

Appendix 1 to the FCM Regulations of Eurex Clearing AG:

## FCM Clearing Agreement

with an FCM Clearing Member for the Clearing of FCM Client  
Transactions under the FCM Regulations of Eurex Clearing AG

As of 03.02.2020

This Clearing Agreement (the “**Agreement**”) is dated the last date specified on the signature page hereof and entered into

**BETWEEN:**

(1) \_\_\_\_\_  
(legal name)  
 acting through /  having its ( registered) office at  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

as FCM Clearing Member (the “**FCM Clearing Member**”);

(2) Eurex Clearing Aktiengesellschaft, a stock company (*Aktiengesellschaft*) incorporated under the laws of Germany, registered in the commercial register of the local court (*Amtsgericht*) in Frankfurt am Main under HRB 44828 and having its registered seat in Frankfurt am Main, with its business address at Mergenthalerallee 61, 65760 Eschborn, Germany (“**Eurex Clearing AG**”).

The FCM Clearing Member and Eurex Clearing AG are hereinafter also referred to as the “**Parties**” and each of them as a “**Party**”. Unless the context requires otherwise, terms used in this Agreement shall have the meaning given to them in the *FCM Regulations of Eurex Clearing AG* (the “**FCM Regulations**”) (including by way of reference made therein).

1. The Parties enter into this Agreement for the Clearing of:

- (1) Own Transactions, and
- (2) FCM Client Transactions.

The FCM Clearing Member shall be granted an FCM Clearing License for the Clearing of Interest Rate Derivative Transactions pursuant to Chapter II Part 2 of the FCM Regulations.

Instructions of the FCM Clearing Member that can be made according to the FCM Regulations shall be made in the form requested by Eurex Clearing AG.

2. This Agreement incorporates by reference the FCM Clearing Conditions.

3. Eurex Clearing AG charges fees to the FCM Clearing Member (acting for the account of its FCM Clients) for the provision of Clearing services in accordance with the FCM Regulations and the Price List for Eurex Clearing AG, in each case as amended from time to time.

4. The FCM Clearing Member makes to Eurex Clearing AG amongst others the representations and warranties set out in under Chapter I Number 1.7.1, 1.7.2, and 1.7.3 of the FCM Regulations (*Representations and Undertakings with Respect to the FCM Clearing Agreement*).

Eurex Clearing AG makes the representations and warranties set out in Chapter I Number 1.7.4 of the FCM Regulations.

5. Unless otherwise agreed between the FCM-Clearing Member and Eurex Clearing AG, the FCM Clearing Member undertakes to enter into a pledge agreement with Eurex Clearing AG in the form of Appendix 2 to the FCM Regulations in order to grant pledges required pursuant to Chapter I Number 3.2.3 of the FCM Regulations in order to provide Initial Margin or Supplementary Margin in the form of securities to Eurex Clearing AG.

6. Eurex Clearing AG and the FCM Clearing Member hereby enter into the following trust arrangements in relation to Initial Margin or Supplementary Margin for FCM Client Transactions in the form of cash:

- (1) Eurex Clearing AG will open and maintain the following cash accounts in which Initial Margin and Supplementary Margin in the form of cash in respect of an FCM Client Margin Account have to be booked (each such account a “**Cash Trust Account**”):
  - (a) the Eurex Clearing AG FCM Client RTGS Account,
  - (b) any account of Eurex Clearing AG with a Settlement Bank in any currency accepted by Eurex Clearing AG for the delivery of Initial Margin or Supplementary Margin for FCM Client Transactions in form of cash, maintained in the name of Eurex Clearing AG, and
  - (c) any account of Eurex Clearing AG with a commercial bank, which was established for investment purposes with respect to Eligible Margin Assets in

the form of cash delivered by an FCM Clearing Member to Eurex Clearing AG as cover in respect of Initial Margin or Supplementary Margin for FCM Client Transactions in accordance with Chapter I Number 3.1.3 (2) of the FCM Regulations

Each Cash Trust Account shall be opened and maintained as an open trust account (*offenes Treuhandkonto*) solely for purposes of holding Initial Margin or Supplementary Margin for FCM Client Transactions in the form of cash delivered by all FCM Clearing Members of Eurex Clearing AG in respect of any FCM Client Margin Account(s) and solely for the benefit of the FCM Clearing Members of Eurex Clearing AG.

- (2) Eurex Clearing AG holds and will hold all amounts credited to any Cash Trust Account on trust (*treuhänderisch*) for the FCM Clearing Member and the other FCM Clearing Members.
- (3) Eurex Clearing AG shall disclose each bank with which a Cash Trust Account is maintained (each an “**Account Bank**”) that all amounts credited to such Cash Trust Account are held on trust (*treuhänderisch*) by Eurex Clearing AG. Eurex Clearing AG will inform the FCM Clearing Member of the account numbers of each Cash Trust Account to which any Initial Margin or Supplementary Margin for its FCM Client Transactions in the form of cash is credited. Eurex Clearing AG shall be entitled to provide the Account Bank on request with identifying information about the FCM Clearing Member, if the Account Bank proves to Eurex Clearing AG that such information are needed to comply with laws, rules regulations or executive orders (in particular those relating to funding of terrorist activities and money laundering) (the “**Relevant Laws**”). Eurex Clearing AG shall use reasonable endeavours to procure that the Account Bank treats such information confidential and only discloses the information to third parties as requested by the Relevant Laws.
- (4) Eurex Clearing AG shall use reasonable endeavours to procure that the relevant Account Bank with which the Cash Trust Account is maintained waives any right of set-off against any amounts credited to the Cash Trust Account and any security interest, lien or charge it may have against any credit on the Cash Trust Account, except as provided in any acknowledgement letter that Eurex Clearing AG will obtain from the Account Bank in accordance with CFTC Regulation 22.5.
- (5) Eurex Clearing AG will, in its books and records, record any Initial Margin or Supplementary Margin for FCM Client Transactions in the form of cash credited to the Cash Trust Account in the relevant FCM Client Margin Account of each FCM Clearing Member and must not commingle any of its proprietary monies with any monies credited to any Cash Trust Account from time to time. If Eurex Clearing AG becomes aware of any such commingling, it shall immediately rectify the relevant credits to the relevant Cash Trust Account.
- (6) All payments of Initial Margin or Supplementary Margin for FCM Client Transactions in the form of cash with respect to any FCM Client Margin Account of the FCM Clearing Member shall be made by the FCM Clearing Member directly to the relevant Cash Trust Account, provided that if Eurex Clearing AG receives any

payment by the FCM Clearing Member of Initial Margin or Supplementary Margin for FCM Client Transactions in the form of cash denominated in EUR in relation to an FCM Client Margin Account in a Cash Trust Account with a Settlement Bank, Eurex Clearing AG will, without undue delay, transfer a corresponding amount into the Eurex Clearing AG FCM Client RTGS Account.

- (7) The FCM Clearing Member hereby authorises and instructs Eurex Clearing AG to withdraw amounts (recorded and segregated in Eurex Clearing AG's books and records as Initial Margin or Supplementary Margin for FCM Client Transactions in the form of cash delivered by the FCM Clearing Member in respect of an FCM Client Margin Account) from any Cash Trust Account and to transfer amounts to any Cash Trust Account only in order to
- (a) redeliver Excess Margin in accordance with the terms of the FCM Regulations,
  - (b) discharge any FCM Client Secured Claims relating to the relevant FCM Client(s) that are due but unsatisfied,
  - (c) transfer any such amounts to another Cash Trust Account,
  - (d) otherwise release or repay amounts upon a termination of FCM Clearing Licenses, subject to and in accordance with the FCM Regulations,
  - (e) invest such amounts into repo transactions pursuant to Chapter I Number 3.1.3 (2) of the FCM Regulations and to transfer any such amounts to an Investment Account of Eurex Clearing AG and to re-transfer any cash amounts Eurex Clearing AG receives from the commercial counterparties of the repo transaction on the applicable maturity date of such repo transaction into the relevant Cash Trust Account, or
  - (f) transfer any proceeds Eurex Clearing AG generates from the investment in repo transactions pursuant to Number 3.1.3 (2) of the FCM Regulations into the relevant Cash Trust Account.

7. Eurex Clearing AG and the FCM Clearing Member hereby enter into the following trust arrangements in relation to securities received as Deal Securities under repo transactions entered into between Eurex Clearing AG and commercial counterparties pursuant to Chapter I Number 3.1.3 (2) of the FCM Regulations:

- (1) Eurex Clearing AG will open and maintain with Account Banks securities accounts in which the Deal Securities have to be booked (each such account a "**Securities Trust Account**").

Each Securities Trust Account shall be opened and maintained as an open trust account (*offenes Treuhandkonto*) solely for purposes of holding Deal Securities and solely for the benefit of the FCM Clearing Members of Eurex Clearing AG.

- (2) Eurex Clearing AG holds and will hold all Deal Securities credited to any Securities Trust Account on trust (*treuhänderisch*) for the FCM Clearing Member and the other FCM Clearing Members.

- (3) Eurex Clearing AG shall disclose each Account Bank that all amounts credited to such Trust Account are held on trust (*treuhänderisch*) by Eurex Clearing AG. Eurex Clearing AG will inform the FCM Clearing Member of the account numbers of each Securities Trust Account to which any Deal Securities are credited. Eurex Clearing AG shall be entitled to provide the Account Bank on request with identifying information about the FCM Clearing Member, if the Account Bank proves to Eurex Clearing AG that such information are needed to comply with laws, rules regulations or executive orders (in particular those relating to funding of terrorist activities and money laundering) (the “**Relevant Laws**”). Eurex Clearing AG shall use reasonable endeavours to procure that the Account Bank treats such information confidential and only discloses the information to third parties as requested by the Relevant Laws.
  - (4) Eurex Clearing AG shall use reasonable endeavours to procure that the relevant Account Bank with which the Securities Trust Account is maintained waives any security interest, lien or charge it may have with respect to any Deal Securities credited to the Securities Trust Account, except as provided in any acknowledgement letter that Eurex Clearing AG will obtain from the Account Bank in accordance with CFTC Regulation 22.5.
  - (5) Eurex Clearing AG will (i) record in its books and records any Deal Securities credited to the Securities Trust Account separate from its own assets and assets it hold for its FCM Clearing Members or Non-FCM Clearing Members and (ii) must not commingle any of its own assets and assets it hold for its FCM Clearing Members or Non-FCM Clearing Members with any Deal Securities credited to any Securities Trust Account. If Eurex Clearing AG becomes aware of any such commingling, it shall immediately rectify the relevant credits to the relevant Securities Trust Account.
  - (6) Eurex Clearing AG shall deliver all Deal Securities Eurex Clearing AG receives from the commercial counterparties of the repo transactions directly to the relevant Securities Trust Account.
  - (7) In accordance with the relevant contractual arrangements entered into between Eurex Clearing AG and the commercial counterparties of the repo transactions, any payments of interest, dividends or other distributions Eurex Clearing AG receives with respect to the Deal Securities shall be paid or delivered to the commercial counterparty.
  - (8) The FCM Clearing Member hereby authorises and instructs Eurex Clearing AG to withdraw Deal Securities from any Securities Trust Account only in order to redeliver the Deal Securities to the commercial counterparties of the repo transactions on the relevant maturity date of the repo transactions.
8. This Agreement shall be entered into for an indefinite period of time and shall remain in effect until it is terminated by one of the Parties in accordance with the FCM Regulations.

This Agreement supersedes any previous written or oral agreement between the Parties in relation to the matters dealt with herein.

9. This Agreement shall be amended pursuant to Number 16.2 of the FCM Regulations, in the case of amendments to the form of this Agreement set out in Appendix 1 to the FCM Regulations. In addition, this Agreement may be amended at any time by written agreement between the Parties by executing an amended and restated version of this Agreement.
10. Unless otherwise provided for in the FCM Regulations, the FCM Clearing Member shall not assign any of its respective rights or claims under this Agreement except with the prior written consent of Eurex Clearing AG.
11. This Agreement does not and is not intended to confer any rights to third parties.
12. This Agreement (except for Clause 6 and except for the inclusion of any parts of the FCM Clearing Conditions that are stated to be governed by German law) is governed by the substantive laws of the United States of America and of the State of New York. Clause 6 as well as the inclusion of any part of the FCM Clearing Conditions that is stated to be governed by German law are governed by the substantive laws, excluding German private international law, of the Federal Republic of Germany.  
  
Any non-contractual rights and obligations arising out of or in connection with this Agreement shall also be governed by the laws of the State of New York.
13. The courts in Frankfurt am Main, Germany shall have exclusive jurisdiction (*ausschließlicher Gerichtsstand*) over any action or other legal proceedings arising out of or in connection with this Agreement.
14. The place of performance shall be Frankfurt am Main, Germany.
15. The FCM Clearing Member acknowledges and agrees that, if Eurex Clearing AG becomes subject to any mandatory provisions of any statute or regulation on the recovery and/or resolution of regulated entities, such as central counterparties, any measures taken by a competent authority with respect to Eurex Clearing AG under such statute or regulation with respect to rights or obligations arising under the FCM Clearing Conditions (such as, without limitation, any partial or full termination of contracts, any haircutting of margin or variation margin, any cash calls or any write-down or conversion of liabilities) shall also be binding upon the FCM Clearing Member.
16. If any provision contained in this Agreement is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected. Such invalid, illegal or unenforceable provision shall be replaced by means of supplementary interpretation by a valid, legal and enforceable provision, which most closely approximates the parties' commercial intention. This shall also apply *mutatis mutandis* to any gaps in this Agreement.

**AUTHORISED SIGNATURES  
to the FCM Clearing Agreement**

_____	_____	_____
[insert legal name] (as FCM Clearing Member)	(place)	(date)
_____	_____	_____
(signature)	(signature)	
_____	_____	_____
(printed name)	(printed name)	
_____	_____	_____
(title)	(title)	

**Eurex Clearing AG**

	_____	_____
	(place)	(date)
_____	_____	_____
(signature)	(signature)	
_____	_____	_____
(printed name)	(printed name)	
_____	_____	_____
(title)	(title)	