

Supplement S-1—Exhibit a-4 the national statutes, laws and regulations governing the activities of the clearing organization and its members.

This updated Exhibit reflects changes in the regulatory environment in Germany since August 2012. It is intended to replace the previously submitted Supp-1 Exhibit A-4.

Eurex Clearing operates within a well-understood, well-founded and transparent legal environment with respect to the functions of novation, netting, and settlement, Eurex Clearing's interest in collateral, the finality of settlement and the default process.

The Clearing Agreement and the Clearing Conditions of Eurex Clearing – the general terms of business of the clearinghouse – are governed by the laws of Germany. The hierarchy of the legislative and regulatory regime in Germany is that the regulations of the European Union prevail over national law, generally even constitutional law. German constitutional law itself prevails over any other national law, including, in particular, Acts of the Federal Parliament. The federal government, a secretary of the government legislator or the state government can be authorized under an Act of the Federal Parliament to adopt ordinances subordinate to an Act of the Federal Parliament.

As an entity incorporated in accordance with private law, the legal relationship between Eurex Clearing and its Clearing Members is generally based on private law. Eurex Clearing has not been granted any statutory immunity. The rules of Eurex Clearing consist of the Clearing Agreement between Eurex Clearing and its Clearing Member which incorporates the Clearing Conditions as the general terms of business for Eurex Clearing. The Clearing Conditions constitute the set of legally binding rules of Eurex Clearing. The Clearing Agreement and the Clearing Conditions as well as any amendments to those documents are not subject to regulatory approval but are, as a contractual arrangement, enforceable and subject to civil law.

In accordance with the German Code of Civil Procedure, Eurex Clearing may assert and enforce contractual claims and/or damages against any defaulting Clearing Member before the competent Civil Court of Law.

The German Stock Corporation Act (Aktengesetz "AktG") governs private law corporations

The Articles of Incorporation of Eurex Clearing, attached as Attachment 1a to Exhibit A-2 of Supplement S-1, are required to comply with the requirements of the AktG, in particular section 23 AktG, and have been certified by a notary public. The activity of Eurex Clearing, as far as it conducts a banking business or financial services is subject to regulatory approval and ongoing oversight as further described in this application.

The German Civil Code promotes and maintains standards of integrity and fair dealing.

The German Civil Code requires, among other things, any debtor of an obligation to perform in such a way that is required by good faith.¹ This provides the way in which contractual performance must be rendered and gives rise to a number of ancillary or supplementary duties: for example duties of information, cooperation, protection and fairness. Moreover, this provision serves to limit the exercise of contractual rights, a concept commonly referred to as inadmissible exercise of rights. This principle in particular applies where a party to a contract uses standard terms of business. Section 307 (1) 1 of the BGB provides that provisions of general terms and conditions are void in the event that they operate to the detriment of the counterparty against the principle of good faith. Consequently, Eurex Clearing is strictly bound by the principle of good faith in its relationship to the Clearing Members which is based on the Clearing Conditions.

Protection of Customer Funds at the Clearing Member Level

The 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") lays down clearing and bilateral risk-management requirements for over-the-counter derivative contracts, reporting requirements for derivative contracts and uniform requirements for the performance of activities of central counterparties and trade repositories.

EMIR requires that a CCP shall keep separate records and accounts that shall enable the CCP, at any time without delay, to distinguish in accounts with the CCP the assets and positions held for the account of one clearing member from the assets and positions held for the account of any other clearing member and from its own assets.² In addition EMIR requires individual and omnibus client segregation solutions for positions and assets (collateral) of clearing members and their client.³

An applicant for a Clearing Membership is required to have available for cash payments in euro an TARGET2 account with a central bank at the Euro system or non-Euro central bank connected to the TARGET2 system and/or an account with the Swiss National Bank and SIX Interbank Clearing AG for payments in Swiss francs. Additionally, applicants must have a securities account or sub-account with Clearstream Banking Frankfurt or SIX SIS Ltd.

Eurex Clearing offers three different clearing models: the Elementary Clearing Model ("ECM"), Net Omnibus Clearing Model ("NOCM") and the Individual Clearing Model ("ICM"), which Clearing Members and their customers may individually elect. The ICM requires that Clearing Members have an account for each non-Clearing Member. The Net Omnibus Clearing Model is currently only available for Clearing Members in England and Wales. U.S. non-Clearing Members may only utilize the ECM and, if they clear through an English or Welsh Clearing Member, the net omnibus model. Eurex Clearing is currently amending its ECM which will reflect the new segregation and portability requirements under the Regulation (EU) No.

¹ German Civil Code, Section 242. ("BGB"). A copy of the German Civil Code, in English translation, is enclosed as Attachment 2.

² EMIR Article 39 para. 1.

³ EMIR Article 39 para. 2 and 3.

648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ("EMIR"). The amended ECM will be available by the end of the year 2013.

With respect to the activities of Clearing Members, customer funds are protected pursuant to the requirements of the Commission and applicable German law. All collateral and funds deposited by the Clearing Member with Eurex Clearing must be the proprietary funds of the Clearing Member. The funds of U.S. customers when held at a U.S. futures commission merchant ("FCM"), or firm granted an exemption pursuant to CFTC Regulation 30.10, are subject to the requirements of CFTC Regulation 30.7. CFTC Regulation 30.7 requires that an FCM must maintain in a separate account (or accounts) money, securities and property in an amount at least sufficient to cover or satisfy all of its current obligations to foreign futures or foreign options customers denominated as the foreign futures or foreign options secured amount. Such money, securities and property may not be commingled with the money, securities or property of such FCM, with any proprietary account of such FCM, or used to secure or guarantee the obligations of, or extend credit to, such FCM or any proprietary account of such FCM. Accordingly, Eurex Clearing does not permit the commingling of customer and proprietary funds at the CCP level. Eurex Clearing itself is subject to the provisions of the *Gesetz über das Kreditwesen* ("KWG"), discussed below, which also applies to Clearing Members.⁴

Settlement

All securities clearing systems of Eurex Clearing as CCP and Clearinghouse are qualified as "Security Settlement Systems" under the EU Settlement Finality Directive (Directive 98/26/EC) ("SFD") and have been notified as such to the European Commission by Deutsche Bundesbank. Thus, trades entered into Eurex Clearing's system benefit from specific insolvency protection under the German Insolvency Act ("InsO"). This means that such trades can be executed even where Eurex Clearing or another Clearing Member becomes insolvent.

Insolvency

The legal basis for the supervision of banking business and financial services is the German Banking Act, KWG. Eurex is licensed as a CCP and a bank by BaFin under the KWG. The KWG was recently amended to order to address requirements under the European Markets Infrastructure Regulation ("EMIR"). Attached are the most recent Questions and Answers provided by the European Securities and Markets Authority which discusses issues in EMIR. There is currently no translation into English of the amended KWG available but the German implementing law is attached. An English translation of the amended KWG will be provided to the Commission when available.

Under section 46b of the KWG, if Eurex Clearing were to become insolvent, the relevant insolvency procedure can only be instigated at the request of Bafin. In that event, Bafin would likely first announce a so-called "Moratorium" under section 47 KWG in order to ensure the orderly closure of Eurex Clearing's business activities. Before insolvency, since Eurex Clearing is qualified as a systemic relevant

⁵ KWG Section 48a.

credit institution, Bafin may issue an order to transfer all assets and liabilities to another legal entity, provided that Eurex Clearing's existence is endangered.⁵

Attachments:

- German Stock Corporation Act (“AktG”)
- Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC Derivatives, central counterparties and of the Council on Markets in Financial Instruments Directive 2004/39/EC of the European Parliament and of the Council (“EMIR”)
- EU Settlement Finality Directive (Directive 98/26/EC)(“SFD”)
- ESMA Q&A on EMIR Implementation, dated June 10, 2013.
- German Implementing Act for EMIR