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Our reference: 7217095/3
 Responsible lawyer: Tore Mydske

Oslo, 31 December 2013

Dear Sirs

CCP OPINION IN RELATION TO NASDAQ OMX CLEARING AB, NORWEGIAN BRANCH (CLEARING RULES – COMMODITY DERIVATIVES)

You have asked us to give an opinion in respect of the laws of the Kingdom of Norway ("**this jurisdiction**") as to the effect of certain netting and set-off provisions and collateral arrangements in relation to NASDAQ OMX Clearing AB, a Swedish company with business registration number 556383-9058, acting through its Norwegian branch NASDAQ OMX Oslo NUF with registration number 994 583 352 (the "**CCP**") as between the CCP and its clearing members (each a "**Member**").

We understand that your requirement is for the enforceability and validity of such netting and set-off provisions and collateral arrangements to be substantiated by a written and reasoned opinion letter.

References herein to "**this opinion**" are to the opinion given in Section 3.

1 TERMS OF REFERENCE

- a) Except where otherwise defined herein, terms defined in the Rules of the CCP have the same meaning in this opinion letter.
- b) This opinion relates to the service provided by the CCP in respect of a Clearing Transaction, which includes clearing of transactions in respect of the following types of Products (each defined in the Rules and each a "**Transaction**"):
 - (i) Electricity Contracts;
 - (ii) Natural Gas Contracts;
 - (iii) Allowance Contracts; and
 - (iv) Electricity Certificate Contracts.

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Transactions related to the abovementioned Products includes all transactions conducted by the CCP.

- c) We express no opinion as to:
 - (i) any provisions of the Rules of the CCP other than those on which we expressly opine;
 - (ii) tax and VAT issues that might arise, or the general fiscal treatment of Transactions under Norwegian law; and
 - (iii) whether specific performance or injunctive relief would necessarily be available in respect of any of the obligations under the Rules and note that availability of discretionary remedies, such as injunctions and specific performance, is restricted under Norwegian law.
- d) Further, this opinion:
 - (i) is confined to and is given on the basis of Norwegian law as it exists at the date hereof and we assume no obligation to update or supplement this opinion to reflect any facts or circumstances which may hereafter come to our attention, or to advise you of any changes in Norwegian law after the date hereof;
 - (ii) is to be construed in accordance with Norwegian law. It is strictly limited to the Agreement and the transactions contemplated thereby, and it is not to be extended by implication to any other matter; and
 - (iii) shall be governed by Norwegian law and be subject to the exclusive jurisdiction of the courts of Norway.
- e) Finally, the opinion given in paragraph 3.7 below is given only in relation to margin comprising securities credited to an account.

1.2 Definitions

In this opinion, unless otherwise indicated herein or in the Rules:

- a) **"Clearing Agreement"** means the clearing membership agreement entered into between each Member and the CCP;
- b) **"Security Documentation"** means the security documents and the related general terms for collateral custody accounts as of 2 December 2013 entered into between each Member and the CCP in the form attached hereto at Annex 3;
- c) **"Financial Collateral Act"** means the Act on Financial Collateral Arrangements no. 17 of 26 March 2004 (*lov om finansiell sikkerhetsstillelse*);
- d) **"CCP Documentation"** means the Clearing Agreement, the Security Documentation and other documents, agreements, acts or other things pursuant to which the Rules are made contractually binding between the Parties;
- e) **"Client Account"** means a Client Clearing Account (as defined in the Rules);

- f) **"Event of Default"** means the occurrence of a (i) Material Default as defined in Sub-Section 8.8.2 of Section 8.8 (*Default or Insolvency of the Clearinghouse*) of the Rules, which is deemed to occur when the Clearinghouse breaches a Settlement or Delivery obligation (other than to a defaulting Account Holder) and such breach is not remedied within twenty (20) Bank Days after the relevant Settlement or Delivery is due and (ii) an event where the CCP enters into bankruptcy, upon which all Open Positions with the Clearinghouse are automatically terminated.
- g) **"Netting Provisions"** has the same meaning as in Sub-Section 8.8.3 through 8.8.6 of Section 8.8 (*Default or Insolvency of the Clearinghouse*) of the Rules;
- h) **"House Account"** means any Clearing Account of a General Clearing Member or Clearing Member which is not a Client Clearing Account (each as defined in the Rules);
- i) **"Securities Trading Act"** means the Securities Trading Act of 29 June 2007 No. 75 (*Verdipapirhandeloven*).
- j) **"Payment Systems Act"** means the Payment Systems Act of 17 December 1999 No. 95 (*Betalningssystemloven*).
- k) **"Party"** means the CCP or the relevant Member;
- l) **"Product"** means an Instrument for Clearing Listed Products as specified in the Clearing Appendix 2 Contract Specifications (Commodity Derivatives).
- m) **"Set-off Provision"** means Sub-Section 8.8.8 of Section 8.8 (*Default or Insolvency of the Clearinghouse*) of the Rules;
- n) **"Swedish Law Annex"** means the Swedish law annex attached hereto as Annex 1 provided by the Swedish law firm Roschier setting out certain Swedish law assessments relevant for this opinion and the CCP.
- o) references to the word **"enforceable"** and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy;
- p) **"Rules"** means the rules of the CCP in force as at the date of this opinion, attached hereto as Annex 2;
- q) references to a **"section"** or to a **"paragraph"** are (except where the context otherwise requires) to a section or paragraph of this opinion (as the case may be).

2 ASSUMPTIONS

In providing this opinion, we have made the following assumptions:

- a) except with regards to the provisions discussed and opined on in this opinion letter, the CCP Documentation and Transactions are legally binding and enforceable against both Parties under their governing laws;

- b) each Party has the capacity, power and authority under all applicable law(s) to enter into the CCP Documentation and Transactions; to perform its obligations under the CCP Documentation and Transactions; and each Party has taken all necessary steps to execute and deliver and perform the CCP Documentation and Transactions;
- c) each Party has obtained, complied with the terms of and maintained all authorisations, approvals, licences and consents required to enable it lawfully to enter into and perform its obligations under the CCP Documentation and Transactions and to ensure the legality, validity, enforceability or admissibility in evidence of the CCP Documentation in this jurisdiction;
- d) the CCP Documentation has been entered into by the Parties prior to the commencement of any insolvency procedure under the laws of any jurisdiction in respect of either Party;
- e) each Party acts in accordance with the terms of the CCP Documentation and Transactions; and (save in relation to any non-performance leading to the taking of action by a relevant Member under the Netting Provisions), each Party performs its obligations under the CCP Documentation and each Transaction in accordance with their respective terms;
- f) the Swedish Law Annex is an accurate and not misleading statement as to Swedish law in relation to the matters addressed therein;
- g) any Collateral (as defined in the Rules) provided by a Member is based on the Security Documentation;
- h) all Products covered by the Rules are “financial instruments” as defined in Section C of Annex I to Directive 2004/39/EC and Commission Regulation 1287/2006; more specifically we assume that all Products are derivative contracts mentioned in Section C 10 of Annex I of Directive 2004/39/EC. the Clearing System (as defined in the Rules) has been approved by the Norwegian FSA and notified to the EFTA Surveillance Authority in accordance with the Norwegian Payment Systems Act section 4-2 (we have been informed by the CCP that these requirements are fulfilled);
- i) apart from any circulars, notifications and equivalent measures published by the CCP in accordance with the CCP Documentation, there are not any other agreements, instruments or arrangements between the Parties which modify or supersede the terms of the CCP Documentation.

3 OPINION

On the basis of the foregoing terms of reference and assumptions and subject to the qualifications set out in Section 4 below, we are of the following opinion.

3.1 Insolvency Proceedings

- a) The CCP is not subject to Norwegian insolvency legislation as the CCP operates in Norway through a Norwegian branch (No. *norskregistrert utenlandsk foretak*). A Norwegian branch of a foreign based company/entity is not considered an independent legal entity under Norwegian law and can therefore not be subject to

Norwegian insolvency proceedings before the courts of Norway - any such proceedings will therefore be undertaken in Sweden.

- b) Based on the above, the only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which the CCP could be subject, and which are relevant for the purposes of this opinion, are set out in clause 3.1 of the Swedish Law Annex (together the “**Insolvency Proceedings**”).
- c) The legislation applicable to Insolvency Proceedings is set out in clause 3.1 of the Swedish Law Annex.

3.2 Recognition of choice of law

- a) A Norwegian branch of a foreign company/entity is not considered an independent legal entity under Norwegian law, thus (i) cannot itself be subject to legal action¹ and (ii) will not have legal venue in Norway. The relevant jurisdiction in respect of recognition of choice of law of the CCP is therefore Swedish jurisdiction.
- b) As set out in 3.2 of the Swedish Law Annex, the choice of law provisions of Section 18 (*Choice of law and arbitration*) of the Rules would be recognised under the laws of Sweden (being the jurisdiction under whose laws the CCP is incorporated), even if the Member is not incorporated, domiciled or established in that jurisdiction.

3.3 Netting

- a) The Netting Provisions will be immediately (and without fulfilment of any further conditions) enforceable under Norwegian law in accordance with its terms so that, upon the occurrence of:
 - (i) an Event of Default in relation to the CCP which has not occurred as a result of Insolvency Proceedings, where the enforceability of the Netting Provisions will be subject to Norwegian law; or
 - (ii) an Event of Default in relation to the CCP which has occurred as a result of Insolvency Proceedings, and the enforceability of the Netting Provisions are subject to Norwegian law pursuant to Swedish law as further described in clause 3.3 of the Swedish Law Annex (i.e. a situation where the courts of Sweden decides that Norwegian law is applicable notwithstanding the fact that the Insolvency Proceedings are undertaken in Sweden),

then:

 - (iii) the Member would be entitled immediately to exercise its rights under the Netting Provisions; and
 - (iv) the Member would be entitled to receive or be obliged to pay only the net sum of the positive and negative mark-to-market values of the included individual Transactions, together with other losses or gains referable to the Transactions.

¹ Cf the Supreme Court decision in Rt 2008 p 1730

- b) Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of such rights in respect of Products by the Member.
- c) There is a significant risk that a Norwegian court would deem close-out netting provisions as drafted in the Rules to be unenforceable under general Norwegian insolvency law. However, close-out netting provisions are given explicit protection ("safe-harbours") in certain circumstances. We are of the opinion under letter a) and b) above because the Transactions will qualify for one or more of the relevant safe-harbours.

We will comment on each the relevant safe-harbours below.

- d) Close-out netting provisions in certain Transactions related to *financial derivative contracts* will be enforceable according to their terms pursuant the Securities Trading Act Section 14-2. The relevant financial derivative contracts are listed in the Securities Trading Act Section 2-2, Subsection 5, and includes, inter alia, "commodity derivatives" as defined by Directive 2004/39/EC Annex I section C point 10 and the Commission Regulation No. 1287/2006.

We have assumed that all of the Products will be deemed to be "financial instruments" as defined above, and Transactions related to such financial instruments will be covered by the safe-harbour.

- e) The second safe-harbour applies to certain transactions entered into a security settlement system as defined in the Norwegian Payment Systems Act. The Payment Systems Act implements EU Directive 98/26/EC as amended. According to the Payment Systems Act Section 4-2, all transactions entered into a security settlement system that relates to the clearing and settlement of financial instruments will be enforceable according to their terms, even if one of the participants in the security settlement system (including the CCP) is made subject to insolvency proceedings.

In our opinion, the system operated by the CCP under the Rules constitutes a security settlement system as defined in the Payment Systems Act. Transactions entered into this system will therefore fall within the safe-harbour provided for in the Payment Systems Act.

- f) Furthermore, Section 6 of the Norwegian Financial Collateral Act provides a third safe harbour for close-out netting in connection with certain defined financial collateral arrangements falling within its scope, and we are of the opinion that where;
 - (i) the Collateral Provider is a qualifying counterparty listed in the Financial Collateral Act (which includes banks, credit institutions, financial institutions, central banks and clearinghouses); and
 - (ii) the Collateral provided is either Government Bonds and Bills, Covered Bonds and/or Kommuninvest Bonds or other financial instruments or "cash deposits" as defined in the Financial Collateral Act; and

- (iii) the such Collateral is provided for the purpose of securing obligations under Electricity Contracts and Natural Gas Contracts (which are subject to cash settlement),

such a collateral arrangement would fall within the definition of a "*financial collateral arrangement*" as set out in the Financial Collateral Act and hence the Netting Provisions will be recognised and enforceable under Norwegian law in accordance with Section 6 of the Financial Collateral Act.

- g) Collateral provided over the remaining types of preapproved Collateral under the Rules (other than those set out in letter f) above, being Cash Collateral, Bank guarantees, ETF, Pre-delivered EI-Certs and European Union Allowances (EUA)) and/or any type of Collateral provided for the purpose of securing obligations under and in respect of Allowances Contracts and Electricity Certificate Contracts will not fall within the definition of a financial collateral arrangement pursuant to the Financial Collateral Act because:

- (i) the term "*financial collateral agreement*" is defined as an arrangement under which a collateral provider provides security over "*financial collateral*" for the purpose of securing "*financial obligations*";
- (ii) the term "*financial obligations*" is defined as an obligation comprised by the agreement on financial collateral which gives a right to either "*cash payment*" or delivery of "*financial instruments*"; and
- (iii) the term "*financial collateral*" means collateral that consists of financial instruments or "*cash deposits*". "*Cash deposits*" refers only to money represented by a credit to an account, or similar claims of repayment of money, and it is only monetary claims arising from money borrowed by way of deposits to financial institutions or entities under the public supervision (in Norway carried out by the Financial Supervisory Authority of Norway) which are covered by the definition cash deposits.

3.4 Set-Off

- a) The Set-off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that upon the occurrence of an Event of Default in relation to the CCP:
 - (i) the Member would be immediately entitled to exercise its rights under the Set-Off Provision; and
 - (ii) any and all amounts owed by the Member to the CCP would be set off against any amounts owed by the CCP to the Member, so that in particular:
 - (A) the Termination Amount (once calculated);
 - (B) the value of any margin (whether initial margin or variation margin) transferred by one Party to the other Party as collateral on a title transfer basis and owed by the second Party to the other (unless already set off in the calculations of the Termination Amount),

would be included in the set-off so that the Member would be entitled to receive or be obliged to pay only the net sum resulting from the set-off of such amounts. However, the value of any Default Fund contributions owing by the CCP to the Member would be excluded from the set off by virtue of Section 8.8.5 of the Rules.

- b) We are of this opinion because set-off is provided for in Clause 8.8.8 of the Rules, and because such set-off upon the occurrence of an Event of Default in relation to the CCP:
 - (i) which has not occurred as a result of Insolvency Proceedings (where the enforceability of the Provisions will be subject to Norwegian law), is contractually valid, binding and enforceable under Norwegian law; and
 - (ii) as a result of Insolvency Proceedings (where the enforceability of the Set-Off Provisions will be subject to Swedish law), the Set-Off Provision will be enforceable under Swedish law as set out in clause 3.4 the Swedish Law Annex.
- c) Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of such rights by the Member.

3.5 Netting and Set-Off: House Accounts and Client Accounts

- a) Where a Member has exercised its rights under the Netting Provision, a Termination Amount payable in respect of any Client Account of a Member would not be aggregated with or netted against a Termination Amount payable on any House Account of that Member.
- b) This is because is because such aggregation or netting is prohibited by Clause 8.8.8 of the Rules.

3.6 Cash Collateral

- a) The CCP is not subject to Norwegian insolvency and creditors' rights legislation as the CCP operates in Norway through a Norwegian branch. A Norwegian branch of a foreign based company/entity is not considered an independent legal entity under Norwegian law and the rights of the creditors of the CCP are as a main rule subject to Swedish Law, unless ordinary principles of Swedish conflict-of-laws rules stipulates otherwise.
- b) In which situations the question referred to below is governed by Norwegian law or Swedish law, respectively, is set out in clause 3.6 of the Swedish Law Annex.
- c) If the question of whether or not payments made by a Member to the CCP as cash margin constitute an absolute transfer of cash is subject to Swedish law as further described in clause 3.6.2 of the Swedish Law Annex, such cash do constitute an absolute transfer of cash, so that, in the event of Insolvency Proceedings relating to the CCP, such cash would be treated as the property of the CCP available to its creditors generally in the event of Insolvency Proceedings in respect of the CCP.
- d) If the question of whether or not payments made by a Member to the CCP as cash margin constitute an absolute transfer of cash is subject to Norwegian law, such

cash do not constitute an absolute transfer of cash, so that, in the event of Insolvency Proceedings relating to the CCP, such cash would not be treated as the property of the CCP available to its creditors generally in the event of Insolvency Proceedings in respect of the CCP. If such cash is commingled with other cash owned by the CCP set out section 4.4 of the Security Documentation (which states that "*Cash Amounts will be pooled and comingled with the funds of*" the CCP), the amount of cash so provided would constitute a debt owed by the CCP to the Member as principal.

- e) This is because pursuant to clause 8.2 of the Security Documents any "*Cash Amounts transferred by the Account Holder to a Bank Account and reflected on the Custody Account, from time to time, shall be deemed transferred by way of security*" to the CCP "*and shall constitute collateral for all of the Account Holder's present and future obligations under the Rules, subject to the limitations (including in relation to segregation of client assets) set out in the Rules*". Under Norwegian law this will not constitute an absolute transfer of cash, but rather a security interest (No. *sikkerhetsrett*) and the ownership to such cash will not be deemed to have been transferred to the CCP.

3.7 Non-cash Collateral

- a) The CCP is not subject to Norwegian insolvency and creditors' rights legislation as the CCP operates in Norway through a Norwegian branch. A Norwegian branch of a foreign based company/entity is not considered an independent legal entity under Norwegian law and the rights of the creditors of the CCP are as a main rule subject to Swedish Law, unless ordinary principles of Swedish conflict-of-laws rules stipulates otherwise.
- b) In which situations the question referred to below is governed by Norwegian law or Swedish law, respectively, is set out in clause 3.6 of the Swedish Law Annex.
- c) Irrespective of the question of whether any securities provided to the CCP as margin would be treated as the property of the CCP available to its creditors generally in the event of Insolvency Proceedings in respect of the CCP is governed by Norwegian or Swedish law, such securities would be returnable to the Member in the event of Insolvency Proceedings relating to the CCP, subject to the Member satisfying its obligations to the CCP. If the relevant securities are, as a matter of fact and as per the CCP's option pursuant clause 4.4 of the Security Documents (which states that "*Securities may be pooled and comingled with property of other clients of*" the CCP), commingled, then the securities will not be considered as ring-fenced under Norwegian law and consequently the value of any securities provided to the CCP as margin will constitute a debt payable by the CCP in the event of a default of the CCP, which is able to be set off under the Set-Off Provision.
- d) This is because:
 - (i) in respect of Norwegian law, it follows from clause 8.1 that the "Account Holder (...) pledges" to the CCP "*any and all securities which are registered on the Custody Account*", and this constitute a pledge under Norwegian law (No. *panterett*) in such securities, as opposed to a transfer of title; and

- (ii) in respect of Swedish law, this follows from clause 3.7.2 of the Swedish Law Annex.

4 QUALIFICATIONS

- a) The opinions in this opinion letter are subject to the following qualifications:
 - (i) we express no opinion as to any matters of fact;
 - (ii) this opinion is limited to netting as allowed under the Financial Collateral Act and the Securities Trading Act and we express no opinion with regard to the enforceability of any netting obligations resulting from netting or set-off under Norwegian general insolvency law;
 - (iii) the Securities Trading Act section 14-2 provides that all derivative transactions covered by the netting agreement shall be credited or debited at "market value" when netted;
 - (iv) except as otherwise provided herein, the validity and enforceability of rights and obligations under the Rules will be subject to any Norwegian laws from time to time in effect, including Section 8 of the Financial Collateral Act which states that terms with regard to realisation (sale, right to use, netting) and valuation of the financial collateral as well as the calculation of the financial obligations shall be undertaken on commercially reasonable conditions. The Norwegian legislative has not given any guidelines as to which terms will be commercially reasonable (other than that walk-away clauses will not be acceptable);
 - (v) a Norwegian court may decline to enforce provisions in an agreement specifying that such agreement may only be amended or waived in a certain way to the extent that an oral agreement or implied agreement in trade practice or course of conduct has been created modifying provisions of the agreement;
 - (vi) except as otherwise provided herein, any provisions in the Rules which constitute, or purports to constitute, a restriction of the exercise of any statutory power by any party or any other person may be ineffective;
 - (vii) Norwegian courts may reject the right to take proceedings in Norway if and to the extent proceedings which have led or may lead to a judgment which is enforceable in Norway have already been taken in another court of competent jurisdiction within or outside Norway; and
 - (viii) if any provision of the Rules is held to be illegal, invalid or unenforceable, the severance of such provision from the remaining provisions of the Rules will be subject to the exercise of the discretion of a Norwegian court.
- b) We are not aware of any other material issues relevant to the issues addressed in this opinion which we wish to draw to your attention.
- c) This opinion is given for the sole benefit of the Futures and Options Association (the "**FOA**"). This opinion may not, without our prior written consent, be relied upon for

any other purpose or be disclosed to or relied upon by any other person save that it may be disclosed without such consent to:

- (i) such of the FOA's members (excluding associate members) as subscribe to the FOA's opinions library and whose terms of subscription give them access to this opinion (each a "**subscribing member**") and the officers, employees, and professional advisors of such subscribing member;
- (ii) any affiliate of a subscribing member (being a member of the subscribing member's group, as defined by the UK Financial Services and Markets Act 2000) and the officers, employees, and professional advisors of such affiliate;
- (iii) any competent authority supervising a subscribing member or an affiliate of such subscribing member in connection with their compliance with their obligations under prudential regulation; and
- (iv) the officers, employees and professional advisors of the FOA,

on the basis that (i) such disclosure is made solely to enable any such person to be informed that an opinion has been given and to be made aware of its terms but not for the purposes of reliance, and (ii) we do not assume any duty or liability to any person to whom such disclosure is made.

- d) We accept responsibility to the FOA in relation to the matters opined on in this opinion. However, the provision of this opinion is not to be taken as implying that we assume any other duty or liability to the FOA's members or their affiliates. The provision of this opinion does not create or give rise to any client relationship between this firm and the FOA's members or their affiliates.

Yours faithfully
Advokatfirmaet Thommessen AS


Tore Mydske
Advokat

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Annex 1: Swedish Law Annex



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Dear Sirs

SWEDISH LAW ANNEX TO NORWEGIAN LAW CCP OPINION IN RELATION TO NASDAQ OMX CLEARING AB, NORWEGIAN BRANCH (CLEARING RULES – COMMODITY DERIVATIVES)

You have asked us to give an opinion in respect of the laws of the Kingdom of Sweden ("**this jurisdiction**") as to the effect of certain netting and set-off provisions and collateral arrangements in relation to NASDAQ OMX Stockholm AB (the "**CCP**") as between the CCP and its clearing members (each a "**Member**").

We understand that your requirement is for the enforceability and validity of such netting and set-off provisions and collateral arrangements to be substantiated by a written and reasoned opinion letter.

References herein to "**this opinion**" are to the opinion given in Section 3.

1. Terms of Reference

- 1.1 Except where otherwise defined herein, terms defined in the Rules have the same meaning in this opinion letter.
- 1.2 This opinion letter is an Annex to the Norwegian law opinion letter of even date hereto (the "**Norwegian Opinion**"), addressing the Rules (as defined below) that are governed by Norwegian law and should be read only in conjunction with that opinion letter.
- 1.3 This opinion relates to the service provided by the CCP in respect of clearing of each of the types of transaction (each a "**Transaction**") as set out in the Norwegian Opinion.
- 1.3 We express no opinion as to any provisions of the Rules of the CCP other than those on which we expressly opine.
- 1.4 Where Transactions are governed by laws other than the laws of this jurisdiction, the opinion contained in paragraph 3.3 is given in respect only of those Transactions which are capable, under their governing laws, of being terminated and liquidated in accordance with the provisions of the Netting Provision.

1.5 Definitions

In this opinion, unless otherwise indicated herein or in the Rules, terms defined in the Norwegian Opinion shall have the same meaning when used herein. The “**General Terms**” means the CCP’s General Terms for Collateral Custody Accounts of 2 December 2013.

2. Assumptions

With your permission, we have made the following assumptions:

- 2.1 All that is assumed in the Norwegian Opinion.
- 2.2 That the Norwegian Opinion is an accurate and not misleading statement as to Norwegian law in relation to the matters addressed therein.
- 2.3 that Cash Collateral is being held with a bank that maintains the relevant account in Norway or in Sweden.
- 2.4 Non-cash collateral is held with or through a central securities depository on a dematerialised basis in Norway or in Sweden.
- 2.5 For the purposes of the opinions set out in paragraphs 3.3 to 3.5, that the Member is at all relevant times able and not likely to become unable to meet its obligations in respect of one or more Contracts (whether due to winding-up, administration, receivership, bankruptcy, dissolution or analogous insolvency proceedings or any of the other events specified to be an event of default under the default rules of the CCP).

3. Opinion

On the basis of the foregoing terms of reference and assumptions and subject to the qualifications set out in Section 4 below, we are of the following opinion.

3.1 Insolvency Proceedings

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which the CCP could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion, are:

- (A) bankruptcy (*konkurs*) (which employs a liquidity test) (“**Bankruptcy Proceedings**”) and
- (B) compulsory liquidation (*likvidation*) (which employs a balance-sheet test) (“**Compulsory Liquidation**”).

These procedures are together called “**Insolvency Proceedings**”.

The legislation applicable to Insolvency Proceedings is:

- (1) for Bankruptcy Proceedings, the Bankruptcy Act 1987 (as amended) (*konkurslagen* (1987:672)) and
- (2) for Compulsory Liquidation, the Companies Act 2005 (as amended) (*aktiebolagslagen* (2005:551)).

Compulsory Liquidation is only available where all creditors may be paid in full. If this is not the case, Compulsory Liquidation will terminate and Bankruptcy Proceedings will be the mandatory alternative.

3.2 Recognition of choice of law

The choice of law provisions of Section 18 of the Rules would be recognised under the laws of this jurisdiction, even if the Member is not incorporated, domiciled or established in this jurisdiction.

We are of this opinion because it is a long-standing principle in Swedish private international law to respect the choice of law of the parties to a contract. This principle has been reaffirmed by Article 3(1) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

3.3 Netting

The Netting Provisions will be immediately (and without fulfilment of any further conditions) enforceable in accordance with their terms as set out in the Norwegian Opinion.

We are of this opinion because Section 12 of the Act on Settlement Systems 1999 (as amended) (*lagen* (1999:1309) *om system för avveckling av förpliktelser på finansmarknaden*) provides that if collective insolvency proceedings are opened in respect of a participant in a “notified settlement system” (*anmält avvecklingssystem*) the law that the designated as applicable by the rules of the system applies to the rights and obligations of that participant in the system. Section 2 of the Act provides that the “operator” (*administratören*) is regarded as a participant. In our view, Section 12 is not limited to the formal protection of the transfer orders addressed in Section 13 of the Act but indicates Norwegian law also for the substantive protection of netting that is being performed in accordance with the Rules, which provide for the application of Norwegian law. By “**formal protection**” we refer to the protection of the transfer order or other operation of the system constituted by the Rules, without also providing protection of the result of the transfer order. By “**substantive protection**” we refer to the protection of the result of the transfer order; substantive protection includes protection against claw-back actions (as further detailed in Section 3.4).

Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of such rights by the Member.

If Section 12 of the Act on Settlement Systems 1999 would not be construed as set out above, Swedish law would apply to the Netting Provisions. The Netting Provisions would then be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, upon the occurrence of an Event of Default in relation to the CCP:

- 3.3.1 the Member would be entitled immediately to exercise its rights under the Netting Provisions; and
- 3.3.2 the Member would be entitled to receive or be obliged to pay only the net sum of the positive and negative mark-to-market values of the included individual Transactions, together with other losses or gains referable to the Transactions (as further detailed in Clause 1.10.5 of the Rules).

We are of this opinion because all instruments cleared by the CCP would qualify as “financial instruments” (*finansiella instrument*) and any Transaction or Contract would amount to “trade in financial instruments” (*handel med finansiella instrument*) between two parties, viz. the CCP and the Member (“Qualified Contracts”). The need for this classification arises from the fact that close-out netting contracted for in connection with Qualified Contracts is subject to a separate statutory regime that provides legal certainty under Chapter 5, Section 1 (the “**Netting Law**”) of the Financial Instruments Trading Act 1991 (as amended) (*lagen (1991:980) om handel med finansiella instrument*; the “FITA”).

Under the FITA, financial instruments include (following the definition of “financial instruments” in Section C of Annex I to Directive 2004/39/EC of 21 April 2004 on markets in financial instruments and Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards recordkeeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive) the following types of instruments:

- (1) transferable securities;
- (2) money-market instruments;
- (3) units in collective investment undertakings and alternative investment funds;
- (4) options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;
- (5) options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);
- (6) options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market and/or a multilateral trading facility;

- (7) options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in (6) and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls;
- (8) derivative instruments for the transfer of credit risk;
- (9) financial contracts for differences;
- (10) options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this catalogue, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or a multilateral trading facility, are cleared and settled through recognised clearing houses or are subject to regular margin calls; and
- (11) any instrument qualifying under Chapter VI of Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards recordkeeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive.

All Transactions qualify as financial instruments.

Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of such rights by the Member.

The Netting Law, first sentence, reads (in our translation into English):

“An agreement between two parties in conjunction with trade in financial instruments or in rights and obligations similar to financial instruments or currencies, pursuant to which a final settlement shall take place of all outstanding obligations in the event of one of the parties’ entering bankruptcy shall be valid against the bankruptcy estate and the bankruptcy creditors.”

(“Ett avtal mellan två parter vid handel med finansiella instrument, med andra liknande rättigheter och åtaganden eller med valuta, om att förpliktelser dem emellan ska slutavräknas om en av parterna försätts i konkurs, gäller mot konkursboet och mot borgenärerna i konkursen.”)

The Government committee responsible for the original draft of what later became the Netting Law came out in favour of the view that the uncodified common law would

uphold procedures such as close-out netting. The committee was careful to point out that its proposal should not be construed to imply that, in the absence of legislation, procedures such as close-out netting would not be upheld. The preparatory works to the Netting Law accepted the analysis and arguments of the committee.

The Netting Law provides *substantive* protection for close-out netting arrangements, irrespective of the form in which the arrangements have been agreed. To some degree, *formal* protection is provided also under Section 13 of the Act on Settlement Systems 1999 (as amended) (*lagen (1999:1309) om system för avveckling av förpliktelser på finansmarknaden*) that protects “transfer orders” (*överföringsuppdrag*) in “notified settlement systems” (*anmälda avvecklingssystem*) in the system “operator’s” (*administratörens*) Bankruptcy Proceedings. The CCP is an operator of a notified settlement system (constituted by the Rules). To the extent that the Netting Provisions involve transfers orders, those transfer orders in themselves would be protected. However, the substance achieved by any such transfer orders would not be protected by the Act on Settlement Systems but would have to rely on the protection of the Netting Law.

3.4 Set Off

In our view, the permissibility of set off in Insolvency Proceedings in respect of the CCP would be governed by Swedish law. The Set-off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that upon the occurrence of an Event of Default in relation to the CCP:

- 3.4.1 the Member would be immediately entitled to exercise its rights under the Set-Off Provision; and
- 3.4.2 any and all amounts owed by the Member to the CCP would be set off against any amounts owed by the CCP to the Member, so that in particular:
 - the Termination Amount (once calculated); and
 - the value of any margin (whether initial margin or variation margin) transferred by one Party to the other Party as collateral on a title transfer basis and owed by the second Party to the other (unless already set off in the calculations of the Termination Amount)

would be included in the set-off so that the Member would be entitled to receive or be obliged to pay only the net sum resulting from the set-off of such amounts. However, the value of any Default Fund contributions owing by the CCP to the Member would be excluded from the set off by virtue of Section 8.8.5 of the Rules.

- (a) We are of this opinion because set off is provided for in Clause 8.8.8 of the Rules. There is no rule of the laws of this jurisdiction which would, in our view, apply to prohibit the Parties from entering into a contract upon the terms of the Set-off Provision or which would render such terms ineffective; and Chapter 5 Section 15 & *seqq.* of the Bankruptcy Act 1987 allow (but do not mandate) set off over and above what may have been agreed between the

bankrupt party and its counterparty. As set off in effect provides the counterparty with a preferential right, set off under the Bankruptcy Act 1987 may be characterised as a “super-priority” right which takes precedence over the formal ranking provisions of the Creditors’ Ranking Act 1970 (as amended) (*förmånsrättslagen (1970:979)*) (which does not address set off as it has been conclusively dealt with in the Bankruptcy Act 1987). In particular, the Bankruptcy Act 1987 allows set off also between debts that have not yet matured.

Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of such rights by the Member.

Section 12 of the Act on Settlement Systems 1999 (as amended) (*lagen (1999:1309) om system för avveckling av förpliktelser på finansmarknaden*) provides that if collective insolvency proceedings are opened in respect of a participant in a “notified settlement system” (*anmält avvecklingssystem*) the law that the designated as applicable by the rules of the system applies to the to the rights and obligations of that participant in the system. Section 2 of the Act provides that the “operator” (*administratören*) is regarded as a participant. It is possible to argue that Section 12 is not limited to the formal protection of the transfer orders addressed in Section 13 of the Act but indicates Norwegian law also for the substantive protection of set off that is being performed in accordance with the Rules (except for claw-back actions that would be subject to Swedish law), which provide for the application of Norwegian law. Although the Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings does not directly apply to Norway (as recently affirmed by the Swedish Supreme Court¹), the Regulation provides reasons to believe that this argument cannot be repugnant to Swedish law as the same result would have followed if Article 6 of the Regulation had been applied in a situation in which the CCP owed money to the Member.

3.5 Netting and Set-Off: House Accounts and Client Accounts

Where a Member has exercised its rights under the Netting Provision, a Termination Amount payable in respect of any Client Account of a Member would not be aggregated with or netted against a Termination Amount payable on any House Account of the Member.

This is because such netting is prohibited by Clause 8.8.5 of the Rules; and that Clause is not overridden by any mandatory Swedish law allowing for such netting.

3.6 Cash Collateral

3.6.1 Cash in Norway

Under ordinary principles of Swedish conflict-of-laws rules (as represented by the majority view), a debt is regarded as being situate where the debtor is situate. In respect of cash held in a bank account, the bank is the debtor. As banks may operate

¹ See NJA 2013 p 22.

through branches in more than one country, the above principle is generally thought to be modified such that the relevant place will be where the bank's branch maintaining the account is situated. On this principle, Cash Collateral paid into an account with a bank in Norway would be dealt with in accordance with Norwegian law.

However, the general principle may have been put aside by statute. Section 9 of the Act on Bankruptcies Involving Assets in Other Nordic Countries 1981 (as amended) (*lag (1981:6) om konkurs som omfattar egendom i annat nordiskt land*) provides that the claim of the bankrupt debtor (in this case the CCP) is held to be situated where the document is situated if the claim is based on a negotiable instrument or any other documentary proof of debt that has to be presented for payment; and that any other assets should be regarded as being situated in Sweden. If this statutory provision is applied, the Cash Collateral should be dealt with in accordance with what is set out in paragraph 3.6.2 below.

3.6.2 Cash in Sweden

For assets situated in Sweden (whether they are so situated would be determined under the principles set out in paragraph 3.6.1 above) the following would apply:

Payments made by a Member to the CCP as cash margin constitute an absolute transfer of cash, so that, in the event of Insolvency Proceedings relating to the CCP, such cash would be treated as the property of the CCP available to its creditors generally in the event of Insolvency Proceedings in respect of the CCP.

However, the amount of cash so provided would constitute a debt owed by the CCP to the Member as principal.

This is because this follows from the way cash collateral is posted to the CCP; and it is reinforced by the provisions of Clause 8.8.6 that allows for set off between a claim of the CCP as a result of close-out netting and a Member's claim for the return of cash collateral.

To the extent that the posting of cash collateral involves transfer orders, formal protection would be provided under Section 13 of the Act on Settlement Systems as discussed (*mutatis mutandum*) under paragraph 3.3.

Clause 9.1 of the CCP's General Terms refer to the CCP's "appropriation" of Cash Amounts. Appropriation is not a procedure properly consistent with an absolute transfer of cash to the CCP but would be more appropriate to a pledge (*pant*) of cash. A characterisation of the Cash Security as a pledge could to some extent be supported by Clauses 4.4 (in part), 8.2 and 8.4 of the General Terms and the opinion of certain academics to the effect that virtually all security arrangements should be assimilated to pledges. If the Cash Security is characterised as a pledge it is arguable, on this theory, that set off would not be permitted between an amount owed by the Member to the CCP against the CCP's obligation to return the Cash Security. We do not share this theory. We base our rejection of the theory on two arguments:

- (a) Clauses 4.3 and (in particular) and 4.4 of the General Terms are not consistent with a pledge, as they clearly and unambiguously seek to establish that the

return of any Cash Amount will only be an unsecured personal claim by a Member against the CCP. Whereas Clauses 4.4 (in part), 8.2, 8.4 and 9.1 of the General Terms could be construed to apply to an absolute transfer in the light of Clauses 4.3 and 4.4 (in part)², the opposite would not be possible without violating the reasonable import of the language used. Also, an absolute transfer is consistent with the manner in which we understand the CCP deals with the Cash Amount without challenge from Members.

- (b) Even if the Cash Security were to be construed as a pledge, the “return” of the pledged assets would take the form of a payment of money. As such, it is in our view strongly arguable that this monetary redelivery obligations should be treated as a payment obligation capable of being set off against another payment obligation between the two parties.

3.7 Non-cash Collateral

3.7.1 Assets in Norway

The treatment of Non-cash Collateral held in Norway would be subject to Norwegian law. This is because Section 6 of the Act on Bankruptcies Involving Assets in Other Nordic Countries 1981 (as amended) (*lag (1981:6) om konkurs som omfatter egendom i annat nordiskt land*) provides that 6 § for assets that are situate in another Nordic country at the time of the commencement of Swedish bankruptcy proceedings are pledged the laws of that other country (in this case Norway) shall apply as to the right satisfy any claim out of the value of the assets.

Section 9 of the same Act provides that the claim of the bankrupt debtor (in this case the CCP) is held to be situate where the document is situate if the claim is based on a negotiable instrument or any other documentary proof of debt that has to be presented for payment; and that any other assets should be regarded as being situate in Sweden. In our view, this provision cannot be read in isolation. It appears only to envisage certificated instruments of debt. Such instruments are highly unusual in financial markets where the relevant instruments would be either immobilised or even more frequently dematerialised. For these types of instruments the conceptual framework of Section 9 of the Act is clearly inappropriate. Instead, Chapter 5 Section 2 of the Financial Instruments Trading Act 1991 (as amended) (*lagen (1991:980) om handel med finansiella instrument*), that provides that, in respect of dematerialised instruments the entitlements in respect of which are registered to an account, the laws of the place in which the account is being maintained should govern the rights over the relevant assets. This more recent rule, which specifically addresses dematerialised instruments, would in our view, under orthodox legal principles, take precedence over the older rule as being both the more specific and the more recent rule. If this construction of the statutory language is not applied, the Non-cash Collateral should be dealt with in accordance with what is set out in paragraph 3.7.2 below.

² Clause 4.4 of the General Terms are internally not entirely consistent in this respect.

3.7.2 Assets in Sweden

For assets situate in Sweden (whether they are so situate would be determined under the principles set out in 3.7.1 above) the following would apply:

Any securities provided to the CCP as margin would not be treated as the property of the CCP available to its creditors generally in the event of Insolvency Proceedings in respect of the CCP. Such securities would be returnable to the Member in the event of Insolvency Proceedings relating to the CCP, subject to the Member satisfying its obligations to the CCP.

This is because non-cash collateral posted to the CCP by Members take the form of a pledge (pant) and it is trite law that pledged assets do not belong to the pledgee and therefore do not form part of the pledgee's bankruptcy estate but must be returned to the pledgor, subject to the Member's satisfying its obligations to the CCP.

4. Qualifications

The opinions in this opinion letter are subject to the following qualifications:

- 4.1 Pursuant to the Swedish Contracts Act 1915 (*lagen (1915:218) om avtal och andra rättshandlingar på förmögenhetsrättens område*) and general equitable principles of the law of contract and obligations, a contract term may be modified or set aside if it is adjudged to be unreasonable. Where any party to an agreement is vested with a discretion or may determine a matter in its opinion or at its discretion, the laws of this jurisdiction may require that such discretion be exercised reasonably or that such opinion be based on reasonable grounds and a provision that a certain determination is conclusive and binding will not serve to prevent or preclude judicial enquiry into the merits of any claim by an aggrieved party. The effectiveness of any provision which allows an invalid or unenforceable provision to be severed to save the remainder of the relevant document and its provisions will be determined by the courts of this jurisdiction or arbitral tribunals sitting in, or applying the procedural laws of this jurisdiction in their discretion. The courts of this jurisdiction are generally loath to utilise such equitable power in matters between two professional parties.
- 4.2 The enforcement of any agreement, guarantee or instrument may be limited by the provisions of the Moratorium Act 1940 (*lag (1940:300) ang. förordnande om anstånd med betalning av gäld m.m. (moratorielag)*) (which provides for a moratorium on the performance of obligations by persons or entities domiciled or resident in Sweden when the Kingdom is at war; where extraordinary circumstances obtain in the Kingdom as a result of war; or in retaliation for corresponding or commensurate measures in another state in respect of claims by Swedish creditors) and the Emergency Powers (Defence of the Realm) Act 1978 (*förfogandelag (1978:262)*) (which provides that property and assets situate in Sweden may be requisitioned or otherwise compulsorily disposed of by the authorities of the Kingdom when the Kingdom is at war; when there is a risk of the Kingdom becoming at war; where extraordinary circumstances obtain in the Kingdom as a result of war; or where there is an imperative need for the defence of the Kingdom).

4.3 Chapter 4, Sections 5–12 of the Bankruptcy Act 1987 set out the grounds on which legal acts of whatever nature may be “clawed-back” to the estate of a bankrupt debtor; there are no claw-back actions available outwith Bankruptcy Proceedings (and therefore not in Compulsory Liquidation). “**Claw-back**” for these purposes means that, at the suit of the administrator-in-bankruptcy (*konkursförvaltaren*) or, under certain circumstances, one or more creditors, the relevant legal act is in effect rescinded such that each party reverse its performance. The claw-back actions would *ex hypothesi* be relevant in respect of a Transaction itself, netting and the posting of Cash Collateral and Non-cash Collateral; set off is dealt with under a separate legal head in the Bankruptcy Act 1987 and is addressed below at paragraph 4.4. The claw-back actions are:

- (a) the general grounds of unconscionable legal acts (Section 5);
- (b) gifts (Section 6);
- (c) certain matters pertaining to marital property (Section 7);
- (d) payments of salaries, wages, professional fees or pensions (Section 8);
- (e) transfers to pension funds for the debtor’s staff (Section 9);
- (f) payments using non-customary means of payment (Section 10);
- (g) certain payments relating to cheques and bills of exchange (Section 11); and
- (h) collateral that is not agreed or posted at the time the debt secured by the collateral was contracted (including margin) (Section 12).

Claw-back actions under Sections 6 would not be relevant to Transactions as they are bilateral transactions on market terms; claw-back actions under Sections 7 or 8 would not be relevant to the CCP as they only apply to natural persons and the CCP is performe a legal entity; claw-back actions under Section 9 would not apply as a Transaction would not be a transfer of the requisite kind, even if the Member were a pension fund for the CCP’s staff; claw-back actions under Section 10 would not apply as no non-customary means of payment are permitted under the Rules; and claw-back actions under Section 11 would not apply as no payments under the Rules would be made by cheques or bills of exchange (which are very rarely used in the Swedish payment system).

The requirements for a successful claw-back action under Section 5 are highly complex involving various sets of tests for the mental state of the parties and the objective circumstances. The mental state involves qualified bad faith as to the unconscionable nature of the relevant legal act and its causal relationship to the CCP’s permanent incapacity to pay its debts as they fall due. Claw-back under Section 5 is precluded in respect of the Netting Provisions by the Netting Law. It is submitted that it is not necessary to analyse all the requirements to conclude that these requirement would only be fulfilled in respect of a Transaction or the posting of Cash Collateral or Non-cash Collateral in wholly exceptional and egregious circumstances. The analysis would also need to take into account that the posting of collateral is a legal requirement in respect of Transactions and that the Transactions are made on standard terms under

the generally applicability of the Rules to Transactions and all Members irrespective of the particular circumstances of an individual Transaction or Member, all of which would strongly militate against the conclusion that a particular Transaction was unconscionable and that the Member acted in such qualified bad faith as is required by Section 5.

Claw-back action under Section 12 is precluded in respect of collateral posted in the ordinary course of business. As the posting of Cash Collateral and Non-cash Collateral is mandated by law in respect of Transactions and is done pursuant to standard terms under the generally applicability of the Rules to Transactions and all Members irrespective of the particular circumstances of an individual Transaction or Member it is submitted that such posting would always and necessarily be in the ordinary course of business involving Transactions.

4.4 Chapter 5 of the Bankruptcy Act 1987 deals inter alia with set off in Bankruptcy Proceedings. Under the provisions of this Chapter, protection of set-off rights may be withheld on certain limited grounds:

- (a) The nature of a claim proposed for set off is such that it would not have been permitted to be set off outwith the Bankruptcy Proceedings; very limited categories of claim – especially with respect to legal entities engaged in commerce – have this nature under Swedish law.
- (b) A Member may not set off a claim acquired by it within a three-month period prior to the “swearing of the oath” (*edgångssammanträdet*) (which is a formal procedure by which a representative of the CCP would certify the assets of the CCP under oath) or it was acquired under circumstances that were such that the Member did in fact understand, or ought to have understood, that the CCP was permanently unable to pay its debts as they fall due.

A Member that contracted a debt to the CCP in circumstances that would be tantamount to a payment with non-customary means of payment and that was not made in the ordinary course of business (as specified in Chapter 4, Section 10 of the Bankruptcy Act 1987) would not be permitted to use that debt in set off.

4.5 Provisions in an agreement specifying that its provisions may only be amended or waived in writing may not be enforceable to the extent that an oral agreement or implied agreement in trade practice or course of conduct has been created modifying provisions of the agreement; and to the extent that any matter is expressly to be determined by future agreement or negotiation, such provision may be unenforceable or void for lack of certainty.

4.6 The Rules and this opinion are expressed in the English language whilst addressing and explaining institutions and concepts of the laws of Sweden. Such institutions and concepts may be reflected in or described by the English language only imperfectly. We express no opinion on how the courts of this jurisdiction would construe contractual language expressed in English where the contract would be subject to the laws of Sweden. However, there is judicial support for the proposition that, in construing what the parties intended to put in writing for the purposes of the laws of this jurisdiction, such courts should pay attention to the meaning and import of the

expressions used under the laws of any pertinent jurisdiction in which the English language is normally or habitually employed.

- 4.7 In is not certain whether Transactions that only permit physical settlement will be treated as Financial Instruments where they are traded on the last trading day for that type of Transaction. Such Transaction may rather be characterised as spot transactions for the purchase of the relevant commodity and would then not be protected by the Netting Law. The Netting Law was enacted to provide legal certainty as to the enforceability in Swedish law of provisions such as the Netting Provisions; but it has never been clearly established that such provisions would be unenforceable outwith the remit of the Netting Law (and there are indications that they would be enforceable). There is no statutory definition of "spot transactions" (*avistatrasaktioner*) in Swedish law, but operationally the Swedish Financial Supervisory Authority (the "SFSA") has taken the view that contracts that are treated as spot contracts by the market will be treated so also by the SFSA and that contracts that are not so treated by the market will not be treated as spot contracts by the SFSA. Similar statements were made in the preparatory works to the Netting Law. The SFSA may also defer to or let itself be influenced by Article 38(2) of Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards recordkeeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive, which states that a spot contract (for the purposes of paragraph 1 of that Article) means "a contract for the sale of a commodity, asset or right, under the terms of which delivery is scheduled to be made within the longer of the following periods: (a) two trading days; (b) the period generally accepted in the market for that commodity, asset or right as the standard delivery period" but that a contract is not a spot contract if, "irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the underlying is to be postponed and not to be performed" within two trading days. Although the SFSA does not have jurisdiction in respect of the Netting Law – that jurisdiction devolves exclusively to the courts of plenary jurisdiction – it is likely that the courts will take cognisance of the SFSA's views and we believe that the courts would not take a different view from that of the SFSA. This view is supported by the fact that, in cases where the courts have had to determine whether investment firms and banks have complied with their contractual and extra-contractual obligations of care for the purposes of assessing liability, the views of the SFSA as to what would count as the effective standard against investment firms and banks are to be assessed have been accepted by the courts.

There are no other material issues relevant to the issues addressed in this opinion which we wish to draw to your attention.

This opinion is given for the sole benefit of the Futures and Options Association (the "FOA"). This opinion may not, without our prior written consent, be relied upon for any other purpose or be disclosed to or relied upon by any other person save that it may be disclosed without such consent to:

- (a) such of the FOA's members (excluding associate members) as subscribe to the FOA's opinions library and whose terms of subscription give them access to this opinion (each a "subscribing member") and the officers, employees, and professional advisors of such subscribing member;

- (b) any affiliate of a subscribing member (being a member of the subscribing member's group, as defined by the UK Financial Services and Markets Act 2000) and the officers, employees, and professional advisors of such affiliate;
- (c) any competent authority supervising a subscribing member or an affiliate of such subscribing member in connection with their compliance with their obligations under prudential regulation; and
- (d) the officers, employees and professional advisors of the FOA,

on the basis that (i) such disclosure is made solely to enable any such person to be informed that an opinion has been given and to be made aware of its terms but not for the purposes of reliance, and (ii) we do not assume any duty or liability to any person to whom such disclosure is made.

We accept responsibility to the FOA in relation to the matters opined on in this opinion. However, the provision of this opinion is not to be taken as implying that we assume any other duty or liability to the FOA's members or their affiliates. The provision of this opinion does not create or give rise to any client relationship between this firm and the FOA's members or their affiliates.

Yours faithfully,

Advokatfirman Roschier AB

Stockholm, 30 December 2013

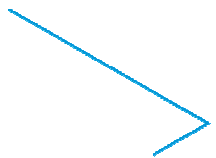


Johan Häger



Dan Hanqvist

Annex 2: Rules of the CCP



General Terms

Clearing Rules

Commodity Derivatives

Issued by NASDAQ OMX CLEARING AB

TABLE OF CONTENTS

I. General Terms

1	Introduction	4
2	Interpretation, Definitions and Abbreviations	4
3	General Matters	5
3.1	Membership	5
3.2	Counterparty Eligibility	6
3.3	Clearing Accounts	6
3.4	Cash Settlement Arrangements	8
3.5	Delivery Arrangements	8
3.6	Collateral Arrangements	8
3.7	Pre-delivered Assets as Collateral	10
3.8	Authorisation of Individuals	11
3.9	Account Information	11
3.10	Continuous Information Obligations on Account Holders	11
3.11	Termination and Suspension of Membership	12
4	General Registration Procedures	13
4.2	Registration of Exchange Transactions	14
4.3	Registration of OTC Transactions	14
4.4	Allocation of Clearing Transactions	14
4.5	Give Ups and Take Ups	14
4.6	Registration Errors	15
4.7	Registration for Clients	15
4.8	Registration for Clearing Clients	15
5	Margins and Margin Requirement Procedures	16
5.1	General	16
5.2	Base Collateral Requirement	16
5.3	Daily Margin Requirement	17
5.4	Intraday Margin Requirements and Extraordinary Margin Requirements	17
6	Settlement Procedures	17
6.1	General	17
6.2	Cash Settlement Procedures	18
6.3	Delivery Procedures	18
6.4	Tax and VAT matters	19
6.5	Settlement Errors	19
6.6	Interest	20
7	Representations and Warranties	20
8	Default and Insolvency	21
8.1	Definition of Default Event	21
8.2	General Provisions Regarding Default Events	22
8.3	Specific Provisions for Default Events Involving Client Clearing Accounts	23
8.4	Specific Provisions for Default Events Involving a Client Representative	23
8.5	Specific Provisions for Default Events Involving a Clearing Client	24
8.6	Definition of Insolvency Event	24
8.7	General Provisions for Insolvency Events involving an Account Holder	25
8.8	Default or Insolvency of the Clearinghouse	25
8.9	The Clearinghouse's Duty of Notification	26
9	Liabilities and Force Majeure	27
9.1	Force Majeure	27
9.2	Exclusion of Liability	28
9.3	Indemnity	28
9.4	Sole Remedy and Exclusion of Consequential Loss	29
9.5	Right of access	29
10	Communication	29
11	Trade Information	30
12	Confidentiality and Information Sharing	30
13	Record Keeping	31

14	Complaints Procedure	32
15	Recovery and Resolution Procedure	32
16	Trade Reporting	32
17	Miscellaneous	32
17.1	Transfer of Rights	32
17.2	Third Party Rights	32
17.3	Severability	32
17.4	Binding Effect of Determinations	32
17.5	Non-waiver of Rights	33
18	Choice of Law and Arbitration	33

II. Clearing Agreements

- A. General Clearing Membership Agreement
- B. Clearing Membership Agreement
- C. Clearing Client Agreement
- D. Bank Guarantee
- E. GBP Bank Guarantee
- F. Broker Agreement
- G. Default Fund Custody Account Agreement
- H. Collateral Custody Account Agreement

III. Clearing Appendices

- 1. Definitions (joint with Trading Rules)
- 2. Contract Specifications (joint with Trading Rules)
- 3. Trading and Clearing Schedule (joint with Trading Rules)
- 4. OTC Clearing Procedures
- 5. Clearing System User Terms
- 6. Market Conduct Rules (joint with Trading Rules)
- 7. Fee List (joint with Trading Rules)
- 8. Membership Requirements
- 9. Default Fund Rules
- 10. Collateral List
- 11. List of Approved Settlement Banks
- 12. Supplemental default rules for Clearing Transactions recorded on Client Clearing Accounts
- 13. Supplemental default rules for Clearing Transactions recorded on Clearing Client Clearing Accounts

1 INTRODUCTION

- 1.1 The Clearinghouse provides Clearing of Exchange Transactions and OTC Transactions in Exchange Listed Products and Clearing Listed Products, and is authorised to conduct Clearing activities as set out herein.
- 1.2 Clearing implies that the Clearinghouse enters into a Transaction as central counterparty by registering the Transaction on the Clearing Accounts of the involved Account Holders, as further described in Section 4.1 of these General Terms. Account Holders are allocated Clearing Accounts with the Clearinghouse in their own names for recording of Clearing Transactions.
- 1.3 The Clearing Rules are a set of private law agreements applying to the Clearinghouse and Account Holders in respect of Clearing and related activities, and apply to Clearing of the Exchange Listed Products and Clearing Listed Products as specified in the Contract Specifications (and directly related activities), but not to any other products or services of the Clearinghouse. The Clearing Rules are, in respect of each Account Holder, supplemented by the relevant Clearing Agreements entered into by that Account Holder.
- 1.4 These General Terms are supplemented by the relevant Clearing Appendixes and the Clearing Agreements. The Contract Specifications shall prevail in case of conflict.
- 1.5 These Clearing Rules and all Clearing Transactions entered into pursuant to these Clearing Rules form part of a Security Settlement System under Norwegian Law pursuant to the Norwegian Payment Systems Act of 17 December 1999 no 95 (implementing EU Directive 98/26/EC on Settlement Finality in Payment and Securities Systems), as may be amended from time to time. A business day under the Security Settlement System is defined as 00:00 CET – 24:00 CET on a Bank Day.

2 INTERPRETATION, DEFINITIONS AND ABBREVIATIONS

- 2.1 Capitalized terms in the Clearing Rules shall have the meanings assigned to them in the Definitions (Clearing Appendix 1) or as otherwise defined in the individual Clearing Appendixes or in the text body of the Clearing Rules. Terms combining several defined terms shall, unless otherwise defined herein, be understood as a combined reference to such terms and the meaning of the combination term shall be construed accordingly.
- 2.2 References to a person or entity include a body corporate, an unincorporated association of persons or any other legal entity or natural person. References to a party include references to the rightful successors or assignees (immediate or otherwise) or nominees of that party.
- 2.3 References to any law or statute include amendments, consolidations, re-enactments and replacements of it. Unless otherwise specified, references to any law or statute are to the laws and statutes of Norway, save that references to "applicable law" shall mean the laws and regulations applicable under any relevant jurisdiction, including any order or judgment or other decisions of any competent court or Regulatory Body in accordance with such laws or regulations at the relevant place and time.
- 2.4 References to points in time refer to Central European Time unless otherwise specified and all time references apply summer savings time when applicable. Time is specified in the 24-hour format and dates are in the little-endian date format (i.e. day-month-year). References to days, weeks and months are, unless otherwise specified, references to calendar days, weeks and months. A calendar week starts on Monday and ends on Sunday. A quarter spans three consecutive calendar months, and the first quarter starts on the first day of the calendar year.
- 2.5 Any words importing the singular shall admit the plural where the context admits and vice versa. Any words importing the neutral gender shall include the feminine gender and the masculine gender (in respect of a natural person).
- 2.6 The term "including" shall mean "including without limitation", and variations of the word shall have the same effect.
- 2.7 Any reference to the Clearinghouse having a right to make a decision or termination or to form any opinion or judgment shall unless as otherwise stated mean that the Clearinghouse has the right to exercise its sole and unfettered discretion in doing so.

- 2.8 References to communications in writing shall unless otherwise specified include fax, e-mail and communications through the Clearing System.

3 GENERAL MATTERS

3.1 Membership

- 3.1.1 The Clearinghouse recognizes the following membership and Counterparty categories:
- a. *General Clearing Members*, who may register Clearing Transactions in their own name and account as Counterparty to the Clearinghouse, either for itself or on behalf of its Clients, including Non-Clearing Members. General Clearing Members must also be Exchange Members.
 - b. *Clearing Members*, who may register Clearing Transactions in their own name and account as Counterparty to the Clearinghouse, either for itself or, subject to the license requirement set out below, on behalf of its Clients, however not including Non-Clearing Members. Clearing Members must not necessarily be Exchange Members.
 - c. *Clearing Clients*, who may register Clearing Transactions in their own name and account as Counterparty to the Clearinghouse, but only through a General Clearing Member or a Clearing Member also being a Client Representative.
- 3.1.2 The Clearinghouse shall only admit as Account Holders applicants that the Clearinghouse in its sole discretion considers fit and proper for its applicable membership category, pursuant to the membership requirements set out by the Clearinghouse in accordance with the Clearing Rules and Applicable Law. Account Holders must at all times have adequate financial resources, a suitable organisation, adequate level of competence, necessary risk management routines, appropriate technical systems, and such other financial, legal, organisational and technical means as in the Clearinghouse's reasonable opinion are appropriate for its applicable membership category. The Clearinghouse may set additional objective and non-discriminatory requirements for each membership category, and the specific requirements for each membership category are available upon request to the Clearinghouse.
- 3.1.3 Notwithstanding other membership criteria, a General Clearing Member must document that it is:
- a. a credit institution licensed in accordance with legislation implementing the Directive 2006/48/EC (Consolidated Banking Directive); or
 - b. an investment firm licensed in accordance with legislation implementing the Directive 2004/39/EC (Markets in Financial Instruments Directive), or
 - c. an entity holding a similar license from another jurisdiction approved by the Clearinghouse.
- The requirement in this section shall also apply in relation to a Clearing Member that registers Clearing Transactions on behalf of its Clients.
- 3.1.4 Notwithstanding other membership criteria, an Account Holder must have financial resources which from time to time correspond to the operations intended to be conducted at the Clearinghouse. However the Account Holder's financial resources may not be less than:
- a. in respect of a General Clearing Member, an amount corresponding to a restricted equity of EUR 20 million;
 - b. in respect of a Clearing Member, an amount corresponding to a total equity of EUR 1 million;
 - c. in respect of a Clearing Client, an amount corresponding to a total equity of EUR 300,000.

The Clearinghouse may, during a transition period, grant an exemption from the above requirement for Clearing Members, however provided that a Clearing Member's total equity under no circumstance falls below EUR 800,000. The Clearinghouse may furthermore grant

an exemption from the above requirement for Clearing Clients, provided that the Clearing Client must at all times be deemed suitable to participate in clearing at the Clearinghouse.

3.1.5 General Clearing Members and Clearing Members may be approved to act as Client Representative on behalf of Clearing Clients, subject to individual approval from the Clearinghouse in relation to each applicable Clearing Client. Client Representatives must be Exchange Members.

3.1.6 Any entity desiring to become an Account Holder of the Clearinghouse shall submit an application in such form as shall be prescribed by the Clearinghouse. Further procedures and requirements on applicants are set out in the Membership Requirements.

3.2 Counterparty Eligibility

3.2.1 Only Account Holders are eligible as Counterparty to the Clearinghouse in Clearing Transactions.

3.2.2 To be eligible for registration of new Clearing Transactions as a Counterparty, the Account Holder must at the time that each Clearing Transaction is registered, and until all Settlements pursuant to that Clearing Transaction have been successfully completed:

- a. have established Clearing Accounts with the Clearinghouse in accordance with Section 3.3;
- b. have established cash settlement arrangements in accordance with Section 3.4;
- c. have established any necessary delivery arrangements in accordance with Section 3.5 (if applicable);
- d. have established arrangements for the provision of Collateral in accordance with Section 3.6;
- e. have appointed a Contact Person in accordance with Section 3.8;
- f. have met its Margin Requirement in accordance with Section 5;
- g. establish a Default Fund Custody Account and contribute to the Default Fund in accordance with the Default Fund Rules (as applicable); and
- h. not have its access to Clearing or the Clearing System suspended or terminated in accordance with these Clearing Rules; and
- i. fulfil the membership criteria for its applicable membership category and any other conditions for membership.

3.2.3 An Account Holder must at all times, and promptly upon request from the Clearinghouse, be able to document that it (or, where applicable, any of its nominees) fulfil the criteria of Section 3.2.2.

3.3 Clearing Accounts

3.3.1 When approving a General Clearing Member, the Clearinghouse shall establish the following Clearing Accounts with the General Clearing Member as Account Holder:

- a. A House Account; and
- b. An Client Clearing Account; and
- c. An Intraday Account.

3.3.2 When approving a Clearing Member, the Clearinghouse shall establish the following Clearing Accounts with the Clearing Member as Account Holder:

- a. A House Account; and
- b. An Intraday Account.

3.3.3 When approving a Clearing Client, the Clearinghouse shall establish a Clearing Account with the Clearing Client as Account Holder. Each such Clearing Account must be fully

collateralised by reference to the Open Positions on such account as further set out in Section 5. The Collateral provided in respect of one Clearing Client's Clearing Account shall not be used to collateralize or meet the losses attributable to another such Clearing Account (or any other account) or to meet the losses attributable to a Client, any other Account Holder, or the Clearinghouse. For the purposes of EMIR, a Clearing Account with a Clearing Client as Account Holder is an EMIR Individual Segregated Account.

- 3.3.4 Additional Clearing Accounts may be ordered by the Account Holder, subject to the approval of the Clearinghouse. A Clearing Member may only order Client Clearing Accounts, provided that it meets the license requirement set out in section 3.1.3. Additional Clearing Accounts may be subject to a fee as set out in the Fee List.
- 3.3.5 A General Clearing Member (and where applicable a Clearing Member) may operate more than one Omnibus Accounts. Each Omnibus Account must be fully collateralised by reference to the Open Positions on such account on a net basis across all Clearing Transactions credited to such account, as further set out in section 5. The Collateral provided in respect of one Omnibus Account shall not be used to collateralize or meet the losses attributable to another such Omnibus Account (or any other account) or to meet the losses attributable to any Client (except Clients in the same Omnibus Account), any Account Holder, or the Clearinghouse. For the purposes of EMIR, an Omnibus Account is an EMIR Omnibus Account.
- 3.3.6 A General Clearing Member (and where applicable a Clearing Member) must operate one Individual Client Segregated Account for each Client that has opted for such account. Each Individual Client Segregated Account must be fully collateralised by reference to the Open Positions on such account as further set out in section 5. In the event that a Client has more than one Individual Client Segregated Account with the same or different General Clearing Member or Clearing Member, the Clearinghouse shall not be entitled to combine or consolidate the balances on such Individual Client Segregated Account (or on any other account). Moreover, the specific Collateral provided in respect of one Individual Client Segregated Account shall not be used to collateralize or meet the losses attributable to another such Individual Client Segregated Account (or any other account) or to meet the losses attributable to another Client, any Account Holder, or the Clearinghouse and the Clearinghouse shall keep separate records and accounts enabling each Clearing Member to distinguish the Collateral held for one Individual Client Segregated Account from the Collateral held for any other Client's Individual Client Segregated Account. For the purposes of EMIR, an Individual Client Segregated Account is an EMIR Individual Segregated Account.
- 3.3.7 Intraday Accounts are opened and used as part of the House Account or, if agreed in each case between the General Clearing Member or Clearing Member and the Clearinghouse, a specific Client Clearing Account. The set-up of one or several Intraday Accounts is without prejudice to the segregation requirements under these Clearing Rules and EMIR.
- 3.3.8 Each Clearing Account will have at least one Clearing Portfolio associated to it. Additional Clearing Portfolios may be ordered by the Account Holder. Additional Clearing Portfolios may be subject to a fee as set out in the Fee List. In relation to General Clearing Members, separate Clearing Portfolios shall be established for the allocation of Transactions for each Non-Clearing Member. Clearing Accounts have Clearing Portfolios connected to them for administrative purposes only. A Clearing Account and all such connected Clearing Portfolios shall therefore be regarded as one Clearing Account, and this is without prejudice to the rest of this Section 3 and the segregation requirements of such accounts under these Clearing Rules and EMIR.
- 3.3.9 Clearing Accounts will be open for registration of Clearing Transactions as soon as the Base Collateral Requirement has been met.
- 3.3.10 Client Clearing Accounts may only be used for registration of Client Transactions. Proprietary Transactions of the Account Holder must not be registered to a Client Clearing Account. Furthermore, a General Clearing Member or a Clearing Member shall not procure the registration of Transactions in its House Account other than those entered into by such General Clearing Member or Clearing Member, as applicable, on its own behalf. A General Clearing Member or a Clearing Member may not use the House Account for clearing of Transactions in respect of entities within the same group of companies as such General Clearing Member or Clearing Member, as applicable. Such entities shall be regarded as Clearing Clients or Clients, as applicable.

- 3.3.11 The Clearing Transactions registered to the Clearing Account of an Account Holder represent the complete and exhaustive contractual relationship between the Clearinghouse and the Account Holder in respect of Clearing Transactions registered to that Clearing Account.
- 3.3.12 All Clearing Transactions registered in a Clearing Account shall be held to constitute one single agreement between the Clearinghouse and the Account Holder in respect of the Clearing Transactions registered to that Clearing Account.
- 3.3.13 The Clearinghouse may require (under special circumstances) and/or approve (upon request from the Account Holder) of individual account structures deviating from what is described above. However, this shall be without prejudice to the segregation requirements under these Clearing Rules and EMIR.
- 3.3.14 The Clearinghouse will open a Margin Requirement Account for margin calculation with respect to each of the Account Holder's Clearing Accounts.

3.4 Cash Settlement Arrangements

- 3.4.1 Each Account Holder must at its own cost and in accordance with the below, establish and maintain arrangements as required for Cash Settlement under these Clearing Rules.
- 3.4.2 The Account Holder must designate a Cash Settlement Account with an Approved Settlement Bank for each currency in which it has Cash Settlement obligations under these Clearing Rules. The Account Holder must ensure that a Power of Attorney and a Mandate is executed in relation to each such Cash Settlement Account. The Account Holder shall comply with the Clearinghouse's instructions regarding, among other things, type of account.
- 3.4.3 The Clearinghouse may approve (upon the request of the Account Holder) arrangements for Cash Settlement which deviate from the above. In such case, the Account Holder shall meet the Clearinghouse's requirements as applicable from time to time.
- 3.4.4 Cash Settlement shall be performed in the Approved Settlement Banks listed in the List of Approved Settlement Banks.

3.5 Delivery Arrangements

- 3.5.1 Account Holders must at its own cost establish, appoint and maintain such Delivery Points and appurtenant arrangements as may be required by it to perform its Delivery obligations under the Clearing Rules, prior to entering into any Clearing Transactions in Products where such Delivery may be required. The Clearinghouse may issue a list of eligible Delivery Points.
- 3.5.2 The Delivery Point(s) nominated by each Account Holder must be approved by the Clearinghouse, such consent not to be unreasonably withheld. Account Holders shall promptly provide the Clearinghouse with such information as the Clearinghouse requests and deems required in relation to each Delivery Point it nominates.
- 3.5.3 The Clearinghouse may, if it has reasonable cause for doing so in relation to any obligation to be performed by it or the Account Holder under the Clearing Rules, require an Account Holder to appoint an alternative Delivery Point whereby the Account Holder shall promptly comply with such instructions.
- 3.5.4 The Clearinghouse may suspend Deliveries to a specific Delivery Point if necessary for the Clearinghouse to comply with applicable laws.

3.6 Collateral Arrangements

- 3.6.1 Each Account Holder must at its own cost and in accordance with the below establish and maintain arrangements for the provision of Collateral as required by these Clearing Rules.
- 3.6.2 The Collateral approved by the Clearinghouse is set forth in the Collateral List in force from time to time. The Clearinghouse may prescribe limits with respect to certain Collateral to mitigate concentration risk. The Collateral List also sets forth the haircut to be made in conjunction with the valuation of provided Collateral.
- 3.6.3 An Account Holder must open at least one Collateral Custody Account for provision of Collateral in respect of each Margin Requirement Account opened for it in accordance section 3.3. In addition to maintaining Collateral Custody Accounts, an Account Holder may

under certain circumstances provide Collateral by way of Bank Guarantee(s) as further set out below.

- 3.6.4 Unless otherwise specified in these Clearing Rules and without prejudice to the segregation requirements under these Clearing Rules and EMIR, all Collateral posted by each Account Holder will apply jointly and severally to all its Clearing Accounts and any and all payment and settlement obligations towards the Clearinghouse.
- 3.6.5 All Margin Requirements will be calculated in the applicable Margin Currency. The Clearinghouse may in its discretion convert any amounts relating to Margin Requirements to the applicable Margin Currency and vice versa at such reasonable currency exchange rate(s) as the Clearinghouse may determine in its discretion.
- 3.6.6 An Account Holder may post more Collateral to the Clearinghouse (to be held on the Collateral Custody Account) than is required pursuant to the determinations of the Clearinghouse in respect of the relevant Margin Requirement Account. Such excess Collateral shall be treated in accordance with the Clearing Rules on the same basis as all Collateral provided in respect of such Margin Requirement Account.
- 3.6.7 Collateral provided to the Clearinghouse by an Account Holder in respect of its Clearing Accounts, as applicable, shall be recorded by asset in the Collateral Custody Account, meaning that the Clearinghouse will record the particular asset transferred in respect of each such account.
- 3.6.8 Collateral provided to the Clearinghouse by a General Clearing Member or Clearing Member in respect of its Omnibus Account, shall not be further recorded by the Clearinghouse as belonging, whether by asset or by value, to any particular Client.
- 3.6.9 An Account Holder that qualifies as a “non-financial counterparty” as defined in Regulation (EU) no 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR), is entitled to provide a Bank Guarantee as Collateral. The Clearinghouse shall not accept any Bank Guarantee which is not compliant with EMIR or any other law or regulation. Such Bank Guarantee must be approved by the Clearinghouse and be issued by a bank accepted by the Clearinghouse. Bank Guarantees must be submitted to, and lodged with, the Clearinghouse. The Clearinghouse may prescribe a maximum amount for a Bank Guarantee. Account Holders shall, upon request by the Clearinghouse, provide new Collateral not later than ten Bank Days prior to the termination of a Bank Guarantee.
- 3.6.10 The Collateral Provider in respect of a Bank Guarantee for an Account Holder may not be
 - a. the Account Holder itself; or
 - b. an entity within the same group of companies as the Account Holder; or
 - c. any other entity which in the opinion of the Clearinghouse could entail an unacceptable credit risk or general business risk to the Clearinghouse’s interest in the relevant Collateral in case of an Insolvency Event involving the Account Holder or any of its group companies.
- 3.6.11 Rating requirements for issuers of a Bank Guarantee are set forth in the Collateral List in force from time to time.
- 3.6.12 The Clearinghouse may at any time reject and/or depreciate the recognized value of any Collateral (or parts thereof) from individual issuers of Bank Guarantees if
 - a. the Clearinghouse has reasonable cause to believe that the relevant issuer is subject to an Insolvency Event or that an Insolvency Event involving the issuer is clearly imminent;
 - b. it deems that the credit rating of the relevant issuer is not (or no longer) acceptable to it; or
 - c. it becomes aware of any other circumstances that may have adverse effects on its security interest in the applicable Collateral.

Affected Account Holders will be notified immediately of any decision pursuant to the above, and the Clearinghouse may at its discretion (i) issue an Extraordinary Margin Requirement to cover for any deficit Collateral against the applicable Margin Requirement,

and/or (ii) suspend the Account Holder from Clearing until the Clearinghouse is satisfied that replacement Collateral has been provided or that the situation has otherwise been remedied. Any replacement Collateral must be accepted by the Clearinghouse as such.

- 3.6.13 The Clearinghouse may reject any additional Collateral, and/or require any existing Collateral to be replaced by Collateral acceptable to the Clearinghouse if the relevant Collateral Provider, or any Affiliate of it, has provided or holds such volume of Collateral that the provision of additional Collateral from that Collateral Provider would entail a concentration risk to the Clearinghouse.
- 3.6.14 Collateral posted by or on behalf of an Account Holder may, upon written request from the Account Holder, be released at the discretion of the Clearinghouse and otherwise pursuant to the applicable arrangement(s) for provision of Collateral. Collateral will not be released (i) if the value of the Collateral (as reasonably determined by the Clearinghouse) does not equal or exceed the most recent Margin Requirement notified by the Clearinghouse or (ii) if the Account Holder is subject to a Default Event at the time of the release. The Clearinghouse will endeavor to process any requests for release of Collateral as soon as practicable and within three (3) Bank Days from receipt of the request. Release of Collateral may be subject to a fee as set out in the Fee List. The Account Holder shall reimburse the Clearinghouse of any external costs the Clearinghouse incurs from release of the Account Holder's Collateral, and the Clearinghouse may set off such costs in the Daily Cash Settlement towards the Account Holder.
- 3.6.15 The Counterparties (including their Collateral Providers) intend that any collateral arrangements created under, pursuant to or in furtherance of the Clearing Rules shall, to the extent possible, constitute a "financial collateral arrangement" for the purposes of EU Directive 2002/47/EC on Financial Collateral Arrangements (as implemented in the national laws of applicable jurisdictions).
- 3.6.16 The Clearinghouse may in individual cases require (under special circumstances) and/or approve (upon request from the Account Holder) of collateral arrangements deviating from the above. Any such deviations shall be without prejudice to the segregation requirements under these Clearing Rules and EMIR and be documented in writing and signed by the Clearinghouse and the applicable Account Holder.

3.7 Pre-delivered Assets as Collateral

- 3.7.1 The Clearinghouse may in its discretion accept pre-delivery of eligible assets and may acknowledge such pre-delivered assets as an alternative to regular Collateral under the Clearing Rules, applying such recognized value to such assets as the Clearinghouse deems appropriate or as otherwise specified by the Clearing Rules. Notwithstanding the foregoing, an Account Holder who has pre-delivered assets to the Clearinghouse will normally not be credited more than its aggregated net short position in respect of its corresponding Delivery obligations of the relevant asset towards the Clearinghouse at any time.
- 3.7.2 Pre-delivered assets shall be transferred to the Clearinghouse with full and valid title, free and clear of all liens, security interests, claims and encumbrances or any interest in or to them by any person (except where in favour of the Clearinghouse). The rules relating to Deliveries of the relevant assets and Collateral enforcement apply *mutatis mutandis* to any pre-delivered assets.
- 3.7.3 Whilst pre-delivered assets are in the possession of the Clearinghouse, the Account Holder shall be excluded from exercising any rights in such assets, or instructing the Clearinghouse in any way in relation to such assets, except as may be set out in the Clearing Rules or otherwise agreed in writing with the Clearinghouse. The Clearinghouse shall not have any obligation to pay interest or other fees to the Account Holder for pre-delivered assets. Pre-delivered assets may be pooled and comingled with other funds (including those of the Clearinghouse), and may be transferred to the Clearinghouse's own accounts. The Account Holder acknowledges that in case of the insolvency of the Clearinghouse, any claims relating to pre-delivered assets will probably rank *pari passu* with the Clearinghouse's other unsecured creditors.
- 3.7.4 Sections 3.6.14 and 6.3.4 apply *mutatis mutandis* to the release and return of pre-delivered assets.

3.8 Authorisation of Individuals

- 3.8.1 An Account Holder shall upon request from the Clearinghouse appoint one or more individual(s) as its Contact Person(s). In case of Clearing Clients, the Contact Person will always be the Contact Person(s) appointed with its Client Representative at any given time. By agreeing to become a Contact Person, an individual agrees to be bound by the duties and responsibilities of a Contact Person and to be subject to, and comply with, all applicable provisions of the Clearing Rules.
- 3.8.2 The appointment of each Contact Person is subject to the approval of the Clearinghouse, not to be unreasonably withheld. The Clearinghouse may suspend or withdraw its approval if a Contact Person is deemed unfit by the Clearinghouse.
- 3.8.3 A Contact Person shall be authorised in the name of the Account Holder to sign all instruments, to give instructions, to correct errors and to perform such other duties as may be required under the Clearing Rules and to generally transact all requisite business in connection with the operations of the Clearinghouse under the Clearing Rules.
- 3.8.4 A Contact Person may appoint other individuals to access the Account Holder's Clearing Accounts and/or to register Clearing Transactions on behalf of the Account Holder. The Contact Person may also revoke or amend any such appointments by written notice. The Clearinghouse may suspend or withdraw such individual's rights if the individual is deemed unfit by the Clearinghouse.
- 3.8.5 All rights and authorisations granted under this Section 3.8 are non-exclusive and persons sharing the same rights are authorised to exercise such rights individually and independently of each other in all matters.
- 3.8.6 Unless otherwise agreed in writing with the Clearinghouse, all appointments, amendments and withdrawals under this Section 3.8 must be in writing and on such format as the Clearinghouse may prescribe from time to time.

3.9 Account Information

- 3.9.1 The Clearinghouse shall on each Bank Day and for each Clearing Account make available to Account Holders:
- a. a Final Trade List, stating the Transactions registered on the relevant Bank Day; and
 - b. a Statement of Account stating the Net Positions, Daily Margin Requirements and Delivery obligations for the relevant Bank Day; and
 - c. any other information regarding the Clearing Account which the Clearinghouse chooses to make available.
- 3.9.2 Information pursuant to this Section 3.9 shall be made available for all Clearing Account(s) at the time specified in the Trading and Clearing Schedule. A Client Representative shall be granted direct access to account information for Clearing Account(s) where it is identified as Client Representative. A Clearing Client will only have direct access to the Statement of Account for its Clearing Account(s) if so requested by the individual Clearing Client. Clients will not have access to account information without the specific approval of the Clearinghouse.

3.10 Continuous Information Obligations on Account Holders

- 3.10.1 The Clearinghouse may at all times monitor an Account Holder's financial standing and soundness, level of competence and other matters relevant (in the opinion of the Clearinghouse) to the financial and legal status of the Account Holder.
- 3.10.2 Each Account Holder shall ensure that the Clearinghouse promptly upon request receives copies of audited versions of any annual reports issued by the Account Holder, any interim reports as well as any consolidated accounts when so requested. All such information shall be provided free of charge to the Clearinghouse. If, for special reasons, the Account Holder is unable to provide the above information, the Clearinghouse may in its own discretion approve that the Account Holder instead discloses a selection of audited key figures, as required by the Clearinghouse from time to time. Such key figures must be accompanied by a parent company guarantee and financial information regarding such parent company, as required by the Clearinghouse from time to time.

- 3.10.3 The Clearinghouse may require any further information on the Account Holder's legal status, financial soundness, organisation, level of competence and other matters as the Clearinghouse deems relevant and appropriate to consider its continued fitness for membership at any time, to monitor and ensure its compliance with the Clearing Rules and in order to fulfil the Clearinghouse's obligations pursuant to applicable securities and clearing operation legislation and regulations given pursuant thereto, including further evidence for the Clearinghouse to verify the authenticity or correctness of any information submitted. Section 3.10.2 applies accordingly to such issues. All such information shall be provided by the Account Holder promptly upon request and free of charge to the Clearinghouse to enable the Clearinghouse to fulfil any legal or regulatory obligations.
- 3.10.4 An Account Holder shall immediately notify the Clearinghouse in writing if it becomes aware of or finds it likely that any of the following events will occur:
- a. any Default Event or Insolvency Event by it under the Clearing Rules, including any breach of the representation and warranties from the Account Holder;
 - b. any Non-Compliance Event by it under the Trading Rules or disciplinary, criminal, or regulatory proceedings related to trading and clearing activities involving the Account Holder or its board of directors or employees responsible for its Clearing operations;
 - c. any merger, de-merger, or other business re-organisation affecting one-third or more of the Account Holder's net capital value (as assessed by reference to the latest annual or interim accounts of the Account Holder);
 - d. any material changes to its business;
 - e. in the case of an undertaking with share capital or equivalent tied-up capital, any reduction in such capital; or
 - f. any other matter relating to it of which an Account Holder acting in good faith would reasonably expect to be of interest to the Clearinghouse in relation to Clearing and its position as an Account Holder, including issues related to any Settlement Bank or Collateral Provider of the Account Holder.

3.11 Termination and Suspension of Membership

- 3.11.1 Clearing memberships may be terminated pursuant to the membership agreement between the Clearinghouse and the Account Holder (which may contain further references to these Clearing Rules). Termination of the membership is without prejudice to the Account Holder's obligations under the Default Fund Rules, which shall maintain until the Account Holder is eligible for a Default Fund Exit (as specified in the Default Fund Rules).
- 3.11.2 If the Clearinghouse makes a decision to suspend an Account Holder from Clearing in accordance with these Clearing Rules, or to terminate the Account Holder's membership agreement, the Clearinghouse shall immediately notify the Account Holder and the Exchange of such decision. In case a suspension is lifted, the Clearinghouse will give notice to the Exchange as soon as practicable during Opening Hours.
- 3.11.3 Upon valid and undisputed termination of a membership agreement with an Account Holder for any reason, the Account Holder may require accelerated termination of its membership notwithstanding the termination period agreed in the membership agreement. The Account Holder's right to accelerated termination is conditional upon the Account Holder not having any Open Positions and not owing any amount to the Clearinghouse under these Clearing Rules other than, if applicable, fixed Pending Settlements that are secured by Collateral. Upon receipt of a written request for accelerated termination, and provided that the Account Holder is eligible for accelerated termination in accordance with the foregoing, the Clearinghouse shall suspend the Account Holder's right to register new Clearing Transactions and effectuate termination of the Account Holder's membership as soon as practicable.
- 3.11.4 Termination of a membership agreement with an Account Holder will not affect the Counterparties' rights and obligations with respect to Clearing Transactions registered at the time of termination becoming effective and the Clearing Rules shall remain in force for as long as the Account Holder has Open Positions or owes any amount to the Clearinghouse. The Clearinghouse may require an Account Holder to close out its Open Positions upon termination of the Account Holder's membership, prior to effective

termination, and may reasonably restrict an Account Holder's ability to enter into new Clearing Transactions except for Close-Out Transactions in the period from a valid termination notice is sent or received until termination becomes effective.

- 3.11.5 Following termination of a membership agreement with an Account Holder, and subject to the Clearinghouse's rights in the Collateral pursuant to Section 8.2 and except as may otherwise follow from relevant collateral arrangements, any remaining Collateral shall be released and/or returned as soon as practicable after the date of termination, provided that in each case all amounts owing to the Clearinghouse by the Account Holder are undisputed and have been fully, finally and unconditionally paid or discharged to the Clearinghouse and the Account Holder has no Open Positions. The Clearinghouse may furthermore withhold Collateral to the extent necessary to secure Pending Settlements.

3.12 Pledge of Clearing Transactions

- 3.12.1 In addition to other collateral arrangements in accordance with these Clearing Rules, each Account Holder pledges as security to the Clearinghouse the Clearing Transactions and other rights and entitlements registered in any of such Account Holder's Clearing Accounts at any and all times. This general pledge shall not be utilised in such a manner so as to override the requirements of Article 39 of EMIR.

4 GENERAL REGISTRATION PROCEDURES

4.1 Registration of Clearing Transactions

- 4.1.1 For the purposes of clause 1.5 above, a Clearing Transaction, including all related variable fees to the Exchange and the Clearinghouse, shall be deemed entered into the Security Settlement System when it has been created in accordance with section 4.1.2. Other than as set forth in these Clearing Rules section 4.6 below and in Clearing Appendix 4 OTC Clearing Procedures section 6, Clearing Transactions may not be revoked.
- 4.1.2 A Clearing Transaction is created through a Registration of an Exchange or a Clearing Transaction, at which time the Clearing Transaction shall be deemed registered and created for the purposes of the Clearing Rules.
- 4.1.3 All Clearing Transactions are entered into in reliance on the applicable Clearing Membership Agreement and the Clearing Rules forming a single agreement between the Counterparties, and that the Counterparties would not otherwise have entered into any Clearing Transactions.
- 4.1.4 Upon registration of a Clearing Transaction in a Clearing Account in accordance with Section 4.1.2 the initial Transaction is replaced by corresponding Clearing Transactions between the Account Holders involved and the Clearinghouse, where the Clearinghouse enters into each Clearing Transaction as a central Counterparty entailing, subject to Section 4.6, that:
- a. the Clearinghouse becomes party to two equal and offsetting Clearing Transactions, each reflecting the original Transaction: One between the Clearinghouse (as seller) and the buying Account Holder (as buyer), and one between the Clearinghouse (as buyer) and the selling Account Holder (as seller);
 - b. the Account Holder's rights and obligations towards each other under the initial Transaction shall be released and discharged upon registration of the Clearing Transactions and the Clearinghouse shall be deemed to have succeeded to and assumed all rights and obligations of each Account Holder in relation to the other Account Holder in its capacity as central Counterparty; and
 - c. a new Net Position is immediately calculated, registered and established between the Clearinghouse and the respective Account Holder.
- 4.1.5 Any obligation of the Clearinghouse to an Account Holder arising from a Clearing Transaction shall be subject to the terms of the Clearing Rules.

4.2 Registration of Exchange Transactions

- 4.2.1 Exchange Transactions are automatically subject to Clearing pursuant to the Trading Rules. The Transaction Confirmation in respect of Exchange Transactions also serves as Clearing Confirmation from the Clearinghouse.
- 4.2.2 The Exchange will provide the Clearinghouse with information of all Exchange Transactions registered in ETS, including the terms of each Exchange Transaction and the Account Holders involved. The Clearinghouse shall register the Exchange Transactions on an Intraday Account of the Account Holders involved immediately following such notification.
- 4.2.3 Upon Registration of an Exchange Transaction in a Clearing Account, the Clearinghouse enters into the Transaction as a Counterparty whereby the initial Exchange Transaction is replaced by corresponding Clearing Transactions in accordance with Section 4.1.

4.3 Registration of OTC Transactions

- 4.3.1 Account Holders may request Clearing of OTC Transactions in accordance with the OTC Clearing Procedures.
- 4.3.2 Upon the registration of a Clearing Request in accordance with the OTC Clearing Procedures, corresponding Clearing Transactions are created in accordance with Section 4.1.

4.4 Allocation of Clearing Transactions

- 4.4.1 Clearing Transactions are initially allocated to an Intraday Account of the registering Account Holder(s) unless another account is designated by the Account Holder. The Account Holder (or its nominee) shall, within the Allocation Deadline and in accordance with the prevailing instructions of the Clearinghouse from time to time, designate the Clearing Account to which each Contract shall be registered. Any subsequent transfer of Contracts shall be deemed as a new Clearing Transaction.
- 4.4.2 The Contracts registered on an Intraday Account of an Account Holder at the Allocation Deadline are automatically transferred to the Clearing Account designated in accordance with Section 3.3.7. This takes place 120 minutes after end of Opening Hours in the relevant Series on the Bank Day in question. A subsequent transfer of Contracts must be registered within sixty (60) minutes prior to end of Opening Hours on the second (2nd) Bank Day from the Bank Day on which the relevant Contract was first registered, however in no event later than thirty (30) minutes prior to the end of Opening Hours on the Expiration Day for the applicable Series.

4.5 Give Ups and Take Ups

- 4.5.1 Account Holders may, through use of the Give Up / Take Up function of the Clearing System and in accordance with this Section 4.5, transfer Registered Contracts from its own Clearing Account, and those of its associated Clients or Clearing Clients where applicable, to the Clearing Account of another Account Holder and vice versa.
- 4.5.2 In order for a Give Up to be effectuated, the receiving Account Holder must confirm the request for Give Up by registering a corresponding Take Up. Matching Give Up and Take Up requests will constitute a Clearing Request and shall follow the OTC Clearing Procedures which shall apply *mutatis mutandis*. Upon Registration of the Contracts with the receiving Account Holder, the receiving Account Holder assumes the position of Counterparty in the Contract and the originating Account Holder is released.
- 4.5.3 Both the Give Up and its corresponding Take Up must be registered within sixty (60) minutes prior to end of Opening Hours on the second (2nd) Bank Day from the Bank Day on which the relevant Contract was first registered, however in no event later than thirty (30) minutes prior to the end of Opening Hours on the Expiration Day for the applicable Series. Unless the Clearinghouse approves otherwise in its discretion, a Contract may only be subject to Give Up and Take Up once (i.e. no re-transfer), and subsequent transfer of Contracts shall take place in accordance with the rules relating to re-registration (and be deemed as a new Clearing Transaction).
- 4.5.4 If no Take Up is registered within the relevant deadline as set out in Section 4.5.3, the Give Up will be cancelled and the Contract(s) subject to Give Up shall remain unchanged. In such cases any transfer of Contracts must be done through registration of a new and opposite Clearing Transaction.

- 4.5.5 Where an Account Holder submits a request for Give Up later than on the day on which the relevant Contracts was first Registered, and subject to Section 4.5.3, the Account Holder will be required to perform any Cash Settlements as normal, but will receive a reimbursement of any Cash Settlement Amounts paid as part of the Daily Cash Settlement on the Bank Day following the day on which the Take Up is Registered.

4.6 Registration Errors

- 4.6.1 The Exchange will handle complaints concerning Exchange Transactions in accordance with the Trading Rules. Exchange Members must submit any claims for trading errors in ETS to the Exchange as soon as possible and no later than two (2) minutes from registration of the relevant Exchange Transaction in ETS. Exchange Member, on whose behalf the Exchange has registered the Order in ETS, may as soon as possible and no later than ten (10) minutes after the relevant Exchange Transaction was registered in the ETS, submit a claim for trading error to the Exchange. Any changes or cancellation made in Exchange Transactions pursuant to the Trading Rules will trigger a corresponding change or cancellation of the registrations with the Clearinghouse. An Account Holder may not raise any other objections against the Clearinghouse in respect of trading errors in Exchange Transactions. In the event that an Account Holder claims that a Clearing Confirmation resulting from an Exchange Transaction is erroneous, a complaint must be filed with the Clearinghouse within the end of Opening Hours on the Bank Day on which the Clearing Confirmation was received. Otherwise the Account Holder will be bound by the Clearing Confirmation.
- 4.6.2 The OTC Clearing Procedures contain provisions relating to errors in relation to the registration of Clearing Requests.
- 4.6.3 Notwithstanding the above, the Clearinghouse may on its own initiative correct substantial errors involving registered Clearing Transactions with effect for all Account Holders concerned, including errors caused by errors in reference prices, provided that the Clearinghouse shall give prior written notice of such corrections to affected Account Holders and that such corrections shall be notified within three (3) Bank Days from the time on which the Clearinghouse determines that such an error has occurred.

4.7 Registration for Clients

- 4.7.1 Clients will have Clearing Transactions registered on Clearing Accounts established in the name of their General Clearing Member (or where applicable their Clearing Member), with such member as Counterparty. All Clearing Transactions for Clients shall be registered to Client Clearing Accounts.
- 4.7.2 Clients will not become Counterparty to the Clearinghouse under any Clearing Transactions with the General Clearing Member (or where applicable the Clearing Member), and no contractual relationship shall arise between the Clearinghouse and the Client. When a General Clearing Member (or where applicable a Clearing Member) registers a Clearing Transaction for a Client, such member becomes liable to the Clearinghouse and the Clearinghouse liable to such member for such Clearing Transaction as if the Clearing Transaction were for the account of such member. A General Clearing Member (or where applicable a Clearing Member) is, without any limitations, entitled and responsible as Counterparty to the Clearinghouse in respect of any and all Clearing Transactions registered to Clearing Accounts where such member is Account Holder.
- 4.7.3 The General Clearing Member shall unsolicited and before registering any Clearing Transactions on behalf of a Client that is a Non-Clearing Member disclose to the Clearinghouse the identity of such Client. The identity of Clients shall furthermore always be disclosed to the Clearinghouse upon request by the Clearinghouse. The Clearinghouse may require that a Non-Clearing Member with an actual or expected significant volume of Transactions is allocated an Individual Client Segregated Account with its General Clearing Member.

4.8 Registration for Clearing Clients

- 4.8.1 The following provisions will apply in respect of Transactions and Clearing where a Clearing Member is acting as Client Representative for a Clearing Client:
- a. Clearing Members may represent Clearing Clients when approved as Client Representatives.

- b. The Clearing Account opened in the name of a Clearing Client will also identify the relevant Client Representative. Transactions may only be registered in this Clearing Account when allocated or approved by this Client Representative.
- c. A Clearing Client is, without any limitations, entitled under and responsible as Counterparty to the Clearinghouse in respect of all Transactions registered in Clearing Accounts where the Clearing Client is Account Holder.
- d. All communication between the Clearinghouse and the Clearing Client shall take place exclusively through its Client Representative, unless as otherwise set out in the Clearing Rules or if the Clearinghouse chooses to involve the Clearing Client.
- e. Unless the Clearing Client requests otherwise (in writing), the Client Representative shall have unlimited access to all Collateral Custody Accounts and Default Fund Custody Accounts (together, the "**Custody Accounts**") of the Clearing Client intended for the provision of margin collateral and default fund contributions including, without limitation, to initiate instructions and communications against such accounts and receive balance and transaction information in relation to such accounts. In such a case, the Clearinghouse will treat instructions given by the Client Representative as instructions or communications given on behalf of the Clearing Client under the relevant Collateral Custody Account Agreement or Default Fund Custody Account Agreement (as defined in the Default Fund Rules). Release of collateral from Custody Accounts will only be effected according to pre-defined settlement instructions as approved by the Clearing Client from time to time. In addition, the Client Representative will be granted access to information on default fund requirements and/or Margin Requirements as well as collateral information for all Clearing Accounts connected to the Custody Accounts.

Notwithstanding the authorisation in item (e) above, the Clearing Client shall remain responsible for its obligations under the relevant Custody Account Agreements and the Clearing Rules.

- 4.8.2 The Client Representative is responsible for the following with respect to Client Transactions:
- a. The Client Representative shall ensure that its Clearing Clients post Collateral for the Base Collateral Requirement before allocating any Transactions to the Clearing Client's Clearing Account.
 - b. The Client Representative shall also ensure that its Clearing Clients meet the Daily Margin Requirement. The Clearinghouse shall inform the Client Representative if the Clearing Client fails to post Collateral, upon which the Client Representative shall immediately post the missing Collateral in the Collateral Custody Account of the Clearing Client.

5 MARGINS AND MARGIN REQUIREMENT PROCEDURES

5.1 General

- 5.1.1 The Clearinghouse determines the Margin Requirement for each Account Holder on each Bank Day. Each Margin Requirement shall be calculated in accordance with the model applied by the Clearinghouse from time to time. Upon request, the Clearinghouse shall provide free of charge a description of the relevant model and the calculation method.
- 5.1.2 Each Account Holder must ensure that the value of its Collateral posted at all times meets (or exceeds) the applicable Margin Requirement(s) for each of its Clearing Accounts as applicable. A Margin Requirement shall be deemed to have been met when the total Collateral posted in relation to the relevant Clearing Account equals or exceeds the total Margin Requirement applicable to that Clearing Account.

5.2 Base Collateral Requirement

- 5.2.1 The Clearinghouse will when each Clearing Account is initially established set the Base Collateral Requirement for the Clearing Account taking into consideration, the Account Holder's financial soundness, expected volume of Clearing Transactions for that Clearing Account, the Default Fund requirement and other factors which the Clearinghouse deems relevant.

5.3 Daily Margin Requirement

- 5.3.1 The Clearinghouse shall on each Bank Day calculate the Margin Requirement for each Clearing Account for that day, and make available to each Account Holder a Statement of Account for each of its Clearing Accounts, where the Daily Margin Requirement for that Bank Day is notified. Client Representatives will have direct access to the Statement of Account for their Clearing Clients.
- 5.3.2 The Daily Margin Requirement is based on the parameter values determined for the respective Products, as published by the Clearinghouse on its website. The Clearinghouse will normally give one (1) week written notice for all parameter value changes, however, the Clearinghouse reserves the right to enter changes in parameter values at any time (including immediate effect from notice) upon giving written notice to affected Account Holders if the Clearinghouse deems that such change is necessary to ensure sound clearing operations and to comply with the Clearinghouse's risk policies and/or applicable law at all times. The Clearinghouse may set specific margining rules for individual Products or groups of Products.
- 5.3.3 The Daily Margin Requirement is calculated for all Open Positions and Pending Settlements on each Clearing Account. The Daily Margin Requirement must be met within the Collateral Deadline on the relevant Bank Day, by the provision of the forms of Collateral accepted under Section 3.6 and the Collateral List.

5.4 Intraday Margin Requirements and Extraordinary Margin Requirements

- 5.4.1 The Clearinghouse will carry out calculations of the Margin Requirement regularly intraday. The Clearinghouse may issue an Intraday Margin Requirement at its own discretion. Collateral for Intraday Margin Requirements must be posted within ninety (90) minutes after the Clearinghouse issued such Intraday Margin Requirement. Following a request by the Account Holder, the Clearinghouse will provide the basis for the new calculation. Intraday Margin Requirements may be calculated as a Daily Margin Requirement following the procedures in Section 5.1 and 5.3.
- 5.4.2 If the relevant risk exposure is reduced within ninety (90) minutes following an Intraday Margin Requirement, the Account Holder may contact the Clearinghouse to request a re-calculation. The Clearinghouse may then issue a new Margin Requirement. Collateral corresponding to the new Margin Requirement shall nevertheless be provided within ninety (90) minutes of the issue of the original Intraday Margin Requirement.
- 5.4.3 The Clearinghouse may issue an Extraordinary Margin Requirement to an Account Holder if the Clearinghouse decides that special circumstances so requires, including increase in market share and matters that indicate a higher credit risk in respect of the Account Holder.
- 5.4.4 Extraordinary Margin Requirements may be calculated as a Daily Margin Requirement following the procedures in Section 5.1 and 5.3. The Clearinghouse may also apply any other risk calculation procedure the Clearinghouse considers prudent.
- 5.4.5 Without any prejudice to its rights under any other provisions in the Clearing Rules, the Clearinghouse may monitor all Transactions and Open Positions in Exchange Listed Products and Clearing Listed Products. If the Clearinghouse finds that an Account Holder holds more than fifteen per cent (15%) of all positions in one Series, the Clearinghouse may calculate an Extraordinary Margin Requirement based on such increased risk interval as the Clearinghouse finds appropriate. The Clearinghouse may require that the relevant Account Holder also discloses Transactions that are not subject to Clearing.
- 5.4.6 Collateral for Extraordinary Margin Requirements must be posted within ninety (90) minutes after the requirement reached the Account Holder or its Client Representative (in respect of Clearing Clients).

6 SETTLEMENT PROCEDURES

6.1 General

- 6.1.1 Settlements shall be carried out in accordance with the Clearing Rules. The Contract Specifications may set out individual requirements in relation to the Settlement of individual Products, which shall prevail in case of conflict with these General Terms.

- 6.1.2 The Counterparties shall co-operate with each other in relation to Settlements (including Cash Settlements and Deliveries) and do such things as are necessary and reasonably requested by the Clearinghouse in order to carry out any Settlements pursuant to the Clearing Rules.

6.2 Cash Settlement Procedures

- 6.2.1 The Clearinghouse shall on each Bank Day and for each Clearing Account calculate the net Cash Settlement Amount(s) due on that Clearing Account, by aggregating and off-setting the relevant Cash Settlement Amounts, including all fees due to the Exchange and the Clearinghouse.
- 6.2.2 All invoices are due on the Settlement Day stated on the invoice.
- 6.2.3 The Clearinghouse may issue and each Account Holder agrees to accept invoices from the Clearinghouse in respect of Clearing Transactions, and each Account Holder further agrees not to raise any other invoice in respect of any Clearing Transaction.
- 6.2.4 Cash settlements shall be calculated and carried out in the currency applicable to the respective Series as stated in the Contract Specifications. Binding set-off (payment netting) has taken place once the Clearinghouse has calculated the relevant Cash Settlement Amount.
- 6.2.5 The following further procedures apply for Cash Settlement:
- a. The Cash Settlement Amount is made available to the Account Holder.
 - b. The Account Holder shall at the latest at the time set out in the Trading and Clearing Schedule for the respective contracts have at its disposal the necessary balance or credit facilities for debit on the designated Cash Settlement Account. The Clearinghouse thereafter issues payment instructions for debiting of such account and receives electronic confirmation from the relevant Approved Settlement Bank.
 - c. The Clearinghouse issues payment instructions for exchange of payments in the respective concentration bank between Approved Settlement Banks. Thereafter, the Clearinghouse issues payment instructions for crediting of settlements on the relevant Cash Settlement Account in accordance with the invoices.
 - d. The Clearinghouse may approve (upon the request of the Account Holder) procedures for Cash Settlement which deviate from section 6.2.5 a-c above. In such case, the Account Holder shall meet the Clearinghouse's requirements as applicable from time to time.
 - e. Cash Settlement in accordance with this Section 6.2.5 is final and binding to all parties except as explicitly set out herein.
- 6.2.6 An Account Holder may not set off any Cash Settlement obligation to or from the Account Holder against any Cash Settlement obligation to or from the Clearinghouse, regardless of whether or not such obligations are due or/and mature.
- 6.2.7 Without prejudice to its other rights and remedies, the Clearinghouse may set off any matured obligation due to or from an Account Holder against a matured obligation due to or from the Clearinghouse under these Clearing Rules, regardless of the place of payment or currency of either obligation, provided that obligations due to an Account Holder's Client Clearing Accounts may not be off-set against obligations due from such Account Holder's other Clearing Accounts. If the obligations are in different currencies, the Clearinghouse may convert either obligation at the currency exchange rate offered to the Clearinghouse in its usual course of business at the time of the set-off to effect the set-off.

6.3 Delivery Procedures

- 6.3.1 Assets (other than cash) that are deliverable under the Clearing Rules shall be Delivered in accordance with the terms of each applicable Clearing Transaction and these Clearing Rules.
- 6.3.2 All deliverables under any Clearing Transaction shall be compliant with the applicable Contract Specifications and shall be Delivered to the receiving Counterparty with full and valid title, free and clear of all liens, security interests, claims and encumbrances or any interest in or to them by any person (except where in favour of the receiving Counterparty).

6.3.3 The risk of loss related to the applicable deliverables or any portion of them transfers to the receiving Counterparty upon completed Delivery. A Delivery shall be deemed completed for the purposes of these Clearing Rules when the delivering Counterparty has received confirmation that the relevant deliverables have been deposited to the applicable Delivery Point of the receiving Counterparty without any possibility of revocation by the delivering Counterparty, and any and all other requirements pursuant to these Clearing Rules in relation to the Delivery are satisfied, including all regulatory or other approvals that may be required from the delivering Counterparty.

6.3.4 Deliverables owing from the Clearinghouse within a Series are, unless as otherwise set out in the individual Contract Specifications and subject to the Clearinghouse's Delivery obligations vis-a-vis the Account Holder, distributed as fungible instruments on a randomized basis. Account Holders shall have no right to receive any specific deliverables under any Clearing Transaction, and any correlation between the deliverables received from the selling Account Holder in a Clearing Transaction and the deliverables distributed by the Clearinghouse to the buying Account Holder in the corresponding Clearing Transaction shall be deemed purely coincidental.

6.4 Tax and VAT matters

6.4.1 Each Counterparty is responsible for any and all VAT payable by that Counterparty in connection with a Clearing Transaction, without any reimbursement or indemnification from the other Counterparty unless as set out below.

6.4.2 All Cash Settlement Amounts shall be exclusive of VAT, with the exemption that the Clearinghouse will charge VAT if this is required under applicable law.

6.4.3 Each Counterparty shall cause to pay any and all taxes legally payable by that Counterparty arising in connection with a Clearing Transaction, with no further charge, reimbursement or indemnification irrespectively if the Counterparty is required by law to pay any tax which is properly for the account of the other Counterparty.

6.5 Settlement Errors

6.5.1 The Account Holder shall, if it believes that a Settlement has been carried out incorrectly, notify the Clearinghouse as soon as possible and not later than sixty (60) minutes after the beginning of Opening Hours on the Bank Day immediately following the Bank Day on which the relevant Settlement took place, failing which the Account Holder will be bound by the Settlement. In connection with such request, the Account Holder shall, in addition to stating the matter to which the request refers, provide information regarding the Series, number of Contracts affected, and the account numbers in question. Additional settlement error procedures may be set out in the Contract Specifications in relation to individual Products.

6.5.2 When an Account Holder has made a claim for a Settlement error the Clearinghouse shall as soon as possible forward the request to Account Holders concerned.

6.5.3 The Clearinghouse shall as soon as possible deal with timely complaints. The Clearinghouse will perform a corrected Settlement on the next Bank Day if all Account Holders concerned consent to the correction claimed. If not all Account Holders concerned consent to the correction the Clearinghouse will determine whether there has been an erroneous Settlement and, if the Settlement was incorrect, carry out a corrected Settlement between the parties involved as part of the Daily Cash Settlement with two (2) Bank Days written notice.

6.5.4 Irrespective of the time limits above, the Clearinghouse may carry out a corrected Settlement in the event of substantial errors:

- a. with respect to corrections of errors in Exchange Transactions as determined in accordance with the Trading Rules;
- b. in respect of errors in a Spot Reference Fix, where the Clearinghouse has applied an erroneous Spot Reference Fix; or
- c. as otherwise set out in the relevant Contract Specifications.

Corrective Settlements under this Section 6.5.4 may take place from (and including) the first Bank Day following written notice from the Clearinghouse.

- 6.5.5 Any correction in accordance with these Clearing Rules will be binding on all Counterparties concerned. The Clearinghouse shall not be liable to any Account Holder for any exercise or non-exercise of its powers under this Section 6.5, provided that it has acted in good faith.

6.6 Interest

- 6.6.1 If a Counterparty fails to pay to the other Counterparty any amount due by the relevant due date (or otherwise determined by any dispute resolution process), interest shall be payable on that amount at an annual rate equal to (i) EURIBOR, in respect of claims in EUR; (ii) LIBOR, in respect of claims in GBP; (iii) the Danish Central Bank Policy Rate (Danmarks Nationalbank's lending rate) in respect of claims in DKK; (iv) the Norwegian Central Bank Policy Rate (Norges Bank's sight deposit rate) in respect of claims in NOK; and (v) the Swedish Central Bank Policy Rate (Repo rate) in respect of claims in SEK; and (vi) the Federal Funds Rate in respect of claims in USD, all as, applicable from time to time plus three percent compounded monthly from and including the relevant due date to but excluding the date payment is made.
- 6.6.2 If a Counterparty, following the resolution of a dispute or otherwise to correct any mistaken overpayment or underpayment made in good faith, is to pay an amount to the other Counterparty, interest shall be payable on that amount. The interest rate shall be (i) EURIBOR in respect of claims in EUR; (ii) LIBOR in respect of claims in GBP; (iii) the Danish Central Bank Policy Rate (Danmarks Nationalbank's lending rate) in respect of claims in DKK; (iv) the Norwegian Central Bank Policy Rate (Norges Bank's sight deposit rate) in respect of claims in NOK; (v) the Swedish Central Bank Policy Rate (Repo rate) in respect of claims in SEK; and (vi) the Federal Funds Rate in respect of claims in USD, all as applicable from time to time with the addition of one percent (1%) interest compounded monthly from the date when the amount would have been paid or not paid (as applicable) if the dispute, overpayment or underpayment had not occurred, until but excluding the date payment is made.
- 6.6.3 If any of the interest rates above ceases temporarily or permanently to be published then the Counterparty entitled to payment may substitute a rate published by a European clearing bank that it in good faith considers to be equivalent to that rate and which is generally accepted as such.

7 REPRESENTATIONS AND WARRANTIES

- 7.1 Each Account Holder represents and warrants to the Clearinghouse on each date on which a Transaction is registered for Clearing that:
- a. **Power.** It has the power to perform its obligations under the Clearing Rules and each Clearing Transaction;
 - b. **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation (and, if relevant under those laws, is of good standing) and, that it meets the conditions for membership stated in the Clearing Rules;
 - c. **Organisation.** It is properly staffed and organised to enable it to carry out, and its personnel have the necessary competence and knowledge for Clearing Transactions;
 - d. **Risk Assumption.** It is aware of and understands the characteristics of the Products and the risks related thereto, and it has entered into the Transactions to which it is a party after a full opportunity to review their terms and conditions, and has a sufficient understanding of those terms and conditions and of their risks, and is capable of assuming those risks;
 - e. **No Violation or Conflict.** The execution, delivery and performance of the relevant Clearing Agreements and of Clearing Transactions do not violate or conflict with any Applicable Law or any provision of its constitutional documents applicable to the Account Holder or any of its assets, or any contractual restriction binding on or affecting it or any of its assets;
 - f. **Required Authorisations.** All Required Authorisations under Applicable Law have been obtained and are in full force and effect, and all conditions of any Required Authorisations have been complied with, and there are no further licences or filings with or other acts by or in respect of any Regulatory Body or competent court that are required to be obtained, made or done by the Account Holder in connection with Trading or Clearing, nor is it necessary in order to ensure the validity or enforceability

of the Transaction that the Transaction, the Clearing Rules or any Clearing Agreement are filed, registered or recorded by the Account Holder in any public office;

- g. **Obligations Binding.** Its obligations under each Clearing Transaction and the Clearing Rules constitute legal, valid and binding obligations of the Account Holder, enforceable in accordance with their respective terms subject to Applicable Law affecting creditors' rights generally and to equitable principles of general application;
 - h. **No Default Event.** No Default Event, or event that with notice or lapse of time or both would constitute a Default Event, has occurred with respect to it and no such event would occur as a result of its entering into or performing its obligations under the Clearing Rules;
 - i. **No Litigation.** No litigation, arbitration or administrative suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency, official or arbitrator is pending or, so far as it is aware, threatened against it that would, if adversely determined, result in a material adverse change in its financial condition or its ability to perform its obligations under the Clearing Rules, or that is likely to affect the legality, validity or enforceability against it of the Clearing Rules or its ability to perform its obligations there under;
 - j. **Principal.** Unless when acting as a General Clearing Member or Client Representative pursuant to the Clearing Rules, it has negotiated, entered into and executed the Transactions as principal (and not as agent or in any other capacity, fiduciary or otherwise);
 - k. **Accurate Information.** All applicable information that is furnished in writing by or on behalf of the Account Holder which is identified as being subject to or connected to the Clearing Rules (including any information submitted in the membership application process) is, as of the date it is furnished to the Clearinghouse, true, accurate and complete in every material respect; and
 - l. **No Encumbrances.** The Account Holder shall deliver to the Clearinghouse the relevant deliverables under the Clearing Rules free and clear of all liens, security interests, claims and encumbrances or any interest in or to them by any person, except where in favour of the Clearinghouse.
- 7.2 An Account Holder is deemed to repeat the representations and warranties specified above when entering into each Clearing Transaction as well as any further representations and warranties specified as such in the Clearing Rules.

8 DEFAULT AND INSOLVENCY

8.1 Definition of Default Event

- 8.1.1 A "**Default Event**" means the occurrence at any time of any of the following events:
- a. The Account Holder no longer meets the membership criteria for its applicable membership category.
 - b. The Account Holder fails to meet a Margin Requirement within the applicable time limit as set out in the Clearing Rules.
 - c. The Account Holder fails to meet any of its Settlement obligations under the Clearing Rules.
 - d. The Account Holder, its Collateral Provider, its Approved Settlement Bank or its parent company is subject to an Insolvency Event.
 - e. The Account Holder is in breach of, or omits to observe, any other obligations towards the Clearinghouse or the Exchange under the Clearing Rules or applicable law, or in the Clearinghouse's reasonable opinion, there is a substantial risk that the Account Holder will breach any such obligations.
 - f. Where an Account Holder is a trading or clearing participant under the Trading Rules or the FIN Clearing Rules, the Account Holder is in breach of, or omits to observe, any obligations towards the Clearinghouse under such rules.
 - g. The Account Holder is suspended from any exchange, clearinghouse or similar organisation, provided that such suspension, in the opinion of the Clearinghouse,

materially affects such Account Holder's suitability to act as an Account Holder pursuant to the Clearing Rules or applicable law or regulation.

- h. The Account Holder causes or is subject to any event with respect to it which in the reasonable opinion of the Clearinghouse has an analogous effect to any of the events specified in letters (a) to (g) (inclusive) above.
- i. The Account Holder takes any action in furtherance of, or indicating its consent to approval of, or acquiescence in, any of the events referred to in letters (a) to (h) (inclusive) above.
- j. The Account Holder is in breach of any of its representations or warranties.

8.1.2 The following constitute a **"Material Default Event"**:

- a. Any Default Event under Section 8.1.1 letters (a) and (b).
- b. Any Default Event under Section 8.1.1 letters (c) through (i) (inclusive), provided that the Default Event, in the reasonable opinion of the Clearinghouse, seriously affects the Account Holder's ability to fulfil its current or future obligations under the Clearing Rules, or clearly indicates that the Account Holder is unfit for further Clearing.
- c. Any Default Event under Section 8.1.1 letter (j), provided that the breach of the representation or warranty is material in the reasonable opinion of the Clearinghouse and has not been remedied within fifteen (15) calendar days following written notice from the Clearinghouse, or the breach clearly indicates that the Account Holder is unfit for further Clearing.

8.2 General Provisions Regarding Default Events

8.2.1 If a Default Event occurs with respect to an Account Holder, the Clearinghouse may suspend the Account Holder from Clearing until the Default Event has been remedied or otherwise ceased to the reasonable satisfaction of the Clearinghouse. During suspension, Clearing of new Transactions with the Clearinghouse will only be accepted when preapproved by the Clearinghouse.

8.2.2 If a Material Default Event has occurred with respect to an Account Holder, and subject to Section 8.3.2 but without prejudice to any other remedies available to the Clearinghouse under applicable laws, other provisions of the Clearing Rules, or additional agreements with the Account Holder or relevant third parties, the Clearinghouse may take any one or more of the following steps, provided that (i) if a Material Default Event occurs with respect to an Account Holder that is party to one or more Clearing Transactions registered on a Client Clearing Account, the Clearinghouse shall take the steps set out in the Supplemental default rules for Clearing Transactions recorded on Client Clearing Accounts, and (ii) if a Material Default Event occurs with respect to an Account Holder that is a Client Representative in respect of one or more Clearing Clients, the Clearinghouse shall take the steps set out in the Supplemental default rules for Clearing Transactions recorded on Clearing Client Clearing Accounts:

- a. declare any or all claims of or against the defaulting Account Holder due on that date;
- b. enter into Hedge Transactions in other Series in order to reduce the market risk in Open Positions registered on the Clearing Accounts of the Account Holder;
- c. take such action as it considers necessary or expedient to close-out Open Interest by entering into Close-Out Transactions for the Account Holder's account and risk or otherwise discharge and/or net the rights, obligations and positions of the Account Holder;
- d. withhold any Cash Settlement Amount owed to the Account Holder;
- e. enforce, appropriate, realise and otherwise apply its rights in relation to any Collateral posted by or on behalf of the Account Holder, provided that the Clearinghouse shall only exercise its rights in relation to Collateral for the relevant Client Clearing Account in respect of which such Collateral has been provided;
- f. retain and sell any assets held on behalf of the Account Holder and take possession of any assets delivered to or deposited with the Clearinghouse in relation to the Account Holder;

- g. set off or otherwise apply any Open Positions related to a Clearing Account against any other claims from the Clearinghouse related to the other Clearing Accounts of the Account Holder;
 - h. set off or otherwise apply all profits, Pending Settlements and other claims owed by the Account Holder to the Clearinghouse and by the Clearinghouse to the Account Holder so as to produce a single net sum payable by or to the Account Holder, irrespective of whether such claims are in different currencies and regardless of their origin or character;
 - i. terminate the membership agreement and exclude the Account Holder from Clearing with fifteen (15) days written notice, provided that non-repeated Material Default Events that does not clearly indicate that the Account Holder is unfit for membership shall normally not be grounds for termination; and/or
 - j. terminate any Clearing Client Agreement to which such Account Holder is a party.
- 8.2.3 The Clearinghouse may carry out any or all of the actions set out in Section 8.2.2 above for some or all of the Open Positions registered on a Clearing Account, and/or refrain from such actions with respect to one or several Clearing Accounts established in the name of the Account Holder.
- 8.2.4 No court order or filing or any other legal act shall be required for any of the actions stated in Section 8.2.2 above.
- 8.2.5 Any Close-Out Transactions or other Transactions by the Clearinghouse on the account and risk of the Account Holder may take place through Exchange Trading, OTC Transactions or such other means as the Clearinghouse deems appropriate under the circumstances, provided that the Clearinghouse shall use reasonable endeavours to obtain the best price possible at the relevant time.

8.3 Specific Provisions for Default Events Involving Client Clearing Accounts

- 8.3.1 The provisions of this Section 8.3 applies only in relation to Client Clearing Accounts, and is in addition to the provisions of Section 8.2. This Section 8.3 shall prevail in case of conflict with Section 8.2.
- 8.3.2 If a Material Default Event occurs with respect to a General Clearing Member or Clearing Member holding Client Clearing Accounts:
- a. a Client Clearing Account may not be off-set, hedged or otherwise applied against any other Clearing Account or claim against the General Clearing Member or Clearing Member without the consent of the Client(s) concerned;
 - b. any Collateral posted specifically for a Client Clearing Account may only be applied to cover any claims arising out of the Trading Rules or the Clearing Rules in respect of that Client Clearing Account; and/or
 - c. the Clearinghouse may require reasonable fees and reimbursement of any expenses or costs it incurs in performing any actions on the request of Clients.

8.4 Specific Provisions for Default Events Involving a Client Representative

- 8.4.1 The provisions of this Section 8.4 apply only in relation to Client Representatives, and are in addition to the provisions of Section 8.2. This Section 8.4 shall prevail in case of conflict with Section 8.2.
- 8.4.2 A Clearing Client may not enter into any new Clearing Transactions while its Client Representative is suspended.
- 8.4.3 Following suspension by the Clearinghouse of a Client Representative, the following shall apply:
- a. The Clearinghouse may designate another Client Representative for affected Clearing Clients on a temporary basis, on such terms as the Clearinghouse may reasonably determine.
 - b. The Clearinghouse shall notify affected Clearing Clients of the suspension of its Client Representative. Each Clearing Client shall immediately endeavour to enter into a Clearing Client Agreement with another Client Representative (to be approved by the Clearinghouse).

- c. If a Clearing Client Agreement is not entered into within two (2) Clearing Days following notice from the Clearinghouse, the Clearing Client may be transferred to a Client Representative appointed by the Clearinghouse. A corresponding Clearing Client Agreement shall be deemed to have been entered into, and a bilateral agreement between the Clearing Client and the new Client Representative shall be entered into on behalf of the Clearing Client on such terms as the Clearinghouse may reasonably determine.
- d. When a Clearing Client enters into a Clearing Client Agreement in accordance with subsections (b) or (c) above, the new Client Representative will assume the responsibility for Margin Requirements of the Clearing Client from the time of the Margin Requirement on the second (2nd) Bank Day following the notification above, and the previous Client Representative shall be released in respect of circumstances occurring after such time.
- e. If a Clearing Client does not enter into a Clearing Client Agreement in accordance with subsections (b) or (c) above, the Clearing Client may either (i) ask the Clearinghouse to close out any Open Positions registered to it or (ii) retain any Open Positions subject to the approval of the Clearinghouse, not to be unreasonably withheld.

8.5 Specific Provisions for Default Events Involving a Clearing Client

- 8.5.1 The provisions of this Section 8.5 applies only in relation to Clearing Clients, and is in addition to the provisions of Section 8.2. This Section 8.5 shall prevail in case of conflict with Section 8.2.
- 8.5.2 If at any time a Clearing Client fails to meet a Margin Requirement, the Client Representative may enter into Close-Out Transactions or Hedge Transactions for the Clearing Client's account and risk to the extent required to meet Margin Requirements. The Client Representative shall conduct such Transactions applying best execution principles.
- 8.5.3 If at any time a Material Default Event occurs with respect to a Clearing Client its Client Representative may terminate the Clearing Client Agreement by giving fifteen (15) calendar days' written notice to the Clearing Client and the Clearinghouse, and the Clearinghouse shall immediately suspend the Clearing Client from Clearing Transactions from the reception of such notice.
- 8.5.4 Following a termination of the Clearing Client Agreement, the Client Representative shall, subject to reasonable instructions from the Clearing Client, or with the approval from the Clearinghouse if such instructions cannot be obtained, enter into Close-Out Transactions or Hedge Transactions relating to the Open Position in the applicable Clearing Account of the Clearing Client. Unless as otherwise agreed between the Client Representative and the Clearing Client or as may follow from applicable law, the Client Representative shall use reasonable endeavours to obtain the best price possible.
- 8.5.5 Notwithstanding Sections 8.5.2, 8.5.3 and 8.5.4, the Clearing Client's responsibilities under the Clearing Rules will remain in force for as long as the Clearing Client has Open Positions with the Clearinghouse or owes any amount to the Clearinghouse, as will the Client Representative's responsibilities to the Clearinghouse in respect of the Clearing Client.
- 8.5.6 The Client Representative has the right to obtain coverage for amounts owed by the Clearing Client to the Client Representative in Collateral posted by the Clearing Client in favour of the Clearinghouse, provided that any such claim shall be subordinated to those of the Clearinghouse and that such coverage is allowed by the applicable collateral arrangements.
- 8.5.7 Following termination of a Clearing Client Agreement any excess cash balance or Collateral shall be released to the Clearing Client after coverage of the Clearinghouse's and the Client Representative's final, undisputed and due claims.

8.6 Definition of Insolvency Event

- 8.6.1 An "**Insolvency Event**" means the occurrence at any time with respect to an entity of any of the following events:
 - a. The entity is dissolved (other than pursuant to a consolidation, amalgamation or merger);
 - b. The entity becomes insolvent, suspends its payments, or is unable to pay its debts, or fails or admits in writing its inability generally to pay its debts as they become due;

- c. The entity makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- d. An application is made to a court of competent jurisdiction, or an order is made by such a court, for the purposes of (i) adjudging the entity to be bankrupt or insolvent or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; (ii) approving or granting a petition for a moratorium, reorganisation, arrangement (including pursuant to a scheme of arrangement), liquidation, dissolution, adjustment or composition of or in respect of the entity under any insolvency law; (iii) appointing an administrator, assignee, custodian, examiner, liquidator, provisional liquidator, receiver, sequestrator, supervisor, nominee or trustee or other similar official in respect of the entity or any substantial part of its property, assets or undertaking; (iv) ordering the winding up, official management, liquidation or bankruptcy of the entity (other than pursuant to a consolidation, amalgamation or merger while solvent on terms approved by the Clearinghouse); or (v) consenting to the institution by the entity or any person of proceedings for it to be adjudicated, bankrupt or insolvent or for it to be wound up or liquidated;
- e. The entity seeks, consents or becomes subject to the appointment of an administrator, provisional liquidator, liquidator, conservator, receiver, sequestrator, supervisor, trustee, custodian or other similar official for it or for all or substantially all its assets;
- f. The entity has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged or restrained, in each case within fifteen (15) calendar days thereafter; and
- g. The entity causes or is subject to any event with respect to which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in letters (a) to (f) above.

8.7 General Provisions for Insolvency Events involving an Account Holder

- 8.7.1 If an Account Holder is subject to an Insolvency Event, the Clearinghouse may terminate all Open Positions in the Account Holder's Clearing Account(s) with immediate effect.
- 8.7.2 The value of the positions terminated under Section 8.7.1 shall be determined by reference to any price that would have been obtainable by the Clearinghouse if carrying out a Close-Out Transaction for the positions at any time within three (3) Bank Days after it became aware of the Insolvency Event. To the extent such valuation is in conflict with mandatory law which is applicable to the Account Holder and has extra-territorial application to the Clearinghouse, the value shall be determined mutatis mutandis in accordance with such applicable law.
- 8.7.3 Subject to Sections 8.2.2 and 8.3.2, the amounts resulting from the valuation pursuant to Section 8.7.2 shall be netted and aggregated with any Losses by the Clearinghouse. The resulting net amount shall be paid by the Account Holder or the Clearinghouse (as applicable) in the next Daily Cash Settlement.
- 8.7.4 This Section 8.7 shall prevail in case of conflict with Sections 8.1 through 8.6 (inclusive).

8.8 Default or Insolvency of the Clearinghouse

- 8.8.1 In the event that the Clearinghouse is in default of its obligations under the Clearing Rules, Account Holders may terminate their Clearing Agreement with effect from the moment no Open Positions are registered in the Clearing Accounts which the Account Holder is responsible for and all Cash Settlements and Deliveries have been finalised, including the associated Clearing Accounts of Clearing Clients in case of Client Representatives.
- 8.8.2 A "Material Default" by the Clearinghouse exists if the Clearinghouse breaches a Settlement or Delivery obligation (other than to a defaulting Account Holder) and such breach is not remedied within twenty (20) Bank Days after the relevant Settlement or Delivery is due.
- 8.8.3 An Account Holder may, in the event that the Clearinghouse is in Material Default as defined above, terminate any or all Open Positions registered in its Clearing Accounts by designating an early termination date by giving the Clearinghouse not less than twenty (20) Bank Days' written notice.

- 8.8.4 In the event that the Clearinghouse files for bankruptcy proceedings or is declared bankrupt, all Open Positions with the Clearinghouse are automatically terminated.
- 8.8.5 Upon a termination under Sections 8.8.3 or 8.8.4 the Account Holder shall calculate a positive or negative value of the terminated Open Positions on the basis of the latest listed price for the relevant Series or, where no such price is available, the market value of such Clearing Transaction, in either case at the time of termination, these values to be aggregated and netted to a single close-out amount for all relevant Clearing Transactions (in each case expressed in EUR or such other currency as approved in writing by the Clearing House). Such calculation shall be made on an account by account basis, provided that it shall be permitted to consolidate two or more accounts if the Account Holder and, where relevant, the underlying Client(s) are identical in respect of all such accounts.
- 8.8.6 The Account Holder is not required to enter into replacement Transactions in order to determine the close-out amount. The Account Holder may, if appropriate and to the extent this does not represent double coverage, calculate its Loss (in each case expressed in EUR or such other currency as approved in writing by the Clearinghouse), in connection with the termination of Open Positions on each such account in respect of the default by the Clearinghouse and set off the Loss against any payment obligation towards the Clearinghouse in respect of the same account(s). To the extent not taken into account when determining the close-out amount or any Loss, the Account Holder may furthermore set off an amount owing by the Clearinghouse to the Account Holder in respect of Collateral that the Clearinghouse is due to return to the Account Holder in respect of each account and that the Account Holder has provided to the Clearing House on a title transfer basis against any remaining payment obligation toward the Clearing House in respect of the same account(s). A net amount remaining is for the purposes of this Section 8.8 referred to as a **“Termination Amount”**.
- 8.8.7 The Account Holder shall notify the Clearinghouse in writing of the Termination Amount(s) calculated, including detailed support for the calculation. If a Termination Amount is positive, the Clearinghouse shall pay such Termination Amount to the Account Holder in EUR within fifteen (15) Bank Days of invoice or notification, which amount shall bear interest in accordance with Section 6.6. If a Termination Amount is negative, the Account Holder shall pay an amount in EUR equal to the absolute value of such Termination Amount to the Clearinghouse within thirty (30) Bank Days of the termination under Section 8.8.3 or 8.8.4, and any such amount shall bear interest in accordance with Section 6.6.
- 8.8.8 The Account Holder may however, at its option, set off the obligation to pay a Termination Amount under Section 8.8.7 against any other amounts owing (whether or not matured, contingent or invoiced) of the Clearinghouse in favour of the Account Holder, save that Termination Amounts owing of the Clearinghouse in respect of Client Clearing Accounts or Clearing Clients’ Clearing Accounts may not be used for such set-off. However, the Account Holder shall not be allowed to set off such payment obligation against the value of any Default Fund contributions owing by the Clearinghouse to the Account Holder. The Account Holder shall provide the Clearinghouse with detailed support of any amounts used for set-off. This right of set-off is without prejudice and in addition to any other right of set-off, combination of accounts, lien, charge or other right to which the Account Holder is at any time otherwise entitled (whether by operation of law, by contract or otherwise).
- 8.8.9 If an amount is unascertained, the Account Holder may reasonably estimate the amount to be set off. The parties shall make any adjustment payment required within three (3) Bank Days of the amount becoming ascertained.
- 8.8.10 If the Clearinghouse disputes any Termination Amount under this Section 8.8, it shall notify the Account Holder as soon as practically possible and pay the lesser amount as calculated by the Clearinghouse by the due date in accordance with Section 8.8.7, subject to payment of any further amount together with interest calculated in accordance with Section 6.6 once the dispute has been settled or determined.

8.9 The Clearinghouse’s Duty of Notification

- 8.9.1 The Clearinghouse shall as soon as practicable inform the Account Holder in writing of any measures that have been taken under Sections 8.1 - 8.7 in accordance with the Default Notification Procedures.
- 8.9.2 The Clearinghouse shall provide the Account Holder with a written account stating the measures taken and the Account Holder’s remaining Open Position and other obligations (if

any) between the Account Holder and the Clearinghouse following the Clearinghouse's finalisation or exhaustion of such measures.

- 8.9.3 Prior to calling a Default Event, the Clearinghouse shall immediately contact the competent authority or other exchange or clearing organisation or governmental authority or regulatory body as required by applicable law and regulation.

9 LIABILITIES AND FORCE MAJEURE

9.1 Force Majeure

- 9.1.1 If a Force Majeure Event prevents a Counterparty from performing any obligation under these Clearing Rules at the prescribed time in whole or in part, the time for performance of such obligation shall be suspended for as long as the Force Majeure Event persists subject to Sections 9.1.2 and 9.1.4. The other Counterparty shall be entitled to suspend its obligations towards the affected Counterparty accordingly.
- 9.1.2 If it is clear that a Force Majeure Event persists or will persist for more than three (3) Bank Days (excluding the day on which the Force Majeure Event occurs) in relation to an Account Holder, and provided that the Account Holder fails to meet its Margin Requirement or its Settlement obligations within the applicable time limits, the Clearinghouse shall be entitled to invoke its rights pursuant to Section 8 notwithstanding Section 9.1.1, provided that the Clearinghouse shall (to the extent possible) give prior notice to the Account Holder and take reasonable account of the Force Majeure Event (including its anticipated perseverance) and the Account Holder's reasonable requests (if any) when invoking such rights.
- 9.1.3 If a significant portion of the Account Holders and/or the Settlement Banks, and/or the Clearinghouse, is subject to a Force Majeure Event, the Clearinghouse may declare a state of general force majeure in relation to all affected Counterparties. In such case, the Clearinghouse may temporarily suspend the affected Counterparties' obligations and/or invoke alternative arrangements, or implement such other similar measures as it deems necessary and appropriate in order to mitigate the effects of such circumstances and to ensure the fair and orderly settlement, price formation or integrity of any Contract, taking into account the reasonably anticipated interests of all affected Counterparties.
- 9.1.4 A Counterparty shall only be entitled to claim relief due to a Force Majeure Event under this Section 9.1 if the Counterparty:
- a. complies with Sections 9.1.5 or 9.1.6 (as applicable); and
 - b. continues to seek to perform its obligations under the Clearing Rules to the best of its abilities.
- 9.1.5 An Account Holder seeking relief under Section 9.1.1 shall:
- a. notify the Clearinghouse as soon as practically possible after it becomes aware (or should reasonably have become aware) of the Force Majeure Event, reasonably evidencing that a Force Majeure Event has occurred; and
 - b. as soon as practically possible provide to the Clearinghouse a non-binding estimate of the likely effect on the performance of its obligations and the extent and expected duration of its inability to perform its obligations under the Clearing Rules, and shall provide reasonable updates, when and if available, of the extent and expected duration of the Force Majeure Event; and
 - c. on request promptly provide all further information required by the Clearinghouse to determine whether a Force Majeure Event has occurred and/or information in relation to affected Clearing Transactions; and
 - d. promptly take such actions in respect of Clearing Transactions as the Clearinghouse deems reasonably necessary or desirable to manage the continued operation of the relevant market and/or Clearing of Transactions in light of the Force Majeure Event.
- 9.1.6 The Clearinghouse shall, as soon as practically possible after it becomes aware of a Force Majeure Event affecting the Clearinghouse, notify all affected Account Holders of the Force Majeure Event and, to the extent then available, provide a non-binding estimate of the likely effect on the performance of its obligations and the extent and expected duration of its inability to perform its obligations under these Clearing Rules. The Clearinghouse shall

use all commercially reasonable efforts to mitigate the effects of the Force Majeure Event and shall, during the continuation of the Force Majeure Event provide all affected Account Holders with reasonable updates, when and if available, of the extent and expected duration of the Force Majeure Event.

- 9.1.7 A Counterparty that is subject to a Force Majeure Event shall not, subject to its compliance with this Section 9.1, be liable for any loss or damage caused by such Counterparty's non-performance of its other obligations under these Clearing Rules, and a Counterparty may not use any claim relating to such loss or damages as grounds for set-off or withholding of its obligations towards another Counterparty. Notwithstanding the foregoing, interest in accordance with Section 6.6 will accrue even in case of a Force Majeure Event.

9.2 Exclusion of Liability

- 9.2.1 The Counterparties shall not be liable for any loss or damage that may arise as a result of any act governed by the Clearing Rules, provided that the Counterparty has not acted negligent or intentional. For the avoidance of doubt this clause shall not limit the Counterparties' obligations in relation to Settlement or Margin Requirements.

- 9.2.2 Save as explicitly set out in these Clearing Rules, the Clearinghouse shall have no liability to any Account Holder or Broker in connection with performance or non-performance of its obligations under these Clearing Rules to the extent such performance or non-performance is a result of:

- a. the occurrence of any Default Event in relation to the Account Holder or its Collateral Provider;
- b. any delay or failure by the Account Holder in the performance of its obligations to the Clearinghouse;
- c. the Clearinghouse acting or relying in good faith on any communication in accordance with Section 10.4;
- d. the performance or non-performance of any Counterparty or entity other than the Clearinghouse (or its nominee) under the Clearing Rules;
- e. any suspension, interruption, temporary unavailability or fault occurring in the provision of the Clearing System except where such circumstances have been caused by the wilful or reckless conduct of the Clearinghouse;
- f. any loss or damage whatsoever and howsoever caused arising in connection with the use of information or services acquired or accessed by Account Holders or Brokers through use of the Clearing System howsoever;
- g. any loss or damage in connection with the availability, functionality or accessibility of any system employed by the Account Holder or Broker to access the Clearing System, including the availability of telecommunication lines leased by the Account Holder or Broker; or
- h. the Clearinghouse complying with applicable law.

9.3 Indemnity

- 9.3.1 Without prejudice to all other rights and remedies available to the Clearinghouse, but provided that the Clearinghouse shall not be permitted to recover twice for the same loss, each Account Holder (the "indemnifying Account Holder") shall, on demand by the Clearinghouse, indemnify the Clearinghouse against any cost, loss or liability incurred by the Clearinghouse as a result of the following:

- a. the occurrence of any Default Event in relation to the indemnifying Account Holder or any of its Collateral Providers (in their capacity as Collateral Provider for the Account Holder);
- b. a delay or failure by the indemnifying Account Holder in the performance of its obligations to the Clearinghouse, except where such performance has been delayed or prevented as a result of a Force Majeure Event and subject to Section 9.1;
- c. investigating, defending and/or paying any claim brought against the Clearinghouse by any person for whom the indemnifying Account Holder has agreed to submit a Transaction for Clearing; and

- d. investigating, defending and/or paying any claim brought against the Clearinghouse by any other Account Holder or third party, directly or indirectly as a result of (i) any breach by the indemnifying Account Holder of the Clearing Rules; (ii) the Clearinghouse complying with any court order or other legal or regulatory process in any action brought by or with respect to the indemnifying Account Holder; (iii) the Clearinghouse's proper provision of its services to the indemnifying Account Holder.
- 9.3.2 The indemnity contained in clause 9.3.1 above shall not require any Account Holder to indemnify the Clearinghouse for any cost or loss to the extent such indemnity would breach the requirements of Article 39 of EMIR or any other applicable law or regulation.

9.4 Sole Remedy and Exclusion of Consequential Loss

- 9.4.1 Save as provided in the next sentence or as provided separately in the Clearing Appendices, the rights under Sections 8 and 9 are in full and final satisfaction of the rights of the non-defaulting Counterparty if a Default Event occurs. For the avoidance of doubt, nothing in these Clearing Rules shall limit any claim or remedy the Clearinghouse has against an Account Holder for failure by the Account Holder to meet its Settlement obligations under the Clearing Rules, including any Excess Emissions Penalty, unless and to the extent such loss or damage was caused by a Force Majeure Event and subject to Section 9.1.
- 9.4.2 Save as expressly provided in the Clearing Rules, no Counterparty shall be liable to any other Counterparty for any indirect or consequential loss (including, but not limited to, loss of business, loss of profits, trading losses, loss of opportunity and loss of use) howsoever suffered or incurred or for any special, punitive or exemplary damages save in the case of deliberate and intentional misconduct by a Counterparty.

9.5 Right of access

- 9.5.1 In order to ensure compliance by the Account Holders with the Clearing Rules, the Clearinghouse shall, subject to relevant statutory and regulatory limitations, such as bank secrecy obligations, have the right to access the offices of an Account Holder (including any facilities or temporary offices wherein data is stored by the Account Holder) at the request of the Clearinghouse in order to conduct audits and in order to obtain any information which the Clearinghouse reasonably deems necessary in order to monitor and ensure compliance with the Clearing Rules and in order to fulfill its obligations pursuant to applicable securities and clearing operation legislation and regulations given pursuant thereto.

10 COMMUNICATION

- 10.1 Communications between the Clearinghouse and Account Holders shall be in English, unless as otherwise agreed between the individuals communicating.
- 10.2 Any notice to be given under the Clearing Rules shall be in writing and shall be delivered or sent by fax or email. If addressed to the Clearinghouse the notice shall be sent to the relevant address(es) and number(s) specified on the Clearinghouse's website at any time. If addressed to the Account Holder the notice shall be sent to the relevant address or telephone number or e-mail address specified by that Account Holder in writing as may be changed by confirmed notice to and from the Clearinghouse (and to the Client Representative in case of Clearing Clients). The Clearinghouse and Account Holders may communicate via the Clearing System in respect of issues that are covered by the functionality of the Clearing System application. The Clearinghouse may also communicate via its standard website for matters pertaining to the Clearing Rules.
- 10.3 Notices shall be deemed to have been given (in the case of fax or email communication) on the date on which they are sent or (in the case of other communications) on the date of delivery to the appropriate address.
- 10.4 The Clearinghouse shall be entitled to act and otherwise rely upon any communication (whether or not in writing) which purports and which the Clearinghouse believes in good faith:
- a. to have been issued by or on behalf of an Account Holder; or
 - b. to have been approved by an individual who is authorised by that Account Holder, and which (in the case of an electronic communication) satisfies the requirements of any

applicable requirements of the Clearinghouse in relation to the security and integrity of information which is transmitted electronically.

11 TRADE INFORMATION

- 11.1 Whenever an Account Holder provides data relating to Transactions to the Clearinghouse;
- a. such data, as provided by the Account Holder in its original format, shall belong to the Account Holder; and
 - b. the Account Holder irrevocably grants to the Clearinghouse a perpetual, non-exclusive, royalty-free licence (which shall survive the termination of any Clearing Agreement) to include such data in the Trade Information and to use such data for whatever purpose in accordance with these Clearing Rules. The Clearinghouse shall treat the identity of the Account Holder as confidential in accordance with Section 12.
- 11.2 Account Holders shall, except as permitted pursuant to these Clearing Rules or as may be permitted by mandatory provisions of applicable law or other written agreement with or written authorisation from the Clearinghouse:
- a. use any Trade Information received only in the ordinary course of business as it relates to its Clearing activities, and not cause any unauthorized third party to access or use the Trade Information except where such third party is assisting the Account Holder in relation to its Clearing activities and is subject to restrictions that are no less strict than those applying to the Account Holder in respect of Trade Information;
 - b. ensure that its relevant employees, agents, independent contractors and other recipients of Trade Information do not act in violation of the Clearinghouse or its licensors rights to the Trade Information; and
 - c. take all such reasonable steps which shall from time to time be necessary, in the reasonable opinion of the Clearinghouse, to protect the rights of the Clearinghouse or its licensors in the Trade Information.
- 11.3 All copyright and other intellectual property rights or proprietary rights of whatever nature contained in the Trade Information (including, for the avoidance of doubt, all database rights and similar rights whether or not protected by law) are and shall at all times remain, as between the Clearinghouse and the Account Holders, the property of the Clearinghouse. The Clearinghouse shall be entitled to use, copy, adapt, sub-license, supply, sell, distribute, assign, transfer, rent, lease, charge or otherwise deal with Trade Information as it deems fit at all times.

12 CONFIDENTIALITY AND INFORMATION SHARING

- 12.1 Except as otherwise set forth herein all information and data received by the Clearinghouse from Account Holders, including information relating to Transactions and information pertaining to the legal or financial status of the Account Holder or its membership eligibility or business in general, will be treated as confidential by the Clearinghouse.
- 12.2 Notwithstanding Section 12.1, but subject to applicable and mandatory law:
- a. the duty of confidentiality shall not extend to information which is or becomes public through no breach of the Clearinghouse's confidentiality obligations hereunder, which the Clearinghouse already possessed at the time of reception without any obligation of confidentiality, or which the Clearinghouse receives from a third party through no breach of the third party's confidentiality obligations towards the Account Holder;
 - b. the Clearinghouse may share information with the Exchange relating to Account Holders that are also Exchange Members, provided that the relevant Account Holder has an obligation under the Trading Rules (as Exchange Member) to disclose such information to the Exchange or the provision of such information is required in connection with market surveillance of Exchange Listed Products;
 - c. the Clearinghouse may share information related to a Client Transaction, or any Default Event affecting the General Clearing Member or Clearing Member, with the relevant Client;

- d. the Clearinghouse may share information related to the Clearing Accounts and Clearing Transactions of a Clearing Client, or any Default Event affecting the Clearing Client, with its Client Representative;
 - e. the Clearinghouse may share information with any other person or entity advising or assisting the Clearinghouse in its operations, provided that such persons and entities are subject to a corresponding duty of confidentiality and shall only use the information for such purposes;
 - f. the Clearinghouse may share any information as the Clearinghouse deems to be required by applicable law, provided that the Account Holder should be notified thereof to the extent allowed and practicable; and
 - g. the Clearinghouse shall not be required to keep confidential the fact that an Account Holder is a member of the Clearinghouse or its applicable membership category.
- 12.3 The Clearinghouse may enter into information-sharing agreements or other arrangements or procedures with other market operators or clearing organizations for the purpose of market surveillance of the Products, or contracts or instruments related to the Products, provided that the receiving entity is subject to materially similar confidentiality obligations and other restrictions as those of the Clearinghouse in respect of the disclosed information. As part of any such arrangements or procedures the Clearinghouse may:
- a. provide market surveillance reports to other market operators or clearing organizations;
 - b. share information and documents concerning current and former Account Holders with other market operators or clearing organizations;
 - c. share information and documents concerning ongoing and completed investigations with other market operators or clearing organizations; and/or
 - d. require its Account Holders to provide information and documents to the Clearinghouse at the request of other market operators or clearing organizations with which the Clearinghouse has entered into such arrangements.
- 12.4 The Clearinghouse may enter into any arrangement with any entity or body (including any Regulatory Bodies, any market operator or clearing organization) if the Clearinghouse (i) believes that such entity or body exercises a legal or regulatory function under any law or regulation, or a function comprising or associated with the enforcement of a legal or regulatory function, or (ii) considers such arrangement to be in furtherance of the Clearinghouse's purpose or duties under applicable law. The Clearinghouse may disclose to any entity information concerning or associated with an Account Holder or other entities that the Clearinghouse believes is necessary and appropriate in exercising a legal or regulatory function (including, without limitation, information concerning any aspect of any clearing activity or business concerning the Clearinghouse), whether or not a formal arrangement governing the disclosure exists or a request for information was made.
- 12.5 The Clearinghouse shall publicly disclose any breaches by Account Holders of the criteria referred to in Articles 37(1) and 38(1) of EMIR (breach of admission criteria and breach of requirement to publicly disclose prices and fees) except where the competent authority, after consulting the European Securities and Markets Authority, considers that such disclosure would constitute a threat to financial stability or to market confidence or would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.
- 12.6 Subject to applicable and mandatory law, the Clearinghouse may use any information in relation to any Account Holder or Client where necessary to enable the proper performance of its activities.

13 RECORD KEEPING

- 13.1 The Clearinghouse shall maintain, for a period of at least ten years, all the records on the services and activity provided so as to enable the competent authority to monitor the Clearinghouse's compliance with EMIR.
- 13.2 The Clearinghouse shall maintain, for a period of at least ten years following the termination of a Clearing Transaction, all information on all Clearing Transactions it has

processed. That process shall at least enable the identification of the original terms of a Transaction before clearing by the Clearinghouse.

- 13.3 The Clearinghouse shall make the records and information referred to in sections 13.1 and 13.2 and all information on the positions of the cleared Clearing Transactions, irrespective of the venue where the Transactions were executed, available upon request to the competent authority, to the European Securities and Markets Authority and to the relevant members of the European System of Central Banks.

14 COMPLAINTS PROCEDURE

- 14.1 The Clearinghouse's complaints procedure is published by the Clearinghouse on its website.

15 RECOVERY AND RESOLUTION PROCEDURE

- 15.1 The Clearinghouse's recovery and resolution procedure is published by the Clearinghouse on its website.

16 TRADE REPORTING

- 16.1 Unless otherwise agreed in writing, the Clearinghouse shall not be responsible for reporting details of any Transaction or Clearing Transaction and of any modification or termination of such Transaction or Clearing Transaction to a Trade Repository in accordance with EMIR or any other applicable laws on behalf of any Account Holder.
- 16.2 Should the Clearinghouse in any way agree to report such details on behalf of an Account Holder, the Account Holder shall upon request by the Clearinghouse provide such information the Clearinghouse may require to submit such reports.

17 MISCELLANEOUS

17.1 Transfer of Rights

Save as explicitly set out herein, the rights of an Account Holder under the Clearing Rules are not assignable or otherwise transferable without the prior written consent of the Clearinghouse.

A clearing membership may be transferred to another entity in connection with a merger or other business combination where such transfer of membership is approved by the Clearinghouse, as well as any other transfer approved by the Clearinghouse.

17.2 Third Party Rights

Save as explicitly set out herein, no entity who is not a Counterparty (or its Broker) shall confer any benefit on, or give any right to enforce any provisions of the Clearing Rules to any person.

17.3 Severability

If at any time any provision of the Clearing Rules becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of the Clearing Rules nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

17.4 Binding Effect of Determinations

Any good faith certification or determination by the Clearinghouse of a rate or amount under the Clearing Rules shall, in the absence of manifest error, be conclusive evidence of the matters to which it relates.

Any good faith estimate made by the Clearinghouse in accordance with the Clearing Rules shall, in the absence of manifest error, be binding on all Counterparties affected thereby.

In any proceedings arising out of or in connection with the Clearing Rules, the entries made in the accounts maintained by the Clearinghouse for an Account Holder will be prima facie evidence of the matters to which they relate.

17.5 Non-waiver of Rights

No failure of a Counterparty to exercise, nor any delay on its part in exercising, any of its rights (in whole or in part) under the Clearing Rules shall operate as a waiver of the Counterparty's rights or remedies upon that or any subsequent occasion.

18 CHOICE OF LAW AND ARBITRATION

- 18.1 The Clearing Rules and all disputes arising out of them are subject to Norwegian law without regard to its conflict of laws provisions. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.
- 18.2 Any dispute between the Parties concerning the understanding of the Clearing Rules or any dispute arising from any acts or omissions governed by them shall be decided by arbitration in Oslo pursuant to the Norwegian Arbitration Act.

[end of document]

Annex 3: Security Documentation



GENERAL TERMS FOR COLLATERAL CUSTODY ACCOUNTS

1. APPLICATION

- 1.1 These General Terms for Collateral Custody Accounts set forth certain terms and conditions generally applicable to Custody Accounts with NASDAQ OMX, and apply to any and all Custody Accounts and govern the relation between NASDAQ OMX and the Account Holder in connection therewith.
- 1.2 These General Terms for Collateral Custody Accounts are a supplement to, and form an integral part of, the Collateral Custody Account Agreement which must be signed by the Account Holder and NASDAQ OMX in order to establish a Custody Account.
- 1.3 If any provision of these General Terms for Collateral Custody Accounts is inconsistent with a provision of the Collateral Custody Account Agreement, the latter shall prevail.

2. INTERPRETATION

- 2.1 Save where the context requires otherwise, the following capitalized expressions shall have the meaning ascribed to them below (including where used above):

Account Holder	means the person nominated as such in the Collateral Custody Account Agreement.
Agreement	means the Collateral Custody Account Agreement and these General Terms for Collateral Custody Accounts as from time to time may be amended, supplemented or restated.
Authorised Person	has the meaning ascribed to it in clause 12.4.
Bank	means a bank or similar financial institution, which is designated as eligible by NASDAQ OMX to receive Cash Amounts for the purposes of this Agreement at the relevant time.
Bank Account	means any account opened in the name of NASDAQ OMX with a Bank and designated by NASDAQ OMX for the purpose of receiving Cash Amounts under this Agreement.
Business Day	means a day (other than a Saturday or Sunday) on which commercial banks in the country in which the relevant Custody Account, Bank Account or Securities Account is held are generally open for business.
Cash Amounts	means any Collateral in the form of cash, and includes cash amounts deposited on a Bank Account and reflected on the Custody Account, cash amounts received as matured principal amounts or yield on Pledged Securities, or any other cash amounts which otherwise are related to the Pledged Securities, and accrued interest on cash amounts reflected on the Custody Account.
Cash Security	has the meaning ascribed to it in clause 8.2.
Collateral	has the meaning ascribed to it in the Rules, as may be amended from time to time.

CSD	means a Central Securities Depository, or similar organisation holding securities to enable book entry transfer of Securities, and which is designated as eligible by NASDAQ OMX to register and/or hold Securities for the purposes of this Agreement at the relevant time.
Custody Account	means the account opened in the name of the Account Holder with NASDAQ OMX as account provider and nominated as such in the Collateral Custody Account Agreement.
Instructions	has the meaning ascribed to it in clause 12.5.
Investment Policy	means a policy document containing NASDAQ OMX' investment policies in respect of the cash provided as collateral to NASDAQ OMX, as may be amended from time to time.
NASDAQ OMX	NASDAQ OMX Clearing AB, corporate registration number 556383-9058 in the Swedish companies register, with its registered business address at Tullvaktsvägen 15, SE-105 78 Stockholm, Sweden.
NASDAQ OMX Deposit Rate	NASDAQ OMX's base rate for interest calculations of Account Holders' cash deposits with NASDAQ OMX. The current rate can be found on the Website.
Other Security Interest	means: <ul style="list-style-type: none"> (i) any mortgage, charge, pledge, assignment (whether or not expressed to be by way of security), hypothecation, lien, encumbrance or other priority or any security interest whatsoever, howsoever created or arising; (ii) any deferred purchase, title retention, trust, sale-and-repurchase, sale-and-leaseback, hold back or "flawed asset" arrangement or right of set-off; (iii) any other agreement or arrangement whatsoever having the same or a similar commercial or economic effect as security.
Party	means either the Account Holder or NASDAQ OMX (as the context requires) in their capacity as parties to the Agreement, and "Parties" shall be construed accordingly.
Pledged Securities	has the meaning ascribed to it in clause 8.1.
Rules	means the terms and conditions governing the relevant clearing activities, as designated in the Collateral Custody Account Agreement, conducted by NASDAQ OMX as a clearing organisation, as may be amended from time to time.
Secured Sums	means, in relation to a Custody Account, any and all claims NASDAQ OMX may have against the Account Holder in accordance with the Rules and subject to the limitations (including in relation to segregation of client assets) set out in the Rules and any amounts payable by the Account Holder under this Agreement.

Securities	means any Collateral other than Cash Amounts.
Securities Account	means any securities account with a CSD opened in the name of NASDAQ OMX in its capacity as nominee or any securities account opened in the name of NASDAQ OMX on behalf of clients with a CSD or with any of NASDAQ OMX's appointed Sub-custodians, and designated by NASDAQ OMX for the purpose of depositing Securities under this Agreement.
Security Interest	means the security created in accordance with these General Terms for Collateral Custody Accounts and as specified under clause 8.
Securities Pledge	means the pledge created over the Pledged Securities under clause 8.1.
Sub-custodians	means an institution appointed by NASDAQ OMX in accordance with this Agreement to provide custody services to NASDAQ OMX.
Website	means the internet web page of NASDAQ OMX, and shall include any hyperlinks or other references directly incorporated by such Website.

- 2.2 References to clauses are, unless otherwise specified, references to clauses of the Agreement.
- 2.3 References to any agreement or document shall be construed as a reference to such agreement or document (including their respective schedules and appendices) as the same may from time to time be amended, varied, supplemented, novated, replaced or restated and shall include any document which is supplemental to, or is expressed to be collateral to, or is entered into pursuant to or in accordance with the terms of, such agreement or document.
- 2.4 References to statutes are, unless otherwise specified, references to statutes of Sweden, and include any statutory modifications or re-enactments thereof, or rules or regulations promulgated thereunder for the time being in force. References to "applicable law" shall include references to the relevant laws of any relevant jurisdiction.
- 2.5 Words importing one gender only shall include the other and words importing the singular number only shall include the plural and vice versa (unless the context otherwise requires).
- 2.6 Words importing persons include companies and associations or bodies of persons whether corporate or unincorporated.
- 2.7 Headings are for convenience only and shall not affect the construction hereof.
- 2.8 Any discretion, power or right conferred on NASDAQ OMX to make or vary any determination or to give any approval or to decide any matter or to form any opinion or judgment shall be construed to be a discretion, power or right exercisable by NASDAQ OMX, in its sole and unfettered discretion, at any time and from time to time.

3. CUSTODY ACCOUNT

- 3.1 The Account Holder hereby authorises NASDAQ OMX (and NASDAQ OMX so agrees) to establish and maintain, on the terms of the Agreement, a Custody Account with NASDAQ OMX for the purpose of registering Pledged Securities and reflecting Cash Amounts provided as Collateral in accordance with the Rules.
- 3.2 NASDAQ OMX shall be responsible for the safekeeping of any Pledged Securities registered to the Custody Account.

4. REGISTRATIONS AND REFLECTIONS ON THE CUSTODY ACCOUNT

- 4.1 The Account Holder will provide Collateral through either:
- (i) Securities deposited to the Custody Account; or
 - (ii) Cash Amounts deposited to one or more Bank Accounts and reflected on the Custody Account.
- 4.2 Securities shall be registered on the Custody Account and received by NASDAQ OMX on the same day that the Securities are registered on the relevant Securities Account in accordance with the rules of and market practice applicable to the applicable Securities Account, provided that the registration is made during the opening hours applicable to the relevant Securities Account (failing which the registration shall not be deemed made until the next day on which the relevant Securities Account is open for registration of the relevant Securities).
- 4.3 Cash Amounts shall be reflected on the Custody Account, representing a claim, and shall be received by NASDAQ OMX on the same day Cash Amounts are registered on the relevant Bank Account and NASDAQ OMX has received a confirmation from such Bank, provided that (i) the registration is made and the confirmation is received during the opening hours of the relevant Bank (failing which the registration shall not be deemed made until the next day on which the relevant Bank is open for registration of the relevant Cash Amounts) and (ii) the registration of the Cash Amounts on the relevant Bank Account is made with a valid reference to the Account Holder's Custody Account number (failing which the registration shall not be deemed made until the day on which NASDAQ OMX has received the valid reference).
- 4.4 Securities may be pooled and comingled with property of other clients of NASDAQ OMX, provided that any Securities Account(s) used shall be marked so as to indicate its nominee nature or that it is held on behalf of clients. Securities may not be pooled and comingled with NASDAQ OMX's own assets or the assets of NASDAQ OMX's appointed Sub-custodians. Any maturity proceeds following a corporate action in respect of Pledged Securities provided will be held by NASDAQ OMX as a Cash Amount until such time as it may be released in accordance with the Rules. Cash Amounts will be pooled and comingled with the funds of NASDAQ OMX. The Account Holder acknowledges that it will rank *pari passu* with NASDAQ OMX's other unsecured creditors in relation to the Cash Amounts. NASDAQ OMX is entitled to, at its own discretion, dispose of any amounts registered on a Bank Account, subject to NASDAQ OMX's Investment Policy. For avoidance of doubt, any disposal by NASDAQ OMX of any amount registered on a Bank Account will not affect the Cash Amount reflected on the Custody Account. A summary of the Investment Policy applicable from time to time shall be made available to the Account Holder upon request. Material changes to the Investment Policy shall be notified to the Account Holder with at least two (2) weeks' prior notice.

5. DUTIES OF NASDAQ OMX

NASDAQ OMX shall:

- 5.1 Comply with the terms of the Agreement and the Rules and shall not do any act or omit any act which is in conflict with the Agreement or the Rules.
- 5.2 Keep and maintain all Pledged Securities in accordance with the Agreement and the Rules, and shall not use or otherwise dispose of any Pledged Securities for any other purpose.
- 5.3 Keep and maintain the Custody Account in Sweden.
- 5.4 Keep separate records in respect of Pledged Securities that shall enable NASDAQ OMX to at any time, without delay, distinguish the Pledged Securities registered on the Custody Account from securities registered on any other custody account and from NASDAQ OMX's own assets.
- 5.5 Insofar as relevant to the Pledged Securities registered to the Custody Account:
 - (i) sign any certificates of ownership or other certificates relating to the Pledged Securities;
 - (ii) collect and receive all payments (whether income, capital or dividend) and distributions in respect of such Pledged Securities on behalf of the Account Holder, and take any action necessary and proper, and/or otherwise reasonably incidental in connection with the same, including (without limitation) the presentation of coupons and other interest items and reflect all such payments on the Account Holder's Custody Account, whereby income and dividend payments will be paid out to the Account Holder's designated bank account;
 - (iii) upon receipt of Instructions from the Account Holder and as far as reasonably practicable and unless in conflict with NASDAQ OMX's Securities Pledge, exercise subscription, purchase or other similar rights attaching to the Securities on behalf of the Account Holder, provided in each case that the Account Holder has furnished to NASDAQ OMX the funds and other documentation, etc. required and requested to cover any costs in relation to such actions and execute such actions; and
 - (iv) NASDAQ OMX shall have a duty of care with respect to the Pledged Securities in accordance with applicable laws, regulations, customs and market practice in the relevant market.

6. DUTIES OF THE ACCOUNT HOLDER

The Account Holder shall:

- 6.1 Comply with the terms of the Agreement and the Rules and not do any act or omit any act which could reasonably impede or diminish NASDAQ OMX's Securities Pledge or Cash Security.
- 6.2 On the request of NASDAQ OMX execute and deliver such documents and give such Instructions as may be required to give effect to the Agreement.
- 6.3 On the request of NASDAQ OMX deliver or cause to be delivered to NASDAQ OMX from time to time any relevant material as NASDAQ OMX may require for the

performance of its duties hereunder, including evidence of ownership of any Pledged Securities and copies of any other documents or material which is reasonably requested by NASDAQ OMX.

7. REPRESENTATION AND WARRANTIES

7.1 Each of NASDAQ OMX and the Account Holder represents and warrants to the other that:

- (i) it is duly organized and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing (unless it is an individual);
- (ii) it has obtained all authorisations of any governmental or regulatory body required in connection with the execution and performance of the Agreement and such authorisations are in full force and effect;
- (iii) it will comply with all rules and regulations applicable to its operations under applicable law; and
- (iv) it has the power and authority to execute, deliver and to perform its obligations under the Agreement (and under any other documentation required in connection herewith).

7.2 The Account Holder further represents and warrants to NASDAQ OMX that:

- (i) it is the owner of any Pledged Securities and that it is fully empowered to enter into and perform its obligations under the Agreement and to grant the rights and remedies to NASDAQ OMX contained herein and therein;
- (ii) all right, title and interest in any Pledged Securities shall be pledged to NASDAQ OMX, free of any Other Security Interest in favour of any party other than NASDAQ OMX; and
- (iii) its obligations under the Agreement constitutes legal, valid and binding obligations enforceable against the Account Holder.

7.3 Each Party shall inform the other Party immediately if any representation or warranty in clauses 7.1 or 7.2 ceases, or will clearly cease, to be true and correct.

7.4 On each day on which a transfer of Pledged Securities is effected, all the representations and warranties stated in this clause 7 shall be deemed to be repeated.

8. CREATION OF SECURITY

8.1 As collateral for all of the Account Holder's present and future obligations under the Rules, subject to the limitations (including in relation to segregation of client assets) set out in the Rules, the Account Holder hereby pledges to NASDAQ OMX any and all securities which are registered on the Custody Account, from time to time ("**Pledged Securities**"), including:

- (i) any right to receive yield and matured principal amounts with respect to the Pledged Securities;
- (ii) any rights or claims relating to the Custody Account; and

- (iii) any rights or claims relating to the Pledged Securities.

For the avoidance of doubt the pledge of Pledged Securities under this clause 8.1 shall not constitute a transfer of title (Sw. *äganderättsövergång*) from the Account Holder.

- 8.2 Any Cash Amounts transferred by the Account Holder to a Bank Account and reflected on the Custody Account, from time to time, shall be deemed transferred by way of security (Sw: *säkerhetsöverlåtelse*) ("**Cash Security**") to NASDAQ OMX and shall constitute collateral for all of the Account Holder's present and future obligations under the Rules, subject to the limitations (including in relation to segregation of client assets) set out in the Rules.
- 8.3 Any yield and matured principal amounts which have been received with respect to the Pledged Securities and reflected on the Custody Account and any interest accrued on Cash Amounts reflected on the Custody Account in accordance with clause 10.2 shall be deemed transferred by way of security in accordance with clause 8.2 and thus be subject to a Cash Security.
- 8.4 The Account Holder shall not, without the prior written consent of NASDAQ OMX:
- (i) create, or agree or attempt to create, or permit to subsist, any Other Security Interest than those created pursuant to clause 8.1 and 8.2 to arise or subsist over any Pledged Securities or Cash Amounts subject to a Cash Security; or
 - (ii) sell, transfer or otherwise dispose of any part of the Pledged Securities or any of its right, title or interest therein.
- 8.5 The Parties intend that the Securities Pledge and the Cash Security created under the Agreement shall constitute a "financial collateral arrangement" for the purposes of EU Directive 2002/47/EC on Financial Collateral Arrangements (as implemented in applicable national laws).
- 8.6 The Agreement shall be in addition to and shall not prejudice or be prejudiced by any right of set-off, lien, pledge or other rights exercisable by NASDAQ OMX against the Account Holder or any security, guarantee or indemnity now or in the future held by NASDAQ OMX.

9. RIGHT OF APPROPRIATION

- 9.1 NASDAQ OMX may, at any time after the Securities Pledge or the Cash Security constituted by the Agreement has become enforceable, appropriate any Pledged Securities or Cash Amounts and apply it in such manner as NASDAQ OMX may determine in accordance with the Rules, including the sequence in which the Securities Pledge or the Cash Security shall be realised.
- 9.2 NASDAQ OMX will account for the appropriation to the Account Holder and pay any amount by which the value of the appropriated Pledged Securities or Cash Amounts exceeds the Secured Sums then due in accordance with the Rules and the Agreement.
- 9.3 NASDAQ OMX shall notify the Account Holder following the appropriation of any Pledged Securities or Cash Amounts.

10. FEES AND INTEREST

- 10.1 NASDAQ OMX shall not pay any fees, interest or other remuneration to the Account Holder on any Pledged Securities or Cash Amounts unless explicitly set out in the Agreement and/or the Rules.
- 10.2 Account Holders may be entitled to interest for Cash Amounts reflected on the Custody Account whereby interest payments will be paid out to the Account Holder's designated bank account. To the extent the NASDAQ OMX Deposit Rate is below zero, NASDAQ OMX is entitled to charge the Account Holder for the negative interest rate for Cash Amounts reflected on the Custody Account. Interest shall accrue and be paid in accordance with the terms, including rates and intervals, set out on the Website from time to time.
- 10.3 Fees may be charged for custody and other services in accordance with the fees stipulated on the Website from time to time.

11. APPOINTMENTS AND AUTHORISATIONS

- 11.1 The Account Holder hereby appoints NASDAQ OMX to be its attorney (with full power to appoint substitutes and to sub-delegate, including power to authorise the person so appointed to make further appointments, in both cases, with regard to all or any part of the Pledged Securities) on behalf of the Account Holder and in its name or otherwise:
- (i) to execute any document or do any act or thing which NASDAQ OMX or such substitute or delegate may, in its discretion, consider appropriate in connection with the exercise of any of the powers of NASDAQ OMX or which the Account Holder is obliged to execute or do, whether under the Agreement, the Rules or otherwise;
 - (ii) to act on behalf of the Account Holder with full authority to communicate with the Banks and CSDs in all matters relating to the Pledged Securities and, without limitation, to send and receive messages and instructions on behalf of the Account Holder with respect to the Pledged Securities and to make any transfer of Pledged Securities registered to the Custody Account in accordance with the Agreement and the Rules;
 - (iii) to correct and/or reverse any erroneous entries in the Custody Account or any entry or deposit to any other account as soon as practically possible after discovery, provided that the Account Holder shall be informed following such action; and
 - (iv) to realise any Securities Pledge or otherwise to safeguard or exercise any rights in relation to a Securities Pledge.
- 11.2 The Account Holder acknowledges and agrees that the power of attorney given under clause 11.1:
- (i) is coupled with a pledge to the benefit of NASDAQ OMX, and that it may not be revoked for as long the Agreement is in effect; and
 - (ii) shall be exercisable by NASDAQ OMX at any time or times as NASDAQ OMX thinks fit.
- 11.3 NASDAQ OMX shall be authorized to appoint one or several Sub-custodians. NASDAQ OMX shall appoint such Sub-custodians with proper care and ensure that it at all times has
- (i) obtained all authorisations of any governmental or regulatory body required in

connection with the performance of its duties and that such authorisations are in full force and effect and (ii) sufficient knowledge, resources and organization to carry out its respective services. Furthermore, NASDAQ OMX shall be authorized to appoint one or several sub-contractors to perform parts of NASDAQ OMX's duties under the Agreement. NASDAQ OMX is responsible for any Sub-custodian or sub-contractor appointed by NASDAQ OMX to perform any of NASDAQ OMX's duties under this Agreement, as if NASDAQ OMX itself had performed such duties. For the avoidance of doubt, any CSD is not regarded as a Sub-custodian or sub-contractor. Nothing in this clause shall be construed as to allow any Party to transfer or assign this Agreement to a third party without the prior written consent of the other Party.

12. COMMUNICATIONS, NOTICES AND INSTRUCTIONS

- 12.1 All notices and other communications under the Agreement shall be in English and in case of Account Holders to and from the Authorised Persons and in case of NASDAQ OMX to and from its relevant officers or employees. NASDAQ OMX may in its discretion agree to communicate in any other language than English upon request from the applicable Account Holder(s).
- 12.2 Notices may be sent by mail, e-mail, or such other teleprocess or electronic instruction system acceptable to NASDAQ OMX which shall have been transmitted with such security features as NASDAQ OMX may determine and on such terms and conditions as NASDAQ OMX may specify. Communication which shall be in writing shall be sent by registered mail, e-mail (in which case receipt shall be confirmed by the recipient) or other form of written communication which NASDAQ OMX may accept to the relevant point of receipt specified by the receiving Party in writing (or such new address that a Party has acknowledged by the other Party in accordance with this clause 12).
- 12.3 Notices sent by mail shall be deemed received by the Account Holder no later than three (3) Business Days after the date of posting/ mailing, and notices sent by e-mail or other electronic communication shall be regarded as received by the Account Holder immediately upon confirmed transmission of the same.
- 12.4 The Account Holder shall upon the request of NASDAQ OMX provide NASDAQ OMX with a list of such officers, employees, agents or other persons (each an "**Authorised Person**") of or for the Account Holder as have been authorised, either alone or with others as specified, to act on its behalf in the giving of instructions and/or performance of any acts, discretions or duties under the Agreement, and NASDAQ OMX shall be entitled to rely upon the continued authority of an Authorised Person to given instructions and so act on behalf of the Account Holder as aforesaid until NASDAQ OMX receives written notice from the Account Holder to the contrary. The Account Holder may also give individual authorisations to individual Authorised Persons, subject to the consent of NASDAQ OMX which shall not be unreasonably withheld. In absence of explicit written and acknowledged instructions to the contrary, NASDAQ shall be entitled to deem any person who is either (i) generally authorised to act on behalf of the Account Holder or (ii) authorised by the Account Holder in relation to NASDAQ OMX to act on behalf of the Account Holder in relation to the relevant matters as an Authorised Person.
- 12.5 NASDAQ OMX may act upon instructions ("**Instructions**") from an Authorised Person (or otherwise given on behalf of the Account Holder) in such manner as may be agreed or required by NASDAQ OMX in its discretion. However, NASDAQ OMX shall not be obliged to take any action to comply with any Instructions or to take any other action hereunder if:

- (i) such Instructions in the opinion of NASDAQ OMX are in conflict with the Rules, the Agreement or other written arrangements in effect between NASDAQ OMX and the Account Holder;
- (ii) NASDAQ's fulfilment of such Instructions are prevented by any event falling within the scope of clause 13.2 (vi); or
- (iii) such Instructions in NASDAQ OMX's opinion are outside the scope of its duties under the Agreement or are contrary to any applicable law or NASDAQ OMX's policies or other requirement which NASDAQ OMX is subject to (whether arising from any governmental authority, or that of a relevant exchange, clearing organisation, settlement system, CSD, Bank or market).

12.6 When taking action upon Instructions NASDAQ OMX shall act in a reasonable and proper manner, provided that:

- (i) any Instructions shall give NASDAQ OMX reasonable time to evaluate and prepare for such Instructions prior to the time of execution;
- (ii) any Instructions shall continue in full force and effect until cancelled or superseded (except in respect of Instructions executed by NASDAQ OMX which can no longer be cancelled);
- (iii) any Instructions shall be carried out subject to the rules, operating procedures and market practice of any relevant stock exchange, clearing organisation, settlement system, CSD, Bank or market where or through which they are to be executed;
- (iv) NASDAQ OMX shall have a right to refuse to execute any Instructions that in the opinion of NASDAQ OMX are unreasonable or, if performed by NASDAQ OMX, may have adverse consequences to the reputation of NASDAQ OMX; and
- (v) NASDAQ OMX shall have a right to refuse to execute Instructions if that in the opinion of NASDAQ OMX are illegible, unclear and/or ambiguous, until any ambiguity or conflict has been resolved to its satisfaction.

12.7 NASDAQ OMX shall without undue delay give written notice to the Account Holder if an Instruction is refused pursuant to clause 12.6.

13. LIABILITIES AND INDEMNITIES

13.1 NASDAQ OMX shall not be responsible for any loss or damage suffered by the Account Holder, provided that NASDAQ OMX has acted with normal care.

13.2 NASDAQ OMX shall, unless resulting from an act of fraud, willful default or gross negligence on the part of NASDAQ OMX, in any event not be responsible for:

- (i) any indirect or consequential losses;
- (ii) any losses exceeding the market value (as determined by NASDAQ OMX in any reasonable commercial manner) of the relevant Pledged Securities or Cash Amounts;
- (iii) any liabilities, losses, damages, costs and expenses caused by delay in the actual receipt by NASDAQ OMX, or occurrence, of Instructions or payments from the Account Holder hereunder;

- (iv) any liabilities, losses, thefts, damages, costs and expenses arising out of any unauthorised disposal of the Securities held and/or administered by or under the direction or control of any CSD (or by any third party instructed by or through such CSD), provided that NASDAQ OMX has exercised reasonable care in selecting and monitoring the relevant CSD;
 - (v) any liabilities, losses, damages, costs and expenses arising out of NASDAQ OMX relying upon any Instructions believed by it in good faith to be given by an Authorised Person (or otherwise to have been given on behalf of the Account Holder) and upon any notice, request, consent, certificate or other instrument believed by it in good faith to be genuine and to be signed or furnished by the proper Party or parties thereto, including (without limitation) the Account Holder or any Authorised Person; and
 - (vi) any event of force majeure or other event beyond NASDAQ OMX's reasonable control, including but not limited to nationalization, expropriation, currency restrictions, terrorism, acts of state, acts of god, labour disturbances, power failures, breakdowns in communications links or equipment of NASDAQ OMX or of its nominees or agents (or of any third parties as aforesaid), or the failure or disruption of any relevant exchange, clearing organisation, settlement system or market.
- 13.3 The Account Holder shall indemnify NASDAQ OMX against any reasonable liabilities, losses, damages, costs and expenses (including reasonable and evidenced legal fees) ("**Losses**") incurred by NASDAQ OMX and arising out of any action taken or omitted to be taken by NASDAQ OMX hereunder or pursuant to any Instructions, and shall reimburse NASDAQ OMX (on the basis of a full indemnity) the amount of all reasonable costs and expenses (including reasonable and evidenced legal costs and VAT thereon) incurred by NASDAQ OMX in connection with the exercise, or the attempted or purported exercise, by or on behalf of NASDAQ OMX of any of its powers under the Agreement or any other action taken by or on behalf of NASDAQ OMX with a view to or in connection with the recovery of the Secured Sums, the realisation of a Securities Pledge created by the Agreement or, the preservation of a Securities Pledge or a Cash Security or any other purpose contemplated by the Agreement. The Account Holder shall, unless resulting from an act of fraud, willful default or gross negligence on the Part of the Account Holder, in no event be liable to indemnify NASDAQ OMX for any indirect or consequential Losses. Notwithstanding the above, the Account Holder shall in no event be liable to indemnify NASDAQ OMX under this Clause 13.3 for any Losses attributable to NASDAQ OMX's fraud, willful default or gross negligence.

14. TAXES ETC

- 14.1 The Account Holder shall be responsible for all filings, tax returns and similar reports on any transactions undertaken pursuant to the Agreement or in connection with the Pledged Securities or Cash Amounts which must be made to any relevant authority whether governmental or otherwise and for the payment of all unpaid calls, taxes (including without limitation any valued added tax), imposts, levies or duties, or any other liability or payment arising out of or in connection with the Pledged Securities or Cash Amounts, and in so far as NASDAQ OMX is under any obligation (whether of a governmental nature or otherwise) to pay the same on behalf of the Account Holder it may do so without Instructions from the Account Holder out of the Custody Account.
- 14.2 NASDAQ OMX may, in accordance with Swedish/foreign law, Swedish/foreign public authorities' regulations or decisions or NASDAQ OMX's Agreement with Swedish/foreign

authorities, be obliged on account of the Account Holder to take actions concerning tax in relation to the Account Holder's securities. The Account Holder shall provide such information, including written documentation, as NASDAQ OMX deems to be necessary in order to fulfil such obligation.

15. RELEASE OF PLEDGED SECURITIES OR CASH AMOUNTS AND TERMINATION

- 15.1 The release of Pledged Securities and Cash Amounts shall take place to the extent that Secured Sums have been fully and unconditionally paid or discharged to NASDAQ OMX, subject to the limitations (including in relation to segregation of client assets) set out in the Rules, (or, if contingent, have wholly ceased to be capable of arising) and after the Account Holder has become entitled under the Rules to request the release of such Pledged Securities and Cash Amounts.
- 15.2 The Agreement may only be terminated by the Account Holder with the consent of NASDAQ OMX which shall not be unreasonably withheld or delayed. NASDAQ OMX shall consent to termination if the Account Holder is no longer subject to collateral requirements in relation to the relevant clearing account(s) and the Pledged Securities and Cash Amounts may otherwise be released in accordance with the Agreement and the Rules.
- 15.3 On termination of the Agreement, NASDAQ OMX shall transfer Pledged Securities and Cash Amounts in accordance with the Rules to the Account Holder or to such other person(s) as the Account Holder shall give Instructions. NASDAQ OMX may withhold amounts (as reasonably determined by NASDAQ OMX) for outstanding liabilities attaching to the Pledged Securities and Cash Amounts of which NASDAQ OMX is or becomes aware and of any fees and expenses owing to NASDAQ OMX under the Agreement or the Rules.

16. CONFIDENTIALITY

- 16.1 Except as otherwise set forth herein all information and data received by NASDAQ OMX from the Account Holder, including information relating to the Pledged Securities or Cash Amounts and information pertaining to the legal or financial status of the Account Holder, will be treated as confidential by NASDAQ OMX.
- 16.2 Notwithstanding clause 16.1, but subject to applicable and mandatory law:
- (i) the duty of confidentiality shall not extend to information which is or becomes public through no breach of NASDAQ OMX's confidentiality obligations hereunder, which NASDAQ OMX already possessed at the time of reception without any obligation of confidentiality, or which NASDAQ OMX receives from a third party through no breach of the third party's confidentiality obligations towards the Account Holder;
 - (ii) NASDAQ OMX may share information with its Sub-custodians and any other person or entity advising or assisting NASDAQ OMX in its operations under the Agreement, provided that such persons and entities have a reasonable interest in such information under the Agreement, are subject to a corresponding duty of confidentiality, and shall only use the information for purposes related to the Agreement;

- (iii) NASDAQ may share information with any entity or body (including any financial supervisory authorities or governmental bodies) if NASDAQ OMX (a) reasonably believes that such entity or body exercises a legal or regulatory function under any applicable law, or a function comprising or associated with the enforcement of a legal or regulatory function which NASDAQ OMX or the Account Holder is subject to, or (b) considers such arrangement to be in furtherance of its purpose or duties under applicable law; or (c) deems such disclosure to be otherwise required by applicable law; and
- (iv) NASDAQ OMX shall not be required to keep confidential the fact that the Account Holder has entered into this Agreement.

17. MISCELLANEOUS

- 17.1 **Regulatory Cooperation.** The Account Holder acknowledges that NASDAQ OMX is subject to supervision by the Swedish Financial Supervisory Authority. The Account Holder undertakes to cooperate with NASDAQ OMX, the Swedish Financial Supervisory Authority and any other governmental authority that may supervise NASDAQ OMX in relation to any inspection or any other actions initiated by the Swedish Financial Supervisory Authority or any other competent governmental authority and provide such information that NASDAQ OMX, the Swedish Financial Supervisory Authority or a competent governmental authority may request.
- 17.2 **Account Statements.** NASDAQ OMX shall provide the Account Holder with periodical reports and/or statements of accounts relating to the Custody Account, the specific contents and format to be determined by NASDAQ OMX from time to time. In absence of the Account Holder filing with NASDAQ OMX objections to any information, report, statement, confirmation, note or other document within thirty (30) days of the date of such information becoming available to the Account Holder, NASDAQ OMX shall have no responsibility for any errors or omissions therein, if not caused by NASDAQ OMX's gross negligence, and the Account Holder shall be deemed to have approved the contents thereof and accepted responsibility for all of its obligations appearing therein.
- 17.3 **Amendments.** Any changes of these General Terms for Collateral Custody Accounts that are not material and changes to any fees charged by NASDAQ OMX, shall apply to the Account Holder from and including the thirtieth (30th) calendar day after the Account Holder shall be deemed to have received notice of the change in accordance with clause 12. Material changes shall be reported to the Swedish Securities Dealers Association or, should NASDAQ OMX deem it appropriate, to other representatives of the Account Holders. When these aforementioned representatives have not, within five Business Days of the report, requested consultations with regard to the changes (or if consultation has been requested, when such consultation has been made), NASDAQ OMX shall send a notice of the change to the Account Holders. The changes shall apply to the Account Holder from and including the thirtieth (30th) calendar day after the Account Holder shall be deemed to have received notice of the change in accordance with clause 12. Should a delay be hazardous, or should the changes be caused by legislation, judicial decision, or decision of any public authority, such notice may however be sent before such consultation has been made.
- 17.4 **Third Party Rights.** Other than as may follow from the Rules, no person other than a Party to the Agreement shall have any right to enforce any term (express or implied) of the Agreement. The Parties may vary any term of the Agreement without the necessity of obtaining any consent from any third party.

17.5 **No Waiver.** No failure to exercise and no delay on the part of either Party in exercising any right, remedy, power or privilege under the Agreement and no course of dealing between the Parties shall be construed or operate as a waiver of that right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of it or the exercise of any other right, remedy, power or privilege. The rights and remedies provided by the Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

17.6 **Severability.** If any provision of the Agreement is held to be illegal, invalid or unenforceable in whole or in part, the Agreement shall continue to be valid as to its other provisions and the remainder of the affected provision.

18. **GOVERNING LAW AND DISPUTE RESOLUTION**

18.1 The Agreement and all non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, Swedish law.

18.2 The Swedish courts shall have exclusive jurisdiction to settle any claim, dispute or difference which may arise out of or in connection with the Agreement.

18.3 Clause 18.2 shall not limit the right of NASDAQ OMX to seek interlocutory measures or similar, or to otherwise seek enforcement of the Securities Pledge and the Cash Security created by the Agreement, against the Account Holder in any other court of competent jurisdiction, nor shall the taking of proceedings in one or more jurisdictions preclude the taking of proceedings by NASDAQ OMX in any other jurisdiction, whether concurrently or otherwise.

18.4 The Account Holder irrevocably waives any objections on the ground of venue or inconvenient forum or any similar grounds and irrevocably agrees that any judgment in any proceedings brought in any court referred to in this clause 18 shall be conclusive and binding and may be enforced in any other jurisdiction.

COLLATERAL CUSTODY ACCOUNT AGREEMENT

Complete, sign and send two (2) originals to:

NASDAQ OMX Clearing AB,

Att: Memberships, Tullvaktsvägen 15, SE-105 78 Stockholm, Sweden

Custody Account no (to be completed by NASDAQ OMX)
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ACCOUNT HOLDER DETAILS	Name of the Account Holder		
	Registered business address		Company registration number
	Postal code	Postal district/city	Country
E-mail		Tel. No. (int. format)	Fax. No. (int. format)
		+	+
Supplemental details (if any)			
<i>The Account Holder undertakes to notify NASDAQ OMX without delay of any change to the details provided above.</i>			
NOTICES	Notices to the Account Holder under this Collateral Custody Account Agreement may be sent to the following person (please note that notices may also be sent to other Authorized Persons as further set out in the General Terms for Collateral Custody Accounts):		
	Authorized Person:		
	Address (if other than above):		
	Email address:		
Office phone (int. format):		+	Mobile phone (int. format):
		+	
Notices to NASDAQ OMX under this Collateral Custody Account Agreement shall be sent to the address (or other point of reception as applies in connection with the relevant method of communication) stated on the Website at the time of notice.			
AGREEMENT	This Collateral Custody Account Agreement is concluded between the Account Holder and NASDAQ OMX Clearing AB, corporate registration number 556383-9058, Tullvaktsvägen 15, SE-105 78 Stockholm, Sweden ("NASDAQ OMX").		
	This Collateral Custody Account Agreement is supplemented by NASDAQ OMX's General Terms for Collateral Custody Accounts, as may be amended from time to time, which sets out further terms and conditions for the Custody Account and governs the relation between NASDAQ OMX and the Account Holder in connection therewith. The General Terms for Collateral Custody Accounts shall form an integral part of this Collateral Custody Account Agreement. The Account Holder confirms that it has read and received a copy of the General Terms for Collateral Custody Accounts as in force at the time of execution of this Collateral Custody Account Agreement.		
	The Account Holder hereby creates, or undertakes to create, the Securities Pledge and the Cash Security contemplated by this Collateral Custody Account Agreement (including the General Terms for Collateral Custody Accounts), and undertakes to do all things necessary or reasonably requested by NASDAQ OMX in connection therewith (including provision of information).		
	This Collateral Custody Account Agreement is governed by the laws of Sweden.		
MEMBERSHIP	The Custody Account is intended for the provision of margin collateral under the following NASDAQ OMX membership (please tick one box only):		
	<input type="checkbox"/> FIN – Rules and Regulations of NASDAQ OMX Derivatives Markets (Financial Derivatives) <input type="checkbox"/> COM – Clearing Rules Commodities Derivatives		

PURPOSE OF CUSTODY ACCOUNT	<p>The Custody Account is intended for the provision of margin collateral in relation to the following clearing account or category of clearing accounts (please tick one box only):</p> <p> <input type="checkbox"/> House Account <input type="checkbox"/> Omnibus Account with account no _____ <input type="checkbox"/> Individual Client Segregated Account (ICA) with account no _____ <input type="checkbox"/> all Indirect Pledging Customer Accounts administered by the Account Holder </p> <p> <input type="checkbox"/> Direct Pledging Customer Account with account no _____ (FIN only) <input type="checkbox"/> Clearing Client Account with account no _____ (COM only) </p>							
CSD ACCOUNT SEGREGATION	<p>By default, Securities in the Custody Account may be held in omnibus Securities Accounts with CSDs/ICSDs. Please indicate below, if Securities in the Custody Account shall instead be held in individually segregated Securities Accounts (i.e. Securities of the Account Holder will not be comingled in accounts with CSDs/ICSDs with property of other clients of NASDAQ OMX) with one or more of the following CSDs/ICSDs. Please note that additional fees apply.</p> <table border="0"> <tr> <td><input type="checkbox"/> Clearstream</td> <td><input type="checkbox"/> Euroclear Sweden</td> </tr> <tr> <td><input type="checkbox"/> Euroclear Bank</td> <td><input type="checkbox"/> VP Denmark</td> </tr> <tr> <td><input type="checkbox"/> Euroclear Finland</td> <td><input type="checkbox"/> VPS Norway</td> </tr> </table>		<input type="checkbox"/> Clearstream	<input type="checkbox"/> Euroclear Sweden	<input type="checkbox"/> Euroclear Bank	<input type="checkbox"/> VP Denmark	<input type="checkbox"/> Euroclear Finland	<input type="checkbox"/> VPS Norway
<input type="checkbox"/> Clearstream	<input type="checkbox"/> Euroclear Sweden							
<input type="checkbox"/> Euroclear Bank	<input type="checkbox"/> VP Denmark							
<input type="checkbox"/> Euroclear Finland	<input type="checkbox"/> VPS Norway							
AUTHORIZED SIGNATURES	<p>By signature below the Account Holder agrees to be bound by the terms and conditions of this Collateral Custody Account Agreement. This Collateral Custody Account Agreement has been signed in two (2) original counterparts, of which the parties receive one (1) each.</p> <table border="0"> <tr> <td> <p>For NASDAQ OMX Clearing AB</p> <p>_____</p> <p>Clarification of signature:</p> <p>_____</p> <p>Place:</p> <p>Date:</p> <p>_____</p> <p>Clarification of signature:</p> <p>_____</p> <p>Place:</p> <p>Date:</p> </td> <td> <p>For [Account Holder]</p> <p>_____</p> <p>Clarification of signature:</p> <p>_____</p> <p>Place:</p> <p>Date:</p> <p>_____</p> <p>Clarification of signature:</p> <p>_____</p> <p>Place:</p> <p>Date:</p> </td> </tr> </table>		<p>For NASDAQ OMX Clearing AB</p> <p>_____</p> <p>Clarification of signature:</p> <p>_____</p> <p>Place:</p> <p>Date:</p> <p>_____</p> <p>Clarification of signature:</p> <p>_____</p> <p>Place:</p> <p>Date:</p>	<p>For [Account Holder]</p> <p>_____</p> <p>Clarification of signature:</p> <p>_____</p> <p>Place:</p> <p>Date:</p> <p>_____</p> <p>Clarification of signature:</p> <p>_____</p> <p>Place:</p> <p>Date:</p>				
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