

part of eex group



NCM Agreement for Clearing Broker Clients

Required in triplicate

07.11.2019
Leipzig

Ref. NCM03
Release 004

NCM Agreement for Clearing Broker Clients

between

as Clearing Member (CM) and Clearing Broker

and

as Non-Clearing Member (NCM) and Clearing Broker Client

And

European Commodity Clearing AG (ECC AG), Leipzig.

Applicable legal provisions

The respective rights and obligations of ECC AG, the CM and the NCM are set forth in the Clearing Conditions of European Commodity Clearing AG (Clearing Conditions); these conditions are an integral part of this agreement in the respective current German version. In addition, the rules and regulations of the respective market in the respectively valid version shall apply as a supplement with regard to the NCM taking part in clearing on ECC or to take part in said clearing in the future.

NCM-DCM relationship

To the extent that an NCM Agreement for Clearing Broker Clients shall be entered into by an NCM and a Direct Clearing Member (DCM), this shall only be permissible if the NCM is an affiliated company in relation to the DCM. The type and scope of the group of affiliated companies shall be determined by ECC AG. The CMs shall be notified thereof. NCM and DCM undertake to inform ECC AG promptly in the event that they cease to meet such preconditions.

Legal relationships; Liability

- (1) This NCM-Agreement for Clearing Broker Clients only applies to Non-Clearing Members which do not have direct access to the markets cleared by ECC. Market access for these Non-Clearing Members (Clearing Broker Clients) is provided exclusively via its Clearing Member (Clearing Broker).

If nothing to the contrary is stated in the Clearing Conditions, Clearing Brokers are Clearing Members with all rights and obligations resulting therefrom. Clearing Broker Clients are Non-Clearing Members and must be approved as Trading Participants. However, Clearing Broker Clients do not possess direct market access. They are subject to the same rights and obligations as any Non-Clearing Member if not special rules for Clearing Broker Clients apply.

- (2) All entries into the clearing and settlement system of ECC AG and into the system of the markets regarding the products which are cleared by ECC AG or which will be cleared in future, will be executed exclusively by the Clearing Broker and shall be directly binding for and against the Clearing Broker and its Clearing Broker Client.

If an order entered by the Clearing Broker is matched with another order, or if an OTC trade is registered in a system by the Clearing Broker for the Clearing Broker Client referred to in sentence 1, the Clearing Broker shall be liable towards ECC AG for the fulfilment of the obligations resulting from such an entry according to the Clearing Conditions.

- (3) The CM shall be required to notify ECC AG promptly if a Non-Clearing Member represented by it fails to meet its margin requirements in a timely manner.
- (4) Neither ECC AG nor the CM shall be liable for any losses incurred by the NCM due to interruption of its operations as a consequence of force majeure, riot, acts of war or natural disasters or other events for which either ECC AG or the CM, as the case may be, is not responsible (e.g. strikes, lock-outs, disruption of communications) or that may result from the actions of domestic or foreign governmental authorities. This also applies to damages suffered to the NCM as a consequence of technical problems or of the full or partial unavailability of the electronic data processing devices or electronic data processing system of ECC AG in as far as such are not based on premeditation or gross negligence on the part of ECC AG or the CM unless said damage constitute a culpable breach of essential obligations. However, in this case the liability on the part of ECC AG and/or of the CM shall be restricted to the amount of the damage typical of the contract which was foreseeable at the time of the conclusion of the contract in case of slight negligence.

Netting-out procedure in the relationship between CM and its NCM

The CM and the NCM hereby agree on the following procedure for netting-out:

- (1) At the end of each ECC business day, the CM shall net out its claims and liabilities regarding cash payments or deliveries arising from transactions of the NCM, in the clearing process of which the CM is involved pursuant to the Clearing Conditions and this NCM Agreement, against the NCM. Such netting-out procedure shall result in one net claim or liability, with the consequence that there is only one such net claim or liability regarding a cash payment or delivery in the relationship between CM and NCM.
- (2) Netting-out of the cash payments and other performance activities pursuant to paragraph (1) shall be made separately with respect to the transactions as set forth in the individual products and markets, in the clearing process of which the CM is involved. The claims or liabilities regarding cash payments and other performance resulting from such netting-out shall not be netted against each other.
- (3) Netting-out shall be effected separately by the CM for every Principal Position Account and Agent Position Account.

Term

- (1) This agreement shall remain in effect until it is terminated by one of the parties thereto according to the regulations of the Clearing Conditions.
- (2) Amendments of this agreement can be effected by a replacement of the appendix to this NCM Agreement by mutual consent.
- (3) Partial terminations regarding individual markets are allowed.

Governing law; Place of performance

This agreement shall be governed by, and construed in accordance with, German law. The place of performance and the legal venue shall be Leipzig.

Severability clause

In case any individual provisions of this agreement are or should be invalid or unenforceable, the validity of the remaining provisions of this agreement shall not be affected thereby. Instead of the invalid provision the provision provided by law shall apply or - in the absence of such a provision - a provision shall be deemed to have been agreed upon by the parties in good faith and in accordance with the legal provisions, if they had been aware of the invalidity of the provision. The same shall apply in the case of an omission.

On behalf of the CM

Place	Date	Company stamp and legally binding signature(s) of the company
		Signature(s): Name(s):

On behalf of the NCM

Place	Date	Company stamp and legally binding signature(s) of the company
		Signature(s): Name(s):

On behalf of ECC AG

Place	Date	Company stamp and legally binding signature(s) of the company
		Signature(s): Name(s):

Appendix to the NCM Agreement for Clearing Broker Clients between

as Clearing Member (CM) and Clearing Broker

and

as Non-Clearing Member (NCM) and Clearing Broker Client

and

European Commodity Clearing AG (ECC AG), Leipzig.

The above-mentioned NCM Agreement of _____ shall apply to the clearing of:

transactions at all markets, which are cleared by ECC AG at the time of the conclusion of this NCM-Agreement or will be cleared by ECC AG in the future

or

transactions at the following markets:

- European Energy Exchange (EEX)**
- HuPX Hungarian Power Exchange**
- PXE Power Exchange Central Europe**
- NOREXECO ASA**

This Appendix to the NCM Agreement for Clearing Broker Clients replaces all previous Appendices.

The above mentioned NCM Agreement for Clearing Broker Clients shall apply to the clearing of transactions which have been concluded or registered for clearing (Trade Registration) at a market selected above. The Clearing Broker declares to have access to the markets ticked above.

On behalf of the CM

Place	Date	Company stamp and legally binding signature(s) of the company
		Signature(s): Name(s):

On behalf of the NCM

Place	Date	Company stamp and legally binding signature(s) of the company
		Signature(s): Name(s):

On behalf of ECC AG

Place	Date	Company stamp and legally binding signature(s) of the company
		Signature(s): Name(s):