

Porting Agreement

between

the Replacement Clearing Member
as specified in Clause 1.2 of this Porting Agreement

and

Eurex Clearing AG, Frankfurt am Main.

This porting agreement (the "**Porting Agreement**") is dated _____¹ and entered into

BETWEEN:

- (1) The Replacement Clearing Member specified in Number 1.2; and
- (2) Eurex Clearing Aktiengesellschaft, a stock company (*Aktiengesellschaft*) incorporated under the laws of the Federal Republic 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 Replacement Clearing Member and Eurex Clearing AG are hereinafter also referred to as the "**Parties**" and each of them as a "**Party**".

WHEREAS:

- (A) A Termination Event or an Insolvency Termination Event and a Termination Date within the meaning of Chapter I Part 1 Number 7 of the Clearing Conditions have occurred with respect to the Transferor Clearing Member (as specified in Clause 1.2 of this Porting Agreement) and an ECM Porting Period pursuant to Chapter I Part 2 Subpart C Number 8.4 of the Clearing Conditions and/or an ISA Porting Period pursuant to Chapter I Part 4 Number 10.3 of the Clearing Conditions has commenced.
- (B) Certain Direct Clients of the Transferor Clearing Member have designated the Replacement Clearing Member to going forward act as their Clearing Member with respect to the assets and positions held by the Transferor Clearing Member for their account.
- (C) It is therefore the intention of the Parties to transfer certain assets and positions held by the Transferor Clearing Member for the account of the relevant Direct Clients to the Replacement Clearing Member (porting) in accordance with the provisions of Chapter I Part 2 Subpart C Number 8 (Porting of assets and positions in relation to an Omnibus Standard Agreement) of the Clearing Conditions and/or (ii) Chapter I Part 4 Number 10 (Porting of assets and positions in relation to an ISA Standard Agreement) of the Clearing Conditions.
- (D) As part of the intended porting the Parties intend to transfer to the Replacement Clearing Member by way of assumption of contract (*Vertragsübernahme*) the rights and obligations of the Transferor Clearing Member specified in Clause 3.1 of this Porting Agreement.
- (E) The Transferor Clearing Member has given its irrevocable consent to the assumption of contract agreed between the Parties under this Porting Agreement in accordance with Chapter I Part 2 Subpart C Number 8.4 of the Clearing Conditions and/or Chapter I Part 4 Subpart C Number 10.4 of the Clearing Conditions.

NOW THEREFORE, the Parties agree as follows:**1 Definitions**

- 1.1 Unless the context requires otherwise, terms used, but not defined, in this Porting Agreement shall have the meaning given to them in the Clearing Conditions of Eurex Clearing AG (the

¹ Please do not include any date, the date of the conclusion of the Agreement will be included by Eurex Clearing AG.

"**Clearing Conditions**"). This Porting Agreement incorporates by reference the Clearing Conditions.

1.2 Key terms

The following terms shall have the following meanings:

"**Replacement Clearing Member**" means _____.

"**Replacement Clearing Member E-Mail Address**" means the e-mail address of the Replacement Clearing Member for the purposes of sending notices to the Replacement Clearing Member in accordance with Number 8: _____.

"**Transferor Clearing Member**" means _____.

1.3 Miscellaneous terms

The following miscellaneous terms shall have the following meanings:

"**Business Day**" means a day (other than Saturday or Sunday) on which commercial banks in Frankfurt am Main, Germany, are open for general business.

"**Margin**" means Omnibus Margin and/or Margin (as used in Chapter I Part 4 of the Clearing Conditions for the purposes of the ISA Provisions), as the context requires.

"**Transfer Date**" means the date specified as such in the Porting Data File or the date to which the Transfer is postponed in accordance with Number 5.4.

"**Transferred Transactions**" means, with respect a Transferred Standard Agreement, the transactions comprised in such Transferred Standard Agreement.

"**Transferred Standard Agreement**" means a Standard Agreements established between Eurex Clearing AG and the Transferor Clearing Member relating to a Client Transaction Accounts Group comprising the transactions of the Direct Clients for which the Replacement Clearing Member shall act as Clearing Member following the transfer, as has been specified by the Parties in the Porting Data File.

"**Transferred Unallocated Redelivery Claims**" means any Unallocated Redelivery Claims (if any) relating to an Internal Omnibus Margin Account, if the Transfer to the Replacement Clearing Member includes all Omnibus Transactions of the Transferor Clearing Member that are allocated to the Client Transaction Accounts that are allocated to such Internal Omnibus Margin Account.

"**Variation Margin**" means Omnibus Variation Margin and/or Variation Margin (as used in Chapter I Part 4 of the Clearing Conditions for the purposes of the ISA Provisions), as the context requires.

2 Transferred Standard Agreements

The Parties shall in a separate file or document (the "**Porting Data File**"), which shall become an integral part of this Porting Agreement, identify each Transferred Standard

Agreement and whether the Transferred Transactions comprised in a particular Transferred Standard Agreement shall following the Transfer be covered by the:

- (a) Elementary Clearing Model Provisions,
- (b) Elementary Clearing Model Provisions (CASS),
- (c) Individual Segregated Account Provisions (under a Security Interest Margin Election: by providing Margin in the form of Securities by way of pledge),
- (d) Individual Segregated Account Provisions (under a Title Transfer Margin Election: by providing Margin in the form of Securities by way of title transfer) or
- (e) Individual Segregated Account Provisions (CASS) (under a Security Interest Margin Election: by providing Margin in the form of Securities by way of pledge).

The Replacement Clearing Member shall provide to Eurex Clearing AG any relevant information in form and substance as required by Eurex Clearing AG to facilitate the Transfer in accordance with the instructions of Eurex Clearing AG.

3 Transfer

3.1 With respect to each Transferred Standard Agreement, the Replacement Clearing Member and Eurex Clearing AG agree with effect as of the Transfer Date, on a transfer (the "**Transfer**") to the Replacement Clearing Member by way of assumption of contract (*Vertragsübernahme*) of all rights and obligations of the Transferor Clearing Member with respect to:

- (i) all Transferred Transactions,
- (ii) (a) the Allocated Redelivery Claims, if the Transferred Standard Agreement is an Omnibus Standard Agreement or
(b) subject to Number 3.2 below, the Redelivery Claims for Margin, if the Transferred Standard Agreement is an ISA Standard Agreement,
- (iii) all Redelivery Claims for Variation Margin relating to the relevant Transferred Standard Agreements,
- (iv) the Transferred Unallocated Redelivery Claims (if any) specified in Clause 1.2 of this Porting Agreement and
- (v) the Redelivery Claims (if any) relating to the proceeds of the realisation of Securities liquidated by Eurex Clearing AG in accordance with Chapter I Part 2 Subpart C Number 8.10 of the Clearing Conditions or Chapter I Part 4 Number 10.8.5(i) to the extent such Redelivery Claims have arisen or will arise subsequently to the execution of this Porting Agreement in respect of the relevant Transferred Standard Agreements,

Any such rights and obligations shall be captured by, and be subject to, the Clearing Agreement between the Replacement Clearing Member and Eurex Clearing AG.

3.2 If (i) the Replacement Clearing Member has specified with respect to a Transferred Standard Agreement that is an ISA Standard Agreement prior to the Transfer becoming effective that the Transferred Transactions shall upon the Transfer becoming effective become Omnibus Transactions of the Replacement Clearing Member and (ii) the relevant Disclosed Direct

Client has elected '*Direct Return*' in its Transfer Notice, Redelivery Claims for Margin (if any) relating to such a Transferred Standard Agreement shall not be transferred from the Transferor Clearing Member to the Replacement Clearing Member pursuant to Number 3.1(ii)(b).

- 3.3** The effectiveness of the Transfer of the Transferred Transactions is subject to the condition precedent (*aufschiebende Bedingung*), unless waived by Eurex Clearing AG, that the Replacement Clearing Member has provided or provides Eligible Margin Assets as Margin for the Transferred Transactions that cover the related margin requirement of the Replacement Clearing Member resulting from the Transfer of the Transferred Transactions. For the avoidance of doubt, such provision of Margin may be effected through a transfer of Eligible Margin Assets in the form of cash or Securities referred to in this Number 3 and/or in Number 4 or by the provision of Margin in accordance with the Clearing Conditions.
- 3.4** Eurex Clearing AG may reject a Transfer under this Porting Agreement, in particular if the respective Transfer would result in an adverse risk for Eurex Clearing AG.

4 Transfers in relation to Eligible Margin Assets in the form of Securities

Unless otherwise provided in this Number 4, the transfer of title (if any) to the Replacement Clearing Member to Eligible Margin Assets in the form of Securities with respect to a Transferred Standard Agreement shall be executed separately in accordance with the Clearing Conditions.

If a Transferred Standard Agreement is an Omnibus Standard Agreement and upon the Transfer the Transferred Transactions shall become subject to an ISA Standard Agreement for which a Title Transfer Margin Election applies, then the Replacement Clearing Member shall upon the transfer of the relevant Eligible Margin Assets in the form of Securities to the Replacement Clearing Member be obliged to transfer title in such Eligible Margin Assets to Eurex Clearing AG as Margin in respect of the Transferred Transactions. The security interests held by Eurex Clearing AG in such Eligible Margin Assets shall upon the transfer be extended in accordance with Number 10.8.2 (ii) (B) of Chapter I Part 4 of the Clearing Conditions and shall only lapse when title in such Eligible Margin Assets has been transferred to Eurex Clearing AG by the Replacement Clearing Member.

5 Further Transfer requirements; Transfer complementing provisions

- 5.1** In addition to Number 3.4 and 3.5, the Transfer shall only occur if the following conditions are satisfied, unless waived by Eurex Clearing AG:
- 5.1.1** The Clearing Agreement between Eurex Clearing AG and the Replacement Clearing Member is in full force and effect at the Transfer Date,
 - 5.1.2** no default of the Replacement Clearing Member has occurred on or prior to the Transfer Date; and
 - 5.1.3** no Termination Event with respect to the Replacement Clearing Member has occurred on or prior to the Transfer Date.
- 5.2** The Replacement Clearing Member, waiving the prohibition against self-dealing pursuant to § 181 German Civil Code (*Bürgerliches Gesetzbuch*), irrevocably authorise (*bevollmächtigt*) Eurex Clearing AG to issue all statements and to take all acts on behalf of the Replacement

Clearing Members that Eurex Clearing AG considers necessary or expedient to effect the Transfer. Eurex Clearing AG will make the necessary system entries in respect of the transfer. Delays with respect to the system entries shall have no effect on the validity of the transfer.

- 5.3** The Replacement Clearing Member shall carry out, upon Eurex Clearing AG's written instructions, all such further acts and make all further declarations which Eurex Clearing AG deems necessary to make this Porting Agreement and the Transfer fully effective.
- 5.4** Eurex Clearing may postpone the Transfer to a different date, which it shall attempt to coordinate with the Replacement Clearing Member.
- 5.5** Eurex Clearing AG shall reflect the completed Transfer in its books and records by making respective debit and credit entries to the Internal Transaction Accounts and Internal Margin Accounts of the Replacement Clearing Member.
- 5.6** It is the responsibility of the Replacement Clearing Member to enter into relevant agreements (if any) with its clients to reflect the Transfer.

6 Liability

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 this Porting Agreement. An essential obligation is an obligation the performance of which is necessary for the execution of the contract and as well a performance of which the Replacement Clearing Member trusts in and may trust in. In case of simple negligence (*einfache Fahrlässigkeit*), the liability of Eurex Clearing AG is restricted only to damages typically foreseeable at the time of the conclusion of the contract. 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*).

7 Representations

The Replacement Clearing Member represents and warrants by way of an independent guarantee and irrespective of fault (*selbstständiges, verschuldensunabhängiges Garantieverprechen*) to Eurex Clearing AG that at the time it enters into this Porting Agreement:

- 7.1.1** it has the power to enter into, deliver and perform this Porting Agreement and any other documentation relating to this Porting Agreement to which it is a party and has taken all necessary actions to authorise such execution, delivery and performance;
- 7.1.2** its entry into, delivery and performance of this Porting Agreement and any other documentation relating to this Porting Agreement to which it is a party do not conflict with any law or regulation applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any agreements or instruments by which it is bound or which affects any of its assets;
- 7.1.3** it is acting as principal in respect of this Porting Agreement (including all transactions entered into under it);

7.1.4 it has all governmental and other consents that are required to have been obtained by it with respect to its entry into and performance of this Porting Agreement and are in full force and effect and all conditions of any such consents have been complied with; and

7.1.5 the requirements as set out by the Clearing Conditions, Chapter I Part 1 Number 1.7.1 (d) – (i) are fulfilled.

8 Notices

Before acting upon an instruction submitted under this Porting Agreement, Eurex Clearing AG may ask the Replacement Clearing Member to confirm the instruction orally (including by telephone) or by E-mail, letter or fax.

The Parties agree and accept that there are inherent risks connected with a communication by E-Mail and fax (including, but not limited to, the possibility of an unauthorised access, forgery or unauthorised alteration, interception and delays), and each Party shall burden any such risk with respect to an E-Mail or fax sent by the respective Party.

Any communication by E-Mail shall be made using the following E-Mail addresses:

- To Eurex Clearing AG: client-porting@eurexclearing.com
- To the Replacement Clearing Member: The Replacement Clearing Member E-Mail Address specified for such purpose in Number 1.2.

9 Governing Law, Jurisdiction, Place of Performance

9.1 Governing Law

9.1.1 This Porting Agreement (subject to Number 9.1.3 below) is governed by the substantive laws (*Sachrecht*) of the Federal Republic of Germany, excluding German private international law.

9.1.2 Any non-contractual rights and obligations arising out of or in connection with this Porting Agreement shall also be governed by the substantive laws (*Sachrecht*) of the Federal Republic of Germany, excluding German private international law.

9.1.3 The effects of this Porting Agreement on a Client Clearing Agreement that is governed by English law or on a New Client Clearing Agreement that is subject to English law shall be governed by the substantive laws, excluding private international law, of England and Wales.

9.2 Jurisdiction

The courts in Frankfurt am Main shall have exclusive jurisdiction (*ausschließlicher Gerichtsstand*) over any action or other legal proceedings arising out of or in connection with this Porting Agreement.

9.3 Place of Performance

The place of performance shall be Frankfurt am Main.

10 Severability Clause

If any provision contained in this Porting 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 Porting Agreement.

SIGNATURES to the Porting Agreement

(as Replacement Clearing Member)

(Place / Date)

Name:

Name:

Function:

Function:

Eurex Clearing Aktiengesellschaft

(Eurex Clearing AG)

(Place / Date)

Name:

Name:

Function:

Function: