

## **Special Conditions for the re-entry of internal instructions on 6-series Accounts (the „Special Conditions“)**

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Unless otherwise stated, all times are given in Central European Time (CET).

This English translation is provided for convenience only as the German text is to be considered as the binding version.

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# 1 Applicable terms and conditions

Pursuant to Article II (2) of the General Terms and Conditions of Clearstream Europe AG ("CEU"), these Special Conditions provide for the rules for the re-entry of Internal Instructions on 6-series Accounts of CEU.

In case of inconsistency between CEU's General Terms and Conditions and the present Special Conditions, the latter shall prevail.

The Client agrees and accepts the Special Conditions.

These Special Conditions enter into force as from the moment of announcement (*Bekanntgabe*). CEU reserves the right to amend these Special Conditions in accordance with the provisions set out in Article II (5) of CEU's General Terms Conditions, at any time and shall notify the Client of any such amendment and of the effective date thereof.

# 2 Definitions

The following expressions bear the following meanings unless the context otherwise requires. Any other capitalised terms and expressions used herein that are not specifically defined in the Special Conditions but in CBL's Client Handbook shall have the meaning as set out in the CBL Client Handbook (as defined below). Any other capitalised terms and expressions not defined herein shall have the meaning given in CEU's General Terms and Conditions:

**"Authenticated Message"** means a communication that is sent by mail in writing and signed by an Authorised Person, or that is sent by Swift or any other secured communication media the use of which is agreed in writing by the Client and CEU.

**"Authorised Person"** means, with respect to the Client, any person duly authorised by it to give instructions or notices on its behalf, such persons and their specimen signatures to be provided by the Client to CEU from time to time.

**"Business Day"** means any day, other than Saturday, Sunday or a day specified as a public holiday in the "public holiday" - calendar of CEU.

**"Client"** means any client of CEU.

**"6-series Accounts"** means any 6-series accounts representing a series of accounts on the Creation platform which are technically and legally independent and governed by German law.

**"Securities Settlement System"** means the securities settlement system Creation.

**"Settlement Day"** has the meaning set out in the CBL Client Handbook.

**"CBL"** means Clearstream Banking S.A.

**"CEU Client Handbook"** means the CEU client handbook, as may be amended from time to time.

**"CBL Client Handbook"** means the CBL client handbook, as may be amended from time to time.

**"End of Day Processing"** has the meaning ascribed to it in the CBL Client Handbook.

“Internal Instruction” means an “*Internal Instruction*” on 6-series Accounts as described in the CBL Client Handbook.

## 3 Re-entry of an instruction

### 3.1 General

In relation to the settlement rules applicable to 6-series Accounts pursuant to the CEU Client Handbook referring itself to the CBL Client Handbook<sup>1</sup>, matched Internal Instructions that do not settle by End of Day Processing will, as from 3 December 2012, be considered as failed.

A failed Internal Instruction has to be entered into the Securities Settlement System as a new instruction on the next Settlement Day.

In order to facilitate such re-entry of an Internal Instruction for the Client, CEU offers to its Clients the service to re-enter such Internal Instruction on their behalf.

The rights and obligations in relation to any re-entry of an Internal Instruction are set out in these Special Conditions.

### 3.2 Authorisation of CEU by the Client to re-enter an instruction

If an Internal Instruction, whose Status is “matched”, does not settle at the End of Day Processing, (the „Instruction”), the following rules shall apply:

#### a) Power of attorney

The Client grants to CEU the authorisation to enter on the Client’s behalf and in its name, on all 6-series Accounts set up in the name of the Client, an instruction into the Securities Settlement System that is identical to the original Instruction that did not settle (the “**New Instruction**”) for settlement on the next Settlement Day as described below (“**Re-entry of the New Instruction**”). If the re-entered New Instruction does not settle on the Next Settlement Day, CEU shall re-enter the New Instruction over a period of 45 calendar days following the initial Settlement Date on each following Settlement Day into the Securities Settlement System (“**Default Option**”). If the Client does not opt out of the Default Option by Authenticated Message, the Default Option shall continue to apply for another 15 calendar days (“**Extended Default-Option**”).

CEU shall delete, at the End of the Day Processing of the last calendar day of the Default - respectively Extended Default Option (for the avoidance of doubt: either, as applicable, 45 or 60 calendar days), on behalf of the Client and in its name the New Instruction in the Securities Settlement System unless the Client has requested CEU by Authenticated Message, to apply the Default Option respectively the Extended Default Option again, i.e. for another period of 45 respectively, if applicable, another 15 calendar days.

Subsequently, the Client may via Authenticated Message instruct CEU to re-apply the Default - respectively the Extended Default Option .

For the avoidance of doubt: the (as applicable, Extended) Default Option includes any Instruction entered into the Securities Settlement System by the Client.

#### b) Cancellation of the (as applicable, Extended) Default Option by the Client

A Client may individually cancel the (as applicable, Extended) Default Option via Authenticated Message for a

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<sup>1</sup> For the applicable rules on (ir)revocability and finality of Internal Instructions, please refer to the CBL Client Handbook (inter alia Section 4.2)

dedicated Instruction after sending such Instruction to CEU until 18:00 on the respective Business Day (the **"Cancelled Instruction"**). The Cancelled Instruction shall be deleted by CEU on the Client's behalf and in its name and will not be re-entered into the Securities Settlement System by CEU on the next Settlement Day. For the avoidance of doubt: in this case, the (as applicable, Extended) Default Option no longer applies to the Cancelled Instruction and there will be no Re-entry of a New Instruction. The cancellation of the (as applicable, Extended) Default Option refers only to the Cancelled Instruction; the (as applicable, Extended) Default Option continues to apply to any other Instruction.

### 3.3 Authorisation of CEU by the Client to re-enter the **"Cancellation Instruction"** of the Client

If a Client has entered an instruction into the Securities Settlement System to cancel an Instruction<sup>1</sup> (the **"Cancellation Instruction"**), but a corresponding counter instruction of the counterparty to cancel the Instruction in the Securities Settlement System has not been received by CEU by the End of the Day Processing, CEU offers to its Client to re-enter on the next Settlement Day the Cancellation Instruction on the Client's behalf and in its name into the Securities Settlement Agreement.

The Client grants to CEU the authorisation to enter, on all 6-series Accounts setup in the name of the Client, on its behalf and in its name a cancellation instruction into the Securities Settlement System which is identical to the Cancellation Instruction that did not settle (the **"New Cancellation Instruction"**) for settlement on the next Settlement Day as described below (**"Re-entry of the New Cancellation Instruction"**).

The (as applicable, Extended) Default Option pursuant to section 3.2 applies accordingly to the New Cancellation Instruction.

### 3.4. Obligation of the client

The Client is bound by any and all obligations, that have been created, upon its instruction and in accordance with the power of attorney pursuant to sections 3.2. and 3.3 and undertakes to ratify anything that has been initiated by CEU pursuant to the authority granted to it under sections 3.2 and 3.3.

In case of a Cancelled Instruction, the Client is solely responsible to re-enter, as the case may be, any such instruction again into the Securities Settlement System by himself.

## 4 Liability of the client

The Client shall be fully liable to CEU for any direct or indirect losses, claims, liabilities, damages, fee and expenses resulting from its negligence or wilful misconduct in performing its obligations set out in the Special Conditions.

The Client shall indemnify CEU in respect of any of the aforementioned losses, claims, damages, fees and expenses suffered or incurred by CEU arising from a breach by the Client of any of its obligations under the Special Conditions, including, but not limited to losses, claims, damages, fees and expenses suffered or incurred by CEU due to an act or omission in relation to the power of attorney pursuant to sections 3.2 and 3.3.

## 5 Communications

Any notice or communication between the Client and CEU required or permitted under the Special Conditions shall be made via Authenticated Message. Any such notice or communication shall be deemed to be duly given or made at the time the Authenticated Message is received.

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<sup>1</sup> For the applicable rules on (ir)revocability and finality of Internal Instructions, please refer to the CBL Client Handbook (inter alia Section 4.2)

## **6 Severability**

If any term or other provision of these Special Conditions is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of these Special Conditions shall nevertheless remain in full force and effect so long as the economic or legal substance of the relationship contemplated hereby is not affected in any manner adverse to the Client and CEU.

## **7 Governing law and competent jurisdiction**

These Special Conditions shall be governed by and construed in accordance with the laws of the Federal Republic of Germany. Any litigation which may arise in relation to these Special Conditions shall be submitted to the jurisdiction of the competent courts of Frankfurt am Main, Germany. CEU reserves however the right to initiate legal steps against the Client also at its general venue.