 Where a subsequent Notice of Default is issued prior to completion of a Cooling-Off Period, (i) such Cooling-Off Period is immediately voided, (ii) any Default Handling Completion Notice issued prior to completion of such Cooling-Off Period shall be deemed void, and (iii) the Default Handling Period immediately preceding such voided Cooling-Off Period shall be deemed as continuing until the issuance of a subsequent Default Handling Completion Notice. Any Clearing Participant who has not satisfactorily terminated its membership in accordance with article 8.6.2 by the time a Cooling-Off Period is voided shall remain liable under article 16.1(a).

## 8.7 Return of Contributions

- 8.7.1 On termination of the Clearing Participant Agreement, Cboe Clear shall return the balance of the relevant Clearing Participant's Contributions as soon as reasonably possible. Cboe Clear may, acting reasonably, make such deductions from that balance as it deems necessary to cover for foreseeable future losses. If Cboe Clear makes a deduction, Cboe Clear will provide the Clearing Participant with the reason for such deduction.
- 8.7.2 Cboe Clear will repay a deduction as set out in article 8.7.1 to the Clearing Participant promptly when the reason for such deduction no longer exists, as reasonably determined by Cboe Clear.

## 9. Financial resources

### 9.1 Application of financial resources in case of a Breach

- 9.1.1 For the purpose of articles 9, 11.4.8 and 13.1.3 if a breach has a referral to 'Breach' or 'its default' it will be a referral to all those facts, events and circumstances that gave rise to the losses suffered by Cboe Clear that existed in relation to the relevant Clearing Participant on or before the time the financial resources as set out in article 9.1.2 were applied.
- 9.1.2 The financial resources as set out below may be applied by Cboe Clear to make good all losses suffered by Cboe Clear as a result of a Breach that triggers a Notice of Default by any Clearing Participant and/or as a result of a Default Event (as defined in the relevant Link Agreement) of any Co-operating Clearing House in the following order:
- (a) first, the Collateral and Contributions posted by a defaulting Clearing Participant (together the "**Defaulter's Collateral**") and/or the assets provided to Cboe Clear by a defaulting Co-operating Clearing House (the "**Co-CCP Collateral**"), provided that all Defaulter's Collateral related to a particular Product Class is applied first to any loss attributable to that Product Class, and provided that all Co-CCP Collateral is applied first to any loss attributable to that Co-operating Clearing House;
  - (b) second, the dedicated own financial resources of Cboe Clear determined in accordance with Regulation EU 152/2013 of 19 December 2012;

- (c) third, as further set out in article 9.1.3, the Contributions made by non-defaulting Clearing Participants pursuant to article 8.2.1, provided that all Contributions applicable to a particular Product Class are applied first to any loss attributable to that Product Class;
- (d) fourth, the additional dedicated own financial resources of Cboe Clear determined in accordance with EU Regulation R&R;<sup>1</sup>
- (e) fifth, as further set out in article 9.1.3, the additional Contributions made by non-defaulting Clearing Participants related to Recovery CF Cash Calls made pursuant to article 16.1(a), provided that all additional Contributions applicable to a particular Product Class are applied first to any loss attributable to that Product Class; and
- (f) sixth, any remaining financial resources of Cboe Clear.

9.1.3 The application of the financial resources as set out in article 9.1.2 (c) and (e) will be as follows:

- (a) Contributions applicable to a particular Product Class in which a loss arises (“**Applicable Contributions**”) shall firstly be applied until such loss is fully absorbed or until such Applicable Contributions have been fully applied. For the purposes of this article 9.1.3, losses will be attributed against Applicable Contributions as follows: where Open Positions are subject to a direct sale, Applicable Contributions will be applied on a pro rata basis; where Open Positions are subject to an auction as set out in article 12, losses will be attributed in the following order:
  - (i) non-defaulting Clearing Participants who do not participate in a relevant auction or who submit auction bids below the winning bid(s) (together “**Non-winning Bidders**”) shall have their Applicable Contributions applied proportionally according to their distance from the winning bid until all such Applicable Contributions have been fully applied. For the purpose of this article 9.1.3, non-defaulting Clearing Participants who do not participate in a relevant auction shall be deemed to have submitted an auction bid equal to the lowest bid received during the relevant auction.
  - (ii) subject to the Applicable Contributions in article 9.1.3(a)(i) being fully applied, non-defaulting Clearing Participants who are declared winning bidders or who submit auction bids equal to or above the winning bid(s) (together “**Winning Bidders**”) shall have their Applicable Contributions applied on a pro rata basis until all such Applicable Contributions have been fully applied.
- (b) Contributions applicable to a particular Product Class in which the loss does not arise that remain available after the application of article 9.1.3(a) with respect to that particular Product Class (“**Residual Contributions**”) shall be applied on a pro rata basis until the loss is fully absorbed or until such Residual Contributions have been fully

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<sup>1</sup> Section 9.1.2(d) shall apply from 12 February 2023.

applied.

## 10. Investment Losses

- 10.1.1 Any losses incurred by Cboe Clear related to investments ("**Investment Losses**") that have been made in accordance with the Regulation Investment Policy which are in excess of the capital allocated by Cboe Clear for credit, counterparty and market risk pursuant to article 1 (c) of RTS 152/2013 shall be borne by the Clearing Participants.
- 10.1.2 Cboe Clear will allocate Investment Losses to Clearing Participants which delivered cash as collateral. The amount payable by each Clearing Participant with respect to each Collateral Account held by such Clearing Participant shall be calculated by dividing the cash collateral amount in each respective Collateral Account by the total cash collateral pool and multiplying the outcome by the Investment Losses.
- 10.1.3 Currency exchange losses resulting from cash provided in a currency other than the currency in which the Investment Losses are expressed will be distributed pro rata to the respective Clearing Participants which delivered such currency.
- 10.1.4 Upon determination of the Investment Losses, Cboe Clear shall deduct the amount payable by the respective Clearing Participant from its Collateral Account and may issue a margin call (**Investment Losses Cash Call**) to the Clearing Participant to cover for the shortfall in Collateral.
- 10.1.5 The amounts so received pursuant to the Investment Losses Cash Call shall be applied to make good for all losses suffered by Cboe Clear as a result of the Investment Losses.
- 10.1.6 Cboe Clear shall not reimburse any Clearing Participant for Investment Losses Cash Calls. However, if Cboe Clear makes any recovery of investment losses, Cboe Clear shall distribute the net proceeds of such recovery pro rata to the amount paid by each Clearing Participant.

## 11. Breaches

### 11.1 Definition of a Breach

- 11.1.1 If a Clearing Participant appears to Cboe Clear to be unable, or to be likely to become unable, to meet its obligations under the Clearing Rules, Cboe Clear may declare such event a Breach. A Breach can be qualified by Cboe Clear as a Breach that triggers a Notice of Default as set out in article 11.3 or as a Breach leading to the imposition of a disciplinary measure or sanction.
- 11.1.2 Each of the events or circumstances set out in this sub-article is a Breach:
  - (a) the Clearing Participant fails to perform, or is in breach of, any of the terms of the Clearing Rules or the Clearing Participant Agreement;

- (b) the Clearing Participant is in breach of the rules of an Exchange applicable to the Clearing Participant;
- (c) the Clearing Participant is in breach of the terms of membership of, licence with, authorisation from a Competent Authority or in breach of the rules of a Competent Authority;
- (d) a Competent Authority over a market where Cboe Clear is active takes or threatens to take action against or in respect of the Clearing Participant related to that market under any statutory provision or process of law;
- (e) failure to pay or deliver any or all balances in Securities or cash owed to Cboe Clear in respect of Open Positions of the Clearing Participant with Cboe Clear, within the stipulated deadlines;
- (f) failure to pay or provide Margin or any additional Margin as indicated in article 6.1.2, imposed by Cboe Clear, within the stipulated time limits;
- (g) failure to pay or provide the Minimum Deposit Value as indicated in article 7 imposed by Cboe Clear, within the stipulated time limits;
- (h) failure to pay or provide Contributions as indicated in article 8 imposed by Cboe Clear, within the stipulated time limits;
- (i) failure to pay the Fees imposed by Cboe Clear;
- (j) the Clearing Participant is presented with a bankruptcy petition or a bankruptcy order is made or a voluntary arrangement for debts is approved;
- (k) the Clearing Participant is presented with or an order is made for the appointment of an administrator, a receiver or manager or a composition or scheme of arrangement is approved by the court;
- (l) a petition is presented or a petition is made for the winding up of the Clearing Participant, or a resolution is passed for the winding up of the Clearing Participant;
- (m) the Clearing Participant is presented with the declaration pursuant to article 3:160 (1) of the Act on Financial Supervision (*Wet op het financieel toezicht*);
- (n) any of the insolvency proceedings listed in Annex A to the Regulation (EU) 2015/848 of 20 May 2015 on Insolvency Proceedings becomes or is expected to become effective in respect of the Clearing Participant;
- (o) any step analogous to those mentioned in paragraphs (j) to (n) is taken in respect of the Clearing Participant in any jurisdiction;
- (p) (in respect of a Co-operating Clearing House) an event of default, however described, has occurred under the Link Agreement; and

- (q) failure to pay or provide Settlement Exposure Add-on as indicated in article 14.1, within the stipulated time limits.

11.1.3 Articles 11.2, 11.3 and 11.4 shall apply in respect of all Position Accounts even if the Breach occurs in respect of one (1) Position Account.

11.1.4 A resolution action as defined in Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 shall, in itself, not constitute a Breach.

## **11.2 Measures in case of a Breach (not qualified as trigger of a Default)**

11.2.1 In case of a Breach, Cboe Clear may impose any of the following measures to the Clearing Participant:

- (a) to require the Clearing Participant to provide, within such timeframe, in such detail and in such manner as Cboe Clear shall determine, with written assurances that the Participant will comply with the Rules.
- (b) to demand compliance by the Clearing Participant of its obligations in the manner as determined by Cboe Clear;
- (c) the issue of directions as to future conduct;
- (d) the issue of recommendations in the remedy of past conduct;
- (e) the issue of warning or reprimand;
- (f) the temporary suspension of relationship with the Clearing Participant pursuant to article 4.12;
- (g) the declaration of default of the Clearing Participant; and finally
- (h) suspend settlements of Trade Legs on DVP basis of both the Clearing Participant causing the Breach as well as any non-defaulting Clearing Participant.

11.2.2 In determining the level of any measure or sanction Cboe Clear will, inter alia, take into account:

- (a) the seriousness of the Breach;
- (b) any evidence of repeated or regular Breaches;
- (c) accumulation of complaints against the Clearing Participant;
- (d) the degree of co-operation with Cboe Clear by the Clearing Participant in connection with the identification and rectification of the Breach; and
- (e) relevant precedent, although Cboe Clear will not be bound by precedent.



### 11.3 Declaration of a default

- 11.3.1 Upon the occurrence of a Breach, Cboe Clear may declare, acting reasonably and proportionately in its sole discretion, the Clearing Participant concerned in default by any means which will be confirmed in writing (such notification to be referred to as the **Notice of Default**), provided the Breach has not, or not fully been remedied at the time of the Notice of Default.
- 11.3.2 The events described in 11.1.2 under (n) shall constitute a Breach leading to a declaration of a default and Cboe Clear shall serve Notice of Default to the Clearing Participant concerned without delay.

### 11.4 Measures in case of a Declaration of a Default

- 11.4.1 Immediately after serving the Notice of Default, Cboe Clear shall take any of the following, or any other measure as may be provided elsewhere in the Clearing Rules or Clearing Participant Agreement:
- (a) to suspend its relationship with the Clearing Participant;
  - (b) to terminate its relationship with the Clearing Participant as stated in the Clearing Participant Agreement;
  - (c) to request that the relevant Exchange(s) suspend(s) any trading activity of the Clearing Participant and/or any of the Trading Participants of the defaulting Clearing Participant;
  - (d) to demand compliance by the Clearing Participant of its obligations in the manner as determined by Cboe Clear;
  - (e) where Positions and Collateral are recorded in an Omnibus Client Position Account and in an Omnibus Client Collateral Account, or an Omnibus Indirect Client Position Account and in an Omnibus Indirect Client Collateral Account or in an Individual Client Position Account and in an Individual Client Collateral Account, Cboe Clear to trigger the procedures for the transfer of the assets and positions held by the defaulting Clearing Participant in these Accounts, to another Clearing Participant in accordance with the Regulation Portability. If the transfer to that other Clearing Participant has not taken place for any reason within the predefined transfer period as specified in the Regulation Portability, Cboe Clear may take the steps permitted by these Clearing Rules, in particular under (f), (g), (h) and (i) in relation to the assets and positions held by the defaulting Clearing Participant.
  - (f) to impose further requirements as regards Collateral to be furnished to secure the Clearing Participant's compliance with its obligations;
  - (g) to declare one or more or all of the obligations of the Clearing Participant to be due and payable immediately;
  - (h) to buy, borrow or sell Securities for the account of the Clearing Participant to secure

compliance with the settlement obligations of the Clearing Participant or to buy or sell Securities for the account of the Clearing Participant to close a position of the Clearing Participant (regardless whether this position is created pursuant a settlement), or to enter into new Trades in the name of and for the account of the Clearing Participant in order to hedge Open Positions of the Clearing Participant;

- (i) subject to article 11.4.1(e), to close Derivatives Contracts to secure compliance with the settlement obligations of the Clearing Participant, or to enter into new Trades in the name of and for the account of the Clearing Participant in order to hedge the Open Position of the Clearing Participant, or to exercise an Options Contract;
- (j) to organise an auction as further set out in article 12;
- (k) in case an auction conducted pursuant to article 12.1.1 is unsuccessful or is deemed ineffective, whether in whole or in part, to cash settle the outstanding positions with the Clearing Participants on the basis of the latest available closing price of the primary exchange.
- (l) to enforce the Collateral furnished by the Clearing Participant and apply the Clearing Fund provided that Cboe Clear may only use the Collateral held in a House Collateral Account, an Omnibus Client Collateral Account, an Omnibus Indirect Client Collateral Account and an Individual Client Collateral Account for a shortfall in the corresponding Position Account and for any other obligations the Clearing Participant may have towards Cboe Clear;
- (m) to act on behalf and for the account of the defaulting Clearing Participant to pay funds and deliver Securities due;
- (n) apply the Deposits and Contributions of the defaulting Clearing Participant in accordance with articles 7.4 and 9;
- (o) to obtain any advice or assistance, as Cboe Clear may reasonably require in connection with the default at the expense of the defaulting Clearing Participant;
- (p) to claim damages and costs;
- (q) suspend settlements of Trade Legs on DVP basis of both the defaulting Clearing Participant as well as any non-defaulting Clearing Participant; and
- (r) upon activation of the Recovery Plan, to invoke the recovery measures set out in article 16.

11.4.2 If a Notice of Default has been sent in respect to a Clearing Participant, Cboe Clear may specify a date (the **Liquidation Date**). Cboe Clear will notify in writing the defaulting Clearing Participant of the Liquidation Date. After such notification:

- (a) per the Liquidation Date in accordance with sub-articles 11.4.2(c) and 11.4.2(d), Cboe Clear will determine a Liquidation Amount for each Position Account as applicable;

- (b) on the Liquidation Date neither Cboe Clear nor the Clearing Participant shall be obliged to make any further payments or deliveries under any Open Position, but shall be obliged to pay the Liquidation Amount(s);
  - (c) Cboe Clear shall (on, or as soon as reasonably practicable after, the Liquidation Date) determine (discounting if appropriate) its total cost, loss or, as the case may be, gain, in each case expressed in EUR (and, if appropriate, including any loss of bargain, cost of funding or, without duplication, cost, loss or, as the case may be, gain as a result of the termination, liquidation, obtaining, performing or re-establishing of any hedge or related trading position), as a result of the termination of each payment or delivery which would otherwise have been required to be made under such Open Position, having due regard to, if appropriate, such market quotations published on, or official settlement prices set by, an Exchange as may be available on, or immediately preceding, the time of calculation) including the costs and losses, or gains, in respect of any payment or delivery required to have been made (assuming satisfaction of any applicable condition precedent) on or before the designated Liquidation Date and not made; and
  - (d) Cboe Clear shall treat each cost or loss to it, determined as above, as a negative amount and each gain by it, so determined, as a positive amount and aggregate all of such amounts to produce a single, net positive or negative amount, per Position Account, denominated in EUR (the **Liquidation Amount**). Cboe Clear shall notify the Clearing Participant of the Liquidation Amount, specifying the Liquidation Amount per Position Account, immediately after the calculation of such amount.
- 11.4.3 If the Liquidation Amount of a House Position Account is a positive amount, Cboe Clear shall owe it to the Clearing Participant. If the Liquidation Amount of the House Position Account is a negative amount, the Clearing Participant shall owe such amount to Cboe Clear.
- 11.4.4 If the Liquidation Amount of an Omnibus Client Position Account or an Omnibus Indirect Client Position Account is a positive amount, Cboe Clear shall pay it to those clients when they are known to Cboe Clear or, if they are not, to the Clearing Participant for the account of those clients, provided the relevant security arrangements are in place. If the Liquidation Amount of the Omnibus Client Position Account or the Omnibus Indirect Client Position Account is a negative amount, the Clearing Participant shall owe such amount to Cboe Clear.
- 11.4.5 If the Liquidation Amount of an Individual Client Position Account is a positive amount Cboe Clear shall pay it to the client when known to Cboe Clear or, if not, to the Clearing Participant for the account of the client, provided the relevant security arrangements are in place. If the Liquidation Amount of the Individual Client Position Account is a negative amount, the Clearing Participant shall owe such amount to Cboe Clear.
- 11.4.6 Cboe Clear may only use the Collateral held in the corresponding Collateral Account for the negative Liquidation Amount of a Position Account and for any other obligations the Clearing Participant may have towards Cboe Clear in relation to the Position Account. Cboe Clear may not use the Collateral surplus in the Omnibus Client Collateral Account, the Omnibus Indirect Client Collateral Account or the Individual Client Collateral Account for a negative Liquidation Amount in a House Position Account.

- 11.4.7 If permitted by law, Cboe Clear will set off the amount owed by it to the Clearing Participant pursuant to article 11.4.3 as well as any remaining Collateral held in a House Collateral Account with the amount(s) owed by the Clearing Participant to Cboe Clear pursuant to article 11.4.4 and/or 11.4.5.
- 11.4.8 If a Breach has occurred in relation to a Clearing Participant, and Cboe Clear has sent a Notice of Default to that Clearing Participant, Cboe Clear will only allow that defaulting Clearing Participant to recommence its activities as Clearing Participant after the payment of all obligations of that Clearing Participant towards Cboe Clear. Any payment made by the defaulting Clearing Participant to Cboe Clear including interest will be credited in the reverse order of the order in which Cboe Clear has applied the Clearing Fund, taking into account article 8.5, and its own or other funds to cover the losses caused by that Breach.
- 11.4.9 If Cboe Clear has sent out a Notice of Default to the Clearing Participant, Cboe Clear will promptly notify this to the other Clearing Participants by way of publication according to article 3.6.

## 12. Voluntary Auctions

- 12.1.1 Without **prejudice** to the ability for Cboe Clear to take any other action as described in the Clearing Rules, Cboe Clear may, where it deems appropriate and acting commercially reasonably, organise an auction to transfer of Open Positions of a defaulting Clearing Participant to the non-defaulting Clearing Participants and/or third party brokers.
- 12.1.2 Immediately after serving the Notice of Default, Cboe Clear shall invite all non-defaulting Clearing Participants and/or any third party brokers as selected by Cboe Clear in its sole discretion (the “**Invited Bidders**”) to participate in one (1) or more auctions to acquire all or part of the Open Positions that Cboe Clear has not yet closed out (the “**Auction Portfolio**”). The contents of an Auction Portfolio shall be disclosed only to Invited Bidders participating in the auction of that Auction Portfolio and shall be subject to a non-disclosure agreement.
- 12.1.3 Only Clearing Participants which have successfully demonstrated their ability to assess and provide a bid on an auction portfolio within a specified period of time can participate in the auction process.
- 12.1.4 Cboe Clear reserves the right, at any point and in its sole discretion, to exclude a Clearing Participant from participation in an auction if it appears to Cboe Clear, in its reasonable opinion, that such exclusion is desirable for any reason.
- 12.1.5 Cboe Clear shall prescribe procedures for the completion of such auction process as it considers reasonably appropriate from time to time.
- 12.1.6 Cboe Clear shall notify each Invited Bidder of all details that may be reasonably required in relation to the Auction Portfolio prior to commencing the auction. The auction may take place on the day on which the Notice of Default has been issued and can take place over a number of days following such day. Auctions of different Auction Portfolios may take place at different

times.

- 12.1.7 Invited Bidders who decide to participate in an auction will submit bids to Cboe Clear. Bids may be submitted for the entire Auction Portfolio or for a portion (as determined by Cboe Clear) of the Auction Portfolio. Bids shall be submitted at a price at which the relevant Invited Bidder is willing to acquire the Auction Portfolio or portion (as determined by Cboe Clear) of the Auction Portfolio. Cboe Clear will oversee the bidding process in a manner which it considers best protects the resources of Cboe Clear and ensures an orderly process.
- 12.1.8 Cboe Clear will have full discretion in deciding whether or not to accept one or more bids for the entire Auction Portfolio or for a portion (as determined by Cboe Clear) of the Auction Portfolio and, in so deciding, will take into account the range of bids received relative to the amount of Collateral held in respect of Initial Margin, Variation Margin (if applicable) and additional margin and the Contributions and Deposits of the defaulting Clearing Participant and, subject to its availability, Cboe Clear capital resources. Bids on the entire Auction Portfolio may take preference over bids for portions of the Auction Portfolio. In the event that more than one Invited Bidder submits a bid of the same value (each an **"Equal Bid"**), Cboe Clear may, subject to its discretion, reject one or more such Equal Bids, split the relevant Auction Portfolio between the relevant Invited Bidders who submitted Equal Bids on parts of the Auction Portfolio on an individual Security basis. If Cboe Clear decides to accept more than one bid for the entire Auction Portfolio or for a portion (as determined by Cboe Clear) of the Auction Portfolio, the price payable or receivable by all such Winning Bidders will be the price of the lowest bid which is accepted by Cboe Clear. Cboe Clear may choose to accept a bid in respect of a smaller proportion of an Auction Portfolio than an Invited Bidder has specified in its bid. In addition, Cboe Clear reserves the right to reject an auction bid from a Clearing Participant if it deems the overall risk presented by that Clearing Participant, following the transfer of any Auction Portfolio, to be in excess of Cboe Clear's risk tolerance for that Clearing Participant.
- 12.1.9 In the case of an auction in which no bid is accepted or received (as the case may be), one or more further auctions may, at the discretion of Cboe Clear, be held in relation to the relevant Auction Portfolio or that part of the Auction Portfolio which remains.

## 13. Liability

### 13.1 Clearing Participants

- 13.1.1 A Clearing Participant shall be liable for any damage, with the exception of loss of profit and loss of opportunity, which Cboe Clear suffers as a consequence of that Clearing Participant's default.
- 13.1.2 All reasonable expenses incurred by Cboe Clear as a consequence of a Breach shall be taken from the proceeds of the enforcement of the Collateral of the defaulting Clearing Participant and, where relevant, any other funds made available by such defaulting Clearing Participant to Cboe Clear. Any remaining balance shall be remitted to the Clearing Participant after Cboe Clear has discharged all its obligations.

- 13.1.3 A defaulting Clearing Participant shall reimburse the Clearing Fund for any amount which was applied out of the Clearing Fund as a result of its default.

## 13.2 Cboe Clear

- 13.2.1 In no circumstance shall Cboe Clear incur any liability for any breach of the Clearing Rules by a Clearing Participant towards other Clearing Participants.
- 13.2.2 Cboe Clear shall not incur any liability for any breach of a Clearing Participant's obligation, under the relevant applicable law, to segregate clients and non-clients assets, notably in securities settlement systems or CSDs. Cboe Clear only registers the Trade Legs in the Position Account indicated by the Posting-Electronic Message containing the particulars of a Trade submitted to Cboe Clear by an Exchange of the Trade.
- 13.2.3 Cboe Clear will not be liable towards the Clearing Participant if any payment or delivery instruction by the Clearing Participant is not made in accordance with the Regulation Settlement and it shall be discharged of its obligations towards a Clearing Participant once the payment and the settlement of the relevant Product has occurred.
- 13.2.4 Cboe Clear shall not be liable if the trade reports provided by an Exchange do not reflect the terms and conditions reached between the Trading Participants.
- 13.2.5 Cboe Clear shall be liable for damage arising from non-compliance with its delivery or payment obligation under the Clearing Rule Book under Trade Legs it has entered into with Clearing Participants unless such non-compliance is the result of a Force Majeure event.
- 13.2.6 In the event of the occurrence of Force Majeure or the danger of Force Majeure occurring, or if Cboe Clear determines that it will not be able to comply with its obligations to a Clearing Participant as a result of compliance with a Link Agreement or as a result of a failure by the Co-operating Clearing House to meet its obligations under the Link Agreement, Cboe Clear or Clearing Participants, as the case may be, will take such measures as may be reasonably demanded of them in order to limit as much as possible the detrimental consequences for the other party resulting from these circumstances.
- 13.2.7 For damage arising from obligations other than those referred to in article 13.2.5, Cboe Clear will under no circumstances be held liable unless such damage is a direct result of negligence or an intentional act or omission on the part of Cboe Clear.
- 13.2.8 Cboe Clear will not be held liable for any detrimental consequences of abnormal or fraudulent use of the Clearing System or for any detrimental consequences of acts or omissions of third parties.
- 13.2.9 Cboe Clear will under no circumstances be liable for consequential loss suffered by the Clearing Participant such as loss of custom, profit or revenues believed by the Clearing Participant to be the consequence of a total or partial failure to perform the Clearing Rules or the Clearing Participant Agreement.
- 13.2.10 Cboe Clear shall take all reasonable care in the selection and monitoring of any third party that

is to act on its behalf.

- 13.2.11 Notwithstanding the other paragraphs of this article 13.2, in the event that a third party engaged by Cboe Clear has caused any loss or damage to a Clearing Participant and Cboe Clear is contractually or otherwise in a position to claim damages from that third party, Cboe Clear will be liable to the relevant Clearing Participant for at maximum the amount that is actually recovered by Cboe Clear from that third party less the amount of Cboe Clear's own loss or damage.
- 13.2.12 Subject to article 15, set-off by Clearing Participants of their obligations with the obligations of Cboe Clear shall not be permitted, unless expressly provided otherwise in writing.

## **14. Liquidity measures**

### **14.1 Settlement Exposure Add-on and Settlement Prefunding Requirement**

- 14.1.1 Cboe Clear may demand payment of a Settlement Exposure Add-on and/or Settlement Prefunding Requirement from a Clearing Participant in accordance with the Regulation Liquidity Measures.

### **14.2 Suspension of Collateral, Deposit and Contribution withdrawals**

- 14.2.1 To continue to perform its settlement obligations towards the non-defaulting Clearing Participants in times of liquidity stress and without prejudice to the ability for Cboe Clear to take any other action as described in the Clearing Rules, Cboe Clear may suspend withdrawals of Contributions, Deposits and/or Collateral by non-defaulting Clearing Participants until the date as notified by Cboe Clear to the Clearing Participants as of which Cboe Clear will return to perform its settlements on a business as usual basis.
- 14.2.2 Cboe Clear shall notify the Clearing Participant of the suspension as mentioned in article 14.2.1 becoming effective.
- 14.2.3 As of the date as of which Cboe Clear will return to perform its settlements on a business as usual basis, the non-defaulting Clearing Participants may again withdraw Collateral pursuant to the Regulation Collateral and/or withdraw Contributions pursuant to the Regulation Clearing Fund and/or withdraw Deposits pursuant to the Regulation Interoperability Fund.
- 14.2.4 Cboe Clear shall notify the non-defaulting Clearing Participants of the date as of which the non-defaulting Clearing Participants may again make the withdrawals pursuant to article 14.2.3.

## **15. Close out netting**

For the purpose of this article 15, the following definitions will apply:



**“Cboe Clear Default Event”** means the failure to comply with an undisputed obligation to pay money or deliver Securities to a Clearing Participant for a period of thirty (30) business days;

**“Cboe Clear Insolvency Event”** means a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights of Cboe Clear;

**“Notice of Termination”** means a written notification by the Clearing Participant to Cboe Clear that it terminates all Trade Legs;

**“Net Asset Position”** or **“Net Liability Position”** means the close-out values of the Open Positions within each Position Account as of the Termination Date by netting the aggregate of the asset position against the aggregate of the liability position within each Position Account and setting off the Collateral or its market value as of the Termination Date in the relevant Collateral Account;

**“Termination Date”** means as of the close of business on the third business day following Cboe Clear’s receipt of the Notice of Termination, which term of notification shall be deemed reasonable, or any longer period stipulated in the Notice of Termination;

**“Net Settlement Amount”** means one net amount calculated in accordance with article 15.7 and 15.8.

- 15.1 The Clearing Participant shall be entitled to exercise its rights stipulated in the articles below, if an Cboe Clear Default Event or an Cboe Clear Insolvency Event occurs.
- 15.2 Upon the occurrence of an Cboe Clear Default Event or an Cboe Clear Insolvency Event, a Clearing Participant that is not in default with respect to any obligation owing to Cboe Clear may send Cboe Clear a Notice of Termination.
- 15.3 A Notice of Termination resulting from an Cboe Clear Default Event, may only be sent by the Clearing Participant against which Cboe Clear is in default.
- 15.4 A Notice of Termination is deemed to be received by Cboe Clear one (1) business day after sending such Notice of Termination by a Clearing Participant.
- 15.5 The Clearing Participant shall calculate the Net Asset Position or Net Liability Position in EUR. When calculating the Net Asset Positions and Net Liability Positions within each Position Account, the Clearing Participant shall exercise its discretion, acting in good faith, in adopting methods of valuation expected to produce reasonably accurate substitutes for the values that would have been obtained from the relevant market if it were operating normally.
- 15.6 The Clearing Participant shall calculate the Net Settlement Amount as promptly as reasonably practicable.
- 15.7 The Net Settlement Amount for each House Position Account, Omnibus Client Position Account, Omnibus Indirect Client Position Account and Individual Client Position Account is calculated by netting all Net Asset Positions in these Accounts against all Net Liability



Positions in these Accounts as well as against any other obligation, including the Collateral in the relevant Collateral Account the Clearing Participant may have towards Cboe Clear.

- 15.8 The Clearing Participant shall notify Cboe Clear of the calculated value of the Net Settlement Amounts as promptly as possible and provide Cboe Clear with a written statement in which an explanation is given as to how the Net Settlement Amounts were determined.
- 15.9 If a Clearing Participant has a positive Net Settlement Amount, Cboe Clear shall pay such amount to the Clearing Participant as soon as reasonably possible. If a Clearing Participant has a negative Net Settlement Amount, the Clearing Participant shall pay such amount to Cboe Clear on the first business day following the written statement mentioned in article 15.8.

## 16. Recovery measures

- 16.1 Upon Cboe Clear having served a Notice of Default in accordance with article 11.3.1 and activation of the Recovery Plan, Cboe Clear may:
- (a) require non-defaulting Clearing Participants to make one or more contributions in cash to Cboe Clear of amounts that do not in aggregate exceed their Contribution in a currency as specified by Cboe Clear ("**Recovery CF Cash Call**"). Recovery CF Cash Calls shall be payable immediately on demand of Cboe Clear;
  - (b) require non-defaulting Clearing Participants to make a contribution in cash to Cboe Clear of an amount and in a currency as specified by Cboe Clear to enable the physical settlement of Open Positions, in accordance with Regulation Liquidity Measures ("**Recovery Liquidity Cash Call**"). Recovery Liquidity Cash Calls shall be payable immediately on demand of Cboe Clear; and
  - (c) partially or fully terminate Trade Legs.
- 16.2 Cboe Clear shall have full discretion in determining which of the recovery measures it shall apply.
- 16.3 Cboe Clear shall notify its Competent Authority when, in order to achieve the goals of Cboe Clear's recovery process, Cboe Clear wishes to:
- (a) take measures provided for in the Recovery Plan despite the fact that the relevant indicators in the Recovery Plan have not been met; or
  - (b) refrains from taking measures provided for in the Recovery Plan despite the fact that the relevant indicators in the Recovery Plan have been met.

## 17. Resolution measures

- 17.1 The Resolution Authority may reduce the amount of Cboe Clear's payment obligations to non-

defaulting Clearing Participants where those obligations arise from gains due, in accordance with Cboe Clear's processes for paying Variation Margin, or a payment that has the same economic effect.

- 17.2 The Resolution Authority may require non-defaulting Clearing Participants to make a contribution in cash to Cboe Clear up to twice the amount equivalent to their Contribution ("**Resolution CF Cash Call**"). Resolution CF Cash Calls shall be payable immediately on demand of the Resolution Authority.
- 17.3 In the event that the Resolution Authority refrains partially or fully from enforcing existing and outstanding obligations of non-defaulting Clearing Participants towards Cboe Clear for the reasons as set out in the second subparagraph of paragraph 3 or in paragraph 4 of article 27 of EU Regulation R&R, the Resolution Authority may enforce the remaining obligations within 18 (eighteen) months after Cboe Clear is considered to be failing or likely to fail in accordance with article 22 of EU Regulation R&R, provided that the reasons for refraining from enforcing those obligations no longer exist.
- 17.4 Each Clearing Participant acknowledges and accepts that liabilities arising under the Clearing Rules may be subject to the exercise of Resolution Action and acknowledges and accepts to be bound by any Resolution Action and the effects thereof (including any variation, modification and/or amendment to the terms of the Clearing Rules as may be necessary to give effect to any such Resolution Action).

## **18. Complaints and Settlement of Disputes**

- 18.1 If a Clearing Participant has a complaint about Cboe Clear in the performance under the Clearing Rules, the Clearing Participant may submit a written complaint to Cboe Clear. Cboe Clear will inform the Clearing Participant that it received the complaint upon receipt. Cboe Clear will handle the complaint in accordance with its complaints procedure as set out in the Regulation Complaints.
- 18.2 Any dispute between Cboe Clear and a Clearing Participant that may arise under the Clearing Rules shall be settled in accordance with the Clearing Participant Agreement.

## Appendix 1 – List of regulations

- 1) Regulation Clearing Days pursuant to the definition Clearing Day and Opening Hours of the Clearing Rule Book;
- 2) Regulation Portability pursuant to article 11.4.1 of the Clearing Rule Book;
- 3) Regulation Collateral pursuant to the definition Collateral and articles 4.7.2, 6.1.4, 6.1.5, 6.2.2, 6.2.5, 6.2.7, 6.2.8 and 14.2.3 of the Clearing Rule Book;
- 4) Regulation Securities pursuant to the definition Security and article 4.6.4 of the Clearing Rule Book;
- 5) Regulation Derivatives pursuant to the definition Derivative and article 4.6.4 of the Clearing Rule Book;
- 6) Regulation Complaints pursuant to article 18 of the Clearing Rule Book;
- 7) Regulation Margin pursuant to the definition Margin and articles 6.1.2, 6.1.3 and 6.1.4 of the Clearing Rule Book;
- 8) Regulation Settlement pursuant to the definitions CSD and Settlement Date and articles 5.11.1, 5.12.1, 5.12.4 and 8.4 of the Clearing Rule Book;
- 9) Regulation Statement of Authority pursuant to the definition Statement of Authority of the Clearing Rule Book;
- 10) Regulation Fees and Penalties pursuant to articles 4.6, 5.11.1, 5.11.3 and 5.11.8 of the Clearing Rule Book;
- 11) Regulation Trade Refusal pursuant to the definition Electronic Message and articles 4.4.3, 5.1.2 and 5.3.1(c) of the Clearing Rule Book;
- 12) Regulation Buy-in Procedure pursuant to articles 5.11.7, 5.11.8 and 5.11.11 of the Clearing Rule Book;
- 13) Regulation Corporate Actions pursuant to articles 5.7.4 and 5.11.5 of the Clearing Rule Book;
- 14) Regulation Investment Policy pursuant to articles 6.2.4, 8.1.5, 10.1.1 and of the Clearing Rule Book;
- 15) Regulation Interoperability Fund pursuant to article 7 and 14.2.3 of the Clearing Rule Book;
- 16) Regulation Clearing Fund pursuant to articles 8 and 14.2.3 of the Clearing Rule Book;
- 17) Regulation Position Management pursuant to articles 5.9.1 and 5.10.1 of the Clearing Rule Book; and
- 18) Regulation Liquidity Measures pursuant to article 14 and 16 of the Clearing Rule Book.