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29 Apr 2022
Eurex Clearing

Amendments to the Clearing Conditions and Auction Terms of Eurex Clearing AG

Eurex Clearing Circular 031/22 Amendments to the Clearing Conditions and Auction Terms of Eurex Clearing AG

1. Introduction

This circular contains information with respect to amendments to the Clearing Conditions and Auction Terms of Eurex Clearing AG.

In preparation to upcoming wind-down of Eurex Securities Transactions Services GmbH (Eurex STS) services, the amendments enable Eurex Clearing AG to conduct a replacement purchase using the B7 application (Buy-in Agent platform, formerly operated by Eurex STS), in order to process a buy-in for failing securities deliveries towards the CCP, in accordance with the Clearing Conditions of Eurex Clearing AG.

All amendments will become effective as of **30 May 2022**.

2. Required action

There is no required action for the participants.

upcoming discontinuation of Eurex STS's service offering as Third Party Buy-In Agent.

The amendments of the Auction Terms of Eurex Clearing AG enable Eurex Clearing AG to conduct a replacement purchase via the B7 application. This happens in order to process a buy-in for failing securities deliveries towards the CCP, in accordance with the Clearing Conditions of Eurex Clearing AG.

The amendments will become effective on 30 May 2022. As of the effective date, the full versions of the amended legal framework of Eurex Clearing will be available for download on the Eurex Clearing website www.eurex.com/ec-en under the following link:

Rules & Regulations > Eurex Clearing Rules & Regulations > **1. Clearing Conditions**

The amendments to the legal framework of Eurex Clearing AG published by this circular are deemed accepted by each affected contractual party of Eurex Clearing AG, unless the respective contractual party objects by written notice to Eurex Clearing AG within the first 10 Business Days after publication. Any ordinary right of Eurex Clearing AG to terminate the respective contract (including a Clearing Agreement, if applicable) shall remain unaffected.

Unless the context requires otherwise, terms used and not otherwise defined in this circular shall have the meaning ascribed to them in the Clearing Conditions or FCM Clearing Conditions of Eurex Clearing AG, as applicable.

Attachments:

- ◆ 1 – Amended sections of Chapter I of the Clearing Conditions of Eurex Clearing AG

Recipients: All Clearing Members, Basic Clearing Members, Disclosed
Direct Clients and vendors

Target groups: Front Office/Trading, Middle + Backoffice, IT/System
Administration

Contact: client.services@eurex.com

Web: www.eurex.com/ec-en/

Authorized by: Jens Janka

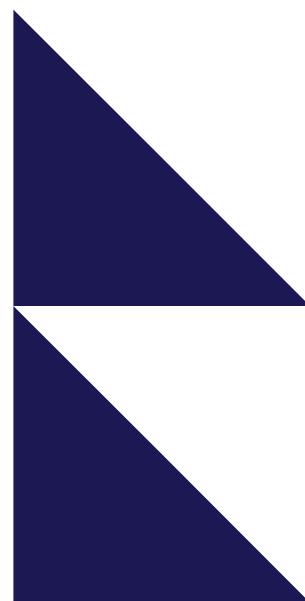
Further information

[!\[\]\(cbe2492b119e39e02a1dab2af4a4b296_img.jpg\) Attachment 1 to Eurex Clearing circular 031/22](#)

[!\[\]\(e474458956c9a37fbf9586ddb60a7fa1_img.jpg\) Attachment 2 to Eurex Clearing circular 031/22](#)

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Chapter I of the Clearing Conditions of Eurex Clearing AG

General Provisions

As of 30.05.2022

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

[...]

Part 1 General Clearing Provisions

1 General Rules

[...]

1.4 Settlement of Transactions

[...]

1.4.4 Buy-In Right, Buy-In Auction and Penalties

(1) Buy-In Right and Buy-In Auction; Penalties in respect of Securities outside the scope of the Penalty Regime of the CSD Regulation

- (a) The Special Clearing Provisions may provide that in the event of a failure by a Clearing Member or Basic Clearing Member under a Transaction to deliver Securities to Eurex Clearing AG on the applicable delivery date, Eurex Clearing AG shall be entitled at the cost of the defaulting Clearing Member or the defaulting Basic Clearing Member to initiate a buy-in process whereby Eurex Clearing AG attempts to acquire the relevant Securities from a third party.

For this purpose, Eurex Clearing AG may, subject to and in accordance with the Special Clearing Provisions

- (i) directly purchase the Securities from a third party,
- (ii) appoint a third party buy-in agent to acquire the Securities for Eurex Clearing AG ~~and/or~~
- (iii) conduct an auction in accordance with the Auction Terms of Eurex Clearing AG ("**Auction Terms**") published by Eurex Clearing AG on the Eurex Clearing Website. ~~The Auction Terms shall form part of these Clearing Conditions.~~ Eurex Clearing AG shall inform the Clearing Member when it attempts to execute a buy-in and the Clearing Member shall not be entitled to deliver the relevant Securities to Eurex Clearing AG during such time. The same applies to the extent the buy-in has been successfully executed by Eurex Clearing AG.

[...]

[...]

Provisions for the Participation in Auctions conducted by Eurex Clearing AG

Auction Terms of Eurex Clearing AG

THE CURRENT VERSION OF THE AUCTION TERMS

WILL BE REPLACED BY THIS NEW VERSION

AS OF 30 MAY 2022

As of 30.05.2022

Preamble

Eurex Clearing AG operates an electronic auction platform ("**Auction Platform**") to ensure the fulfilment of delivery obligations arising from transactions with physical delivery in securities pursuant to the Clearing Conditions of Eurex Clearing AG ("**Clearing Conditions**").

In such cases specified in the Clearing Conditions, Eurex Clearing AG will conduct an auction on the Auction Platform enabling Eurex Clearing AG to purchase for the relevant securities ("**Auction Securities**") from the auction participants. The following auction terms of Eurex Clearing AG ("**Auction Terms**") shall govern the participation in the auction platform and the settlement of any transaction concluded via the auction platform.

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1 Scope

The Auction Terms shall apply to all auctions conducted by Eurex Clearing AG in accordance with Chapter I Part 1 Number 1.4.4 of the Clearing Conditions and the Special Clearing Conditions (each an “**Auction**”).

For the avoidance of doubt, the Auction Terms shall not apply to

- (i) Hedging Auctions pursuant to Chapter I Part 1 Number 7.5.2 (2) of the Clearing Conditions and
- (ii) DM Auctions and DM Bonds Auctions pursuant to Chapter I Part 1 Number 7.5.3 of the Clearing Conditions.

2 Participation Requirements

2.1 To be able to participate in an Auction, the relevant participant needs

- (i) to meet the following participation requirements pursuant to Number 2.2 (“**Participation Requirements**”) and
- (ii) the Auction Participant and Eurex Clearing AG have signed the participation agreement attached to the Auction Terms as Appendix 1 (“**Auction Participation Agreement**”).

2.2 Participation Requirements

Any applicant for becoming a participant in Auctions (“**Auction Participant**”) shall meet the following Participation Requirements and provide proof thereof in form and substance satisfactory to Eurex Clearing AG. The Auction Participant shall – in accordance with any mandatory laws applicable to it – promptly inform Eurex Clearing AG, if it is no longer in compliance with any of the Participation Requirements.

2.2.1 The Auction Participant shall be

- (i) a Clearing Member of Eurex Clearing AG,
- (ii) a Basic Clearing Member of Eurex Clearing AG, or
- (iii) a DC Market Participant of Eurex Clearing AG.

“**Clearing Member**” means that the Auction Participant entered into a clearing agreement as Clearing Member with Eurex Clearing AG in the form as attached to the Clearing Conditions.

“**Basic Clearing Member**” means that the Auction Participant entered into a clearing agreement as Basic Clearing Member with Eurex Clearing AG in the form as attached to the Clearing Conditions.

“**DC Market Participant**” is an entity (other than a Clearing Member) that is a trading participant on one or more markets for which Eurex Clearing AG provides clearing and

which has entered into the Agreement on Technical Connection to the Clearing EDP of Eurex Clearing AG.

2.2.2 The Auction Participant has a technical connection to the Auction Platform by entering into an agreement with Deutsche Boerse AG as provider of the technical infrastructure ("**Connection Agreement**").

2.2.3 The Auction Participant shall have at least one securities account maintained with Clearstream Banking AG, Clearstream Banking S.A., Euroclear Bank S.A or Euroclear UK for the securities settlement of Auction Transactions ("**Auction Participant Settlement Account**").

2.3 **Rejection of Auction Participants**

Eurex Clearing AG may in its sole discretion reject an applicant notwithstanding that the Participation Requirements have been met by such applicant.

2.4 **Acceptance of Auction Participants**

By signing the Auction Participation Agreement by Eurex Clearing AG, Eurex Clearing AG accepts the applicant as Auction Participant. As of the signing of Eurex Clearing AG, the Auction Applicant may participate in Auctions.

3 **Fee**

The participation in Auctions is free of costs.

4 **Set-off**

4.1 With respect to claims arising from Auction Transactions, Eurex Clearing AG is at any time entitled to set off its claims vis-à-vis the Auction Participant against claims of the Auction Participant vis-à-vis Eurex Clearing AG, whereas the Auction Participant shall not be entitled to set off its claims vis-à-vis Eurex Clearing AG against claims of Eurex Clearing AG vis-à-vis such Auction Participant, unless such claims are undisputed or have been determined as legally binding.

4.2 For the avoidance of doubt, no set-off shall be allowed of claims arising from Auction Transactions against claims arising under the Clearing Conditions or any Clearing Agreement (including any transaction cleared under the Clearing Conditions). Notwithstanding the restriction under Number 4.2 Sentence 1, Eurex Clearing AG shall be entitled to set-off any claims of the Auction Participant against Eurex Clearing AG arising from any Auction Transaction against the proprietary difference claim Eurex Clearing AG owes to the Auction Participant in its capacity as Clearing Member or Basic Clearing Member under the Clearing Conditions.

5 Regular Termination of Participation Agreements

Eurex Clearing AG and the Auction Participant may terminate (*kündigen*) the Auction Participation Agreement by giving at least one month prior written notice to the other party and specifying the date on which the termination shall become effective. Number 6 shall remain unaffected by this Number 5.

6 Suspension and Termination

6.1 Right to suspend or terminate

Eurex Clearing AG may

- (i) upon the occurrence of a Suspension Event with respect to the Auction Participant, suspend the Auction Participant from the participation in Auctions pursuant to Number 6.2 ("**Suspension**"), or
- (ii) upon the occurrence of a Termination Event with respect to the Auction Participant, exercise its termination right with respect to the Auction Participation Agreement with the Auction Participant pursuant to Number 6.3 ("**Termination**").

The Auction Participation Agreement shall be terminated automatically upon the occurrence of an Automatic Termination Event with respect to an Auction Participant pursuant to Number 6.4 ("**Automatic Termination**").

Prior to a suspension of the Auction Participant or prior to the Termination of the Auction Participation Agreement pursuant to Numbers 6.2 or 6.3 (but not following the occurrence of an Automatic Termination Event), Eurex Clearing AG shall, when reasonable and appropriate in the circumstances, attempt to notify, and consult with, the relevant Auction Participant regarding the relevant event.

6.2 Suspension

6.2.1 If at any time a Suspension Event has occurred and is continuing with respect to Auction Participant, Eurex Clearing AG may suspend the Auction Participant from the participation in Auctions.

As part of the suspension, Eurex Clearing AG may (without limitation)

- (i) suspend the Network Partner from participating in Auctions,
- (ii) cancel open Auction Offers, or
- (iii) cancel open and not settled Auction Transactions.

Eurex Clearing AG shall notify the affected Auction Participant of the suspension decision. Eurex Clearing AG shall specify in the notification a reasonable period of time during which such suspension shall apply.

6.2.2 "**Suspension Event**" means the occurrence of any of the following events

- (i) the occurrence of a Termination Event with respect to the Auction Participant pursuant to Number 6.3;
- (ii) the occurrence of a termination event with respect to the Auction Participant acting in its capacity as Clearing Member or Basic Clearing Member under the Clearing Conditions (if applicable) ("**Clearing Conditions Termination Event**");
- (ii) the existence of an unremedied breach by the Auction Participant of its obligations under the Participation Agreement, except where such breach is minor, technical or administrative in nature in the reasonable opinion of Eurex Clearing AG;
- (iii) a determination is made by Eurex Clearing AG that a suspension of the Auction Participant is necessary to contain its exposure towards the Auction Participant;
- (iv) the suspension or termination (other than a voluntary termination) of the Auction Participant's membership by a CSD, central counterparty or a trading venue provided that the circumstances relating to that suspension or termination are, in Eurex Clearing AG's reasonable opinion, material to the management of the risk of Eurex Clearing; or
- (v) any other event in respect of the Auction Participant that could materially impact the ability of the Auction Participant to perform its obligations under the Auction Participation Agreement.

6.2.3 Upon the occurrence of a Termination or an Automatic Termination with respect to the Auction Participant pursuant to Number 6.3 or Number 6.4, the Auction Participant shall be suspended automatically ("**Automatic Suspension**").

Due to Automatic Suspension, Eurex Clearing AG shall

- (i) cancel all open Auction Offers, and
- (ii) cancel all open and not settled Auction Transactions.

If a settlement of the Auction Transaction occurs notwithstanding that Eurex Clearing AG cancelled an Auction Transaction in accordance with this Number 6.2.3, Eurex Clearing AG and the Auction Participant shall be required to redeliver the Auction Securities and repay the Settlement Amount.

6.2.4 Eurex Clearing AG may at any time when it deems appropriate revoke the suspension of the Auction Participant by submitting a written notice.

6.3 Termination and Automatic Termination

6.3.1 Termination following the occurrence of a Termination Event

If at any time a Termination Event has occurred and is continuing with respect to the Auction Participant, Eurex Clearing AG may terminate the Auction Participation Agreement with the Auction Participant by giving a Termination Notice to the Auction Participant specifying the date and time on which the termination shall occur subject to and in accordance with Number 9.4.3 ("**Termination**").

“**Termination Event**” means, with respect to the Auction Participant, any of the following events

(i) **Failure to Pay**

The Auction Participant fails to pay any amount due under the Terms and Conditions to Eurex Clearing AG.

(ii) **Failure to comply with the Auction Terms**

The Auction Participant fails to comply with any of its obligations under the Auction Participation Agreement (incorporating these Auction Terms).

(iii) **Rejection or objection to amendments to the Auction Terms**

The Auction Participant (i) rejects any of the terms and conditions of the Auction Participation Agreement or these Auction Terms or (ii) objects to an amendment to the Auction Participation Agreement or these Auction Terms and Eurex Clearing AG cannot reasonably be expected to continue its relationship with the Auction Participant, in particular, if such objections would lead to different versions of the Auction Participation Agreement or Auction Terms being applicable to several Auction Participants.

(iv) **Insolvency related Events**

(a) In relation to an Auction Participant having its registered seat and centre of main interest or, where it is a credit institution, being headquartered (*mit Hauptniederlassung*) in Germany:

(aa) any event occurs which constitutes a cause for the initiation of insolvency proceedings (*Eröffnungsgrund*) as set out in Sections 17 to 19 of the German Insolvency Code (*Insolvenzordnung*);

(bb) a petition for insolvency proceedings in respect of its assets (*Antrag auf Eröffnung eines Insolvenzverfahrens*) is filed; or

(cc) actions are taken pursuant to Section 21 of the German Insolvency Code (*Insolvenzordnung*) by a competent court;

(b) with respect to any Auction Participant not falling within the scope of Paragraph (a) above, any action, legal proceedings or other procedure or step is taken in relation to any of the following events or any of the following events occurs:

(aa) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, termination of existence, liquidation, administration, reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise), bankruptcy, insolvency, judicial management or curatorship;

(bb) a settlement, deferred payment, debt restructuring, transfer, restructuring, composition, compromise, assignment or similar arrangement of the Auction Participant with any of its creditors;

- (cc) the appointment of a liquidator, trustee, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Auction Participant or any of its assets; or
- (dd) any analogous procedure or step is taken in any jurisdiction, provided that this Paragraph (iv) (b) shall not apply to any procedure or step taken in relation to a solvent reorganisation of the Auction Participant.

(v) **Violation of Regulatory Provisions**

Non-compliance by the Auction Participant with regulatory requirements, provided that non-compliance with such requirements may, in the reasonable opinion of Eurex Clearing AG, materially impair the proper fulfilment of the obligations under the Auction Participation Agreement.

(vi) **Regulatory Actions**

Any administrative order issued with respect to the Auction Participant pursuant to Sections 45 to 46g German Banking Act, as well as any similar measures issued in relation to the Auction Participant under foreign law.

(vii) **Change in Law and other similar Causes**

- (a) Any change takes place in the laws of Germany or the laws applicable to the Auction Participant or the official interpretation or application of such laws which, in the reasonable opinion of Eurex Clearing AG, have a material adverse impact on the interests of Eurex Clearing AG under the Auction Terms or the interests of the other Auction Participants, or
- (b) any similar event occurs having a similar adverse impact on the interests of Eurex Clearing AG under the Auction Terms or the interests of other Auction Participants.

(viii) **Termination for serious cause (*aus wichtigem Grund*)**

The occurrence of an event which gives rise to a serious cause (*wichtiger Grund*) with respect to the Auction Participation Agreement and the continuation of the Auction Participation Agreement, taking into account all the circumstances of the specific case and weighing the interests of Eurex Clearing AG and the Auction Participant, cannot reasonably be expected.

6.3.2 **Automatic Termination**

If at any time an Automatic Termination Event occurs with respect to the Auction Participant, the Auction Participation Agreement shall be terminated automatically as of the point in time when the Automatic Termination Event occurred subject to and in accordance with Number 9.4.3 (“**Automatic Termination**”).

“**Automatic Termination Event**” means the occurrence of

- (i) an Insolvency Termination Event or
- (ii) a Clearing Conditions Termination.

“Insolvency Termination Event” means an event that occurs

- (i) with respect to an Auction Participant having its registered seat and center of main interest in Germany or, if it is a credit institution, being headquartered in Germany, when insolvency proceedings in Germany (*Insolvenzverfahren*) within the meaning of the German Insolvency Code (*Insolvenzordnung*) are commenced over the estate of the Auction Participant (*Eröffnung des Insolvenzverfahrens*), or
- (ii) with respect to an Auction Participant not falling under (i), when insolvency proceedings or similar proceedings under the laws of the jurisdiction where such Auction Participant has its registered seat and center of main interest or, if it is a credit institution, where it is headquartered, are commenced over the estate of the Auction Participant.

“Clearing Conditions Termination” means the occurrence of a termination with respect to the Auction Participant acting in its capacity as Clearing Member or Basic Clearing Member under the Clearing Conditions.

6.3.3 **Consequences of a Termination**

In case of a Termination or Automatic Termination with respect to the Auction Participant, the Auction Participant shall no longer be permitted to participate in any Auctions.

7 Suspension upon occurrence of a Force Majeure Event

7.1 If Eurex Clearing AG determines that an Extraordinary Event, Market Disorder Event, Impossibility Event or Force Majeure Event has occurred, Eurex Clearing AG may suspend and/or cancel any or all Auctions and/or the settlement of any Auctions Transactions entered into with the Auction Participant.

Eurex Clearing AG shall not be liable to any Auction Participant with respect to its decision whether to take any of the aforementioned actions. Eurex Clearing AG shall inform affected Auction Participants as soon as reasonably practicably of its decision to take any of the aforementioned actions.

7.2 **“Extraordinary Event”** means the occurrence of extraordinary circumstances that in the opinion of Eurex Clearing AG have or may have a negative effect on market conditions of the markets in all or certain Financial Instruments and/or the functioning and/or the reliability of those markets and/or on other market infrastructures such as CCPs or CSDs, as determined by Eurex Clearing AG taking into account all circumstances Eurex Clearing AG deems relevant, including, without limitation, changes or potential changes in market liquidity or price volatility of Financial instruments in relevant markets as well as the suspension of trading at, or early closure of, relevant markets, CCPs or CSDs or the default of a market participant of a relevant market or the default of a clearing member of a CCP or the default of a participant of a CSD.

“Market Disorder Event” means, under consideration of all applicable German laws, the occurrence of one of the following events:

- (i) the government of any nation, state or territory or any governmental entity, agency or authority thereof has taken or given notice of its intention to take actions or measures which may have a material adverse impact on the fulfilment of any obligations under any Auction Transaction or the Auction Participation Agreement; or
- (ii) the EU or any international organisations, or any institution or agency thereof, has introduced, varied, terminated or allowed to lapse any provision, rule or order which may have a material adverse impact on the fulfilment of any obligations under any Auction Transaction or the Auction Participation Agreement.

“Impossibility Event” means an event (excluding the occurrence of any Market Disorder Event) pursuant to which the fulfilment of any obligation under any Auction Transaction or the Auction Participation Agreement becomes impossible (*unmöglich*) or impracticable, for any reason whatsoever, as reasonably determined by Eurex Clearing AG under consideration of all applicable German laws.

“Force Majeure Event” (*höhere Gewalt*) means, under consideration of all applicable German laws, any failure or delay in discharging in whole or in part any obligations under any Auction Transaction or the Auction Participation Agreement by the obliged party, provided that such failure or delay arises from events which are beyond the reasonable control of the obliged party. Such events may include, without limitation, action of the elements, riot, insurrection, embargos, fire, flood, explosion, war, terrorism, power, communication or mechanical failure, unavailability or restriction of computer or data processing facilities, energy supplies, settlement systems or of bank transfer systems or wires, or any similar event, provided it is beyond the reasonable control of the obliged party.

7.3 Eurex Clearing AG may inform BaFin of any actions taken by Eurex Clearing AG pursuant to this Number 7.

8 Access to the Auction Platform

- (1) Eurex Clearing AG grants the Auction Participant the possibility to use the Auction Platform for the purpose of participating in Auctions held by Eurex Clearing AG. The Auction Participant shall apply for the user identification codes and access codes by using the dedicated User forms.
- (2) The authorisation to access the Auction Platform is granted exclusively to the relevant Auction Participant and shall not be assigned to third parties. The Auction Participant is obliged to keep secret the user identifications and personal access codes and to secure the access to the Auction Platform with all due diligence. The Participants are obliged to inform Eurex Clearing AG instantly, if indications for an unauthorized use of the Auction Platform by application of user identification and access code have been identified.

- (3) Auction Participants shall be liable for all kinds of activities taking place with employment of their user identification and access code. In particular, any unauthorized Auction Offers, which are accepted by Eurex Clearing AG, shall be binding for the Auction Participant.

9 Auction Provisions

This Number 9 sets out the provisions governing the Auctions which Eurex Clearing AG may conduct in accordance with Chapter I Part 1 Number 1.4.4 of the Clearing Conditions and the Special Clearing Conditions.

Each Auction shall relate to a particular Financial Instrument. Eurex Clearing AG will not conduct more than one Auction simultaneously with respect to the same Financial Instrument and Settlement Currency

Each Auction shall be carried out subject to and in accordance with the following provisions:

9.1 Auction Invitation

Eurex Clearing AG shall invite the Auction Participant to participate in an Auction ("**Auction Invitation**"). The Auction Invitation will be provided to the Auction Participants through the Auction Platform prior to the commencement of the Auction Period on the relevant Business Day.

Eurex Clearing AG will specify at least the following information in relation to an Auction Invitation:

- (i) the Auction Securities with respect to which Eurex Clearing AG is conducting the relevant Auction,
- (ii) the currency in which the Auction Offer shall be denominated and in which settlement of any resulting Auction Transacting shall take place ("**Buy-In Currency**"),
- (iii) the aggregate notional amount or the aggregate number of units, as applicable, of the relevant Financial Instrument to be acquired through the Auction ("**Auction Quantity**"),
- (iv) the time as of which the Auction Period commences ("**Auction Start Time**"),
- (v) the applicable Business Day on which the Auction shall be conducted ("**Auction Day**"),
- (vi) the period of time determined during which Auction Offers may be submitted, changed or cancelled ("**Auction Period**"),
- (vii) the maximum price that Eurex Clearing AG may accept as Offer Price ("**Maximum Offer Price**"),

- (viii) the lowest possible Offer Price for which the relevant Financial Instruments with respect to an Auction may be acquired by Eurex Clearing AG ("**Floor Price**"),
- (ix) the minimum notional amount or the number of units, as applicable of the relevant Financial Instrument for which an Auction Offer may be submitted ("**Minimum Offer Quantity**"), and
- (x) the earliest time specified by Eurex Clearing AG following the conclusion of an Auction Transaction as the auction settlement cut-off time for the settlement of an Auction Transaction by an Auction Participant ("**Earliest Possible Settlement Cut-Off Time**").

9.2 Auction

9.2.1 Submission of Auction Offers

- (i) During the Auction Period, the invited Auction Participant may submit an Auction Offer with respect to the relevant Auction through the Auction Platform.

"**Auction Offer**" means, with respect to an Auction, an offer submitted by the Auction Participant within the Auction Platform for the sale of the relevant Auction Securities by the Auction Participant to Eurex Clearing AG and must specify an Offer Quantity, an Offer Price and any other specification that may be required by the Auction Invitation.

"**Offer Quantity**" means, with respect to an Auction, the aggregate notional amount or the aggregate number of units, as applicable of the relevant Auction Securities specified by the Auction Participant in an Auction Offer, subject to (i) a minimum equal to the Minimum Offer Quantity and (ii) a maximum equal to the Auction Quantity.

"**Offer Price**" means, with respect to an Auction, the price (excluding any accrued interest in case of interest bearing Auction Securities) in the Buy-In Currency specified by the Auction Participant in an Auction Offer, subject to a maximum amount equal to the Maximum Offer Price and a minimum amount equal to the Floor Price. The Offer Price shall either be specified as an amount per unit of the Auction Securities or as a percentage of the notional amount of the Auction Securities, unless the context requires otherwise.

- (ii) The Auction Offer of the Auction Participant will not be disclosed to any other Auction Participant.
- (iii) Within the Auction Period, Auction Offers may subsequently be amended, cancelled and/or re-entered by the Auction Participant. Once the Auction Participant submitted an Auction Offer for a specific Auction, it may not submit another Auction Offer for the same Auction relating to the same Auction Securities and settlement currency as long as the earlier Auction Offer has not been cancelled in whole.

- (iv) At the end of the Auction Period, the prevailing Auction Offers will become binding for the Auction Participant and can no longer be amended or cancelled by the Auction Participant.

9.2.2 Determination of winning Auction Offers

- (i) Following the end of an Auction Period, Eurex Clearing AG determines with respect to each Auction Offer whether it accepts or rejects such Auction Offer in whole or in part.
- (ii) Eurex Clearing AG will accept or reject Auction Offers in accordance with the following principles (but not limited to):
- (I) Auction Offers with lower Offer Prices will be preferred over Auction Offers with higher Auction Prices.
- (II) If Auction Offers have identical Offer Prices, Auction Offers with a higher Offer Quantity will be preferred over Auction Offers with a lower Offer Quantity.
- (III) If Auction Offers have identical Offer Prices and Offer Quantities, Auction Offers submitted earlier will be preferred over Auction Offers that have been submitted at a later point in time.
- (iii) Eurex Clearing AG may accept an Auction Offer in whole or in part. When accepting an Auction Offer, Eurex Clearing AG also determines the Accepted Quantity and shall not be entitled to adjust the Offer Price specified by the Auction Participant.

“Accepted Quantity” means

- (I) with respect to an Auction Offer that has been accepted by Eurex Clearing AG in whole, the Offer Quantity, and
- (II) with respect to an Auction Offer that has been accepted by Eurex Clearing AG in part, the notional amount or the number of units of the relevant Auction Securities so determined by Eurex Clearing AG, which shall be less than the Offer Quantity. The Accepted Quantity may be less than the Minimum Offer Quantity.
- (iv) Eurex Clearing AG shall inform each Auction Participant that submitted an Auction Offer about whether Eurex Clearing AG has accepted or rejected the relevant Auction Offer via the Auction Platform.

9.3 Auction Transactions and guaranteed same day settlement

- 9.3.1 Upon acceptance of an Auction Offer in whole or in part by Eurex Clearing AG, an Auction Transaction shall automatically be concluded between the Auction Participant, which submitted such Auction Offer, and Eurex Clearing AG.
- 9.3.2 Following the conclusion of an Auction Transaction, the relevant Auction Participant shall deliver to Eurex Clearing AG the Auction Securities owed by it under the Auction

Transaction in the Accepted Quantity against payment of the Settlement Amount in accordance with Number 10 below and the instructions of Eurex Clearing AG.

- 9.3.3 The Auction Securities shall be delivered to Eurex Clearing AG on the relevant Auction Day until the settlement cut-off time as specified by Eurex Clearing AG in the Auction Platform (*guaranteed same day delivery*).

9.4 Cancellation Right

Eurex Clearing AG shall be entitled to cancel any or all Auction Transactions in whole or in part by giving notice thereof to the relevant Auction Participant provided that no settlement of such Auction Transaction has yet occurred. If a settlement occurs notwithstanding that Eurex Clearing AG cancelled an Auction Transaction in accordance with this Number 9.4, the Auction Participant and Eurex Clearing AG shall be required to redeliver the Auction Securities and repay the Settlement Amount received from each other.

9.5 Measures to maintain an orderly auction procedure

Eurex Clearing AG may execute any measures necessary to ensure an orderly auction procedure, including, without limitation:

- (i) Adjustment of the Auction Start Time or the Auction Period,
- (ii) Suspension or cancellation of the Auction, or
- (iii) Cancellation or rejection of Auction Offers.

10 Settlement Provisions

10.1 General provisions

- (i) Upon Acceptance of the relevant Auction Offer, Eurex Clearing AG will inform the Auction Participant of the quantities, settlement amounts and other settlement details (including shaping and sizing) as soon as reasonably practicable. Eurex Clearing AG may instruct that a settlement shall occur in one or more tranches.
- (ii) Each Auction Participant shall, for the purpose of a timely and correct fulfilment of its delivery obligations, ensure that (I) sufficient Auction Securities are available on the relevant Auction Participant Settlement Account and (II) it has appropriately instructed the relevant CSD (with whom the relevant Auction Participant Settlement Account of the Auction Participant is maintained) that settlements can be processed latest until the applicable settlement cut-off time specified by Eurex Clearing AG.

10.2 Settlement

- (i) All deliveries of Auction Securities owed by the Auction Participant under an Auction Transaction shall be carried out versus payment (DvP) of the Settlement Amount in the Buy-In Currency between the Auction Participant and Eurex Clearing AG.

“**Settlement Amount**” means with respect to an Auction Transaction the amount payable for the sale of the Auction Securities, as determined by Eurex Clearing AG based on

- (I) the Offer Price of the relevant Auction Transaction,
- (II) in case of an interest-bearing Auction Securities, any accrued interest applicable for the Auction Securities, and
- (III) the Accepted Quantity.
- (ii) The Auction Participant shall deliver the Auction Securities to the Eurex Clearing AG Settlement Account on the Auction Day by no later than the Auction Settlement Cut-Off Time notified by Eurex Clearing AG to the Auction Participant upon the conclusion of the relevant Auction Transaction.

“**Eurex Clearing AG Settlement Account**” means the account of Eurex Clearing AG with CBL, CBF or Euroclear UK for the purpose of settlement of Auction Transactions.

“**Auction Settlement Cut-Off Time**” means, with respect to an Auction Transaction, the cut-off time for delivery of the Auction Securities owed by the Auction Participant under the Auction Transaction, as determined by Eurex Clearing AG with respect to the Auction Transaction.

10.3 Settlement Failures

10.3.1 Failure by the Auction Participant to deliver Auction Securities

- (i) If the Auction Participant fails to deliver the Auction Securities to the relevant Eurex Clearing AG Settlement Account by the relevant Auction Settlement Cut-Off Time on the Auction Day, the Auction Transaction shall be cancelled automatically and Eurex Clearing AG shall give notice thereof to the Auction Participant.
- (ii) In case of an automatic cancellation of the relevant Auction Transaction, the Auction Participant shall not be entitled to receive any payment of the Settlement Amount with respect to the cancellation of an Auction Transaction and shall cancel its respective settlement instruction with the CSD.
- (iii) The Auction Participant failing to deliver the Auction Securities shall be obliged to pay a penalty payment to Eurex Clearing AG in the amount of 0.04 per cent of the stock market price or market value of the Auction Securities due at the moment of the default's beginning, however, no less than EUR 1,000.00.

(iv) If a settlement occurs notwithstanding the automatic cancellation of the Auction Transaction in accordance with this Paragraph (i), Eurex Clearing AG shall be entitled

- (I) to unwind the cancellation, or
- (II) to request from the Auction Participant the repayment of the Settlement Amount against redelivery of the Auction Securities received.

10.3.2 Failure by Eurex Clearing AG to pay the Settlement Amount

If the delivery versus payment settlement of an Auction Transaction with the Auction Participant fails due to the failure by Eurex Clearing AG to pay the Settlement Amount for the Auction Securities to the Auction Participant by the relevant Auction Settlement Cut-Off Time on the Auction Day, Eurex Clearing AG shall be entitled to cancel the Auction Transaction.

10.4 Corporate Action, Cash and Securities Income

This Number 10.4 applies only with respect to Auction Securities that are subject to the Settlement Provisions of this Number 10.

10.4.1 Corporate Actions

- (i) Where any voting rights or elections in relation to corporate actions (e.g. the exercise of subscription rights) may or have to be exercised in relation to any Auction Securities, Eurex Clearing AG shall not have any obligation in respect of the exercise of such voting rights or the exercise of such elections in relation to corporate actions to be made in accordance with the instructions of the Auction Participant.
- (ii) Eurex Clearing AG shall not exercise any voting or other rights resulting from such Auction Securities.
- (iii) Eurex Clearing AG shall neither be under any obligations to exercise any subscription right resulting from Auction Securities nor under any obligations to sell such subscription rights and any subscription right resulting from such Auction Securities which has not been exercised by the end of the subscription period shall lapse without the Auction Participant being entitled to any compensation.

10.4.2 Cash and Securities Income

Upon the occurrence of an Income Event, with respect to an Auction Transaction, Eurex Clearing AG shall be entitled to receive a payment or delivery of an amount equivalent to the amount of the Cash Income and/or Securities Income from the Auction Participant.

“**Income Event**” means, with respect to the settlement of an Auction Transaction, the payment or delivery of Cash Income or Securities Income to the Auction Participant during the period commencing with the relevant Auction Day and ending with the final settlement of the Auction Transaction.

“**Cash Income**” means a payment of any interest, dividends or other distributions in cash in relation to Auction Securities.

“**Securities Income**” means any payment of interest, dividends or other distributions in the form of securities arising in relation to Auction Securities that in respect of which no payment of consideration is required as well as any other rights arising in relation to the Auction Securities (such as bonus shares).

11 Liabilities, Emergency Actions

- 11.1 The Auction Participant shall be liable for wilful misconduct (*Vorsatz*) and negligence (*Fahrlässigkeit*). If the Auction Participant causes any damages for Eurex Clearing AG, such damages shall in particular include any loss and properly incurred legal fees (including any applicable VAT).
- 11.2 Eurex Clearing AG shall only be liable for wilful misconduct (*Vorsatz*) or gross negligence (*grobe Fahrlässigkeit*), unless Eurex Clearing AG violates any of its essential obligations (*wesentliche Vertragspflichten*) under these Auction Terms. An essential obligation is an obligation, the performance of which is both necessary for the execution of the contract and which the Participant can, and does, rely upon.
- In case of simple negligence (*einfache Fahrlässigkeit*), the liability of Eurex Clearing AG is restricted only to damages typically foreseeable at the time of entering into these Auction Terms. The provisions under the previous sentences above shall not affect the statutory liability for damages incurred as a result of injury to life, body or health as well as the liability pursuant to the German Product Liability Act (*Produkthaftungsgesetz*).
- 11.3 Neither Eurex Clearing AG nor the Auction Participant shall be liable for damages arising out of a business disruption as a result of a Force Majeure Event or Market Disorder Event.
- 11.4 In case an orderly Auction is disrupted, in particular by technical disruptions, the relevant Auction Participant shall immediately notify Eurex Clearing AG thereof. Any respective emergency actions by Eurex Clearing AG are legally binding on the Auction Participant.

12 Transmission of information relating to Auction Participants

- 12.1 Eurex Clearing AG treats all data and information which relate to the Auction Participant confidentially. Eurex Clearing AG shall be authorised – subject to applicable law – to transfer such data and information to competent supervisory authorities or other authorised third parties domestic or abroad which are subject to confidentiality regulations with respect to such data and information comparable to those of Eurex Clearing AG.
- Other client-related information may only be passed on by Eurex Clearing AG, if it is already publicly available or if it is legally required to be passed on, or if the relevant Auction Participant has agreed to it.

- 12.2 Notwithstanding the provisions in Number 12.1, Eurex Clearing AG shall also be entitled to transmit or to request from clearing and settlement institutions or independent auditors which are subject to confidentiality regulations comparable to those applicable to Eurex Clearing AG, all data and information which refer to the Auction Participant and which are necessary for the orderly conduct of the Auctions and the settlement of Auction Transactions.

13 Publications and Notices; Objections to Notifications or Reports

- 13.1 If these Auction Terms provide that certain notices from Eurex Clearing AG shall be provided, then such notices shall be published by Eurex Clearing AG

- (i) via e-mail to the Auction Participants,
- (ii) on the Eurex Clearing Website,
- (iii) on its Member Section of Eurex Clearing AG for variable figures relevant for the auction processing, or
- (iv) within the Auction Platform.

Such notices will become effective immediately upon publication.

- 13.2 Unless otherwise specified in these Auction Terms, notices by the Auction Participant may be made by e-mail or, if it is foreseen in these Auction Terms, within the Auction Platform. If Eurex Clearing AG has published forms, such forms must be used. Forms published by Eurex Clearing AG must be used in the language in which they are published.

- 13.3 All notices to be given and all communication between Eurex Clearing AG and the Auction Participant shall be given in such form and at such address as agreed or notified from time to time by the relevant party. Notices may be given in the German or in the English language.

14 Amendments to these Auction Terms

- 14.1 Eurex Clearing AG may amend the Auction Terms at any time. Any changes and amendments to the Auction Terms shall be notified to all affected Auction Participants in writing at least fifteen (15) Business Days prior to the effective date fixed in the relevant notice ("**Notification Period**"). Affected Customers may submit in writing to Eurex Clearing AG comments to any changes or amendments of the Auction Terms within the first 10 Business Days of the Notification Period. Eurex Clearing AG shall assess whether these comments prevent the published change or amendment from becoming effective taking into account the interests of Eurex Clearing AG and the Auction Participants.

- 14.2 Each Affected Customer accepts each change and amendment of the Auction Terms, unless it objects by written notice to Eurex Clearing AG within the Notification Period.

Eurex Clearing AG will inform the Affected Customers of the effects of such approval in the relevant publication of the changes and amendments of these Auction Terms. The right to terminate the Auction Participation Agreement pursuant to Number 6.3.1 (iii) shall remain unaffected.

15 Assignment of Rights and Claims

The Auction Participant shall not assign any of its rights or claims under the Auction Participation Agreement or these Auction Terms except with the prior written consent of Eurex Clearing AG.

16 Final provisions

- (1) These Auction Terms are subject solely to the laws of the Federal Republic of Germany. Exclusive place of jurisdiction for all disputes arising out of, or in connection with, the Auction Participation Agreement and these Auction Terms is Frankfurt am Main.
- (2) The English language version of these Auction Terms is legally binding. A German language version is not provided. The current version of the Auction Terms is available on the Eurex Clearing Website.
- (3) Should individual provisions of these Auction Terms be or become invalid or non-enforceable, this shall not affect the other provision's validity. In lieu of the invalid contractual provisions, the legal provisions shall apply or, in absence of such provision, that provision shall apply which the parties bona fide would have lawfully concluded had they noticed the invalidity or voidness. The same procedure shall apply if a gap in the provisions of these Auction Terms is observed.

Appendix 1 to the Auction Terms:

Auction Participation Agreement

between

Eurex Clearing AG

and

[•]

This Auction Participation Agreement (the "**Agreement**") is dated the last date specified on the signature page hereof and entered into

BETWEEN:

- (1) _____
(full legal name)
- _____
- _____
- _____
- (address)
- _____
- (Clearing Member ID or Basic Clearing Member ID or DC Market Participant ID)
- _____
- (e-mail address)
- _____
- (Telefon)
- as "**Auction Participant**"; and

- (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, Federal Republic of Germany ("**Eurex Clearing AG**").

The Auction Participant 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 Auction Terms of Eurex Clearing AG ("**Auction Terms**").

1. The Parties enter into this Agreement to agree on the participation of the Auction Participant in Auctions conducted by Eurex Clearing AG in accordance with Chapter I Part 1 Number 1.4.4 of the Clearing Conditions and the Special Clearing Conditions.
2. Upon invitation by Eurex Clearing AG, Auctions will enable the Auction Participant in accordance with the Auction Terms to enter into Auction Transactions with Eurex Clearing AG.
3. The Auction Participant is
 - a Clearing Member of Eurex Clearing AG;
 - a Basic Clearing Member of Eurex Clearing AG; or
 - a DC Market Participant of Eurex Clearing AG.
4. The Auction Participant assigns one or more eligible settlement accounts for the settlement of Auction Transactions in the Auction Platform.
5. This Agreement incorporates by reference the Auction Terms as amended from time to time.
6. 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.
7. This Agreement does not and is not intended to confer any rights to third parties. The Auction Participant shall not assign any of its rights and obligations under this Agreement except with the prior written consent of Eurex Clearing AG.
8. This Agreement is governed by the substantive laws (*Sachrecht*), excluding German private international law, of Germany. Any non-contractual rights and obligations arising out of or in connection with this Agreement shall also be governed by the substantive laws (*Sachrecht*), excluding German private international law, of Germany.
9. 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.
10. 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 (*ergänzende Vertragsauslegung*) by a valid, legal and enforceable provision, which most closely approximates the Parties' commercial intention. This shall also apply mutatis mutandis to any gaps (*Vertragslücken*) in this Agreement.

Auction Terms of Eurex Clearing AG

Eurex04.07e

As of 30.05.2022

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AUTHORISED SIGNATURES

to the

Auction Participation Agreement

Date

Place

Signature of an authorized signatory at **[•] (Auction Participant)**

Date

Place

Signature of an authorized signatory at **[•] (Auction Participant)**

Date

Place

Signature of an authorized signatory at **Eurex Clearing AG**

Date

Place

Signature of an authorized signatory at **Eurex Clearing AG**