

Terms of Reference User committee

Clearstream Banking S.A. (CBL)

25 June 2020

Clearstream Banking S.A.

USER COMMITTEE

Terms of Reference

1. Scope of Application and Definitions

- (1) These Terms of Reference (the "**ToR**") shall apply to the User Committee (the "**Committee**").
- (2) The Committee shall be established for the purpose of consulting with and making recommendations to the executive board of the Company (the "**Executive Board**") with respect to the Relevant Matters (as defined in § 2 below), to the extent this would not constitute a breach of law, a breach of an order of a court of competent jurisdiction or applicable governmental, quasi-governmental, or regulatory body.
- (3) Notwithstanding anything to the contrary in these ToR, the Executive Board shall not have any obligation to accept any proposal made by, or take any action proposed by, the Committee, and any deliberation and/or decision of the Executive Board with respect to any such proposal shall be made at the sole discretion of the Executive Board, with no obligation whatsoever to the Committee in respect of such deliberation or decision or the reasoning thereof.
- (4) For the purposes of these ToR, "**Business Days**" shall be those days (other than Saturday or Sunday) on which commercial banks in Luxembourg are open for general business.

2. Relevant Matters

The "**Relevant Matters**" with respect to the Committee shall be the following:

- (a) The Committee shall advise the Executive Board on key arrangements that impact on its member, including the criteria for accepting issuers or participants in their respective securities settlement systems and on service level,
- (b) The Committee may submit non-binding opinions to the Executive Board, containing detailed reasons regarding the pricing structures of the Company.

The advice of the Committee shall be independent from any direct influence of the Executive Board.

3. Information Rights

- (1) The Executive Board shall, subject to applicable law and subject to potential conflicts of interest between the Committee Members (as defined below) and the Company, provide the Committee with all information and documents necessary to perform its functions pursuant to Article 2, including, but not limited to
 - (a) Results of audits / audit findings relating to the criteria for accepting issuers or users to the securities settlement system,
 - (b) Results of audits / audit findings relating to the Committee's mandate,
 - (c) Results of audits / audit findings which may impact the level of provision of services by the Company, including results of audits on business continuity.
- (2) The Company shall
 - (a) promptly inform the Committee and the competent authority of any decisions in which the Executive Board decides not to follow the advice of the Committee. The Committee may inform the competent authority of any areas in which it considers that the advice of the Committee has not been followed,
 - (b) regularly inform the Committee of the performance of the Company's securities settlement system,
 - (c) in addition to the information pursuant to (a) above, annually inform the competent authority of any decisions of the Executive Board following the advice of the Committee, as well as any decisions where the Executive Board has decided not to follow the advice of the user committee.
- (3) Committee Members shall not be provided with information that may place them or the Selected Members at a competitive advantage.

4. Reporting to the Company

The Committee shall regularly report to the Executive Board on the Relevant Matters; Minutes of the Meetings (as defined below) shall be shared with the Executive Board.

5. Committee Members

- (1) The Company will invite issuers (which may include issuer agents) and participants in the securities settlement system to participate in the Committee based on the admission criteria mentioned in Article 5.1 below (such invitees each a "**Selected Member**").
- (2) The Committee consists of representatives of Selected Members (each a "**Committee Member**"), where each Committee Member represents one Selected Member.
- (3) Each Committee Member shall be appointed to serve for a period commencing on the date of such appointment, and ending on the last day of the calendar year (the "**Term**") following the year in which such appointment was made, provided that such appointment shall in each case

be extended by such period (not exceeding one month) as the Company requires to invite the Selected Members with respect to the following Term and take such steps as it considers necessary in relation to the appointment of the successor Committee Members. Nothing shall prevent any person from serving consecutive Terms.

- (4) Following the appointment of the Committee Members, the final composition of the Committee shall be communicated to the competent authority, including a classification on whether the respective Committee Member is a representative of an issuer, a participant or both.

5.1. Admission Criteria

- (1) The criteria that are relevant for the admissibility of a Selected Member are the following:
 - (a) Must be an account holder,
 - (b) Must have a contractual relationship with the Company,
 - (c) Should be issuer or client (participant) and
 - (d) Should represent a majority of value within the Company's business areas or should represent a majority of value as issuer of Eurobonds.
- (2) The Company strives to achieve a balanced composition of representatives of both issuers and participants.

5.2. Election Mechanism

- (1) In due time prior to the expiry of each Term, the Company shall carefully compile a list of Selected Members. The choice of these Selected Members shall be sufficiently justified, laid down in writing and have base on the criteria defined under Article 5.1.
- (2) Subsequently, the Company shall invite each Selected Member to nominate one representative with respect to the following Term. Each Selected Member shall notify the Company of the name of its proposed Committee Member and provide a curriculum vitae required to verify compliance with the following criteria which a proposed person should fulfill:
 - (a) occupy a senior management position within the Selected Members,
 - (b) have appropriate expertise and experience in relation to the Relevant Matters;
 - (c) be able to commit time and energy to the role of the Committee Member, and
 - (d) be proficient in spoken and written English.
- (3) The Executive Board of the Company will examine whether the proposed Committee Members fulfill the requirements under the foregoing paragraph (2) and either appoints the candidate or rejects the candidate and asks the respective Selected Member to propose another Committee Member in accordance with this Article 5.2. The Executive Board shall reject a candidate only if he/she does not satisfy the criteria set forth above or other material reasons exist which, in the discretion of the Executive Board, would hinder an appointment as Committee Member.

- (4) The Company shall maintain a list of all Committee Members including the relevant contact details (address, phone number, fax number, email address).
- (5) The Chairperson (as defined below) and the Company shall be informed of any withdrawal of a Committee Member without undue delay. Sub-sections (2) and (3) shall apply *mutatis mutandis* to the replacement of such Committee Member.
- (6) The Board of Directors may review the composition of the Committee based on the criteria defined in Article 5.1, and may decide, at any time, to appoint additional Committee Members. Those additional Committee Members shall be appointed for the current Term applicable to the other Committee Members. Except for the term of office, the provisions of Article 5.1 and Article 5.2 shall apply *mutatis mutandis* to the election and appointment of those Committee Members.

6. Chairperson and Committee Secretary

- (1) At the first Meeting of the Committee, the Committee shall appoint a Committee Member by majority vote of the Committee Members to serve as chairperson of the Committee (the "**Chairperson**") and a second one as his/her deputy. If the Chairperson ceases to be a Committee Member or resigns as Chairperson, the Committee shall appoint a new chairperson. In the meantime or when the Chairperson is not present at a Meeting (as defined below) in person the deputy shall perform his/her functions.
- (2) The Chairperson chairs the Meetings (as defined below). He/she liaises with the Executive Board and acts as spokesperson of the Committee. The Chairperson is independent from any direct influence by the Executive Board.
- (3) The Company appoints a representative of the Company to serve as secretary of the Committee (the "**Committee Secretary**") who shall take the minutes and perform administrative duties.

7. Guests

The Company shall appoint members of the Executive Board as representatives of the Company to attend the Meetings (as defined below) as permanent or non-permanent guests ("**Guests**"). Guests are not entitled to vote. To provide for the necessary independence of the Committee from any direct influence by the management of the Company, the Chairperson is moreover entitled to exclude representatives of the Company from being present during discussions and/or the voting process on specific topics.

8. Meetings

- (1) The Committee shall meet at least two times per year. Meetings shall be held at the premises of the Company or any other location as determined by the Committee Secretary.
- (2) Any Committee Members or Guests who do not attend in person may participate by telephone and/or video conference.
- (3) The Committee Secretary shall convene a meeting of the Committee (a "**Meeting**") at his/her own initiative or at the request of the Chairperson, his/her deputy, or any two Committee Members (provided such request is accompanied by a draft Agenda (as defined below) for such

Meeting). The ordinary Meetings shall be scheduled at the end of each calendar year for the following calendar year.

- (4) The Committee Secretary and the Chairperson shall align on an agenda specifying in reasonable detail the matters to be discussed at each Meeting (the "**Agenda**").
- (5) To provide the Committee with the necessary tools to perform its role, the Chairperson is entitled to ask the Executive Board of the Company to provide the necessary information and/or to nominate experts to be invited as guests to the Meeting.
- (6) A notice of a Meeting shall:
 - (a) Be delivered to each Committee Member and Guest in writing, by email and/or facsimile no later than fifteen days prior to the date of such Meeting;
 - (b) Specify the date, time and location of the Meeting;
 - (c) Set out the arrangements to attend by telephone and/or video conference; and
 - (d) Set out the Agenda. Materials providing reasonable background in relation to matters to be discussed shall be delivered no later than ten days prior to a Meeting.
- (7) Minutes shall be taken of all Meetings (the "**Minutes**"). The Chairperson ensures that the minutes of the Committee are a complete and accurate record of the committee discussions. These Minutes shall be shared with the Executive Board and maintained by the Company.
- (8) At the beginning of each Meeting, the Chairperson determines whether there is a sufficient and balanced representation of participants and issuers in order to proceed with the meeting.

9. Voting

- (1) All decisions and recommendations made by the Committee shall be made at a Meeting by majority vote of the Committee Members present (in person or by telephone/video conference).
- (2) For the purpose of all voting procedures hereunder each Committee Member shall have one single vote. In the event that any vote is tied, the Chairperson shall have the casting vote.

10. Confidentiality

- (1) Except as expressly contemplated otherwise in these ToR or as required by applicable law, regulation, court order or as required or requested by the regulator, each Selected Member and Committee Member agrees during the relevant Term and for two years thereafter
 - (a) not to disclose any Confidential Information (as defined below) to third persons,
 - (b) not to use any Confidential Information for its own benefit, the benefit of any of its Affiliates (as defined below) or a third person and
 - (c) use all reasonable efforts to keep the Confidential Information in confidence and to safeguard the Confidential Information.

“**Affiliate**” shall include any entity, partnership or person that, directly or indirectly, controls, is controlled by or is under common control with such Selected Member, where the term “**control**” means the possession of (i) 50% or more of the voting rights in the general meeting of a entity, partnership or person or (ii) the power, directly or indirectly, whether by contract or ownership, to direct or cause the direction of the management and affairs of a entity, partnership or person, including investment decisions.

- (2) A Selected Member or a Committee Member shall be allowed to share Confidential Information with employees of such Selected Member and its Affiliates (together with the Committee Members, the “**Authorised Persons**”) solely for the purpose of and to the extent necessary to prepare for the Relevant Matters which are to be discussed in the Committee, on a need-to-know basis. Upon request of the Company (in particular, for legal or regulatory purposes), the identities of the persons referred to hereunder shall be disclosed to the Company. The Selected Member shall procure that such Authorised Persons are bound by confidentiality obligations to the Selected Member comparable to the confidentiality obligations hereunder and shall take all measures to restrain or prevent any breach of the confidentiality obligations pursuant to these ToR by the employees.
- (3) Confidential information shall, in particular, not be used
 - (a) to facilitate the implementation or development of services competing with those of the Company, or
 - (b) in connection with any breach of law.
- (4) Upon receipt of a written request, the Selected Member and Committee Member shall, subject to any mandatory provision of applicable law or regulation requiring them to retain the Confidential Information for audit or legal purposes, promptly, either (a) return all documents or materials (including computer media) or such parts thereof containing or reflecting any Confidential Information; or (b) permanently destroy, erase or delete all the Confidential Information (including all copies thereof except copies created pursuant to automatic archiving and back-up procedures that can't be deleted without unreasonable efforts).
- (5) In case of any breach of this confidentiality obligation by the Selected Member, the Committee Member or any person referred to under (2), such Selected Member shall be liable for any foreseeable damages the Company caused by that breach and shall promptly notify the Company thereof.
- (6) “**Confidential Information**” shall mean
 - (a) all information relating to or received by the Committee and the Committee Members, including, but not limited to, any presentations, audit reports, discussions, deliberations, proceedings or results of any vote, and
 - (b) any and all confidential information and secrets of entities of Deutsche Börse group or of any Committee Members, obtained during a Meeting and/or from the Committee and/or in connection therewith, except for information which

- i. is or becomes public information other than as a direct or indirect result of a breach (of which the Selected Member or the Committee Member is aware) of this confidentiality obligation; or
- ii. is identified in writing at the time of delivery as non-confidential by the Company or any of its advisers; or
- iii. is known by the Selected Member or the Committee Member before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by the Selected Member or the Committee Member after that date, from a source which is, as far as that Selected Member or the Committee Member is aware, unconnected with the Company and which, in either case, as far as that Selected Member or the Committee Member is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

11. Conflict of Interest; Competition Law

- (1) Each Committee Member shall inform the Chairperson of any potential or actual conflict of interest.
- (2) The Chairperson will not allow a Committee Member to cast his/her vote on a particular matter if he determines or has reasons to believe that the Committee Member has an actual or a potential conflict of interest in relation to that particular matter.
- (3) The Committee, the Selected Members and the Committee Members shall abstain from any information exchange or other conduct that would constitute a breach of competition law.

12. Fiduciary Duties; Limitation of Liability

- (1) No Committee Member shall, to the extent legally possible, owe any fiduciary duties to the Company, the shareholders of the Company, any directors, managers or officers of the Company or its shareholders, customers of the Company or any other person by reason of such service on the Committee or the appointment of a Committee Member.
- (2) In exercising its rights or performing its duties under these ToR, the Company shall only be liable *vis-à-vis* any Selected Member or any Committee Member in case of intention or gross negligence and unless the damage results from a negligent violation by the Company of essential obligations. In case of slight negligence, however, the liability of the Company is restricted to the extent of the typical and foreseeable damage.
- (3) Nothing in this Article, however, shall exclude or restrict any statutory liability for damages incurred as a result of injury to life, body or health.

13. Publication

These ToR will be published on the website of the Company.

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www.clearstream.com

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