

Questionnaire for CDS CCPs on Protection of Customer Initial Margin

Response of Eurex Clearing AG

June 30, 2009

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Eurex Clearing AG (“Eurex Clearing”) is pleased to respond to the revised Questionnaire dated June 5, 2009 prepared by the ad hoc group formed by ISDA. Eurex Clearing understands that the purpose of the Questionnaire is to more fully understand the rights of “customers” (buy-side participants) under Eurex Clearing’s proposed clearing services relating to CDS transactions. Our answers are therefore limited to clearing of CDS transactions and focus mainly on the treatment of initial margin posted in connection with the central clearing of CDS transactions.

Our answers are as follows:

I. Factual Matters

A. Composition and Structure of the CCP, CMs, Custodians and Customers

Structure of the CCP

1. Please describe the legal structure (e.g., entity type, jurisdiction, governing structure, etc.) of the CCP. Include references to any required licenses or registration orders obtained in connection with the establishment of the CCP.

Answer:

Eurex Clearing is a stock corporation (*Aktiengesellschaft*) formed and incorporated under the laws of Germany. It is a wholly owned subsidiary of Eurex Frankfurt AG ("Eurex Frankfurt") a German stock corporation which is itself wholly owned by Eurex Zürich AG ("Eurex Zürich"), a Swiss stock corporation. Eurex Zürich has two 50% parents, Deutsche Börse AG (“DBAG”), a German stock corporation listed at the Frankfurt Stock Exchange, and the SIX Swiss Exchange (“SIX”).

Eurex Clearing is recognized as a German credit institution and separately received permission to act as a CCP from the German Federal Financial Supervisory Authority (“BaFin”) according to § 1 (1) Nr.12, (31) German Banking Act on December 12, 2006.

2. Please list all relevant regulatory and supervisory authorities of the CCP.

Answer:

Eurex Clearing is supervised by BaFin cooperatively with the Deutsche Bundesbank (the German Federal Bank). Under the German regulatory framework, the Deutsche Bundesbank cooperates and coordinates with BaFin in the supervision of Eurex Clearing. In addition, on January 16, 2007, Eurex Clearing was recognized

by the U.K. Financial Services Authority (“FSA”) as a Recognized Overseas Clearing House (“ROCH”), on the basis that the regulatory framework and oversight of Eurex Clearing in its home jurisdiction was comparable to that of the U.K. FSA. Eurex Clearing has requested that the U.S. SEC issue an Order exempting Eurex Clearing from registering as a U.S. clearing agency in connection with the clearing of CDS contracts. That request is pending.

3. Please detail any legal or regulatory segregation requirements applicable to customer IM held at the CCP.

Answer:

No customer funds are held at the CCP.

Structure of CMs

4. Please describe the legal structures applicable to the CMs.
 - a. Does the CCP restrict either the (i) organizational type (e.g., banks, broker-dealers, futures commission merchants, unregulated entities, etc.) or (ii) jurisdictions of organization of CMs? (Note: This will be key, as much of the legal analysis will depend on the insolvency laws applicable to the CMs.)

Answer:

Generally, cleared transactions are made between Eurex Clearing and the member firm that holds a “clearing license,” which is a permit by Eurex Clearing to an enterprise enabling that entity to clear a particular instrument or class of instruments. A clearing license is granted when the applicant satisfies the prerequisites for clearing membership and executes the appropriate Clearing Agreement. Eurex Clearing will issue a separate clearing license for its members that wish to clear OTC CDS contracts—the CDS Clearing Members. Eurex CDS Clearing Members will be required to meet a number of requirements in order to obtain a CDS Clearing License. These include in addition to the requirements that generally apply to be a Eurex Clearing Member, payment of a contribution to the separate CDS Clearing Fund, granting of an authorization to capture information from an approved trade source system (like DTCC) by the CDS Clearing Member or its Registered Customer and a higher capital requirement. CDS Clearing Members will be required to have at least €1 billion in liable equity capital. Eurex Clearing may permit a bank guarantee and/or collateral in the form of cash or securities to supplement a member’s liable equity capital or proprietary funds.

Eurex Clearing will admit U.S. entities for membership in its CDS clearing facility. However, the general requirement under the rules of Eurex Clearing that credit institutions, banks, and other financial institutions which shall have a license

covering the conduct of safe custody business, lending operations and the receipt of collateral in the form of cash or securities and which shall be regulated by a member country of the European Union or Switzerland (or be a branch office of such an entities if the branch office is comprehensively regulated by a European Union member state or Switzerland) will continue to apply for all clearing licenses other than the CDS clearing license. U.S. CDS Clearing Members will be required to meet similar requirements as would apply to non-U.S. entities holding a CDS Clearing License. These would include regulation, licensing or supervision of the entity by a U.S. securities, futures or banking regulatory authority and an enhanced regulatory equity capital requirement. Unregulated entities are not permitted to become Credit Clearing Members.

From a technical perspective, the CDS Clearing Member must have arrangements to effect payment obligations to the clearing house through a Target2 account. It must also have account arrangements to effect collateral and delivery obligations to Eurex Clearing for credit clearing with the securities depositories and global custodians Clearstream or Sega Intersectle (“SIS”), respectively. The CDS Clearing Member must also have adequate systems and operational support, including back-up and business continuity arrangements.

Eurex Clearing’s legal relationship, and its clearing guarantee, extends only to its CDS Clearing Members. CDS Clearing Members may agree with another entity—a Registered Customer-- to act as the Clearing Member in respect of transactions in which the Registered Customer is a counterparty to the CDS Clearing Member or another Registered Customer. As a pre-condition to a transaction involving a Registered Customer, Eurex Clearing, the CDS Clearing Member and its Registered Customer must enter into a tripartite Clearing Agreement in the form specified by Eurex Clearing.

In addition to the above requirements, Eurex Clearing understands that under U.S. law, its CDS clearing services will only be available to U.S. entities that satisfy the definition of “eligible contract participant” under sections 1a(12)(A) and (B) of the Commodity Exchange Act.

5. Please list all relevant regulatory and supervisory authorities applicable to the CMs.

Answer:

As discussed above, a CM must be a regulated entity in the EU, Switzerland or the U.S. The relevant regulatory and supervisory authority will be the home country securities, futures or banking regulatory authority as relevant to the entity.

The principal domiciles of Credit Clearing Members are anticipated to be Germany, the U.K. and the U.S.. Accordingly, the relevant regulators of CMs would likely be:

Germany—BaFin and the Deutsche Bundesbank (German Federal Bank)

U.K.—FSA

US—SEC, CFTC, FED, OCC, OTS, NY Department of Banking Supervision, FDIC

6. Please detail any legal or regulatory segregation requirements applicable to customer IM held at the CM.

Answer:

- German CMs are subject to The “Depotgesetz” (German Securities Deposit Act) is applicable to German CMs.
- U.S. CMs that are broker/dealers may be subject to Rule 15c3-3 (pending discussion with SEC).
- U.S. FCMs that are CMs may be subject to a rule of Eurex Clearing requiring that customer funds be held under 17 CFR §30.7 (pending discussions with CFTC).

- To the extent that applicable law would not require segregation of customer funds, all U.S. Credit Clearing Members and all Credit Clearing Members for U.S. Customers, will be required by Eurex Clearing and any Order of the U.S. Securities and Exchange Commission, to segregate customer funds.

Structure of Custodians (If Applicable)

7. Please describe the legal structures applicable to the custodians used by the CCP and CMs to hold IM.
- a. Does the CCP restrict either the (i) organizational type or (ii) jurisdictions of organization of entities that may serve as custodians of the CCP or CMs to hold IM? Are there any restrictions on whether such custodians may be affiliated with the CCP or CMs? (Note: This will be key, as much of the legal analysis will depend on the insolvency laws applicable to the respective custodians, to the extent IM is held by custodians.)

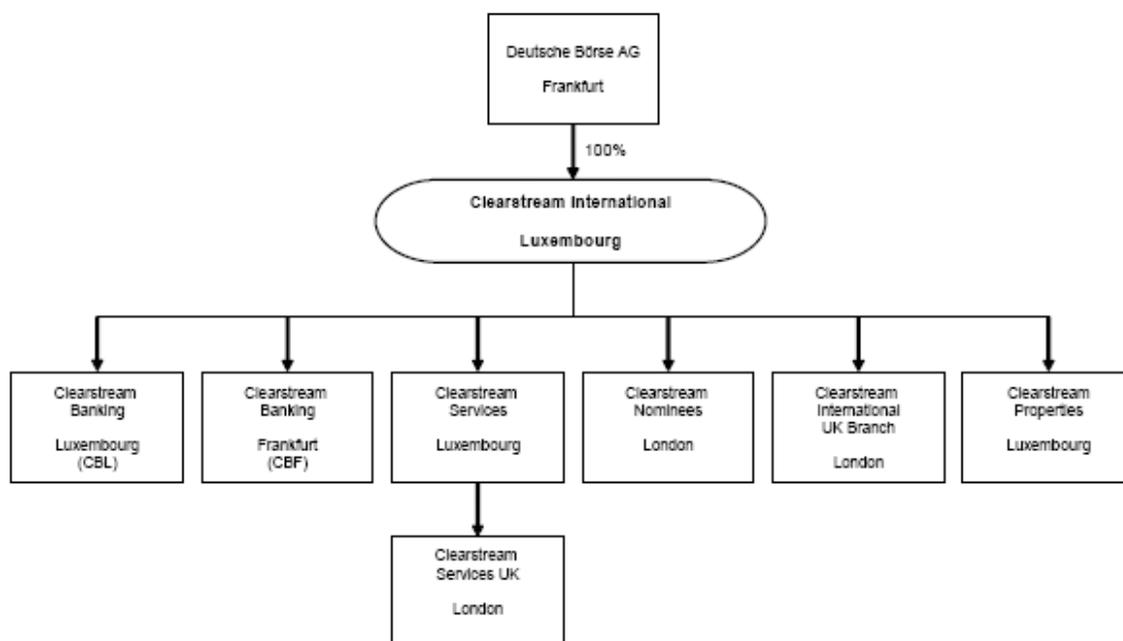
Answer:

Custodian for CCP

For sake of clarity we refer in our responses to the custodian “Clearstream Banking AG”, located in Frankfurt, as “Clearstream”, unless otherwise clarified in our response.

Clearing Members hold collateral for the benefit of Eurex Clearing at Eurex’s custodian, Clearstream. Clearstream, in its present corporate structure, was formed in 1996 as the result of a merger between Deutscher Auslandskassenverein (AKV) and

Deutscher Kassenverein (DKV) to form Deutscher Kassenverein AG. The name of the latter was changed to Deutsche Börse Clearing AG (DBC) in 1997. Between May 1999 and January 2000, DBC merged with Cedelbank S.A., Luxembourg, forming the Clearstream Group in its present form. The Clearstream Group, which is a fully-owned subsidiary of Deutsche Börse AG since July 2002, particularly comprises the following institutions: Clearstream Banking AG Frankfurt (and Clearstream Banking S.A. (Luxembourg) ("CBL")), Clearstream Services S.A., a provider of IT services, as well as holding companies and single-purpose companies (please see following diagram).



Clearstream is a stock corporation (Aktiengesellschaft) under German law (registered in the commercial register under number HRB 7500) and a licensed deposit-taking credit institution under the German Banking Act (Kreditwesengesetz), particularly for securities deposits and current accounts. Furthermore Clearstream is state-recognized as the German Central Securities Depository (CSD) in the meaning of the German Securities Deposit Act (Depotgesetz).

Clearstream is regulated as a bank according to the German Banking Act (Kreditwesengesetz) and is therefore subject to the prudential supervision of the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) in close cooperation with the Deutsche Bundesbank.

In addition, Clearstream is a Central Securities Depository (Wertpapiersammelbank), according to Section 1, paragraph 3, of the Securities Custody Act, and in that function is approved by the Ministry of Economic Affairs of the State of Hessen.

Clearstream Banking AG in its function as CSD is not rated. Clearstream Banking SA, Luxembourg, is rated by Standard & Poor's and IBCA and respective information will be provided in our response to the ICSD questionnaire. In addition, Deutsche Börse AG is rated AA (stable) (long term) and A1+ (short term) by Standard & Poor's.

Clearstream offers a wide range of services in relation to securities issued in Germany and in other countries, firstly as a CSD for securities eligible for collective safe custody under Section 5 of the German Securities Deposit Act and, secondly, as a custodian for other securities which are not traded in the regulated market. Xemac (eXchange Electronic Management of Collateral) is the German market's dedicated collateral management system. Its automated facilities improve liquidity by ensuring the optimal use of collateral, offering clients a more efficient and real-time asset management.

As a CSD offering collective safe custody, Clearstream safekeeps certificated securities of German and international issuers. The securities are evidenced by global certificates, individual certificates or are kept in the form of registered rights. These securities are often traded on regulated markets at German stock exchanges or are included in trading on the unofficial regulated market (i.e. the open market) of these stock exchanges. Clearstream settles these securities transactions, against payment or free of payment, for all German stock and financial futures exchanges as well as various trading platforms.

For securities kept in collective safe custody in accordance with the German Securities Deposit Act, Clearstream maintains qualified securities account links (CSD links) to important securities markets.

Furthermore, through Clearstream Banking S.A., Luxembourg, (CBL) a wide network of custodians outside Germany for securities kept in custody through an intermediary can be offered. CBL is an integral part of the European financial services infrastructure and operator of one of two leading ICSDs. Its core services offered include settlement and custody - all within a highly automated book-entry environment.

A few examples of the key services offered by CBL are noted below:

- ICSD for Eurobonds and international bonds;
- Cross-border domestic securities clearing, settlement and custody across 45 domestic markets;
- Global Securities Financing (GSF) facilities, including securities lending and Triparty Repo services;

CBL's market coverage represents an estimated 97% of domestic debt, 100% of outstanding Eurobonds and 90% of equity market capitalization, according to the latest 2007-2008 statistics from the Bank for International Settlements (BIS), and the Federation of European Securities Exchanges (FESE). CBL differentiates from most global custody providers in that it provides core infrastructure for the international

capital markets. As an ICSD, satisfying the highest standards as an internationally recognized Securities Settlement System (SSS), Clearstream is critical to the effective functioning of the Eurobonds/international bond markets as well as cross-border domestic securities businesses.

Clearstream's EUR 250 million investment program covering 2007 to 2009 will include enhancements to its settlement and asset servicing capabilities to preserve its status as the leading provider of best in class settlement and custody services. In parallel, the service offering for Global Securities Financing (GSF) and Investment Fund Services (IFS) will be upgraded. The goal is to continuously improve interoperability with our network of 45 markets worldwide.

Clearstream also protect its clients' interest through our participation in the various industry bodies. Clearstream is a member of ECSDA (European CSD Association) and closely involved with all of the groups working on European market harmonization, such as CESAME and the ICMSA. Clearstream has been a leading force for the Code of Conduct within the various working groups. Three Executives represent Clearstream in the T2S Advisory Group and consult the ECB. Furthermore Clearstream plays a significant role in the T2S Design Process.

Assets of Clearstream's customers are completely segregated from Clearstream's own assets. The investor's entitlement and protection is equivalent to a co-ownership right in the underlying securities pool granted under German law. Furthermore, it is required under section 4 of the Safe Custody Act that a separation of investor assets on the accounts of Clearstream is in place for investor insolvency protection. In case of an insolvency of Clearstream, due to the specific nature of the German law fiducia/trust, in case of insolvency of the fiduciary, the investors (as fiduciants) would be entitled to single out the cover assets from the insolvency estate of Clearstream (Section 47 German Insolvency Code).

Clearstream is audited by KPMG Germany. In addition, Clearstream has an Internal Auditing Section that has been created as an independent appraisal function to provide assurance to executive management and the Board of the adequacy and effectiveness of the risk management and control framework. As part of this objective, the audit functions verify whether the Group has established adequate systems of internal control to ensure that business is conducted in a well controlled environment and that there are processes for identifying and adequately controlling the risks incurred. Additionally, reports may provide comment to management as to the efficient and economic use of resources and the quality of performance of processes and fulfillment of responsibilities.

Group Compliance, a corporate center within Deutsche Börse Group (DBAG) but also locally represented in Luxembourg is responsible for the group-wide compliance procedures and controls. Specific procedures of internal control and communication have been put in place within Clearstream in order to forestall and prevent operations related to money laundering and terrorist financing. The main legal requirements are

contained in:

- the German Anti-Money Laundering Law, the German Criminal Law, the German Banking Act, and Bundesaufsichtsamt für das Finanzwesen (German banking supervisory authority, BaFin) circulars. In particular, there are three main categories of professional obligations which all regulated DBAG entities are required to adhere to:
- the obligation to know the identity of customers;
- the obligation to monitor customer transactions and to exercise professional judgment in executing transactions;
- the obligation to co-operate with the competent authorities.

Knowing your customer means having satisfactory information to determine the true identity and background of a customer. Clearstream has in place adequate policies, guidelines and procedures which require the proper identification of every customer before a business relationship is initiated, which ensure compliance with established laws and regulations, and which prevent it being misused, intentionally or unintentionally, for illegal activities. The adequate implementation of Know Your Customer standards includes the following elements:

- customer acceptance,
- customer identification and
- ongoing checks.

Clearstream will therefore only accept customers that fulfill the standards to justify such mutual trust and do not give any reason to doubt it. In line with this principle, Clearstream has developed customer acceptance standards as well as an approval procedure which have to be fulfilled to enter into a new customer relationship.

Clearstream does not maintain cash accounts on behalf of its customers. Payments. In relation to securities transactions, income administration, fees and charges settled outside the CASCADE platform. For cash settlement Clearstream uses the central banks, correspondent banks (cash agents) and payment systems where Clearstream's customers keep the corresponding cash accounts.

Custodian for CM

The segregation requirement which would apply under the Clearing Conditions establishes a number of requirements with respect to the custodian of customer funds. The custodian must a U.S. bank. The U.S. Credit Clearing Member must keep a record that it has considered the appropriateness of the custodian based upon a number of criteria, including, the need for diversification of risks, the bank's capital, the amount of client money placed as a proportion of the capital and the bank's credit. It is expected that depositories meeting these conditions will have in excess of \$1billion in regulatory capital. The custodian must provide an acknowledgement that

it is not entitled to combine the segregated customer funds account with any other account or to exercise any right of set-off or counterclaim against assets in that account in respect of any sum owed to it on any other account of the Credit Clearing Member.

8. Please list all relevant regulatory and supervisory authorities applicable to the custodians.

Answer:

Clearstream Banking AG is supervised by BaFin and Deutsche Bundesbank cooperatively.

U.S. Custodians must be banks and would be supervised by one of the relevant bank supervisory authorities.

9. Please detail any legal or regulatory segregation requirements applicable to customer IM held at the custodians.

Answer:

As noted above, Eurex Clearing accepts only proprietary collateral from its Clearing Members. Accordingly, no customer funds are held for the benefit of Eurex Clearing with a Custodian. However, with respect to U.S. customers, as proposed, Credit Clearing Members must segregate the U.S. customer's collateral. For those entities not otherwise subject to a segregation requirement, the segregated customer collateral must be maintained: 1) with a U.S. bank in a separate custodial deposit account explicitly for the benefit of each customer of the Credit Clearing Member;¹ 2) with a U.S. bank as a separate special custodial securities account explicitly for the benefit of each customer of the Credit Clearing Member;² or 3) in a custodial account at and in the name of a U.S. bank acting as a third-party custodian explicitly for the benefit of the customers of the Credit Clearing Member. CMs would be permitted to receive or invest the proceeds in qualified securities as defined in Rule 15c3-3 or in permitted investments as defined in 17 C.F.R. §1.25.

Permitted custodians must meet the following criteria:

(1) shall be a "bank" as defined in section 3(a)(6) of the Act subject to supervision by a U.S. Federal banking authority;

¹ The clearing customer would be granted a security interest in the special custodial deposit account under UCC Section 9-104.

² The clearing customer would be granted a security interest in the special custodial securities account under UCC Section 9-106. The custodial securities account may be linked to a custodial deposit account, credited with uninvested cash balances.

(2) must give written acknowledgement that the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any sum owed to it on any other account of the Credit Clearing Member.

(3) The Credit Clearing Member must make a record of the grounds upon which it satisfies itself that the bank is appropriate, including its consideration of:

(i) the need for diversification of risks;

(ii) the bank's capital;

(iii) the amount of client money placed, as a proportion of the bank's capital and deposits; and

(iv) the bank's credit.

With regard to possible restrictions on whether the custodian may be affiliated with the CCP or CMs, there are no restrictions with respect to Eurex Clearing. With respect to CMs, whether the custodian is affiliated will depend upon applicable law and regulation; with respect to the segregation account discussed above which applies to CMs that are not otherwise required by applicable law to segregate customer funds, whether there is a restriction on affiliation is under discussion with the U.S. SEC.

Structure of the Customers

10. Please describe the legal structures applicable to the customers.

- a. Does the CCP restrict either the (i) organizational type or (ii) jurisdictions of organization of customers? (Note: This may be important, as some of the legal analysis may depend on the insolvency laws applicable to the customers.)

Answer:

Eurex Clearing establishes in its Clearing Condition a defined class of participant—a “Registered Customer.” A Registered Customer, as a consequence of its agreement with a Credit Clearing Member (and Eurex Clearing), is authorized to itself initiate the transfer via DTCC of its marked OTC CDS transaction booked at DTCC to Eurex Clearing for clearance through its Clearing Member. However, the clearing relationship and the clearing house's guarantee extend only between Eurex Clearing and the Credit Clearing Member. Registered Customers must enter into a Tri-Party Agreement with the Clearing Member and with Eurex Clearing. In addition, all U.S. customers must be legally organized entities and must qualify as being an “eligible contract participant.”

11. Please list all relevant regulatory and supervisory authorities applicable to the customers.

Answer:

The supervisory authorities applicable to customers will depend on home country legislation. Because there is no restrictions on the nature of customers (other than for U.S. customers that they be entities and qualify as Eligible Contract Participants), potentially there are many supervisors that might exercise authority over the conduct of customers. This would be true where the customer itself if a regulated entity. For example, a customer may itself be a regulated entity a bank that enters into CDS cleared transactions would be subject to its supervisor with respect to capital and safety and soundness. An insurance company entering into cleared CDS would be subject to the oversight of its insurance regulator.

With respect to U.S. customers generally, the U.S. SEC has certain anti-manipulation and anti-fraud enforcement powers with respect to “security-based swap agreements.” Moreover, the U.S. SEC has taken the position that cleared swaps are “securities” within the meaning of the securities laws.

Finally, the supervisory authority of the clearing house may in certain respects reach conduct by or treatment of customers. In this regard, for example, the SEC has made it a condition of its Orders exempting CDS clearing houses from registration as a clearing agency under section 17a that customers not be permitted to opt out of segregation of customer funds, even if applicable law may give them such a right.

Expansion/Restriction of Permitted Entity Types

12. In weighing the relative benefits and drawbacks of expanding or restricting the entity types and jurisdictions of the CMs, customers and custodians, what factors did the CCP consider in its analysis? For example, to what extent did the CCP consider the following issues in reaching its proposed structure?
- a. Netting implications for CMs and their affiliates (from a credit, accounting and capital perspective);
 - b. Regulatory capital implications for CMs and their affiliates;
 - c. Operational efficiencies or inefficiencies, and other business implications of operating through the permitted entity types;
 - d. Adverse pass-through effects (e.g., unfavorable pricing) flowing from the CMs to customers as a result of the foregoing; and
 - e. The legal regime applicable to the proposed clearing framework upon an insolvency of a CM, customer or custodian.

Answer:

The above considerations are all material to the decisions on structuring the expansion of clearing services to CMs, customers and custodians. Eurex Clearing has been in development of its proposed clearing solutions for over a year, during which it has considered each of the above considerations. In this regard, Eurex Clearing attempted to reach a balance among the above criteria. And, Eurex Clearing has been in constant contact with its members and the buy-side community to take into account their views in reaching the best balance in structuring its proposed clearing services.

13. What is the process for approval and consideration of risks presented by additional CM or custodian entity types (by way of inclusion of new CMs or custodians or mergers of existing CMs or custodians in a manner that changes the applicable legal structure)?

Answer:

Applicants for consideration to become Credit Clearing Members must meet all of the requirements for membership set forth in the Eurex Clearing Conditions. There is not right to transfer a Clearing License so that in the case of a merger, the new entity would be required to reapply for membership. If the new entity demonstrates that it meets the requirements for membership, it will be granted a clearing license.

Custodians at the CCP level are established on a case-by-case determination after a thorough due diligence examination based upon their financial strength and operational and technical capabilities. With respect to custodians at the CM level for U.S. Credit Clearing Members, Eurex Clearing Conditions provide explicit requirements that must be met and provisions for consideration by the CM in choosing a custodian.

B. Segregation and Safekeeping of IM

IM Held at or for the CCP (“CCP Margin”)³

Composition of CCP Margin

1. Please describe the types of assets (e.g., Treasury securities, US dollars, non-US currencies, etc.) that may be deposited as CCP Margin to satisfy IM requirements imposed by the CCP (“Required Margin”). To what extent did customer protection considerations affect the CCP’s determination in this regard?

Answer:

With respect to Cash Collateral, Eurex Clearing accepts EUR, CHF, USD and GBP as cash collateral. Overnight margin calls will only take place in EUR and CHF. EUR and CHF as major currencies are central bank money only. For covering intraday margin calls and overnight margin requirements, members may use all four currencies.

With regard to Securities pledged as Collateral, CCMs can select to open pledged securities accounts either at Clearstream Banking AG Frankfurt (CBF) or SegInterSettle Zurich (SIS). These securities accounts are maintained on the CCMs' behalf with the securities pledged to Eurex Clearing. CCMs must determine in advance which securities should be pledged as margin.

In determining which assets may be accepted as Collateral, Eurex Clearing analyzes the liquidity and operational risk of accepting various categories of collateral. Clearing members’ margin requirement and the value of collateral pledged by any member are evaluated completely independent from each other. This intentionally eliminates correlation effects and as such wrong way risk. In addition position limits will be considered and continuously monitored to minimise concentration risk.

Nature of Relationship Between CCP, CMs, Custodians and Customers

2. Please describe the nature of the legal and contractual relationship between the CCP, the CMs, custodians, the customers and any other relevant parties, specifically addressing the following:
 - a. Are CMs acting as agents or principals (or operating with aspects of both) vis-à-vis (i) the CCP and (ii) customers? Please elaborate.

³ Please also answer the questions below with respect to excess variation margin (i.e., mark-to-market margin posted by customers in excess of the CCP’s requirements), to the extent excess variation margin is treated differently from CCP Excess Margin.

Answer:

CMs act as principals vis-à-vis the CCP. Although Eurex Clearing's only legal relationship is with the CM, Eurex Clearing's account structure differentiates between "principal" and "agent" positions. The CM acts as agent vis-à-vis its Registered Customers which have entered into a Tri-party Agreement with Eurex Clearing.

This structure works well because customer positions are identified as such in the "agent" account and in case of the default of a CM can be identified as such and moved to a CM willing to accept the customer positions.

- b. If customers are permitted to clear transactions through non-CM affiliates of the CM, who in turn clear through the affiliated CM, please describe in detail the mechanics of such an arrangement.

Eurex Clearing has the functional ability to perform account keeping for customer positions of Registered Customers. Accordingly, it has the functional and technical ability from inception of the clearing services to include customers of non-CMs in the clearing architecture. This functional set-up might be used for clearing customer positions of non-CM affiliates by a non-CM. Future versions of the Clearing Conditions may address this relationship.

*Description of Proposed Clearing Structure*⁴

3. Please detail the manner in which customers will post CCP Margin.
 - a. Will the CCP Margin be posted pursuant to pledge or title transfer arrangements?
 - b. May the CCP Margin consist of property posted by customers and pledged or transferred to the CCP, or must it consist of the proprietary assets of the CM?

Answer:

As discussed above, Eurex Clearing accepts only the proprietary funds of its Clearing Members as margin. Thus, there is no commingling of proprietary and customer funds at the CCP level. At the Clearing Member level, the funds of U.S. customers will be subject to segregation, either under applicable law, or if not otherwise required by applicable law, as a condition of the SEC's Section 17a Exemptive Order.

⁴ Please address the relevant questions with respect to each proposed clearing structure. For instance, if the CCP has one clearing structure for transactions entered into directly between a customer and its CM / prime broker, and another for transactions originally entered into between a customer and an executing broker that are subsequently given up to the customer's CM / prime broker, please respond to the questions with respect to each proposed clearing structure.

4. Please detail the manner in which CCP Margin will be held (noting any circumstances in which the default clearing structure may be modified by elections available to CMs or customers), distinguishing between various categories of margin to the extent appropriate – e.g., (i) Required Margin, (ii) margin in excess of that required by the CCP to secure performance obligations in connection with cleared transactions (“CCP Excess Margin”), (iii) margin posted in respect of requirements imposed by CMs on their customers in excess of the CCP’s margin requirements (“Dealer Excess Margin”), etc. – and specifically addressing the following:

a. CCP Margin Held Directly at a CCP (or at a Custodian Holding Solely for the Benefit of the CCP) – If the CCP will hold CCP Margin directly (without a custodian), or the custodian will hold CCP Margin only for the CCP (rather than for individual CMs or customers (individually or as a group)), please detail all aspects of the arrangement that are relevant from a customer protection standpoint, specifically addressing the following:

i. The manner in which the CCP holds the CCP Margin, distinguishing to the extent relevant between various categories and types of CCP Margin (e.g., securities or cash), and identifying in particular:

1. On behalf of whom the CCP is holding the property – itself, the CMs or the customers (as a group or individually);
2. Whether CCP Margin securing the positions of a particular CDS customer will be segregated from (i) the CCP Margin posted by other CDS customers and (ii) the property of other custodial claimants of the CCP or instead, commingled in a single omnibus account (either for CDS customers or custodial claimants of the CCP generally);
 - a. In whose name(s) has/have the account(s) been established?
3. Whether CCP Margin securing customer positions will be segregated from the CCP Margin securing proprietary positions of CMs;
4. Any operational practices (whether voluntary or mandated by regulators) relevant to the analysis of customer protection and the sharing of any shortfalls in custodial property;⁵

⁵ See clause (ii) of note 6.

5. Under what circumstances CCP Excess Margin held at the CCP may be (i) withdrawn by the CM or customers or (ii) applied by CMs or the CCP.
 - ii. Whether the CCP has the right to rehypothecate or cause liens to be placed on the CCP Margin – e.g., to potential lenders or liquidity providers to the CCP – and if so, whether any such liens have been subordinated or waived; and
 - iii. Whether investment of CCP Margin in interest-bearing instruments or vehicles (e.g., overnight sweeps into repos) is permitted or required, and if so, in what types of instruments or vehicles.
 1. Who obtains the economic benefit of investment of CCP Margin in permitted instruments? Who bears the risk of loss?
 2. How does the above response differ as between Required Margin and CCP Excess Margin posted to the CCP?
- b. CCP Margin Held at a Custodian (Whether the Custodian is Holding for the CCP, Individual CMs or Customers) – If the CCP will hold CCP Margin at a custodian, please detail all aspects of the custodial arrangement that are relevant from a customer protection standpoint, specifically addressing the following:
 - i. The manner in which the custodian holds the CCP Margin, distinguishing to the extent applicable between various types of CCP Margin (e.g., securities or cash), and identifying in particular:
 1. On whose behalf the custodian is holding the property – the CCP, the CMs or the customers (as a group or individually);
 2. Whether CCP Margin securing the positions of a particular CDS customer will be segregated from (i) the CCP Margin posted by other CDS customers and (ii) the property of other custodial claimants of the custodian, or instead, commingled in a single omnibus account (either for CDS customers or custodial claimants of the custodian generally);
 - a. In whose name(s) has/have the account(s) been established?

3. Whether CCP Margin securing customer positions will be segregated from the CCP Margin securing proprietary positions of CMs;
 4. Any operational practices (whether voluntary or mandated by regulators) relevant to the analysis of customer protection and the sharing of any shortfalls in custodial property;⁶ and
 5. Under what circumstances CCP Excess Margin held at the custodian may be (i) withdrawn by the CM or customers or (ii) applied by CMs or the CCP.
- ii. Whether the custodian has the right to rehypothecate or cause liens to be placed on the CCP Margin, and if so, whether any such liens have been subordinated or waived;
 - iii. Whether investment of CCP Margin in interest-bearing instruments or vehicles (e.g., overnight sweeps into repos) is permitted or required, and if so, in what types of instruments or vehicles; and
 1. Who obtains the economic benefit of investment of CCP Margin in permitted instruments? Who bears the risk of loss?
 2. How does the above response differ as between Required Margin and CCP Excess Margin posted to the CCP?
 - iv. How the risk of the custodian's insolvency is allocated among the CCP, the CMs and the customers (as a group and individually).

Transfer of CCP Margin from CMs to the CCP

5. If CCP Margin will be deposited by customers at their respective CMs, and subsequently transferred to the CCP, please address the following (distinguishing between various categories of CCP Margin (e.g., Required Margin, CCP Excess Margin, Dealer Excess Margin, etc.) and types of CCP Margin (e.g., securities or cash) to the extent relevant):

⁶ For example, please consider, to the extent relevant, (i) whether the intermediary is a UCC securities intermediary that credits securities to a securities account in the name of a particular customer or customers generally, and whether the securities intermediary debits securities from the securities accounts of its customers upon any rehypothecation of such securities, and (ii) whether any cash held by the intermediary is maintained as a segregated "special deposit" that remains property of a particular customer or customers generally under applicable law (as distinguished from a "general deposit" in which legal title to the cash passes to the intermediary).

- a. How long will it typically take for a CM to transfer CCP Margin posted by customers to the CCP?
- b. In the intervening period, where at a CM will the CCP Margin be held?
- c. At what point is the CM deemed to be in default for failing to transfer CCP Margin to the CCP?
- d. What considerations militate in favor of, or against, allowing customers to deposit CCP Margin directly with the CCP?

Answer:

Eurex Clearing accepts only the proprietary funds of CMs as margin for all positions carried by the CM.

Economic Effects of Proposed Clearing Structure for CCP Margin

6. Please describe the economic benefits or disadvantages (from the perspective of CMs and their customers) of the proposed clearing structure for holding IM at the CCP or its custodian (as opposed to at CMs or their custodians).
 - a. Do CMs have the ability to generate returns on customer property under the proposed structure?
 - b. To what extent do the benefits or disadvantages of the proposed structure flow through from CMs to their customers?

Answer:

The requirement that CMs post only proprietary funds will require that clearing members have the ability to fund the positions which they carry. However, CMs do retain the interest on collateral pledged to, or funds deposited with, the clearing house.

CMs also have the ability to generate returns on customer property under the proposed structure. Those benefits may flow to customers depending upon the agreement negotiated between the customer and the CM.

Determination of Required Margin and Related Considerations

7. Is Required Margin determined on the basis of net exposures (i.e., by netting offsetting positions across different customers) or gross exposures? Are offsetting positions within a particular customer-CM relationship netted for this purpose?

Answer:

The amount of position netting for the determination of margins depends on the customer relationship defined by the CMs. For example, proprietary positions of the CM are not netted with customer positions at all and the positions of Registered Customers are neither netted with CM proprietary positions nor with other Registered Customer positions. The determined margins will be calculated gross and then will be added.

8. Please describe whether margin requirements will be reported and published, and whether calculations are replicable by the CCP upon demand from a CM or customer.

Answer:

All of the data and parameters needed by CMs to replicate margin calculations are provided to CMs directly through various clearing house reports. Eurex Clearing would also be able to replicate margin calculations as requested.

9. Are there any restrictions on the ability of the CCP to demand additional margin from a CM or customer?

Answer:

There are no restrictions on Eurex Clearing's ability to make reasonable demands on CMs for additional margin. Eurex Clearing does not make demands for margin directly to customers of CMs.

10. Are there any restrictions on the ability of a CM to demand additional margin from its customer?

Answer:

There are no restrictions imposed by the Clearing Conditions or in the Tri-Party Agreement. Any limitation would be the result of the negotiated relationship between the CM and its customer.

11. Is the required amount of CM guarantee fund contributions relating to customer positions at the CCP determined on the basis of net or gross clearing exposures? Are offsetting positions of a single customer netted for this purpose?

Answer:

Eurex Clearing will establish a separate clearing fund to guarantee CDS transactions with not spill-over effects to the existing guarantee fund. Specifically, CDS Clearing Members will contribute 5% of their Margin Requirement to the CDS Guarantee Fund, subject to a minimum of €50 million, i.e. the greater of €50 million and 5% of their Margin Requirement has to be contributed to the fund. As the contribution is linked to the margins the same gross exposure handling applies as within the margin calculation.

12. Please discuss the approximate timeline for trade execution, submission to the CCP and novation, and how the CCP's structure in this regard (together with any other operational efficiencies) affects the customer protection analysis.

Answer:

Prior to novation, Eurex Clearing checks the following criteria:

Member related

- Each party to the trade is registered at CCP
- Customer acting as a registered customer has an active relation to a Credit Clearing Member
- Party to the trade is not in default or suspended

Transaction related

- Transaction is routed from an authorized source e.g. DTCC Deriv/SERV
- Traded contract is eligible for clearing via Eurex Clearing
- Minimum duration between novation date and scheduled termination date is greater than one day

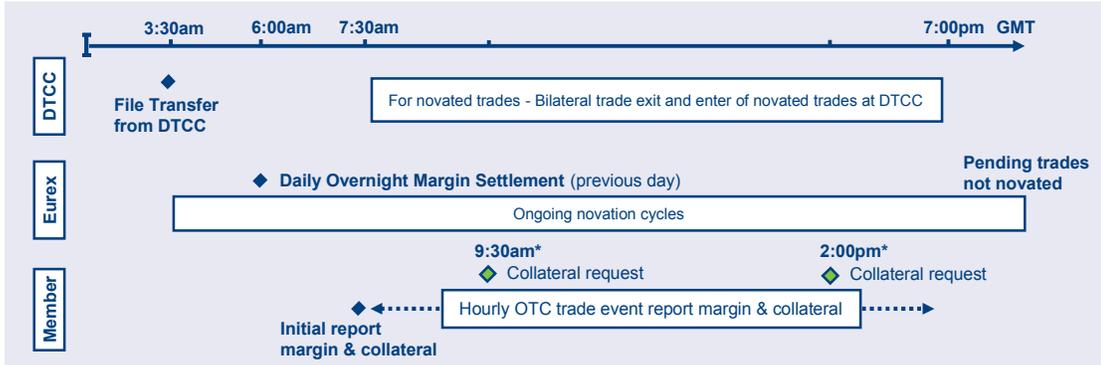
Risk related

- Incremental risk check and risk reduction
- Credit Clearing Member has pledged sufficient collaterals (pre-novation margining)

Backloading

- Facility will be provided
- Similar novation criteria will apply
- Individual back-loading sessions will be provided to facilitate data quality check and upload

Illustration of the daily clearing and novation timeline



The following principles are applied to clearing and novation:

- Only DTCC confirmed trades eligible for novation
- Novation is based on available CCM collateral
- CCM is informed about novated and pending trades via hourly reports that include trade details and required collateral
- Trades novated by the CCP will be updated at DTCC (TIW) replacing bilateral trade confirmations via novation process
- Pending trades will remain part of ongoing novation cycles and will be novated as soon as new collateral is pledged or collateral is freed by risk reducing trades
- Potentially, required collateral could be debited directly from ECB account to facilitate novation of pending CDS trades

Allocation of Risk upon CM Default

13. In the event of a CM default to the CCP, please detail the risk waterfall among guarantee fund contributions, Required Margin securing CM proprietary positions, Required Margin securing customer positions, and any other applicable source of funds (e.g., CCP Excess Margin, to the extent accessible by the clearinghouse), drawing distinctions between defaulting and non-defaulting parties where relevant.
 - a. How does the applicable risk waterfall vary (if at all) depending upon whether the default arises from an insolvency event, as opposed to a non-insolvency event?
 - b. How does the applicable risk waterfall vary (if at all) depending upon the nature of the IM being applied – i.e., is IM securing customer positions applied in a different manner from IM securing proprietary CM positions?
 - c. In the event of a CM default arising from a failure to post sufficient margin, how does the applicable risk waterfall vary (if at all) depending

upon whether the failure to post sufficient margin arose in respect of customer positions, rather than proprietary positions?

- i. Please explain (to the extent applicable) how the CCP's methodology for isolating the origins of the CM default permits the CCP to identify, in a sufficiently precise manner, which risk waterfall applies in any particular instance (especially in circumstances under which the CM default may have arisen from multiple complex and interlocking factors).

Answer:

As discussed above, Eurex Clearing does not accept Customer margin. All margin deposited with it are the proprietary funds of the CM.

Eurex Clearing ensures the fulfilment of every contract in every market for which it provides clearing services. In order to ensure that, Eurex Clearing sets up a multi-level security system, which is called "Lines of Defence". The mainstay of this security system is margin, which Clearing Members deposit as collateral for open positions. However, the Lines of Defence are comprised of much more than margin payments. They consist of multiple layers of safety nets to protect the marketplace in the event of Clearing Member default.

These lines of defence are:

- Position netting
- Collaterals of Clearing Member in default
- Fund contribution of Clearing Member in default
- Eurex Clearing reserves
- Remaining Clearing Fund
- Eurex Clearing equity capital

These layers are built upon each other for maximum stability. In the event of a default, they are implemented in the order that they are listed. By using its Risk-based Margining method, Eurex Clearing has always maintained sufficient margins to cover Members' composite risk. As a testament to the robustness of this method, to date Eurex Clearing has never had to draw upon the contributions of a Clearing Member to the Clearing Fund.

Irrespective of the provision of other margin, each Clearing Member shall be obligated to pay a contribution to the Clearing Fund. The amount of the contribution to be provided shall be determined by Eurex Clearing AG according to the announced method of calculation for each Clearing Member respectively. Basis for the calculation of the contribution to the clearing fund are all transactions of the respective Clearing Member and its respective Non Clearing Member concluded on the markets on behalf of which Eurex Clearing AG conducts the clearing. The contribution to the clearing fund calculated shall be paid by each Clearing Member

with the granting of the Clearing License. It will be verified every quarter and adapted if necessary.

The contribution to the clearing fund shall be provided by cash or securities collateral..

The contribution to the Clearing Fund provided by a Clearing Member may be used to cover the financial consequences of a default in the event of non-fulfilment the obligations from clearing transactions by itself or by any other Clearing Member. In case any compensation must be provided for any damage, Eurex Clearing AG shall – for purposes of compensation of its claims vis-à-vis Clearing Members - realise securities in accordance with the following order of priority:

1. Collateral of the obligated Clearing Member other than that contributed to the Clearing Fund,
2. the contribution to the Clearing Fund of the obligated Clearing Member
3. the reserves of Eurex Clearing AG
4. the contributions of all other Clearing Members to the Clearing Fund which shall be realised on a pro rata basis.

If a defaulting Clearing Member provides the owed payment after Eurex Clearing AG has realised the contributions of other General or Direct Clearing Members to the Clearing Fund, Eurex Clearing AG shall replenish the contributions of the other Clearing Members with this payment on a pro rata basis, up to the amount of effected realisation at the most.

The risk waterfall will only vary in case of a technical default. If a Clearing Member furnishes evidence to Eurex Clearing AG that a default did not occur as a consequence of insolvency and that the Clearing Member will promptly meet its obligations, Eurex Clearing AG may elect that, with respect to such Clearing Member, the rules for an event of default do not apply. In such a case, Eurex Clearing AG will only cause a technical default of such Clearing Member

14. If a CM has defaulted on an obligation to its customer in respect of a cleared transaction (or a transaction related to a cleared transaction), but is not otherwise in default to the CCP, what are the customer's remedies against the CCP?

Answer:

The legal relationship with the CCP is only between the CCP and the CM. However, in those instances where Eurex Clearing has entered into a Tri-Party Agreement, it would be able to enforce any provision of that Agreement vis-à-vis the Registered Customer.

Any dispute arising between the CM and the customer would be settled based upon the account agreement between those two parties. Such agreements would be

enforceable under the terms of the agreement, if it provided for alternative dispute resolution, or under applicable law.

IM Held at or for the CM (“Dealer Margin”)

Permitted Asset Types for Customer Margin

15. Do the types of assets that may be deposited as margin with the CM differ from the types of assets that qualify as Required Margin?

Answer:

n.a.

Description of Proposed Clearing Structure for Dealer Margin⁷

16. Please detail the manner in which customers will post Dealer Margin.
- a. Will Dealer Margin be posted pursuant to pledge or title transfer arrangements?

Answer:

Dealers are permitted to impose margin requirements in excess of the CCP’s margin requirements. The CCP accepts only the proprietary funds of its Clearing Members as margin. Accordingly, there is no “dealer margin.”

17. Please detail the manner in which Dealer Margin will be held (noting any circumstances in which the default clearing structure may be modified by elections available to customers), specifically addressing the following and distinguishing between different types of margin (e.g., cash versus securities) and categories of margin (e.g., Required Margin, CCP Excess Margin, Dealer Excess Margin and any other applicable categories of margin) where appropriate:
- a. Dealer Margin Held Directly at a CM (or at a Custodian Holding Solely for the Benefit of the CM) – If the CM will hold Dealer Margin directly (without a custodian), or the custodian will hold Dealer Margin only for the CM (rather than for customers (individually or as a group)), please detail all aspects of the arrangement that are relevant from a customer protection standpoint, specifically addressing the following:
- i. The manner in which the CM holds the Dealer Margin, distinguishing to the extent applicable between various types of

⁷ See note 4.

Dealer Margin (e.g., securities or cash), and identifying in particular:

1. Whether Dealer Margin securing the positions of a particular CDS customer will be segregated from (i) the Dealer Margin posted by other CDS customers and (ii) the property of other custodial claimants of the CM, or instead, commingled in a single omnibus account (either for CDS customers or custodial claimants of the CM generally);
 - a. In whose name(s) has/have the account(s) been established?
 2. Whether Dealer Margin securing customer positions will be segregated from the margin securing proprietary positions of CMs;
 3. Any operational practices (whether voluntary or mandated by regulators) relevant to the analysis of customer protection and the sharing of any shortfalls in custodial property;⁸ and
 4. Under what circumstances Dealer Margin may be (i) withdrawn by customers or (ii) applied by CMs or the CCP.
- ii. Whether the CM has the right to rehypothecate or cause liens to be placed on Dealer Margin, and if so, whether any such liens have been subordinated or waived; and
 - v. Whether investment of Dealer Margin in interest-bearing instruments or vehicles (e.g., overnight sweeps into repos) is permitted or required, and if so, in what types of instruments or vehicles.
 1. Who obtains the economic benefit of investment of Dealer Margin in permitted instruments? Who bears the risk of loss?
- b. Dealer Margin Held at a Custodian (Whether the Custodian is Holding for the CM or the Customers) – If the CM will hold Dealer Margin at a custodian, please detail all aspects of the custodial arrangement that are relevant from a customer protection standpoint, specifically addressing the following:

⁸ See note 6.

- i. The manner in which the custodian holds the Dealer Margin, distinguishing to the extent applicable between various types of Dealer Margin (e.g., securities or cash), and identifying in particular:
 1. On whose behalf the custodian is holding the property – the CM or the customers;
 2. Whether Dealer Margin securing the positions of a particular CDS customer will be segregated from (i) the Dealer Margin posted by other CDS customers and (ii) the property of other custodial claimants of the custodian or instead, commingled in a single omnibus account (either for CDS customers or custodial claimants of the custodian generally);
 - a. In whose name(s) has/have the account(s) been established?
 3. Whether Dealer Margin securing customer positions will be segregated from Dealer Margin securing the proprietary positions of CMs; and
 4. Any operational practices (whether voluntary or mandated by regulators) relevant to the analysis of customer protection and the sharing of any shortfalls in custodial property.⁹
- ii. Whether the custodian has the right to rehypothecate or cause liens to be placed on the Dealer Margin that is not posted to the CCP, and if so, whether any such liens have been subordinated or waived;
- vi. Whether investment of Dealer Margin that is not posted to the CCP in interest-bearing instruments or vehicles (e.g., overnight sweeps into repos) is permitted or required, and if so, in what types of instruments or vehicles;
 1. Who obtains the economic benefit of investment of Dealer Margin in permitted instruments? Who bears the risk of loss?
- vii. Under what circumstances Dealer Margin may be (i) withdrawn by customers or (ii) applied by CMs or the CCP; and

⁹ See note 6.

- viii. How the risk of the custodian's insolvency is allocated among the CMs and the customers (as a group and individually).

Answer:

Please see answer to number 16 above.

As proposed, CMs would be subject to the segregation requirements of applicable law, or if there is none, to a segregation required provided in the SEC's Order and documented in the Clearing Agreement and Tri-party agreement. This would require U.S. Credit Clearing Members that are not otherwise so required by applicable law, to segregate funds and securities of U.S. persons.

Specifically, a U.S. Credit Clearing Member would be required to maintain or cause to be maintained an amount of funds or qualified securities as defined in Rule 15c3-3 or permitted investments as defined in 17 C.F.R. §1.25, equivalent to the client collateral of such U.S. persons. The segregated customer collateral must be maintained: 1) with a U.S. bank in a separate custodial deposit account explicitly for the benefit of each customer of the Credit Clearing Member; 2) with a U.S. bank as a separate special custodial securities account explicitly for the benefit of each customer of the Credit Clearing Member; or 3) in a custodial account at and in the name of a U.S. bank acting as a third-party custodian explicitly for the benefit of the customers of the Credit Clearing Member.

The transaction documentation in these alternatives must grant the clearing customer a UCC Article 9 security interest in the special custodial deposit account (UCC Section 9-104) or in the special custodial securities account (UCC Section 9-106). Such appropriately titled special custodial deposit or securities accounts would be established separately for each customer of the Credit Clearing Member. Alternatively, similar to the result under Rule 15c3-3, the segregated amounts of customer funds may be kept in a single, commingled third-party custodial account subject to an appropriate control agreement.

Non-US CMs would be subject to similar requirements with respect to the collateral of U.S. persons.

C. Portability

1. Please consider whether a customer's positions and initial and variation margin (and any associated contractual relationships) can be ported to another CM, under each of the following scenarios.
 - a. Can a customer effect a voluntary, pre-CM default transfer of its positions and margin (and any associated contractual relationships)? From which entities must the customer obtain consent before effecting such a transfer?

Answer:

Yes, a customer can effect a voluntary, pre-CM default transfer of its positions. The registered customer must provide Eurex Clearing evidence of a new clearing agreement with the new CM.

- b. Does the CCP have the authority to mandate that a CM transfer any or all of its customer positions and initial and variation margin (and any associated contractual relationships) to another clearing member, if such CM is not in “default” (as defined in the CCP’s rules)?

Answer:

No, Eurex Clearing does not have the authority to mandate a transfer of any customer positions. However, it can do so with the cooperation of the CM that is in default. In such cases, the customer must arrange to have a new CM accept the customer’s position. During the recent events surrounding Lehman Brothers, almost all customer positions were ported in this manner.

- i. Does the answer change if the CM, although not in default, is perceived by the CCP to be in a state of impending financial distress?

Answer:

The Eurex Clearing Conditions require that the CM be in default. They do not permit Eurex Clearing to take action on a subjective determination as to the state of the Clearing Member.

- ii. To what extent is a default under the CCP’s rules the product of the CCP’s subjective determination, rather than being determined by reference to objectively verifiable events?

Answer:

There is no subjective determination of a default within the CCP’s rules. A default is determined objectively and occurs when the CM violates a Clearing Condition.

- c. How does the CCP intend to transfer customer positions and initial and variation margin (and any associated contractual relationships) from a defaulting CM to a non-defaulting CM? Please elaborate on the following details (distinguishing between Required Margin, CCP Excess Margin, Dealer Excess Margin and any other categories of margin where relevant):

- i. The expected timeline from CM default to re-establishment of customer positions and initial and variation margin (and any associated contractual relationships) at a non-defaulting CM;
- ii. The mechanism for transferring customer positions and initial and variation margin (and any associated contractual relationships) to a non-defaulting CM, including a description of:
 1. How customer positions and initial and variation margin (and any associated contractual relationships) are allocated and how transferee CMs are selected (including whether a non-defaulting CM and its customers can be forced by the CCP to accept a transfer of positions through auction, assignment or other allocation procedures);
 2. Whether customer positions and initial and variation margin (and any associated contractual relationships) in respect of cleared transactions can be effectively transferred separately from non-cleared transactions between the defaulting CM and its customers;
 3. Whether the treatment of CCP Margin differs from the treatment of Dealer Margin, from a portability perspective; and
 4. Any pledge or other arrangements designed to facilitate transfer of customer positions and initial and variation margin (and any associated contractual relationships).
- iii. Any procedures designed to control the effect of market movements on the value of customer positions during the pendency of the transfer – e.g., institution of hedge positions subsequent to the CM default, or assigned allocation of customer margin deficits to non-defaulting CMs – and the allocation of losses if the customer positions cannot be assigned to a non-defaulting CM.
 1. Who determines the close-out price applicable to terminated positions? If the CCP, does the CCP’s close-out price flow through to the customer? How is the close-out price determined? Does the same close-out price apply to CM-customer positions and offsetting CM-CCP proprietary positions?

2. How does the CCP account for any unpaid variation margin obligations that may have accrued subsequent to the default of the CM?
 - iv. Any limitations on the rights of customers to (a) terminate non-cleared transactions with CMs upon a CM default, or (b) set off their obligations under non-cleared transactions against obligations to CMs under cleared transactions;
 - v. Whether affiliate and third-party liens or cross-margining and netting arrangements in respect of non-cleared transactions affect the portability analysis;
 - vi. Whether the defaulting CM's contractual agreements with the customer are binding upon the transferee CM and such customer upon any transfer of the customer's positions and initial and variation margin, or whether the transferee CM and such customer can (or must) execute a new set of documentation;
 - vii. In connection with a transfer of customer positions and initial and variation margin (and any associated contractual relationships) to a non-defaulting CM, any rights of customers to elect not to transfer the associated margin, and instead, to apply such margin as a setoff against other amounts that may be payable to the defaulting CM (while separately posting new IM to the transferee CM); and
 - viii. The effects on the portability analysis of (a) IM at the CCP for customer positions being posted on a gross or net basis (as applicable), (b) the existence of Dealer Margin held at the defaulting CM, and (c) non-cleared trades between the defaulting CM and its customers being "in-the-money" or "out-of-the-money" (as applicable) to the CM.

Answer:

As noted above, a customer can effect a voluntary, pre-CM default transfer of its positions if the registered customer shows Eurex Clearing a new clearing agreement with the new CM. These transfers can be effectuated quickly, and have been done so on a broad scale within a week.

Separate from the transfer of positions is the disposition of supporting customer collateral. Eurex Clearing does not hold customer collateral. Accordingly, the transfer of customer collateral must be from the defaulting CM back to the customer or directly to the receiving CM. Under the proposed segregation structure, U.S. customers will be able to establish a security interest in their collateral which will be

held at a separate depository institution. As a result, upon the default of the CM, customers should be able to secure the release of their collateral from the depository.

In the absence of the movement of a defaulting Clearing Member's customers' positions, German insolvency law would require that such positions be liquidated.

D. Documentation

Required Documentation

1. What trading documentation will CMs (and their custodians, if applicable) and customers need to execute with the CCP (and its custodian, if applicable) in order to have customer transactions cleared?
 - a. Please discuss the extent to which the CCP "knows" the customers under the required documentation, and how this affects the customer protection analysis.
2. What trading documentation will customers need to execute with CMs (and their custodians, if applicable) in order to have their transactions cleared?
3. Please describe any legal, operational or other issues arising from the adoption by CMs and customers of a pledge arrangement (from an existing title transfer structure), or of a title transfer arrangement (from an existing pledge structure), for the provision of collateral security.

Answer:

Insofar as Eurex Clearing does not accept customer funds as margin, it does not specify the required form of documentation vis-à-vis collateral between the Clearing Member and its customer, with the exception of requiring that the segregated accounts for U.S. customers be documented by U.S. CMs under Article 9 UCC .

Key Terms of Standardized Documentation

4. Please describe the material terms of any documentation standardized by the CCP, including (but not limited to) terms relating to:
 - a. Circumstances under which posted margin may be returned to customers, and all related conditions and requirements;
 - b. Specification of events of default and termination events with respect to the CM (noting any distinctions drawn between insolvency and non-insolvency events) or customer;

- c. Standstill upon the occurrence of a CM default;
- d. Advance elections to liquidate or transfer cleared contracts;
- e. Advance consents (particularly those obtained to enhance portability of cleared contracts);
- f. Limitations on rehypothecation;
- g. Limitations on setoff against non-cleared bilateral transactions between customers and their CMs; and
- h. Close-out calculations.

Answer:

Once novated, the terms noted above will be governed by Eurex Clearing Conditions, with the exception of limitations on rehypothecation, which is an issue that is subject to negotiation between the CM and customer. Eurex Clearing is currently considering whether a limitation on set off against non-cleared bi-lateral transactions will be included.

Modification of Proposed Clearing Structure

- 5. Please state the circumstances in which the CCP has the ability to amend by rule or order any aspect of its proposed clearing structure.

Answer:

The CCP is able to change its proposed clearing structure by amending the rules. Rule amendments are effective only with agreement of the CM. However, Eurex Clearing may cancel its Clearing Agreement with any CM that refuses to accept an amendment of the Clearing Conditions.

II. Legal Considerations

As stated in the introductory note to this questionnaire, the following questions should be considered under the laws of all jurisdictions relevant to the CCP (and its custodian, if applicable), the CMs (and their custodians, if applicable) and the customers. In the responses below, please highlight any areas of legal uncertainty. For matters requiring reasoned legal judgment, please state the level of legal comfort associated with the relevant response.

Customer Rights to CCP Margin

1. Please detail the ability of customers to recover IM held at the CCP (or the CCP's custodian) upon the insolvency of the CCP (or the CCP's custodian) – distinguishing between Required Margin, CCP Excess Margin, Dealer Excess Margin and any other categories of margin where relevant – in the event their positions are liquidated rather than transferred. Consider all relevant facts, including: (i) the manner in which the IM is held at the CCP or its custodian; (ii) the nature of the customer obligations secured by liens on the IM; (iii) the composition of the IM (e.g., whether the IM consists of securities or cash); (iv) in the event of the insolvency of the CCP's custodian, any restrictions (legal or otherwise) on the ability of the CCP to recover IM from the insolvent custodian; and (v) any other matters described in your responses to the questions above that are relevant to this analysis. Analyze how these facts ultimately affect the conclusions reached.
 - a. What is the legal nature of the customers' rights in the IM held at the CCP (or the CCP's custodian)?
 - i. To the extent relevant to this analysis, please consider whether customers hold proprietary (i.e., ownership) rights in the IM held at the CCP (or the CCP's custodian), or merely contractual rights to recovery of the IM vis-à-vis the defaulted CCP (or the CCP's custodian).
 1. How does the selection of pledge versus title transfer for the provision of collateral security affect this determination?
 2. What are the relevant legal standards with respect to tracing or other requirements necessary to demonstrate proprietary rights in the IM?
 3. What is the practical effect of maintaining proprietary versus contractual rights?
 - ii. If the distinction between proprietary versus contractual rights to the IM held at the CCP (or the CCP's custodian) is irrelevant as a legal matter, please describe the legal framework that is relevant to the analysis.

Answer:

No customer margin is held by the CCP.

- b. How is a shortfall in CCP Margin and other custodial property (i.e., property held in a custodial capacity for purposes unrelated to the clearing of CDS) held by the CCP (or its custodian) allocated as between the CCP (or the CCP's custodian), the CMs, the customers (as a group and individually) and other custodial claimants? Distinguish where relevant between Required Margin, CCP Excess Margin, Dealer Excess Margin and any other categories of margin.
 - i. With what other types of custodial claimants may the customers potentially be required to share with in the event of a shortfall in custodial property?
 - 1. Are there any applicable regulatory regimes that limit the claims of those who may share in CCP Margin?
 - ii. Is it possible to contractually vary the sharing regime that would otherwise apply in any particular instance (e.g., by holding CCP Margin at a third party custodian)?

Answer:

No customer margin is held by the CCP.

Customer Rights to Dealer Margin

- a. Please detail the ability of customers to recover IM held at the CM (or the CM's custodian) upon the insolvency of the CM (or the CM's custodian) – distinguishing between Required Margin, CCP Excess Margin, Dealer Excess Margin and any other categories of margin where relevant – in the event their positions are liquidated rather than transferred. Consider all relevant facts, including: (i) the manner in which the IM is held at the CM or its custodian; (ii) the nature of the customer obligations secured by liens on the IM; (iii) the composition of the IM (e.g., whether IM consists of securities or cash); (iv) in the event of the insolvency of the CM's custodian, any restrictions (legal or otherwise) on the ability of the CM to recover IM from the insolvent custodian; and (v) any other matters described in your responses to the questions above that are relevant to this analysis. Analyze how these facts ultimately affect the conclusions reached.

Answer:

With respect to the insolvency of a clearing member, the location of the insolvency proceeding will often be determined based upon the location of the debtor's "center of interest." Accordingly, U.S., U.K. or German law may apply to the insolvency of the CM, depending upon its location.

Generally, each jurisdiction recognizes that customer securities which are placed in a securities custody account do not belong to the estate of an insolvent CM and would be returned to the customer

The treatment of customer cash is slightly more complicated. Generally, however, where customer cash has been segregated in a special custodial deposit account (U.S.) or a trust account (German) in a custodian credit institution, it would also be excluded from the estate of an insolvent clearing member.

Where a CM is a U.S. bank, in the case of the bank's insolvency the Federal Deposit Insurance Corporation ("FDIC") would exercise authority as the bank's receiver. Section 11 of the Federal Deposit Insurance Act generally covers the rights and duties of the bank receiver and of third parties. CDS contracts would be considered "qualified financial contracts" ("QFCs"). The FDIC has the authority to transfer all assets or liabilities of a particular counterparty of the insolvent institution, including the property securing the obligation or any other credit enhancement of the contract or claim, to another financial institution, or to transfer none of such assets and liabilities.

Where a CM is a U.S. regulated broker/dealer, in the case of an insolvency, the Securities Investor Protection Corporation ("SIPC") would appoint a trustee to oversee the liquidation of the broker/dealer. Other CMs in most cases would be eligible to file for protection under the U.S. Bankruptcy Code. In both a SIPC proceeding as well as a proceeding under the Bankruptcy Code, CDS' would be treated as "swap agreements" and the counterparty a "swap participant." SIPC incorporates these provisions from the Bankruptcy Code. In such a case, the non-defaulting party may liquidate, accelerate, terminate, set-off, and otherwise exercise its rights against collateral notwithstanding the initiation of the bankruptcy case or the SIPC proceeding.

In the case of a failure of a German Credit Clearing Member or Registered Customer that is a German credit institution, German insolvency law will apply. In such a case, the petition for Insolvency Proceedings may be filed only by the Federal Financial Services Supervisory Authority ("BaFin"). This is similar to the role of the FDIC in the U.S. A liquidation under German law involving a Eurex Credit Clearing Member will invoke the statutory rules applicable to the termination and liquidation of financial transactions under master agreements. This

is because the Eurex Clearing Agreement includes and has been interpreted as a master netting agreement. As set forth in § 104(2) and (3) of the Insolvency Code, these provisions provide that with respect to delivery of financial assets with a market or exchange price, including the collateral supporting such contracts, the agreement may be terminated only in full, with respect to all of the outstanding transactions.

In addition, German law, following EU directives, provides for the finality of certain types of transactions. Specifically, Section 130 of the Insolvency Act provides that certain transfers or transactions initiated within three months of the insolvency filing can be challenged. However, such challenges are not permitted with respect to transactions made as part of a financial collateral arrangement containing an obligation to provide financial collateral and to restore the value of such collateral provided as margin.

Generally, in the event of the insolvency of a custodian that is a credit institution, cash may be treated as a general obligation of the custodian, unless segregated in a special custodial deposit account (U.S.) or trust account (Germany) – as intended in the contemplated structure. Similar to the conclusion noted above in respect of the CM itself, securities deposited in a securities custody account would generally not be treated as part of the insolvent custodian’s estate.

- a. What is the legal nature of the customers’ rights in the IM held at the CM (or the CM’s custodian)?
 - iii. To the extent relevant to this analysis, please consider whether customers hold proprietary (i.e., ownership) rights in the IM held at the CM (or the CM’s custodian), or merely contractual rights to recovery of the IM vis-à-vis the CM (or the CM’s custodian).
 1. How does the selection of pledge versus title transfer for the provision of collateral security affect this determination?
 2. What are the relevant legal standards with respect to tracing or other requirements necessary to demonstrate proprietary rights in the IM?
 3. What is the practical effect of maintaining proprietary versus contractual rights?
 - iv. If the distinction between proprietary versus contractual rights to the IM held at the CM (or the CM’s custodian) is irrelevant as a legal matter, please discuss the legal framework that is relevant to the analysis.

Answer:

With respect to U.S. customers, as proposed, CMs must segregate the U.S. customer's collateral. For those entities not otherwise subject to a segregation requirement, the segregated customer collateral must be maintained: 1) with a U.S. bank in a separate custodial deposit account explicitly for the benefit of each customer of the Credit Clearing Member;¹⁰ 2) with a U.S. bank as a separate special custodial securities account explicitly for the benefit of each customer of the Credit Clearing Member;¹¹ or 3) in a custodial account at and in the name of a U.S. bank acting as a third-party custodian explicitly for the benefit of the customers of the Credit Clearing Member.

Although applicable legal principles would recognize beneficial ownership in the IM on the part of the customers under the parties' documentation and account structure (as well as a perfected contractual security interest under U.S. law in the case of U.S. customers), vesting legal title in the CMs facilitates administration of the collateral aspects of the accounts and investment of the funds therein.

Tracing concepts are not applicable in the case of custodial accounts maintained on the basis of customer-by-customer individualized accounts. In the case of aggregated multiple customer accounts, CMs will maintain ledger sub-accounts reflecting the respective balances of customer collateral and the parties' documentation will establish a pari passu pro-rata interest in favor of each customer sharing in an account.

- b. How is a shortfall in Dealer Margin and other custodial property (i.e., property held in a custodial capacity for purposes unrelated to cleared CDS) held by the CM (or its custodian) allocated as between the CMs, the customers (as a group and individually) and other custodial claimants? Distinguish where applicable between Required Margin, CCP Excess Margin, Dealer Excess Margin and any other categories of margin where relevant.
 - i. Are there any applicable regulatory regimes that limit the claims of those who may share in Dealer Margin?
 - ii. Is it possible to contractually vary the sharing regime that would otherwise apply in any particular instance (e.g., by holding Dealer Margin at a third party custodian)?

¹⁰ The clearing customer would be granted a security interest in the special custodial deposit account under UCC Section 9-104.

¹¹ The clearing customer would be granted a security interest in the special custodial securities account under UCC Section 9-106. The custodial securities account may be linked to a custodial deposit account, credited with uninvested cash balances.

Answer:

As envisaged, under the parties' documentation and account structures as described above, IM comprising customer collateral of individual customers in separate accounts would not be shared with or be subject to the claims of other creditors or customers (CDS-clearing or otherwise) of the CMs or their custodial institutions.

Legal Enforceability of Portability Framework

2. Please discuss the legal enforceability of the CCP's portability framework in the event of either or both (i) a CM insolvency (or the insolvency of the CM's custodian) and/or (ii) a customer insolvency. In particular, consider how the enforceability of the portability framework is affected by the following:
 - a. Whether, if either the CCP or insolvency trustee/receiver of the CM transfers any cleared positions and margin (and any associated contractual relationships) of the defaulted CM with the CCP, it must also transfer the defaulting CM's (i) other cleared positions and margin (and any associated contractual relationships) with the CCP, and (ii) non-cleared positions (and associated margin and contractual relationships) with customers of the defaulting CM;
 - b. The effect of any standstill provisions upon default, and the interplay of such provisions with any statutorily protected termination rights;
 - c. Any affiliate and third-party liens or cross-margining and netting arrangements;
 - d. Any setoff rights or limitations between cleared and non-cleared trades;
 - e. Any mandatory setoff requirements for CMs or customers under applicable law;
 - f. Any pledge arrangements or other provisions for collateral security between CMs and customers related to cleared transactions; and
 - g. Whether the CM is acting as principal (rather than as agent) vis-à-vis the CCP in respect of customer transactions.

Answer:

Portability of positions occurs under Eurex's Clearing Conditions. Positions can be moved with the cooperation of the defaulting and receiving CMs. The clearing house cannot move customer assets maintained at the CM. To the extent that the CM is a U.S. bank, the FDIC will accept or revoke all of the QFCs with a particular

counterparty. Accordingly, it is anticipated that the FDIC would treat all contracts between the clearing house and a defaulted counterparty in a like manner. However, the counterparty of a non-cleared contract is not the clearing house, so the treatment of cleared and non-cleared contracts might differ.

As noted above, the CCP transfers positions of customers with the cooperation of the defaulted CM and the receiving CM. Accordingly, there is no requirement that positions of all customers of the defaulted CM be ported if some are. However, the recent experience of Eurex Clearing has been that almost all customer positions were ported under its procedures.

In the event of an insolvency proceeding, the positions may not be moved, and under German law can only be liquidated. The actions of Eurex Clearing as an MCO to liquidate, terminate or accelerate executory swaps contracts will not be subject to bankruptcy rules with respect to stays, avoidance of preferences or other limitations.¹²

Legal Enforceability of Novation/Netting Framework

3. Please discuss the legal enforceability of the CCP's novation and netting framework in the event of either or both (i) a CM insolvency (or the insolvency of the CM's custodian) or (ii) a customer insolvency, giving due regard to the CCP's ability (and, in the event of a customer insolvency, a CM's ability) to exercise its legal and contractual remedies on (a) IM held at the CCP (or the CCP's custodian) and (b) IM held at the CM (or the CM's custodian).
 - a. How would challenges to the validity or enforceability to an underlying bilateral transaction (prior to novation) – e.g., if a transaction was entered into in bad faith, fraudulently, or in contemplation of insolvency – affect the enforceability of the novated transaction, in the event of either or both (i) a CM insolvency or (ii) a customer insolvency?

Answer:

As a general matter, Eurex Clearing is a payment and securities settlement system under the European Finality Directive and has been notified to the European Commission as such. It therefore enjoys certain protections in an insolvency proceeding. Specifically, section 166 of the Insolvency Code provides protection against a German insolvency administrator realizing funds that are property pledged to a participant in a system within the meaning of paragraph 16 of the German Banking Act, such as Eurex Clearing, to secure claims relating to the system.

Considerations Relating to Netting vis-à-vis the CCP

4. Please evaluate, from an accounting and regulatory capital perspective, the ability of CMs to net (i) proprietary positions against other proprietary positions and (ii)

¹² See, 11 U.S.C. §556, and §362(b)(6).

customer positions against proprietary positions, in each case vis-à-vis the CCP, upon a CCP default or insolvency.

Answer:

In the unlikely event of a CCP default or insolvency, all positions carried by the Clearing Member would be treated as the Member's proprietary positions and would be netted accordingly.

Enforcement and Monitoring Mechanisms

5. Please describe any enforcement or monitoring mechanisms (imposed by the CCP, applicable regulatory authorities or otherwise) designed to ensure that CMs (and their custodians, to the extent applicable) comply with their obligations in respect of any legal or contractual requirements described in your response above.

Answer:

German credit institutions are subject to the on-going oversight and surveillance by BaFin and the Deutsche Bundesbank with respect to the safety and soundness of their operations and their on-going compliance. Moreover, such institutions are required to have independent internal compliance programs and are subject to the audit by independent auditors of their compliance programs and their compliance with these regulatory requirements.

Legislative or Regulatory Reforms

6. As requested above, please identify in your responses above any areas of legal uncertainty and the level of legal comfort provided on various aspects of the proposed framework. Please consider whether there are any legislative or regulatory reforms that would be helpful to clarify or improve the legal framework governing any of the foregoing issues and areas of legal uncertainty identified above. If so, describe any such proposed reforms in detail.

Answer:

Eurex Clearing believes that greater uniformity among the requirements of various national regulators would be salutary, including in particular, amendments to insolvency law in Germany to enable the portability of customer positions in the case of a CM insolvency.

Other Considerations

7. Please feel free to elaborate on any topic you deem to be relevant to the analysis of customer protection or systemic risk issues.