

Rules for the Clearing and Settlement of Exchange Transactions in Trading in Environmental Products on Wiener Börse as a General Commodity Exchange – Clearing and Settlement Rules for Environmental Products



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NONCOMMITTAL TRANSLATION
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Section 1 General provisions for financial clearing and settlement

§ 1 Scope of application and clearing and settlement agent

- (1) These Rules regulate the clearing and settlement of exchange transactions concluded in trading in environmental products on Wiener Börse in its function as a general commodity exchange. The exchange operating company commissions EXAA Abwicklungsstelle für Energieprodukte AG (hereinafter “EXAA” or “Clearing and Settlement Agent”) in its function as clearing and settlement agent pursuant to Article 26 paragraph 3 Stock Exchange Act with the settlement of these exchange transactions.
- (2) In its function as Clearing and Settlement Agent, EXAA shall be responsible for the financial clearing, the settlement and risk management of the exchange transactions named in paragraph 1.
- (3) Exchange transactions as defined in Art. 1 par. 1 of the Trading Rules for Environmental Products are concluded through the Trading System exclusively between EXAA and one exchange member participating in the financial clearing and settlement in each case.
- (4) EXAA shall be empowered to commission individual tasks and functions named in paragraph 2 to third parties; this shall not apply to activities named in paragraph 3 if these are tasks to be fulfilled and executed under the final responsibility and control of the Clearing and Settlement Agent.
- (5) The technical implementation of the financial clearing and settlement shall be commissioned by EXAA to Oesterreichische Kontrollbank Aktiengesellschaft (hereinafter OeKB) in accordance with paragraph 4.

§ 2 Requirements for the participation in financial clearing and settlement

- (1) Exchange members that conclude exchange transactions pursuant to the Trading Rules for Environmental Products in their own name and for their own account – whether directly or indirectly via a broker - must at the same time participate in the financial clearing and settlement system. EXAA shall conclude a clearing and settlement agreement for financial transactions (hereinafter “Clearing and Settlement Agreement”) with each company that meets the present requirements for financial clearing and settlement.
- (2) The exchange operating company, EXAA, and the third party commissioned pursuant to Article 1 paragraph 5 (OeKB), shall cooperate in conducting an investigation and check to determine if the requirements for exchange membership in Wiener Börse in its function as a general commodity exchange are met for participating in trading in environmental products as well as for participating in the clearing and settlement of exchange transactions concluded

in trading in environmental products. The institutions named above shall exchange any information necessary to determine if the admission and participation requirements are met within the scope of the membership admission procedures. Applicants and exchange members shall be obligated in accordance with Articles 3 and 6 of the Participation Rules for Environmental Products to provide the named entities with the required information.

§ 3 Termination of the clearing and settlement agreement

- (1) Exchange members participating in the financial clearing and settlement system may terminate the Clearing and Settlement Agreement in writing and without stating reasons at any time effective as of the following exchange trading day. This termination notice shall also be considered an application to rescind membership status pursuant to Art. 7 par. 3 of the Participation Rules for Environmental Products.
- (2) EXAA shall be obligated to supervise compliance with the Clearing and Settlement Agreement. OeKB shall send to EXAA any and all information providing evidence of a breach of the Clearing and Settlement Agreement.
- (3) The exchange member hereby agrees to the sending of data relating to a breach of the Clearing and Settlement Agreement by EXAA to OeKB and the exchange operating company, by OeKB to EXAA and the exchange operating company, and by the exchange operating company to EXAA and OeKB. The exchange member hereby agrees to release OeKB that has been charged with specific tasks pursuant to Article 1 paragraph 5 in its function as credit institution within the meaning of the Austrian Banking Act from its bond to banking secrecy and data secrecy for purposes relating to the notification of suspected violations of the Clearing and Settlement Agreement by way of a written declaration.
- (4) EXAA shall have the right to terminate the Settlement Agreement with immediate effect if it becomes known afterwards that the requirements for concluding a Settlement Agreement were not met at the time the Agreement was signed or if these cease to be given at a later date.
- (5) EXAA shall be entitled to terminate the Agreement with immediate effect if the respective exchange member or in the case of indirect participation in trading the respective broker operating for the exchange member repeatedly violates despite being warned these Rules or the Trading Rules for Environmental Products or if bankruptcy or similar proceedings have been initiated against the exchange member or the opening of such proceedings has been rejected for lack of assets or if a credit institution has been placed under receivership pursuant to Article 83 Austrian Banking Act or other similar proceedings have been instituted against a credit institution.
- (6) Moreover, EXAA shall have the right to terminate the Clearing and Settlement Agreement with immediate effect if there are reasons indicating that the concerned exchange member is or might be at risk of failing to fulfill exchange transactions.
- (7) Any termination with immediate effect by EXAA shall be communicated in writing including a statement of the reasons.

- (8) Exchange members without a valid Settlement Agreement with EXAA are not allowed to place new orders in the trading system in their own name and for their own account: neither directly nor indirectly via a broker; EXAA will take the technical measures to interrupt access to the trading system for placing orders in the name of and for the account of the respective exchange members. All existing orders are to be deleted by the exchange member or the broker operating on behalf of the exchange member. If the deletion of the orders is not carried out within an adequate period as specified by EXAA in each case, EXAA shall delete such orders on behalf of the exchange operating company.
- (9) The termination of the Clearing and Settlement Agreement shall not release the respective exchange member from its rights and duties arising from exchange transactions already concluded in its name and for its account. The termination of the Settlement Agreement means that one of the requirements pursuant to Art. 19 par. 1 and 20 par. 5 Stock Exchange Act as well as Art. 5 and 6 of the Participation Rules for Environmental Products ceases to be given.
- (10) EXAA shall immediately inform the exchange operating company and OeKB of any termination of a Clearing and Settlement Agreement. Article 3 paragraph 2 second sentence shall apply mutatis mutandis.

§ 4 Assignment of rights and duties

Any assignment of rights or duties under the Clearing and Settlement Agreement by an exchange member shall require the consent of EXAA.

§ 5 Obligations under exchange transactions

- (1) The exchange members shall be obligated to meet their financial obligations arising from their membership and their exchange transactions including taxes.
- (2) For the collateralization of the claims arising under paragraph 1, the exchange members shall be obligated to deposit an adequate amount of collateral pursuant to Section 3 of these Rules if the financial settlement is to be done by automatic debit order from an account of an exchange member. If an exchange member opts to transfer euro cash amounts to the cash account with EXAA prior to the start of auction, this amount is used for fulfillment.

§ 6 Objections

Objections against trade confirmations can only be raised within the context of the procedures laid down in the Trading Rules for Environmental Products.

§ 7 Liability

- (1) Exchange transactions in the trading products named in Article 1 paragraph 1 lit. a of the Participation Rules for Environmental Products shall be concluded exclusively between EXAA and an exchange member participating in the financial clearing and settlement in each case.

- (2) Exchange members shall be liable for the timely and orderly financial settlement of their obligations pursuant to Article 5.
- (3) In the event an exchange member is prevented from carrying out the orderly financial clearing and settlement of transactions (especially if due to technical disorders), the corresponding exchange member shall be obligated to immediately inform the OeKB or other third parties commissioned in accordance with Article 1 paragraph 5 thereof. Any measures initiated by the clearing house shall be binding for the exchange members concerned and shall be based on the instructions issued by the exchange operating company.
- (4) The exchange member shall be obligated to immediately follow the instructions of EXAA or the third party (OeKB) commissioned by the exchange operating company, and to ensure that the orderly financial clearing and settlement of transactions is reinstated as soon as possible.
- (5) The exchange member shall be liable for damages arising from any breach of the duties named in paragraphs 2, 3 and 4.
- (6) Any liability of EXAA in its role as a party charged by the exchange operating company, of OeKB or of other parties charged by EXAA for damages arising due to circumstances outside of their control or for damages outside of the control of EXAA or other parties charged by EXAA shall be excluded. Any liability of EXAA and OeKB as well as of other parties charged by EXAA for the orderly and appropriate nature of the measures initiated shall remain unaffected within the scope of paragraph 7 below.
- (7) EXAA, OeKB and other parties charged by EXAA shall not be liable for any losses, profits foregone or damages vis-à-vis exchange members, unless such losses, profits foregone or damages have been caused by willful conduct or by gross negligence. Liability for consequential damages shall be excluded in all cases.
- (8) Unless expressly provided for otherwise under these Rules, EXAA, OeKB and third parties charged by EXAA shall in no case be liable vis-à-vis other parties that are not themselves exchange members for possible losses, damages, consequential damages or profits foregone arising from or in connection with exchange transactions concluded in trading in environmental products on Wiener Börse in its function as a general commodity exchange.
- (9) EXAA, OeKB and other parties charged by EXAA shall not be liable for damages resulting from operational disruptions caused by force majeure, riot, war or natural catastrophes or damages that are due to any other incidents or circumstances outside of their control (e.g. strikes, legal lockouts, traffic obstructions) or which are due to restraints imposed by state authorities.
- (10) This shall also apply to damages suffered by exchange members as a consequence of technical problems or due to the partial or complete inoperability of the computer systems used by the members or due to errors in data input within the context of trading or clearing and settlement and the management of collateral provided inasmuch as said circumstances are not caused by willful conduct or by gross negligence on the part of EXAA, OeKB or other third parties charged by EXAA. The third parties charged by EXAA shall have tested the computer systems and other technical equipment in their responsibility sufficiently before putting it into operation and shall be responsible for the adequate maintenance.

Section 2: Financial clearing and settlement

§ 8 Cash accounts and securities accounts for financial settlement

- (1) An exchange member may choose from two settlement options for financial settlement. First, settlement by transfer from the account of the exchange member with collateral deposit or, second, by transfer to a cash account indicated by EXAA prior to the start of the auction. For the purposes of financial clearing and settlement, the exchange member participating in the financial clearing and settlement must maintain a bank account with an Austrian bank or with a credit institution within the EEA provided that it permits automatic debit orders or it must transfer the euro cash amount to the cash account of EXAA. Buy orders may only be executed by exchange members if the purchase is covered by the amount deposited on the account by the exchange member. The Austrian bank or the credit institution within the EEA must be able to guarantee the settlement of debits and credits within a period of T+3.
- (2) OeKB commissioned in accordance with Article 1 paragraph 5 guarantees the clearing and settlement of debit and credit entries with value date T+3 and upon request maintains for the exchange member the settlement account required pursuant to paragraph 1 for the clearing and settlement of exchange trades concluded under the Trading Rules for Environmental Products.
- (3) The exchange member has the right to commission an Austrian bank or a credit institution within the EEA with the opening and the maintenance of the settlement account on behalf of the exchange.

§ 9 Settlement

- (1) The financial settlement is based on the obligations listed in Article 5.
- (2) If the exchange member has opted for settlement by debit and credit orders to an authorized account of the exchange member, then financial settlement is effected electronically by means of debiting and crediting procedures from the authorized account of the exchange member. If the exchange member has opted for settlement via transfer of a EUR amount to the cash account of EXAA prior to the start of auction trading, then the financial settlement is effected by crediting and debiting from a cash account of EXAA.
- (3) Invoices, credit and fee bookings relating to the exchange transactions carried out by the exchange members shall be made available to the members electronically via the clearing and settlement system of the third parties commissioned in accordance with Article 1 paragraph 4 and it shall be possible to print these if required.
- (4) Settlement day for debits and credits shall be the respective date fixed in the contract specifications or the date fixed or specified in the Schedule of Fees.

- (5) The exchange member shall be responsible for the timely cover in sufficient amounts on its settlement account. As regards the obligations in this context, please refer to Article 5, 8 and 9 of the present Rules.

§ 10a Debiting and crediting operations

- (1) The settlement of financial obligations shall be effected through the automatic debiting procedures if the exchange member has opted for this method. The exchange member undertakes to set up an automatic debit order in the favour of EXAA for its settlement account.
- (2) The exchange members shall be responsible for sufficient cover being available on the settlement date (Article 9 paragraph 4) on the settlement account (Article 8 paragraph 1 and 2) and that the collateral in the amount stipulated in accordance with Article 11 has been deposited.
- (3) In the case of credits, special fees as well as taxes and duties shall be transferred to the settlement account specified by the exchange member on the settlement date after the deduction of the transaction fees.

§ 10b Settlement through the cash account with EXAA

- (1) EXAA shall set up a cash account for all exchange members that have opted for settlement by transfer of cash prior to the start of auction trading. EXAA informs the participants of the account data.
- (2) The exchange members must inform EXAA of the account data of the account from which the amounts are to be transferred prior to auction trading or to which these amounts are to be retransferred. Only transfers from these account notified to EXAA will be considered. Transfers from other accounts will be returned without being examined. Should the account data change, EXAA must be notified immediately.
- (3) Transfer and bank fees as well as the risks of bank transfers are borne by the exchange member. As this account is solely for settlement purposes, no interest is paid that might be credited to the exchange member.
- (4) Exchange members may only trade up to the amount allocated to them on this account. This amount includes taxes and transaction fees. Only those amounts credited to the account on the value day of the auction day can be considered. The calculation of the maximum trading volume is done pursuant to Annex ./1 Collateral of these Rules.
- (5) The settlement of financial obligations of an exchange member is done by deducting the invoice amount from the EXAA cash account on settlement day. The amount that can be allocated to the exchange member is reduced by this amount.
- (6) Credit amounts are transferred to the EXAA cash account and allocated to the exchange member on settlement day.
- (7) The amounts as of the value day allocated to an exchange member are displayed in the trading system on every exchange trading day.

- (8) The exchange member may instruct the transfer of the entire amount on the EXAA cash account allocated to it at any time by sending a written request. No partial amounts will be transferred. The transfer is initiated by EXAA within the following five exchange trading days.
- (9) By the latest on 31 December of every year, all amounts due to the respective exchange members are transferred back.

Section 3: Collateral (applicable only to settlement pursuant to Art. 10a)

§ 11 General

- (1) The exchange member participating in the financial clearing and settlement and who has opted for financial settlement via automatic debit order from a bank account is obligated to provide collateral as cover for liabilities to EXAA in accordance with Article 5 paragraph 2.
- (2) If an exchange member takes part in financial clearing and settlement of exchange transactions in trading in electric energy products as well as in environmental products, then the collateral for both areas of trading may be deposited jointly. In this case, an exchange member must present a written declaration stating the amount to be allocated to trading in environmental products. The difference in the amount to the total collateral deposited is then available for securing trades in electric energy products.

§ 12 Risk assessment

- (1) The objective of the risk assessment is to determine the default risk of an exchange member. The default risk consists in the potential loss that may arise in the event an exchange member fails to meet its obligations pursuant to Article 5 paragraph 1.
- (2) The calculation method to determine the collateral required to cover the default risk in trading in the products named in Article 1 paragraph 1 lit. a of the Participation Rules for Environmental Products is set forth in the Annex.

§ 13 Type of collateral provided

- (1) The exchange member may meet the requirement to deposit collateral with the following types of collateral:
 - I Bank guarantees by EEA or Swiss banks
- (2) The clearing agent shall reserve the right to examine accounts receivable as to whether they meet the principles governing eligible collateral and their capacity to be realized immediately, and to reject them on the basis of these criteria. It shall immediately notify the exchange member(s) in the case of a rejection or a change.

§ 14 Amount of collateral

- (1) The collateral furnished and accepted pursuant to Article 13 shall serve as security to guarantee the fulfillment of the obligations pursuant to Article 5 paragraph 1.

- (2) The amount of the collateral required must have an adequate relation to the obligations entered into pursuant to Article 5 paragraph 1 and the risks implied therein.
- (3) Bank guarantees accepted as collateral must be issued in the name of EXAA and must include the unconditional, open-ended and irrevocable obligation of the credit institution to transfer the guaranteed amount if required on first demand by EXAA to an EXAA account.

§ 15 Calculation of collateral

- (1) The collateral is fixed for each member of the clearing and settlement system.
- (2) EXAA calculates the maximum permissible trading volume for an environmental product pursuant to Annex ./1 based on the amount of collateral deposited by a clearing participant pursuant to Annex ./1.

§ 16 Return of collateral

- (1) Every clearing participant shall have the right to demand EXAA to release collateral. EXAA shall comply with this demand if there are no open claims against the clearing participant.
- (2) In the event an exchange member changes its status within the meaning of Article 7 Participation Rules for Environmental Products, the member's obligations to provide collateral shall expire 14 days as of the time the change takes effect, but at the earliest on the following day after which the obligations of the exchange member pursuant to Article 5 paragraph 1 have been met.

Section 4: Default (only for settlement pursuant to Art. 10a)

§ 17 Occurrence of default

- (1) Default of an exchange member occurs when the member's settlement account on the settlement day pursuant to Article 9 paragraph 4 fails to show sufficient coverage to meet its payment obligations pursuant to Article 10 paragraph 2.
- (2) Default also occurs if an exchange member fails to meet its obligation to deposit sufficient collateral in due time.
- (3) Exchange members shall be obligated to inform the Clearing and Settlement Agent immediately of any failure to meet obligations pursuant to Article 5 paragraphs 1 and 2. This shall apply, in particular, in the case of imminent insolvency or imminent over-indebtedness of an exchange member.
- (4) Exchange members shall be assigned the status of being in default by electronic, written or telefax notification from the Clearing and Settlement Agent.
- (5) In the event that an exchange member fails to meet its obligations pursuant to Article 5 paragraphs 1 and 2 of these Rules or fails to comply with an order to change the composition of its collateral, EXAA shall have the right to apply for suspension of membership of the exchange member concerned pursuant to Article 7 of the Participation Rules for Environmental Products with the exchange operating company.

- (6) The Clearing and Settlement Agency shall from this point on retain as collateral any credit-side cash balances of the exchange member concerned.
- (7) For the duration of the default, a daily penalty interest in the amount of 12 percent per annum for the amount outstanding, as a minimum, however, EUR 75 per day shall be payable to EXAA.

§ 18 Technical default

- (1) If an exchange member provides proof to the Clearing and Settlement Agent that the default pursuant to Article 17 paragraph 1 is not due to insolvency and that the member will meet its obligations without delay, the Clearing and Settlement Agency may refrain from reporting such member to the exchange operating company (technical default). In this case, the Clearing and Settlement Agent shall declare the exchange member to be in technical default.
- (2) Immediately following the occurrence of the technical default, the defaulting exchange member shall submit a written statement to the Clearing and Settlement Agency.
- (3) The defaulting exchange member must immediately remedy the causes of the default.
- (4) The Clearing and Settlement Agent shall have the right of recourse for losses caused to the Clearing and Settlement Agent or other exchange members by a member's technical default. Moreover, the Clearing and Settlement Agent shall have the right in accordance with Article 17 paragraph 7 to levy penalty interest in the amount specified from the defaulting exchange member.

§ 19 Realisation of collateral and default handling

- (1) In the case of insufficient coverage of a settlement account (Article 8 par 1), the collateral deposited by the respective exchange member shall be realized by the Clearing and Settlement Agent after having been given notice once. The exchange member shall be informed by EXAA about the realization of its collateral.
- (2) In the event that recourse is taken to the collateral provided by the exchange members, the respective exchange member shall be obligated to deposit and increase the collateral by the amount required at the latest one week before the next auction of environmental products.
- (3) In the event of the realization of collateral, the Clearing and Settlement Agent shall realize the collateral provided by the defaulting exchange member pursuant to Article 13 only to the extent required.
- (4) In the event of default, EXAA shall have the right to increase the risk amount applicable to the defaulting exchange member as calculated pursuant to Article 12. The progression, amount and term of application of the increased risk amount shall be determined by the Clearing and Settlement Agent.

- (5) In the event of default or other material breaches of these Rules and any obligations arising thereunder, the exchange operating company shall have the right to exclude an exchange member or in the case of indirect membership in trading, the respective broker, with immediate effect wholly or partly from exchange trading. Such exclusion shall be temporarily limited provided the nature of the breach or the accompanying circumstances permit this. For the duration of the exclusion of an exchange member from trading, EXAA shall take immediate technical measures to interrupt access to the trading system for the respective exchange member and its exchange traders.

Section 5: Physical fulfilment

§ 20 Fulfilment obligation

- (1) The exchange members shall be obligated to meet all financial obligations resulting from the exchange transactions concluded - whether directly or indirectly via a broker - in their name and for their account.
- (2) Details of the physical fulfilment of exchange transactions concluded in the trading in environmental products on Wiener Börse AG in its function as a general commodity exchange pursuant to Art. 1 par. 1 of the Participation Rules for Environmental Products are regulated by Art. 26 – 28 of the Trading Rules for Environmental Products.

Section 6: Final provisions

§ 21 Court of Arbitration of Wiener Börse

- (1) All disputes arising from or in connection with the fulfilment of exchange transactions including the issue of whether or not a transaction has been concluded between parties shall be decided by the Court of Arbitration of Wiener Börse under exclusion of the regular courts of justice and in agreement with the decree of the Federal Ministry of Finance and of the Federal Ministry for Economic Affairs and Labour as accorded with the Federal Ministry of Justice on the implementation of Art XIII Introductory Law to the Code of Civil Procedure (Rules of Arbitration of Wiener Börse) Federal Law Gazette II No. 230/2000 in its function as the statutory compulsory court of arbitration
- (2) All other disputes shall be decided by the competent commercial courts of Vienna as the only competent courts.

§ 22 Supplements

- (1) In the event that individual provisions of these Rules are or become wholly or partly invalid or non-executable, this shall not affect the validity or effectiveness of the remaining provisions.
- (2) Null and void provisions shall be replaced by mutual consent by provisions that are best suited to meet the economic purpose intended.

§ 23 Applicable law

All exchange transactions concluded shall be subject to Austrian law (with the exception of the provisions of International Private Law).

§ 24 Entry into force

These rules shall enter into force on the day following their promulgation. *

*) Entry into force of the first version.

Non-binding translation of the German “Abwicklungsbedingungen Umweltprodukte” promulgated by Official Notice of the exchange operating company Wiener Börse AG No. 680 of 17 May 2005 amended by Official Notice XXX of DD MMM YYY (effective 1 January 2008).

ANNEX./ 1 - COLLATERAL

Use of the collateral for calculating the permissible trading volume for exchange trades concluded in trading in the environmental products named in Art. 1 par. 1 lit. a of the Participation Rules for Environmental Products

1.) Limit buy orders (in the meaning of Articles 11 ff Trading Rules for Environmental Products)

In the case of limit orders, the trading system calculates the maximum possible trading value at the time the orders are entered (pursuant to Art. 10 par. 7 of the Trading Rules for Environmental Products) based on the size and prices given. This value is increased to cover the VAT and the transaction fees for domestic exchange members, and for foreign exchange members to cover the transaction fees.

The value calculated in this manner is compared to the collateral deposited for trading in environmental products or with the amount deposited on the cash account by the respective exchange member. If the examination results in the finding that the collateral deposited is not enough to cover the buy order at the limit price including any VAT and transaction fees, the order is rejected by the system and the exchange member is informed of this fact.

The trading participant may then adjust the order or if the time allows, supply the required collateral afterwards. If the exchange member does not respond to the call, the entire order is rejected.

2.) Market buy orders (in the meaning of Articles 11 ff Trading Rules for Environmental Products)

In the case of market buy orders, EXAA's Market Control defines a maximum price (pursuant to Art. 10 par. 7 of the Trading Rules for Environmental Products). Based on the size the maximum possible trade value is calculated. This value is increased for domestic exchange members by the VAT and transaction fees and for foreign exchange members by the transaction fee.

The amount calculated in this manner is compared to the collateral deposited for trade in environment products or with the amount deposited on the EXAA cash account by the respective exchange member. If this examination shows that the collateral deposited is not sufficient to cover the buy order at market price including any VAT and transaction fees, the order is rejected by the trading system and the exchange member is informed of this fact.

The exchange member may subsequently adjust the order, or, if there is enough time, increase the collateral to the required amount. If the exchange member does not respond to the notification, the entire order is ignored.

3.) Limit and market sell orders (in the meaning of Art. 11 et seq Trading Rules

for Environmental Products)

Before executing sell orders, the system checks the cover available pursuant to Art. 10 par. 8 of the Trading Rules for Environmental Products and this may result in a scaling down of the sell order size.