The German Clearing Framework Agreement published by the Association of German Banks (Bundesverband deutscher Banken)

1 To clear transactions through CME Clearing Europe (CMECE), Clearing Members are required to have in place arrangements which meet the requirements set out in Chapter 3A of CMECE’s Clearing Rules (the Rules). These include entering into a Client Agreement with each Client. CMECE does not mandate a specific form of Client Agreement but it does require the Client Agreement to incorporate certain provisions set out in Rule 3A.2.

2 For those Clearing Members who intend to satisfy this requirement by entering into the Clearing Framework Agreement (Framework Agreement) published by the Association of German Banks (Bundesverband deutscher Banken), CMECE would like to highlight the following:

   (a) The Framework Agreement is governed by the laws of the Federal Republic of Germany and governs the contractual arrangements between the Clearing Member (referred to in the Framework Agreement as the Bank) and the Client (referred to in the Framework Agreement as the Contracting Party). The relationship between the Clearing Member and CMECE is subject to the Rules, which are governed by English law.

   (b) However, section 1(4) of the Framework Agreement identifies some circumstances in respect of which it purports that the Rules do not take precedence over section 4 to 6 of the Framework Agreement (as amended by section 7 of the Framework Agreement).

   (c) CMECE is of the view that there is nothing contained in these provisions that conflicts with the Rules as at the date of this Notice.

   (d) Section 1(4) of the Framework Agreement acknowledges that, to the extent there is a conflict between the Framework Agreement and the Rules, the Rules will take precedence.

   (e) CMECE notes that some central counterparties have proposed an additional annex to the Framework Agreement. As a general rule, CMECE does not interfere in the relationship between the Clearing Member and the Client unless it is necessary to protect the Client by facilitating porting. On this basis, CMECE does not think an additional annex to the Framework Agreement to be necessary.

3 As set out above, CMECE does not mandate a specific Client Agreement. Clearing Members and Clients may choose to enter into a bilateral agreement, to use the Framework Agreement or to use the Framework Agreement and amend it as they see fit. In any event, Clearing Members will need to satisfy themselves that this is in line with the requirements set out in Chapter 3A of the Rules.

4 The Appendix contains an excerpt of Rule 3A.2 (Client Agreement) of the Rules, which may be amended from time to time, setting out the terms whose effect CMECE requires to be incorporated into the Client Agreement. Capitalised terms are as defined in the Rules.

5 The Framework Agreement is published by the Association of German Banks (Bundesverband deutscher Banken) and may be accessed via the following link:

6 The information in this note is not intended as legal or other advice. Clearing Members must make their own assessment of the Framework Agreement and its relationship with the Rules.
Appendix

Rule 3A.2 – Client Agreement

3A.2 Client Agreement

3A.2.1 The Clearing Member shall be party to a Client Agreement with each Client for which it holds an Individual Client Account or which is part of an Omnibus Client Account. The Client Agreement shall incorporate provisions with the following effect:

(a) Corresponding Transactions shall be transacted pursuant to the terms of the Client Agreement and be segregated (contractually or otherwise) from any other transactions entered into between the Clearing Member and the Client;

(a) the Client must have the right to terminate all Corresponding Transactions in the event the Clearing House issues a Declaration of Default to a Clearing Member in accordance with the Default Rules;

(b) if a Corresponding Transaction is terminated due to the Clearing House issuing a Declaration of Default in accordance with the Default Rules, the net replacement value of the Corresponding Transaction shall be;

(i) where due to the Client, equal or be greater than; or

(ii) where due from the Client, equal or be less than;

the value attributed by the Clearing House to the Contract to which the Corresponding Transaction relates following the issuance of such Declaration of Default;

(c) the Clearing Member shall have the right in the event of an Insolvency Event relating to the Clearing House, to terminate the Corresponding Transaction;

(d) that “two way payments” arise in the event of a termination of all Corresponding Transactions, the substantive effect of which is that either a Clearing Member or a Client will be entitled to receive payment under the relevant termination provisions if the net replacement value of all terminated Corresponding Transactions effected under the Client Agreement is in its favour; and

(e) that the prohibitions set out in Rule 3.5.1 as amended below are imposed on the Client in relation to the Client’s submission of Transactions to the Clearing House and its activities in relation to the clearing of the Contracts that result from such Transactions:

(i) in Rules 3.5.1(a) and 3.5.1(b), the references to the Clearing Member are references to the Client;
(ii) Rule 3.5.1(f) is deleted; and

(iii) in Rule 3.5.1(g) the words “or other than for the purpose of conducting its business as a Clearing Member” are deleted.

3A.2.3 Any changes made to the terms of a Contract by the Clearing House shall be deemed to be reflected in the Corresponding Transaction.