

NOS Clearing\*

# **RULEBOOK**

**FOR**

**CLEARING WITH**

**NOS**

**(NOS CLEARING ASA)**

**PREPARED BY NOS**

**Effective Date : ~~14<sup>th</sup> January 2008~~ 14<sup>th</sup> February 2010**

## TABLE OF CONTENTS

1	Introduction.....	3
2	Clearing Membership and Access Requirements .....	16
3	Products .....	23
4	Transaction Sources and Clearing Approval .....	24
5	Clearing and Settlement.....	28
6	Margin Rules.....	<del>3535</del>
7	Default Rules .....	<del>3838</del>
8	Liabilities .....	<del>4343</del>
9	Miscellaneous Provisions.....	<del>4545</del>
10	Dispute resolution.....	<del>4949</del>

## Appendices:

1. Markets
2. Clearing Membership Agreement
3. Collateral and Settlement Account Agreement
4. Letter of Credit
5. Product Specification
6. Clearing Calendar
7. Clearing Cycle
8. Fee list
9. Clearing Membership Application Form
10. Non-Cash Collateral and Settlement Account Agreement

# NOS Clearing\*

## 1 INTRODUCTION

### 1.1 Overview

1.1.1 NOS acts as a central counterparty and provides Clearing for trades in Listed Products ~~or otherwise approved by NOS for Clearing.~~

1.1.2 NOS may also act as a central counterparty and provide Clearing for Non-Listed Products.

1.1.3 NOS performs cash settlement through one or more Settlement Bank(s) as part of Clearing.

1.1.4 NOS also performs physical settlement in accordance with the Product Specification of the relevant Product.

~~1.1.4~~ 1.1.5 The services provided by NOS under the Rulebook are open to persons who ~~qualify as~~ are Clearing Members.- NOS may offer Clearing Membership or General Clearing Membership in accordance with the Rulebook.

~~1.1.5~~ 1.1.6 NOS is regulated by The Financial Supervisory Authority of Norway (~~Kreditilsynet~~ Finanstilsynet).

### 1.2 The Rulebook

1.2.1 This Rulebook applies to Clearing Members in respect of their use of the services of NOS.

1.2.2 References to the Rulebook or the Rules are references to this Rulebook together with, as the context admits, the Appendices and the Notices all as supplemented or amended from time to time.

1.2.3 The Rulebook supplements and forms part of the Clearing Membership Agreement entered into between each Clearing Member and NOS. Each Clearing Member shall be a party to a Clearing Membership Agreement in order to qualify as a Clearing Member. Under the Clearing Membership Agreement, each Clearing Member accepts and agrees to be bound by and to observe the terms of the Rulebook as it applies from time to time, and together the Clearing Membership Agreement and Rulebook constitute a legally binding contractual relationship between each Member and NOS.

# NOS Clearing\*

1.2.4 Each Clearing Member shall be party to a Collateral and Settlement Account Agreement between the Clearing Member and NOS, under which NOS is granted certain rights over a Collateral and Settlement Account opened by the Clearing Member in a Settlement Bank approved by NOS, and to an agreement in a form approved by NOS between it and the Settlement Bank at which such account is held.

A Clearing Member wishing to clear Contracts with physical delivery for which NOS has approved Non-Cash Collateral shall, if requested by NOS, be party to a separate Collateral and Settlement Account Agreement governing such Non-Cash Collateral, between the Clearing Member and NOS under which NOS and the Clearing Member are granted certain rights and duties over the relevant Non-Cash Collateral as set forth in Appendix 10.

1.2.5 Clearing Members shall provide collateral in the form of cash in the Collateral and Settlement Account, and/or by presenting Letters of Credit.

A Clearing Member who clears Contracts with financial and/or physical delivery may use Non-Cash Collateral as Collateral subject to NOS' sole and exclusive discretion and approval.

1.2.6 The Product Specifications in Appendix 5 set out more detailed terms for each Product. The relevant time limits for the clearing procedures are set out in the Clearing Cycle in Appendix 7.

1.2.7 Subject to Clauses 3.1.2 and 9.6, NOS may amend the Rulebook at any time. Amendments to the Rules will be published by e-mail to the Clearing Member's Responsible Person(s) by means of a Notice from time to time. In addition the Notice will be distributed on the NOS Website. NOS will, where practicable, give reasonable notice of such amendments. Changes to the Rules shall become effective on publication on the Website or, if later, at the time stated in the relevant Notice, unless otherwise determined by NOS. Clearing Members shall be bound by all amendments to the Rulebook notwithstanding that they may not have received the Notice notifying them of the amendment.

## 1.3 Definitions

For the purpose of these Rules, the following words and expressions shall bear the meanings ascribed to them below:

# NOS Clearing\*

“Access Terms”	the terms governing access to NOS Applications as amended from time to time.
“Approved Broker”	a broker who has entered into an agreement with and been approved by NOS to clear transactions on NOS.
“Automatic Option Exercise”	Exercise of an Option Contract by NOS on behalf of a Buyer on the Option Expiry Day in accordance with Clause 5.8.3.
“Base Collateral”	minimum collateral to be posted by a Clearing Member in accordance with Clause 6.2 as a precondition to Clearing.
“Buyer”	a buyer under a Contract.
“Cleared Contract”	a Contract NOS has approved for Clearing.
“Clearing”	clearing of Listed Products and Non-Listed Products in accordance with Chapter 5; and “Clear” and “Cleared” shall be interpreted accordingly.
“Clearing Account”	an account opened by a Clearing Member with NOS for recording of Contracts.
“Clearing Calendar”	the clearing calendar set out in Appendix 6 as amended from time to time.
“Clearing Cycle”	the clearing procedures specified in Appendix 7.
“Clearing Day”	a day on which NOS may receive trades for Clearing.

# NOS Clearing\*

“Clearing Hours”	the hours in which NOS may receive trades for Clearing as defined in the Clearing Cycle.
“Clearing Member”	a person who fulfils the Clearing Membership Requirements and who is party to a Clearing Membership Agreement with NOS subject to the requirements in Chapter 2 and 5, and “Clearing Membership” shall be interpreted accordingly.
“Clearing Member’s Group”	in relation to a Clearing Member, the Group of which it forms part, and the respective employees, agents and consultants of each member of such Group.
“Clearing Membership Agreement”	an agreement in the form attached as Appendix 2 as amended from time to time.
“Clearing Membership Requirements”	the requirements for Clearing Membership set out in Clause 2.1.5 (as amended or supplemented by NOS in accordance with Clause 2.1.5 and 2.1.6).
“Client Clearing Account”	a Clearing Account established with NOS in the name of a General Clearing Member, for recording of Contracts entered into for the account of clients.
“Close-out Contract”	a Contract between a Defaulter and a Clearing Member performed in accordance with Clause 7.3.
“Closing Price”	the price of a Listed Product or Cleared Non-Listed Product calculated in accordance with the Product Specification.
“Collateral”	has the meaning set out in Clause 6.4.1.

# NOS Clearing\*

“Collateral and Settlement Account”	an account with a Settlement Bank for a Clearing Member’s cash Collateral deposit and settlement of Contracts <u>or any account in which Non-Cash Collateral is deposited.</u>
“Competent Body”	any government or governmental, quasi-governmental, supranational, statutory or regulatory body, court, trade agency, professional association, or other person or body having regulatory, supervisory or disciplinary jurisdiction over the conduct of commodity or derivatives business of NOS or a Clearing Member in any jurisdiction.
“Contract”	a contract in a Listed Product or a Non Listed Product.
“Contract Price”	the price of a Contract as agreed between Buyer and Seller.
“Control”	in relation to a body corporate (“Company A”), the power of a person to secure (directly or indirectly) by means of the holding of shares in or the possession of voting power in or in relation to Company A or any other body corporate, or by virtue of any arrangements, including the constitutional documents of Company A or any other body corporate, that the affairs of Company A are conducted in accordance with the wishes of that person.
“Defaulter”	a person declared in default of the Rules in accordance with Chapter 7.

# NOS Clearing\*

“Delivery Period”	the period prescribed by a Contract for delivery of the subject matter of a Contract.
“Delivery Period Settlement”	settlement of a Contract calculated on the basis of the Settlement Price .
“Electronic Transactions”	transactions entered onto NOS electronically.
“Exercise”	the exercising of the Buyer’s rights under an Option Contract to receive Option Exercise Settlement.
“Exercise Price”	the price agreed between the Buyer and Seller of an Option Contract to be applied in Option Exercise Settlement.
“EUR”	Euro.
“Final Settlement Day”	in respect of a Contract, the last Settlement Day according to the Product Specification.
“Forced Termination”	means an [at-random] termination of a Contract in the event that a Clearing Member is a Defaulter and NOS is not able to enter into Close-Out Contracts.
<u>“Forward Contract”</u>	<u>Contract with financial or physical settlement which entitles the Seller and Buyer to Settlement in accordance with the Product Specification.</u>
“Futures Contract”	Contract with financial <del>Contract</del> settlement which entitles the Seller and Buyer to Mark-to-Market Settlement and Delivery Period Settlement in accordance with the Product Specification.

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“General Clearing Member”	a Clearing Member approved by NOS to Clear Contracts on behalf of clients and for its own account.
“Group”	in relation to an entity, all entities Controlling, Controlled by or under common Control with the entity.
“Letter of Credit”	a valid letter of credit in favour of NOS substantially in the form attached as Appendix 4 as amended from time to time.
“Listed Product”	a product which is approved by NOS for electronic trading through a Market which complies with one of the Product Specifications set out in Appendix 5.
“Margin Collateral”	total posted <del>collateral</del> <u>Collateral</u> less the Base Collateral.
“Margin Requirement”	real time margin requirement and margin requirement to be satisfied by Collateral in favour of NOS in accordance with Chapter 6.
“Margining Account”	a summary account opened by a Clearing Member with NOS, where Contracts recorded in identified Clearing Accounts of that Clearing Member are consolidated for Margin Requirement purposes.
“Mark-to-Market Settlement”	daily market settlement between each Clearing Member and NOS for the variation in value of Open Positions.

# NOS Clearing\*

“Market”	Regulated Exchanges, Regulated Markets, Multilateral Trading Facilities and Approved Brokers approved by NOS and set out in Appendix 1.
“Matched”	in relation to a Contract, means matched by a Market in accordance with its rules and procedures from time to time prior to being submitted to NOS.
“Material”	all material displayed on the NOS Applications from time to time.
“Multilateral Trading Facility”	a trading facility approved by NOS and set out in Appendix 1.
“Net Capital”	shareholders’ funds or equivalent calculated in accordance with generally accepted accounting principles applicable in the jurisdiction of residence or establishment of a Clearing Member.
“NOK”	Norwegian Kroner
<u>“Non-Cash Collateral”</u>	<u>Any Collateral which is accepted as Collateral by NOS and which is not cash or a Letter of Credit.</u>
"Non-Listed <del>Products</del> <u>Product</u> "	<del>products</del> <u>product</u> accepted for Clearing by NOS other than Listed Products.
"NOS"	The Norwegian Futures and Options Clearing House (NOS Clearing ASA).

# NOS Clearing\*

"NOS Applications"	all applications that give access to NOS systems, including but not limited to the Website, WebOffice, Clearing Online Application, Qepta Integration Client, and all websites and download facilities provided by NOS, including all documentation related to such applications.
"NOS Insolvency Close Out Amount"	the positive or negative value of any open positions held by a Clearing member on the occurrence of a NOS Insolvency Event and determined by that Clearing Member in accordance with Clause <del>7.97.89</del> .
"NOS Insolvency Event"	where NOS files for debt negotiations or bankruptcy proceedings or is declared bankrupt.
"NOS Personnel"	the officers, employees and agents of NOS from time to time.
"Notice"	a notice disseminated by NOS to Clearing Members on the Website.
"Open Position"	the accumulated net (novation) Contract position in each product series recorded in a Clearing Account (as updated upon registration, cascading and expiry of Contracts).
"Option Contract"	a financial Contract which entitles (obligates) the Seller (Buyer) to receive (pay) Premium Settlement and obligates (entitles) the Seller (Buyer) to pay (receive) Option Exercise Settlement in accordance with the Product Specification and consisting of call options and put options respectively.

# NOS Clearing\*

"Option Cash Settlement"	the settlement between a Buyer and a Seller of an Option Contract for the difference between the Exercise Price and the Settlement Price in accordance with Clause 5.7.
"Option Delivery Settlement"	the delivery of the Underlying Contract between a Buyer and a Seller of an Option Contract in accordance with Clause 5.8.
"Option Exercise Settlement"	the settlement between the Buyer and the Seller of an Option Contract, following Exercise, either as Option Cash Settlement or Option Delivery Settlement as specified in the Product Specification.
"Option Expiry Day"	the last Clearing Day on which an Option Contract may be Exercised as specified in the Product Specification.
"Option Reference Price"	a price calculated for the Underlying Contract at the Option Expiry Day to be used in Automatic Option Exercise calculations as further specified in the Product Specification.
"Order"	a standing instruction to buy or sell through a Market.
"OTC Transaction"	an over the counter transaction trade received by NOS from a Market or directly from Clearing Members.
"Premium"	the consideration payable by the Buyer to the Seller when entering into an Option Contract.

# NOS Clearing\*

"Premium Settlement"	the settlement of the Premium as organised by NOS.
"Product Specification"	a specification of standard terms to which Cleared Contracts are subject.
"Proprietary Clearing Account"	a Clearing Account established in the name of a General Clearing Member for recording of Contracts entered into on its own account.
"Regulated Exchange"	an exchange approved by NOS and set out in Appendix 1.
"Regulated Market"	a market approved by NOS and set out in Appendix 1.
"Responsible Person"	a person responsible for certain aspects of Clearing Membership in accordance with Clause 2.2.10.
"Rulebook"	the rules of NOS as amended from time to time, and "Rules" shall be interpreted accordingly.
"Seller"	a Seller under a Contract.
"Settlement Bank"	a bank approved by NOS for the establishment of Collateral and Settlement Accounts.
"Settlement Day"	a Clearing Day on which settlement is effected between NOS and a Clearing Member as further specified in the Product Specification.
"Settlement Price"	in respect of a Contract, the price used for final settlement according to the Product Specification.

# NOS Clearing\*

"Spot Price"	the spot price established in respect of each Listed Product and Cleared Non-Listed Product in accordance with the Product Specifications.
"Spread Contract"	Futures Contract where the Settlement Price is calculated as the difference between the Spot Prices of two different underlying products as further specified in the Product Specification.
"Trader"	a person employed by a Clearing Member approved to trade for the account of a Clearing Member.
"Trading Representative"	a representative of a Clearing Member as further described in Clause 2.2.
"Underlying Contract"	in relation to an Option Contract the Futures Contract specified in the Product Specification to be delivered in Option Delivery Settlement following Exercise.
"USD"	US dollars.
"Website"	the website operated by NOS from time to time.

## 1.4 General Interpretation

### 1.4.1 In this Rulebook:

- (a) references to a Clause or SubClause are references to a clause or subclause of this Rulebook;
- (b) references to a person include a body corporate and an unincorporated association of persons; and
- (c) references to a Clearing Member include references to the successors or assigns (immediate or otherwise) of that party.

### 1.4.2 In this Rulebook any reference, express or implied, to an enactment includes references to:

- (a) that enactment as re-enacted, amended, extended or applied by or under any other enactment (before or after the date of this Rulebook);
- (b) any enactment which that enactment re-enacts (with or without modification); and
- (c) any subordinate legislation made (before or after the signature of this Rulebook) under that enactment, as re-enacted, amended, extended or applied as described in paragraph [\(a\) over\(a\) above](#), or under any enactment referred to in paragraph [\(b\) over\(b\) above](#),

and "enactment" includes any legislation in any jurisdiction.

### 1.4.3 In this Rulebook references to writing shall be construed as including reference to any mode of representing words or data in a visible form.

### 1.4.4 Any words importing the singular shall admit the plural where the context admits and vice versa. Any words importing the masculine gender shall include the feminine gender.

### 1.4.5 SubClauses 1.4.1 to [1.4.4 over1.4.4 above](#) apply unless the contrary intention appears.

### 1.4.6 The headings in this Rulebook do not affect its interpretation.

## 2 CLEARING MEMBERSHIP AND ACCESS REQUIREMENTS

### 2.1 Clearing Membership

- 2.1.1 A person who meets the Clearing Membership Requirements may apply to Clear trades in Listed Products through NOS. Such a person may also apply to NOS to Clear trades in Non-Listed Products.
- 2.1.2 An application for Clearing Membership shall be in such form as NOS shall prescribe from time to time.
- 2.1.3 NOS shall only admit to Clearing Membership persons if in its sole discretion considers fit.
- 2.1.4 On conclusion of a Clearing Membership Agreement an applicant shall, subject to continued compliance with the Clearing Membership Requirements, become a Clearing Member.
- 2.1.5 The minimum Clearing Membership Requirements shall be as follows:
- (a) a Clearing Member must have one or more Traders/Trading Representatives;
  - (b) a Clearing Member must have appointed a Responsible Person;
  - (c) a Clearing Member must have employees or contracted advisers who are experienced in trading and clearing of derivative products Cleared by such Clearing Member under the Rules;
  - (d) a Clearing Member must have all licenses, registrations, authorisations and approvals necessary or desirable (in the opinion of NOS) in order to participate in the Markets;
  - (e) a Clearing Member shall have existed for at least one year and NOS may require that the Clearing Member must have produced at least one set of audited annual accounts, which shall be provided to NOS;
  - (f) a Clearing Member shall be able to pay its debts as they fall due;
  - (g) a Clearing Member shall have a minimum Net Capital equivalent to EUR 1 million;

## NOS Clearing\*

- (h) a General Clearing Member must be licensed by and subject to supervision from a relevant public or similar independent authority;
  - (i) a Clearing Member must establish at least one Clearing Account with NOS, a General Clearing Member must establish at least one Client Clearing Account with NOS, and may also establish one or several Proprietary Clearing Accounts;
  - (j) a Clearing Member must establish at least one Margining Account, Collateral Account and Settlement Account;
  - (k) a Clearing Member must provide Base Collateral in accordance with Chapter 6; and
  - (l) a Clearing Member must not be in default of the terms of a Contract or other obligation to NOS.
- 2.1.6 NOS may waive or impose such additional Clearing Membership Requirements in respect of an applicant for Clearing Membership or existing Clearing Member as it in its sole discretion considers fit.
- 2.1.7 As part of the application procedure NOS may request such information and documentation about the financial soundness and level of competence of the applicant for Clearing Membership and any other matters as each considers relevant. NOS may require applicants for Clearing Membership to provide a satisfactory legal opinion on such issues as each considers appropriate including (without limitation) that the applicant is legally entitled to trade and/or Clear Contracts, that the Clearing Membership Agreement has been signed and delivered by a duly appointed representative, and that Contracts and/or the netting and collateral provisions of this Rulebook are valid and legally binding on the applicant.
- 2.1.8 NOS may at any time in its absolute discretion impose conditions or restrictions on Clearing Membership and/or Clearing in the jurisdiction in which a Clearing Member is domiciled. NOS may suspend a Clearing Member or cancel its Clearing Membership in its absolute discretion if NOS considers the Clearing Member unfit for Clearing.
- 2.1.9 NOS may at any time request for and obtain credit information and otherwise monitor a Clearing Member's financial standing and soundness, level of competence and other matters relevant (in the opinion of NOS) to the fitness of a Clearing Member and its Traders and/or Trading

# NOS Clearing\*

Representatives to clear trades through NOS. Each Clearing Member agrees promptly to provide, or procure the provision of, such information and documents as NOS may request, without being prevented by any duty of confidentiality by any holder of information, may obtain such information and documents (where available) from the Clearing Member's Settlement Bank.

2.1.10 Each Clearing Member represents on a continuing basis for the benefit of NOS as follows:

- (a) it has all necessary power and authority to execute and perform each Contract and comply with its obligations under the Rules;
- (b) this Rulebook and the terms of each Contract constitute its legal, valid and binding obligation, enforceable against it in accordance with their terms;
- (c) neither the execution of any Clearing Membership Agreement to which it is party nor performance under such agreement or the Rules or terms of a Contract by the Clearing Member violates any law, rule, regulation or any agreement, document or instrument binding on or applicable to it; and
- (d) it has any and all licences, consents, registrations, authorisations or other similar approvals which are required under applicable laws or regulations in order to enable it to participate as a Clearing Member in accordance with the Rules, and perform its obligations towards NOS pursuant to such Contracts.

2.1.11 A Clearing Member shall immediately notify NOS in writing of the occurrence of any of the following events or as soon as the Clearing Member has reason to believe any of the following events may occur:

- (a) any failure to comply with the Clearing Membership Requirements;
- (b) any breach of the Rules by the Clearing Member;
- (c) any breach of the Rules by another Clearing Member;
- (d) any appointment or resignation of a Trader appointed by the Clearing Member;

## NOS Clearing\*

- (e) any merger, de-merger, or other business re-organisation of the Clearing Member or Clearing Member's Group affecting 33% or more of the value of the Net Capital of the Clearing Member or the Clearing Member's Group;
- (f) the presentation of a petition for the winding up of the Clearing Member, the appointment of a receiver, administrator, or trustee of the Clearing Member and/or its assets, the making of a composition or arrangement with creditors of the Clearing Member, (where the Clearing Member is a partnership) the application or giving of notice to dissolve the Clearing Member, or any action by or omission of the Clearing Member to authorise, institute or commence any such action;
- (g) the Clearing Member being unable to pay its debts as they fall due, admitting its inability to pay its debts as they fall due, or being deemed under applicable law to be unable to pay its debts as they fall due;
- (h) any disciplinary, criminal, civil or regulatory proceedings against any of the Clearing Member, its Traders or Trading Representative which could result in its failure to comply with the Rules; or
- (i) any breach of the representations of the Clearing Member under this Chapter.

2.1.12 If a person in the Clearing Member's Group has provided a parent company guarantee (or similar), the notification requirement of the Clearing Member in this Clause also applies to the occurrence of any of the events in SubClauses (e) to (i) with respect to the relevant guarantor.

2.1.13 If :

- a) a Clearing Member ceases to fulfil the Clearing Membership Requirements; or
- b) NOS in its sole discretion considers that a Clearing Member has ceased or is likely to cease to fulfil such requirements,

NOS may declare such Clearing Member a Defaulter in accordance with Chapter 7.

# NOS Clearing\*

2.1.14 A Clearing Member may resign its Clearing Membership on one month's notice to NOS. Notwithstanding the foregoing, NOS may delay the effective date of resignation if the Clearing Member has any outstanding obligations to NOS or any third party arising by virtue of participation in the Markets.

2.1.15 NOS will monitor all open positions in order to prevent market manipulation or undue trading practices. If NOS finds that any person holds more than 30 percent of all positions in one Contract, NOS has the right to request a Clearing Member to disclose its positions in the underlying market and OTC market, or reduce its positions in that Contract to below 30 percent.

## **2.2 Traders, Trading Representatives and Responsible Persons**

2.2.1 Each Clearing Member shall appoint at least one Trader or Trading Representative. A Trader shall be an officer or employee of the Clearing Member appointing him. A Trading Representative shall be a third party agent of the appointing Clearing Member. A Clearing Member shall not trade through a Market except through a validly appointed Trader or Trading Representative. Each Clearing Member shall be responsible for all acts and omissions of a Trader or Trading Representative appointed by it in relation to trading on a Market and Clearing. A Trader or Trading Representative is not validly appointed until approved in accordance with this Clause.

2.2.2 A Clearing Member may apply for approval of a person as a Trader or Trading Representative. An application for approval of a Trader or Trading Representative shall be in such form as NOS may prescribe from time to time.

2.2.3 General Clearing Members may appoint Trading Representatives with authority to allocate Contracts to specified Clearing Accounts of that General Clearing Member.

2.2.4 NOS may require such information in relating to an applicant to become a Trader or Trading Representative as it in its sole discretion sees fit.

2.2.5 NOS shall not approve a person to be a Trader or Trading Representative if NOS deems the person unfit.

2.2.6 NOS may suspend, terminate or impose conditions on the approval or activities of a Trader or Trading Representative if it considers it appropriate in its sole discretion.

# NOS Clearing\*

- 2.2.7 A Clearing Member shall promptly provide such information relating to any appointed Trader or Trading Representative as NOS requests.
- 2.2.8 A Trader or Trading Representative shall have full authority to act for the account of the Clearing Member. Revocation of such authority shall be notified by the Clearing Member to NOS in writing in order to become effective. Such notification shall become effective on receipt by NOS. If a Clearing Member revokes the authority of all of its Traders and Trading Representatives it must appoint a new Trader or Trading Representative to be approved by NOS.
- 2.2.9 A Clearing Member trading through a Trading Representative must provide NOS with a proxy in the name of such Trading Representative, authorising the Trading Representative to act vis-à-vis NOS for the Clearing Member's account.
- 2.2.10 Each Clearing Member shall appoint a Responsible Person. A Responsible Person shall be an officer or employee of the appointing Clearing Member. The Responsible Person shall be responsible for monitoring the Clearing Member's participation in the Markets, the compliance of the Clearing Member with the Rules and communication with NOS. A Clearing Member shall promptly notify NOS of a change in the identity of its Responsible Person.

## **2.3 Access Terms**

- 2.3.1 Access to the NOS Applications shall be subject to the Access Terms. In the event of inconsistency between the Access Terms and the Rules, the Rules shall prevail.
- 2.3.2 A Clearing Member may clear through NOS from such jurisdiction as is notified in its application for Clearing Membership.
- 2.3.3 Each Clearing Member acknowledges that its access to and utilisation of NOS Applications may be monitored by NOS for their own purpose.
- 2.3.4 Each Clearing Member acknowledges that, the NOS Applications are the exclusive and proprietary property of NOS, and that, except as otherwise provided by the Rules, the Clearing Member shall have no ownership rights in respect of the NOS Applications. Each Clearing Member acknowledges that all rights in inventions, patents, copyrights, design rights, trade marks and trade names, trade secrets, know-how and any other intellectual property rights (whether registered or unregistered) relating to the NOS Applications remain vested in NOS. Each Clearing Member

## NOS Clearing\*

agrees to protect the proprietary rights of NOS, and agrees to comply with reasonable requests made by NOS to respect such rights.

- 2.3.5 The NOS Applications are solely for the use of Clearing Members, and shall be provided "as is" without warranty of any kind, either expressed or implied, to the fullest extent permitted by applicable law including but not limited to implied warranties as to merchantability, satisfactory quality or fitness for a particular purpose.
- 2.3.6 Each Clearing Member may not copy, reproduce, recompile, decompile, disassemble, reverse engineer, distribute, publish, display, perform, modify, upload to create derivative works from, transmit, or in any way exploit, any parts of the Material without the prior consent of NOS except to the extent provided for by these Rules.
- 2.3.7 Each Clearing Member warrants that all data relating to natural persons supplied by it to NOS shall be supplied in accordance with all applicable data protection and privacy legislation and with the consent of all such individuals for use of such data by NOS, their affiliates and their agents for the purposes of operating the Markets, with such data being used both inside and outside the EU/EEA. Each Clearing Member shall be responsible for obtaining all consents necessary in order for NOS to use the information provided thereon in connection with the operation of the Markets, and for such use to comply with all legislation governing the processing, use or holding of data applicable to the Clearing Member.
- 2.3.8 Each Clearing Member shall, at its own cost and expense, provide all equipment, operating platforms and software (other than any software provided by NOS) to use the NOS Applications.
- 2.3.9 Each Clearing Member shall implement security procedures to prevent unauthorised use or misuse of the NOS Applications. Each Clearing Member shall follow all security procedures and instructions of NOS at all times.
- 2.3.10 Each Clearing Member shall, each time it accesses or uses the NOS Applications or Clears a Contract, be deemed to warrant to NOS that it is in compliance with the terms of this Rulebook (including for the avoidance of doubt the representations set out in Clause 2.1.10).

## 3 PRODUCTS

### 3.1 General

3.1.1 NOS may decide the specification of Listed Products (including Product Specifications) from time to time. Standard terms of Listed Products shall be set out in the Product Specifications attached as Appendix 5.

3.1.2 The Product Specification in respect of a Listed Product shall be determined not later than three days before the first day of trading in such Listed Product and may not be changed except as provided for in this Rulebook, unless:

- (a) all Clearing Members with outstanding Contracts in such Listed Product, the operator of the relevant Market (if any) on which the Listed Product is traded and NOS consent in writing;
- (b) applicable laws or regulations, court decisions or orders issued by any Competent Body render such change necessary or (in the reasonable opinion of NOS) desirable; or
- (c) NOS considers such change necessary for any other reason.

3.1.3 In the event of inconsistency between the Rules and a Product Specification, the Rules shall prevail.

## **4 TRANSACTION SOURCES AND CLEARING APPROVAL**

### **4.1 General**

A Contract shall not be a Cleared Contract unless accepted and confirmed as such in accordance with this Chapter 4 or Clause 5.8.

### **4.2 Transaction sources**

4.2.1 To be eligible for Clearing a Contract must be:

- (a) in a Listed Product or Non-Listed Product; and
- (b) Matched:
  - (i) at a Market; or
  - (ii) directly between Clearing Members.

4.2.2 NOS may at its sole discretion Clear Contracts in Non-Listed Products

4.2.3 A Clearing Member must allocate one or more Traders or Trading Representatives who shall have the authority to place Orders at the relevant Market. The name of each Trader and Trading Representative shall be notified to NOS by the Clearing Member in the form NOS decides.

### **4.3 Approval of Electronic Transactions for Clearing**

4.3.1 All Electronic Transactions shall be reported to NOS by the relevant Market,

4.3.2 An Electronic Transaction reported to NOS within Clearing Hours shall be a Cleared Contract in accordance with the provisions set out for that Market in Appendix 1.

4.3.3 An Electronic Transaction reported to NOS outside Clearing Hours shall be subject to approval by NOS before being confirmed as a Cleared Contract. Confirmation of Clearing of such an Electronic Transaction will be made available on NOS once the transaction is approved and recorded on NOS.

## 4.4 Approval of OTC Transactions for Clearing

- 4.4.1 An OTC Transaction must be reported to NOS by either a Clearing Member or a Market.
- 4.4.2 An OTC Transaction shall be subject to approval by NOS before being confirmed as a Cleared Contract.
- 4.4.3 Confirmation of Clearing will be provided by NOS to each Clearing Member.

## 4.5 Approval for Clearing

- 4.5.1 This Clause 4.5 applies in respect of:
  - (a) Electronic Transactions which require approval from NOS as set out in Appendix 1;
  - (b) Electronic Transaction reported to NOS outside Clearing Hours; and
  - (c) OTC Transactions.
- 4.5.2 Approval of transactions for Clearing is entirely within NOS's discretion and may be refused at any time.
- 4.5.3 Prior to accepting a Contract pursuant to an Electronic Transaction or OTC Transaction, NOS may take such steps as it considers appropriate in its sole discretion to:
  - (a) verify and confirm the terms of the Electronic Transaction or OTC Transaction; and
  - (b) determine whether each Clearing Member party to the Contract has sufficient Collateral.

# NOS Clearing\*

4.5.4 Where NOS determines that there is insufficient ~~collateral~~Collateral held by a Clearing Member in respect of an Electronic Transaction or OTC Transaction NOS shall notify the Clearing Member within a reasonable timeframe of the Collateral required for approval of the Contract for Clearing, and the Electronic Transaction or OTC Transaction will remain pending Clearing until either:

- (a) NOS determines in its discretion that sufficient Collateral has been received; or
- (b) the Electronic Transaction or OTC Transaction is withdrawn from Clearing. The Electronic Transaction or OTC Transaction may only be withdrawn from Clearing with the consent of both Clearing Members who are parties to that transaction unless the transaction has been pending Clearing for more than 24 hours after the transaction was verified by NOS in accordance with Clause 4.5.3.

4.5.5 Where approval to Clear a Contract is refused:

- (a) NOS will notify the relevant Clearing Member of such refusal in a reasonable time period; and
- (b) such refusal shall be without prejudice to any rights the Clearing Member may have against one another in respect of the Electronic Transaction or OTC Transaction.

## 4.6 Errors

4.6.1 Where it is notified to NOS by a Market that an error has occurred in respect of a Cleared Contract NOS may take any steps it in its sole discretion considers appropriate in respect of that Cleared Contract, including, for the avoidance of doubt, cancelling the Cleared Contract by deemed entry in to equal and opposite contracts with the affected Clearing Member. To the fullest extent permitted by law and regulation, NOS shall bear no responsibility upon the instructions or notifications of a Market in taking any such steps.

4.6.2 For the purpose of this Clause time is of the essence. Where a Clearing Member believes that a Contract submitted for Clearing or Cleared Contract is erroneous or not legally binding on it, the Clearing Member must immediately, and under no circumstances later than the time limit specified in Appendix 7, make a written complaint to NOS. Failure to make a written complaint within such time shall be deemed to be acceptance of the Cleared Contract for all purposes absent manifest error or fraud.

## NOS Clearing\*

- 4.6.3 Complaints received by NOS shall be handled in accordance with the complaints procedures established by NOS as amended from time to time. NOS may present the complaint to third parties including (without limitation) the relevant Market or the counterparty to the transaction which gave rise to the Cleared Contract.
- 4.6.4 NOS may cancel or alter a Cleared Contract if there is reason to believe that a Clearing Member party to such Contract realised or should have realised that any term of the Cleared Contract was erroneous.
- 4.6.5 A Clearing Member disputing a decision by NOS under the rules in this Clause shall within two months after the Contract was executed, refer the dispute to arbitration in accordance with Clause 10. A failure so to refer the dispute shall be deemed to constitute acceptance by the Clearing Member.

## 5 CLEARING AND SETTLEMENT

### 5.1 General

5.1.1 Where a Cleared Contract arises in accordance with this Rulebook and is recorded in the Clearing Account of each Clearing Member party to the Contract, such Contract shall be replaced by novation by two sets of open contracts, one between each Seller and NOS, and one between each Buyer and NOS, in each case as principals to the Contract. The terms of each such open contract shall be those of the Contract.

5.1.2 As a central counterparty NOS shall:

- (a) effect settlement vis-à-vis Clearing Members party to a Cleared Contract in accordance with this Chapter;
- (b) request and obtain Collateral for Margin Requirements pursuant to Chapter 6; and
- (c) take action in case of default pursuant to Chapter 7.

All Cleared Contracts between NOS and a Clearing Member shall be governed by the Rulebook and shall be treated as single indivisible agreements governed by the Rules.

### 5.2 Accounts

5.2.1 A Clearing Member shall establish and maintain at least one Clearing Account with NOS at all times. NOS shall register all Contracts undertaken by a Clearing Member in such Clearing Member's Clearing Accounts as instructed by the Trading Representative(s) or Traders.

5.2.2 All Contracts are registered in Clearing Accounts established in the name of the Clearing Member. A General Clearing Member must separate its principal and client trading by establishing one or more separate Client Clearing Accounts and Proprietary Clearing Accounts.

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- 5.2.3 A General Clearing Member shall establish and maintain one or more Client Clearing Accounts. Contracts entered into on behalf of clients shall be recorded in a Client Clearing Account of the General Clearing Member. The General Clearing Member shall upon request immediately disclose to NOS the identity of the client that is recorded with the General Clearing Members as beneficial owner/holder of one or several Contracts.
- 5.2.4 A General Clearing Member may also establish and maintain one or more Proprietary Clearing Accounts. Contracts entered into on the account of the General Clearing Member shall be recorded in a Proprietary Clearing Account if the General Clearing Member.
- 5.2.5 A Clearing Member shall establish and maintain one or more Margining Accounts, identifying the Clearing Accounts that shall be consolidated there under. A General Clearing Member must establish and maintain:
- (a) one or more Margining Accounts linked to its Client Clearing Accounts; and
  - (b) one or more Margining Accounts linked to its Proprietary Clearing Accounts.
- 5.2.6 A Clearing Member shall establish and maintain a Collateral and Settlement Account for each Margining Account established. The Collateral and Settlement Account shall be used for deposits of cash Collateral and for settlement in accordance with this Rulebook, and NOS shall have right of disposal over the Collateral and Settlement Account, only to be exercised in respect of amounts due and owing to NOS from the Clearing Member.
- 5.2.7 A Clearing Member shall be responsible for all obligations owed to NOS in respect of every Clearing Account and Collateral and Settlement Account opened in respect of such Clearing Member, including Client Clearing Accounts.
- 5.2.8 NOS shall, except as provided for below in Clause 5.2.9, have the right at any time to combine and consolidate the balances on any and all Clearing Accounts and Collateral and Settlement Accounts held by a Clearing Member, and to set off any amount or amounts (whether or not denominated in the same currency) standing from time to time to the credit of any one or more such accounts in or towards satisfaction of all or any liabilities of such Clearing Member to NOS.

# NOS Clearing\*

5.2.9 NOS may not:

- (a) combine and consolidate the balances on Client Clearing Accounts with the balances on Proprietary Clearing Accounts of a General Clearing Member; or
- (b) set off any amount or amounts (whether or not denominated in the same currency) standing from time to time to the credit of any Client Clearing Accounts against the balance on the Proprietary Clearing Accounts of a General Clearing Member in or towards satisfaction of all or any liabilities of such Clearing Member to NOS.

## 5.3 General rules on settlement

5.3.1 This Clause shall apply when cash settlement takes place through the Collateral and Settlement Account. The Clearing Cycle is described in Appendix 7.

5.3.2 Settlement shall take place on each Collateral and Settlement Account once each Settlement Day.

5.3.3 NOS shall on each Settlement Day:

- (a) perform Mark-to-Market Settlement and/or Delivery Period Settlement in respect of each Futures or Forward Contract to which a Clearing Member is party; and
- (b) perform Premium Settlement and (where relevant) Option Exercise Settlement in respect of each Option Contract to which a Clearing Member is party.

5.3.4 NOS shall, without prejudice to its rights under Clause 5.2.8 with respect to Clearing Members with several Clearing Accounts, aggregate and off-set settlements values arising from Mark-to-Market Settlement, Delivery Period Settlement, Premium Settlement, Option Exercise Settlement and any other settlement due each Settlement Day to a create net settlement amount for each Collateral and Settlement Account. Subject to Clause 5.3.6, the net settlement amounts calculated in accordance with this Clause 5.3.4 shall be binding on the Clearing Member upon being reported to the Clearing Member by NOS.

# NOS Clearing\*

5.3.5 NOS shall on each Settlement Day instruct a Settlement Bank to credit or debit the Collateral and Settlement Account for the net settlement amount calculated in accordance with Clause 5.3.4, at the settlement time specified in the Clearing Cycle. A Clearing Member shall ensure that sufficient funds are credited to its Collateral and Settlement Accounts at the time of settlement to enable such instructions to be fulfilled.

Settlement of Contracts with physical delivery shall be settled as set forth in Clause 5.9.2 and in the Product Specification.

5.3.6 If a settlement is erroneous, the affected Clearing Member must notify NOS not later than five Clearing Days after the day the settlement was reported by NOS, or he shall be deemed irrevocably to agree with the terms of such settlement. NOS shall endeavour to deal promptly with timely complaints and, if the relevant settlement was in its view incorrect, make a corrected settlement between NOS and the parties to the relevant Contract in the next ordinary settlement to be effected. For the purposes of making corrected settlements, NOS may credit or debit the relevant Collateral and Settlement Accounts of the affected Clearing Members.

5.3.7 Irrespective of the time limit above, NOS may effect a corrected settlement if the Clearing Members who benefited from the mistake understood, or ought to have understood, that a mistake had been made. The time limit for complaints shall not apply to corrections of settlements which are a result of corrections of trading errors.

## **5.4 Daily Mark-to-Market Settlement**

5.4.1 Daily Mark-to-Market Settlement between NOS and each party to a Futures Contract shall be calculated and settled in accordance with the Product Specification. Daily Mark-To-Market Settlement shall occur on the Settlement Days designated in the Product Specification.

5.4.2 NOS shall after Clearing Hours on each Clearing Day calculate Closing Prices for each Futures Contract in accordance with the Product Specifications.

5.4.3 On the first Settlement Day after a Futures Contract arises each Buyer shall pay (receive) to (from) NOS the negative (positive) difference calculated as the Closing Price less the Contract Price. Each Seller shall receive (pay) from (to) NOS the equivalent amount.

# NOS Clearing\*

5.4.4 For each subsequent Settlement Day, the Buyer shall pay (receive) to (from) NOS the negative (positive) difference calculated as the Closing Price on the Clearing Day, less the Closing Price of the Contract on the preceding Clearing Day. The Seller shall receive from (pay to) NOS the equivalent amount.

5.4.5 A Clearing Member closing a Futures Contract entered as Buyer shall pay (receive) the negative (positive) difference calculated as the sold Contract Price, less the Closing Price of the contract on the preceding Clearing Day. A Clearing Member who closes a Futures Contract entered as Seller shall receive (pay) the equivalent amount.

## 5.5 Delivery Period Settlement

5.5.1 Each Buyer and Seller under a Futures Contract shall effect Delivery Period Settlement on the Final Settlement Day designated in the Product Specifications. NOS shall calculate and perform Delivery Period Settlement in accordance with this Clause.

5.5.2 On the Final Settlement Day the Buyer shall pay (receive) the negative (positive) difference calculated as the Settlement Price, less the Closing Price of the Contract on the preceding Clearing Day. The Seller shall receive (pay) the equivalent amount.

## 5.6 Premium Settlement

5.6.1 The Buyer shall pay the Seller the Premium for an Option Contract on the premium Settlement Day designated in the Product Specification. NOS shall calculate and perform Premium Settlement in accordance with the Product Specification.

## 5.7 Option Cash Settlement

5.7.1 This Clause 5.7 applies to Option Contracts which provide for cash settlement.

5.7.2 On the Final Settlement Day designated in the Product Specification NOS shall for all Open Positions calculate and perform the following Option Cash Settlement:

- a) For a call Option, the Seller shall pay the Buyer the positive difference calculated as the Settlement Price less the Exercise Price; and

- b) For a put Option, the Seller shall pay the Buyer the positive difference calculated as the Exercise Price less the Settlement Price.

## 5.8 Option Delivery Settlement

- 5.8.1 This Clause 5.8 applies to Option Contracts which provide for settlement by delivery of an Underlying Contract.
- 5.8.2 A Buyer may Exercise an Option Contract for which Option Delivery Settlement is designated in the Product Specification on the Clearing Days specified in the Product Specifications. Exercise requests shall be sent to NOS within the time limit specified in the Clearing Cycle and in such form and by such means as NOS may specify.
- 5.8.3 On the close of the Option Expiry Day NOS shall on behalf of the Buyer effect Automatic Option Exercise for all Open Positions in Option Contracts if:
  - a) the Option Reference Price less the Exercise Price, divided by the Exercise Price is equal to or higher than the limit set out in the Product Specification for a call Option Contract, and
  - b) the Exercise Price less the Option Reference Price, divided by the Exercise Price is equal to or higher than the limit set out in the Product Specification for a put Option Contract.
- 5.8.4 NOS shall on the close of the Option Expiry Day of an Option Contract notify each Buyer if the Option Contract will be subject to Automatic Option Exercise. The information shall be provided in the manner and within the time limit specified in the Clearing Cycle. A Buyer may abandon an Option Contract by giving notice to NOS within the time limit specified in the Clearing Cycle and in such form and by such means as NOS may specify.
- 5.8.5 Abandonment and manual Exercise may be for all or parts of the Open Position of the Buyer. Options that are abandoned will expire on the Option Expiry Day.
- 5.8.6 NOS will select the Seller(s) against which to Exercise. The allocation process randomly determines each lot to be assigned in such a way that its selection is independent of either the preceding lot or of the subsequent lot in the selection process.

## NOS Clearing\*

- 5.8.7 NOS will inform the Seller(s) about the allocation in the manner and within the time limit specified in the Clearing Cycle.
- 5.8.8 Following Exercise, NOS will perform Option Delivery Settlement by registration of the following transactions in the Underlying Contract on the Buyer's and Seller's Clearing Accounts:
- a) for call Options: the Buyer (Seller) shall buy (sell) the Underlying Contract at a Contract Price equal to the Exercise Price; and
  - b) for put Options: the Buyer (Seller) shall sell (buy) the Underlying Contract at a Contract Price equal to the Exercise Price.
- 5.8.9 The Buyer and Seller shall be bound by the transactions undertaken pursuant to Clause 5.8.8 in all respects.

### 5.9 Other Settlements

5.9.1 Where a Buyer or Seller is entitled to receive or obliged to pay an amount or receive or provide physical delivery by way of settlement under the Product Specification for a Contract, NOS shall perform the settlements according to the Product Specification.

5.9.15.9.2 Any Contract with physical settlement shall be settled on the Delivery Day by the Buyer paying the Seller the Contract Price and the Seller delivering the Buyer the underlying as set forth in the Product specification.

## **6 MARGIN RULES**

### **6.1 General**

6.1.1 To cover its obligations arising from trading and Clearing, each Clearing Member shall provide Collateral pursuant to this Chapter.

6.1.2 A Clearing Member shall provide Collateral to cover:

- (a) its requirement for Base Collateral in accordance with Clause 6.2;
- (b) its Margin Requirement in accordance with Clause 6.3; and
- (c) extraordinary and intra day margin in accordance with Clause 6.5.

6.1.3. The Collateral shall be provided in accordance with the time limits specified in the Clearing Cycle.

6.1.4. A Clearing Member shall provide sufficient Collateral prior to the Clearing of a Contract.

### **6.2 Base Collateral**

6.2.1 The Base Collateral shall cover a Clearing Member's overnight positions and serve as an individual default fund relating to the Clearing Member's obligations. The Base Collateral shall be provided in accordance with Clause 6.4.

6.2.2 Subject to the following sentence, the minimum Base Collateral shall be equivalent to EUR 100,000. NOS may in its sole discretion call for a higher Base Collateral taking into consideration the Clearing Member's market exposure, financial soundness, frequency and size of margin calls and earlier volume of Trades subject to clearing and other matters which NOS consider in its sole discretion to be relevant to its ability to meet its obligations towards NOS.

## 6.3 Margin Requirements

- 6.3.1 After a Contract is approved for Clearing, NOS shall calculate a real time Margin Requirement for the Margining Account of each party to such Contract. If this calculation shows that a Clearing Member's Margin Requirement exceeds the Margin Collateral, NOS may cause the Clearing Member's ability to input new Orders or execute Orders at the Markets to be restricted.
- 6.3.2 NOS shall once a Clearing Day after Clearing Hours, calculate the Margin Requirement for each Margining Account of a Clearing Member, reflecting (in NOS' sole discretion) the market risk in the portfolio of Contracts registered in the Clearing Account(s) linked to that Margining Account.
- 6.3.3 The Margin Requirement calculation shall be based on the Closing Prices calculated in accordance with the Product Specification. NOS may for margining purposes adjust a Closing Price if there is reason to believe that the Closing Price does not reflect the market value of the Contract in question. NOS may also require Collateral to cover other risk factors as provided for in the Product Specification. Clearing Members with multiple Margining Accounts denominated in multiple currencies may have the Margin Requirements converted into a single currency. NOS will in its sole discretion determine the exchange rate for such currency conversions as it considers prudent.
- 6.3.4 NOS shall after each Clearing Day inform each Clearing Member of its Margin Requirement. A Clearing Member shall post Collateral to cover the Margin Requirement in accordance with the timetable set out in the Clearing Cycle.

## 6.4 Accepted Collateral

- 6.4.1 Collateral shall be ~~either or both of:~~
- (a) cash deposits on the Collateral and Settlement Account of the Clearing Member; and/or
  - (b) irrevocable Letters of Credit with a residual duration of ten Clearing Days or more from a financial institution approved by NOS substantially in the form attached as Appendix 4 or otherwise agreed by NOS. A Clearing Member shall provide new Collateral not later than ten Clearing Days prior to the expiration of a Letter of Credit, and/or

# NOS Clearing\*

(c) Non-Cash Collateral as accepted by NOS at its sole and exclusive discretion, to be deposited with NOS according to NOS' instructions and to be assigned a value at NOS' sole and exclusive discretion at the time of the pledge and anytime thereafter.

NOS may require such proportion of the Margin Requirement as it may determine in its sole discretion to be provided as cash deposits on the Collateral and Settlement Account of the Clearing Member (specifications set out in Appendix 5) or as Non-Cash Collateral deposited as instructed by NOS to cover settlements.

6.4.2 Any excess ~~amount on the Collateral and Settlement Account~~ after coverage of the Margin Requirement, Base Collateral and aggregate settlement amounts, may be released by NOS to a Clearing Member upon a written request in the form set out in Annex 3B to Appendix 3: or Annex 10B to Appendix 10. NOS may refuse such release in its sole discretion in and may set-off any other due claims against the Clearing Member against the balance in any Clearing Account of the Clearing Member, subject to Clause 5.2.8.

6.4.3 Clearing Members with several Margining Accounts may use excess Collateral from one Margining Account to cover Margin Requirements on other Margining Accounts, subject to Clause 5.2.2. If the excess Collateral to be posted to a Margin Account is denominated in a different currency from the base currency of that Margin Account or is a Non-Cash Collateral the excess Collateral will be converted into the same currency as such base currency. NOS will, in its sole discretion, determine the exchange rate for such currency conversions as it considers prudent. NOS will also, in its sole discretion, determine whether and on which terms Non-Cash Collateral may be included in such conversion.

## 6.5 Extraordinary and intra day margin calls

6.5.1 NOS may issue extraordinary margin calls from a Clearing Member if in the sole discretion of NOS special circumstances, such as major price fluctuations, so warrant. NOS may issue intra day margin calls from a Clearing Member to cover increased Margin Requirements resulting from new Cleared Contracts or Contracts to be Cleared.

6.5.2 Collateral to cover extraordinary and intra day margin calls must be posted to the Collateral and Settlement Account within the time limit specified by NOS. The time limit allowed to post Collateral shall be at least one hour from notification by NOS.

## 7 DEFAULT RULES

### 7.1 The scope of the default rules

7.1.1 The rules in Clauses 7.1 – ~~7.6-7~~ apply to defaults by a Clearing Member only.

7.1.2 On the occurrence of any of the following events, or if NOS in its discretion determines that any of the following events has occurred or is likely to occur NOS may declare a Clearing Member a Defaulter:

- a) any of the events listed in sub-paragraphs (a), (b), (e), (f), (g), (h), (i) of Clause 2.1.11 or 2.1.12;
- b) any failure to post, or overdue posting of, Collateral for a Margin Requirement or Base Collateral;
- c) any failure to settle a Contract in accordance with the Rules;
- d) any material breach of any agreement relating to Clearing Membership referred to in Clause 1.2;
- e) any other circumstances exist which (in the opinion of NOS) indicate that future default is imminent; or
- f) the event listed in Clause 2.1.15.

7.1.3 A Clearing Member that it has been or is to be declared a Defaulter shall be notified by NOS as soon as reasonably practicable.

7.1.4 On declaration that a Clearing Member is a Defaulter NOS may at the cost and expense of the Defaulter take such steps as it considers necessary (including without limitation those set out in this Chapter) to discharge such Clearing Member's rights and liabilities under or in respect of all Cleared Contracts to which it is party and bring into account, net and set-off all sums owing and payable between NOS and such Clearing Member.

# NOS Clearing\*

7.1.5 A Clearing Member shall, once declared a Defaulter, continue to be a Defaulter until the earlier of notification by NOS that it is no longer a Defaulter or termination of Clearing Membership in accordance with Clauses 2.1.8 or 7.2.3.

## **7.2 Suspension from Clearing and trading**

7.2.1 NOS may suspend a Defaulter. The relevant Market shall suspend a Clearing Member from trading in Listed Products when NOS suspends its Clearing Membership.

7.2.2 In the event of repeated or material defaults by a Defaulter NOS may terminate its Clearing Membership Agreement, subject to Clause 7.2.3.

7.2.3 The Clearing Membership Agreement shall remain in force as long as a Defaulter has Contracts on its Clearing Accounts. Chapters 5 to 9 of the Rulebook shall remain in effect as long as NOS has outstanding claims against the Clearing Member.

## **7.3 Close-out Contracts**

7.3.1 NOS may effect Close-out Contracts of all Contracts of a Defaulter for the account and risk of such Defaulter through the Markets. Close-out Contracts shall be effected at the best reasonable price obtainable at the time of the Close-out Contract. The Clearing Member may effect close-out trading with prior written approval from NOS.

7.3.2 NOS may, in its sole discretion, restrict the Close-out Contracts to the number of Contracts required to satisfy the Margin Requirement. NOS may undertake any other trading on behalf of the Clearing Member for the Clearing Member's account and risk, to eliminate or limit the risk resulting from its Contracts.

## **7.4 Forced Termination**

7.4.1 Where provided for in the Product Specification NOS may effect Forced Termination of a Contract in accordance with the terms of the relevant Product Specification.

# NOS Clearing\*

## 7.5 Set-off of claims

7.5.1 Subject to Clauses 5.2.8 and 5.2.9 NOS may, in the event of default, withhold settlement, effect close-out netting and realise the Collateral provided by the Defaulter pursuant to the rules below.

7.5.2 NOS may effect close-out netting by:

- a) bringing into account all sums payable to or by the Defaulter in respect of Contracts or otherwise under the Rules (including for the avoidance of doubt any costs or expenses incurred by NOS under Clause 7.1.4);
- b) aggregating or setting-off all such sums to produce a net sum;
- c) converting any such sums denominated in multiple currencies into a single currency if deemed necessary or desirable by NOS; and
- d) setting-off such net sum against Collateral standing to the credit of the Collateral and Settlement Account of the Defaulter to produce a further net sum.

7.5.3 For the avoidance of doubt, NOS may combine and consolidate the balances on any Clearing Account or Collateral and Settlement Account held by a Defaulter and set off any amount standing to the credit of any such account against any claims NOS may hold against the Clearing Member, irrespective of the nature of the claims.

## 7.6 Realisation of Collateral

7.6.1 Subject to Clauses 5.2.8 and 5.2.9, NOS shall, in the event of default:

- a) have the right to debit the Collateral and Settlement Account of a Defaulter to cover any unpaid claim on the Defaulter; or
- b) call upon any Letters of Credit posted for the Defaulter. NOS may call for the whole amount of the credit thereunder. A court judgement or any other enforcement basis shall not be required in any case for NOS to make such a call. The Defaulter shall, if possible, be notified before a call is made under its Letter of Credit, or

# NOS Clearing\*

c) sell or otherwise dispose of any Non-Cash Collateral at the best price reasonably available, at NOS sole discretion, in the market.

7.6.2 Subject to the following sentence, any excess amount on the Collateral and Settlement Account or Non-Cash Collateral left after NOS's claims have been covered shall be ~~paid~~transferred to the Clearing Member, and the Letter of Credits shall be released. If NOS has called upon a Letter of Credit, the Bank shall be paid before any excess amount shall be paid to the Clearing Member.

## **7.7 Default by NOS – Contracts with physical settlement**

If the Seller in a Forward Contract with physical settlement fails to timely fulfil its obligations towards NOS, NOS shall proceed to purchase the required asset in the market at the prevailing price and shall deduct from Seller's Collateral any price paid by NOS for the replacement asset in excess of the payment received by NOS from Buyer. In the event that Seller's Collateral is insufficient to cover such excess price paid by NOS, Seller shall immediately upon NOS' request reimburse NOS the remaining amount.

If Buyer in a Forward Contract with physical settlement fails to timely pay as required, NOS may proceed to sell the asset received from Seller in the market at the prevailing price and shall deduct from Buyer's Collateral any negative difference between the price obtained for the asset and the price payable by NOS to the Seller. In the event that such Collateral is insufficient to cover such lower price obtained, Buyer shall immediately upon NOS' request reimburse NOS the remaining amount.

## **7.8 Default by NOS**

7.7.17.8.1 In the event of a NOS Insolvency Event, all Open Positions will be automatically terminated for all Clearing Members. A termination notice will be given by NOS to all Clearing Members.

7.7.27.8.2 The early termination shall occur on the date the termination notice becomes effective, this date being designated as the early termination date.

7.7.37.8.3 Upon a termination notice becoming effective all Open Positions held by the Clearing Members with NOS will be automatically terminated and no further payments or deliveries under any Contract shall be required to be made save for the NOS Insolvency Close Out Amount, if any,

# NOS Clearing\*

determined by the Clearing Members for each Contract in accordance with clause ~~7.97.89~~ and off-setted (netted) to a net amount.

## ~~7.87.9~~ **Determination of NOS Insolvency Close-Out Amount**

~~7.8.17.9.1~~ Any NOS Insolvency Close-Out Amount shall be determined by the Clearing Member (or its agent), which shall act in good faith and use commercially reasonable procedures in order to produce a commercially reasonable result.

~~7.8.27.9.2~~ Each NOS Insolvency Close-Out Amount shall be determined as of the early termination date or, if that would not be commercially reasonable, as of the date or dates following the early termination date as would be commercially reasonable.

~~7.8.37.9.3~~ In determining a NOS Insolvency Close-Out Amount, the Clearing Member shall apply quotations pursuant to ~~7.9.37.89.3~~ (a) or relevant market data pursuant to ~~7.9.37.89.3~~ (b) below, unless the Clearing Member reasonably believes in good faith that such quotations or relevant market data are not readily available or would produce a result that would not satisfy the standards set out above in which case information pursuant to (c) and/or (d) below may be used:

- a) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties that may take into account the creditworthiness of the Clearing Member at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Clearing Member and the third party providing the quotation;
- b) information consisting of relevant market data in the relevant market supplied by one or more third parties, including (without limitation) relevant rates, prices, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market;
- c) information of the types described in (a) or (b) above from internal sources (including any of the Clearing Member's affiliates) if that information is of the same type used by the Clearing Member in the regular course of its business for the valuation of similar transactions; or
- d) any other relevant information.

## 8 LIABILITIES

### 8.1 Exclusion of liability

8.1.1 Unless otherwise expressly provided in the Rules or in any other agreements to which NOS is a party:

- (a) none of NOS and NOS Personnel shall be liable for:
  - (i) any dishonest, fraudulent or malicious use of or trading on a Market;
  - (ii) any use of the Markets or of the NOS Applications or Clearing services by a Clearing Member otherwise than in accordance with the Rules;
  - (iii) any act or omission of NOS which is in accordance with the provisions of the Rules or any duty or obligation under its regulatory system or in any regulatory capacity it may have; or
  - (iv) any act or omission taken by NOS in the good faith exercise of its powers under Clause 7; and
- (b) without prejudice to paragraph ~~(a) over(a) above~~, none of NOS and NOS Personnel shall be liable to a Clearing Member, its officers, employees, agents or customers for any losses, damages, costs, fees, expenses or other claims arising from:
  - (i) Clearing Member's participation on, and use of the Markets; or
  - (ii) any failure of NOS or NOS Personnel to deliver, display, transmit, execute, compare, submit for clearance and settlement, or otherwise process orders, messages, or other data, delivered to or created by NOS or NOS Personnel,

unless caused by the gross negligence, wilful default or fraud of such person.

8.1.2 NOS shall not be liable for any indirect or consequential loss or special, general or consequential damages whatsoever, including (without limitation) in respect of loss of profits or contracts.

# NOS Clearing\*

- 8.1.3 This Clause 8.1 shall not constitute a waiver or limitation of liability in respect of any rights a person may have under any laws or regulations of any jurisdiction which may not be properly disclaimed.
- 8.1.4 Nothing in this Clause 8.1 shall have the effect of excluding liability for death or personal injury arising from negligence.
- 8.1.5 NOS shall not be liable for any damage or loss that may be caused to any equipment or other software due to use of, or any viruses, defects or malfunctions in connection with access to, the clearing system.

## **8.2 Force Majeure**

- 8.2.1 NOS shall not be liable for any failure, hindrance or delay in performance in whole or in part of its obligations under the Rules or (subject to the terms of the relevant Contract) of any Contract if such failure, hindrance or delay arises out of events or circumstances beyond its control. Such events or circumstances may include, but are not limited to, a change of law or regulation which in NOS's reasonable opinion would render a Clearing Member's participation on the Markets illegal or impractical or adversely affect the ability of such Clearing Member to perform its obligations under the Rules or a Contract, acts of God or a public enemy, acts of a civil or military authority, embargoes, fire, flood, labour dispute, unavailability or restriction of computer or data processing facilities, energy supplies, settlement systems or of bank transfer systems or wires, and any other causes beyond the parties' reasonable control.
- 8.2.2 On the occurrence of any one or more of the events or circumstances referred to in Clause 8.2.1, which shall immediately be notified by the party prevented, hindered or delayed from performing any of the obligations referred to in Clause 8.2.1 to the other, NOS shall be entitled to treat a Clearing Member affected by such events or circumstances as a Defaulter for the purposes of Chapter 7.

## **8.3 General**

- 8.3.1 A Clearing Member may, in the event of default by NOS, set off his claims against NOS and his debts to NOS only if the claims relate to obligations on settlements for Contracts registered on its Clearing Account(s).

- 8.3.2 The Clearing Member may not set-off potential claims against NOS for compensation or damages against claims from NOS for settlement for Contracts.

## 9 MISCELLANEOUS PROVISIONS

### 9.1 Fees

- 9.1.1 A Clearing Member shall pay NOS a fee for each Contract in accordance with the fee list set out in Appendix 8. Fees shall be settled on the first subsequent settlement for the Clearing Account of the relevant Clearing Member.

### 9.2 Termination

- 9.2.1 The ~~Clearing~~ Clearing Membership Agreement may be terminated by each party thereto on one month's written notice.
- 9.2.2 In the event of NOS's breach of contract, a Clearing Member may terminate the Clearing Membership Agreement.
- 9.2.3 Termination as mentioned in 9.2.1 and 9.2.2 shall take effect from the moment no Contracts are registered in the Clearing Account of the Clearing Member, and all settlements are executed.
- 9.2.4 Termination of Clearing Membership shall be without prejudice to any claim NOS has against the terminating Clearing Member.

### 9.3 Choice of law

- 9.3.1 The governing law of this Rulebook and all Contracts and actions effected under the Rules shall be the law of England and Wales.
- 9.3.2 The governing law of each of the Clearing Membership Agreement, Collateral and Settlement Account Agreement, Non-Cash Collateral and Settlement Account Agreement and Letter of Credit shall be as set out therein.

## 9.4 Confidentiality

9.4.1 NOS shall secure that Confidential Information is not disclosed to any person other than NOS, NOS Personnel, a Market, the personnel of a Market or any professional adviser of, sub-contractor of, or consultant or insurer to any of the foregoing, provided that any disclosure outside of NOS, NOS Personnel, a Market, or the Personnel of a Market shall be subject to the requirements set out in Clause 9.4.4.

9.4.2 A Clearing Member shall secure that Confidential Information is not disclosed to any person other than its officers, employees, professional advisers, sub-contractors, or consultants or any member of such Clearing Member's Group, provided that any disclosure other than to an officer or employee of the Clearing Member shall be made in accordance with the requirements of Clause 9.4.4.

9.4.3 Confidential information shall mean any information relating to the affairs of a Clearing Member or NOS which is obtained in writing, or by electronic transmission of data, by a person pursuant to or in the course of the implementation or performance of the Clearing Membership Agreement and the Rules.

9.4.4 The requirements of this Clause are that the person disclosing such information shall take all reasonable steps to secure that the person to whom the information is disclosed is aware of that person's obligations under, as the case may be, Clause 9.4.1 or 9.4.2 in relation thereto; and is subject to confidentiality obligations at least equivalent to those of this Clause 9.4.4.

9.4.5 Nothing in this Clause shall prevent or restrict:

- (a) the disclosure or use by a person of Confidential Information relating to a person to which such person has consented in writing;
- (b) any Confidential Information which is in, or enters, the public domain other than as a result of the breach of this Clause;
- (c) any disclosure required under applicable law or regulation or by a Competent Body;  
or
- (d) any disclosure pursuant to Clause 10.

The obligations of confidentiality pursuant to this Clause shall continue to bind each Clearing Member and NOS for a period of 3 years after termination of Clearing Membership.

## **9.5 Ownership of Data**

9.5.1 Subject to Clause 9.5.1, the data which is processed by, or recorded or maintained on, or provided to NOS (including all data derived therefrom, and any compilation of such data created by or on behalf of NOS, together with all intellectual property rights in respect of any such data) shall belong to NOS and, subject to Clauses 9.4.1 and 9.5.1, and NOS may, without prejudice to any other requirement of the Rules, use, deal with, and disclose, such data as it thinks fit.

9.5.2 Where a Clearing Member provides data to NOS, such data shall belong to the Clearing Member and the Clearing Member shall, by the provision of such data, grant to NOS a perpetual, non-exclusive royalty-free licence (which shall survive the termination of such Clearing Member's membership) in respect of such data and all intellectual rights therein to use, copy, adapt and deal with such data for such purposes as NOS considers fit, provided that NOS shall not disclose that the Clearing Member was the source of such data.

## **9.6 Changes and amendments**

9.6.1 Subject to this Clause NOS may make changes or amendments to the Rulebook in accordance with Clause 1.2.7.

9.6.2 Changes to the Rules that affect the economic rights of Clearing Members under executed Contracts shall require the consent of all parties to the Contract, unless the changes or amendments are required by law, regulations, public bodies or a court of law.

9.6.3 For the avoidance of doubt, NOS may change the margin calculation parameters referred to in Chapter 6 at any time in its sole discretion.

## **9.7 Contracts (Rights of Third Parties Act) 1999**

Except as expressly provided in the Rulebook, nothing in the Rules shall benefit a person who is not a Clearing Member or NOS under the Contracts (Rights of Third Parties) Act 1999, and such a person shall have no right to enforce any provision of the Rules.

## **9.8 No Partnership**

Nothing in the Rules shall constitute a partnership between NOS and any Clearing Member.

## **9.9 Severability**

If at any time any provision of the Rules becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of the Rules nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

## **9.10 Waiver**

No failure by NOS to exercise, nor any delay on its part in exercising any of its rights (in whole or in part) under the Rules shall operate as a waiver of its rights or remedies upon that or any subsequent occasion, nor shall any single or partial exercise of any right or remedy prevent any further exercise thereof or any other right or remedy.

## **9.11 Notices**

Any notices or communication required under the Rules shall be in Norwegian or English to Norwegian entities and in English to other entities. Notices and communications required under Chapter 7 shall be made by telefax and mail.

## **9.12 Assignment**

Except as expressly provided for by the Rules a Clearing Member may not assign or transfer any rights or obligations arising by virtue of its Clearing Membership or under any Contract.

## 10 DISPUTE RESOLUTION

### 10.1 Duty to resolve disputes in good faith

In the event of any dispute arising out of or in connection with this Rulebook, including any dispute as to the existence, validity or termination of this Rulebook or any Contract, the parties to the dispute will use their best efforts to resolve such dispute in good faith and in a spirit of mutual understanding and co-operation. The parties may agree to handle the dispute in accordance with the complaint procedures established by NOS as amended from time to time.

### 10.2 Arbitration

10.2.1 If the parties to a dispute under Clause ~~10.1~~ over 10.1 above have not settled the dispute within 30 days after the first written complaint, or such further period as the parties shall agree in writing, the dispute shall then be referred to and finally resolved by arbitration under the rules of the London Court of International Arbitration which rules are deemed to be incorporated by reference into this clause.

10.2.2 Any arbitration commenced pursuant to this chapter shall be administered by the London Court of International Arbitration.

10.2.3 The number of arbitrators shall be three (3), unless the value of dispute, according to the statement of claim is below the amount of USD 100,000 in which case the number of arbitrators shall be one (1).

10.2.4 Each party shall designate one arbitrator. The two arbitrators so designated shall within thirty (30) days designate a third arbitrator. If either party fails to designate its arbitrator within thirty (30) days, or if the two designated arbitrators fail to designate the third arbitrator within (3) days, the appointment shall be made by the London Court of International Arbitration.

10.2.5 The seat, or legal place, of arbitration shall be London.

10.2.6 The language to be used in the arbitration proceedings shall be English.