

Trading Agreement B

# Non-Clearing Membership Agreement

Commodity Derivatives

Member: [insert company name of Non-Clearing Member]

General Clearing Member: [insert company name of GCM]

## NON-CLEARING MEMBERSHIP AGREEMENT

### Notice

Please ensure that this document when executed does not contain any square brackets, footnotes, explanatory notes etc except those which are intended to remain in the document (if any). Please initial each page in the bottom right hand corner, and ensure that signatures are by duly authorised persons, accompanied by evidence of authorisation and personal identification etc as further instructed by the Exchange.

This agreement is made on the date stated on the last page of this document between

**[insert company name of Member]**, with reg. no. [insert registration number] in the [insert home state] Company Register (the "**Member**"); and

**Nasdaq Oslo ASA**, a Norwegian limited company with reg. no 965 662 952 in the Norwegian Company Register (the "**Exchange**"); collectively referred to as the "**Parties**" and individually as a "**Party**".

## 1 GENERAL

- 1.1 The Exchange is authorised as an exchange under the Norwegian Securities Trading Act (LOV-2007-06-29-75), listing commodity derivatives contracts and other products, and organises trading in such products in accordance with the trading rules issued by the Exchange as in force from time to time (the "**Trading Rules**").
- 1.2 The Member has or intends to have regular business involving trading in Listed Products (as defined in the Trading Rules).
- 1.3 Upon entering into this agreement and subject to the terms of the Trading Rules, the Member obtains the right to enter into Exchange Transactions as a Non-Clearing Member pursuant to the terms and conditions of the Trading Rules. All provisions on Exchange Members in the Trading Rules apply to Non-Clearing Members unless to the extent specifically otherwise stated.
- 1.4 The Trading Rules set out the rights and obligations of the Member in relation to Exchange Trading, and the Member hereby accepts to be bound by the Trading Rules which are deemed incorporated by reference into this agreement.
- 1.5 Terms defined in the Trading Rules of the Exchange shall have the same meaning in this agreement. In the event of conflict between the Trading Rules and this agreement, the Trading Rules shall prevail.

## 2 REPRESENTATIONS AND WARRANTIES

- 2.1 By entering into this agreement the Member hereby represents and warrants to the Exchange that:
  - a. it has taken all necessary actions to authorise the signing of this agreement as supplemented by the Trading Rules; and
  - b. the signing of this agreement and its compliance with this agreement and the Trading Rules does not violate any law, rule, regulation or agreement, document or instrument binding on or applicable to the Member.
- 2.2 In addition to clause 2.1 the Member is deemed to accept and repeat the representations and warranties in the Trading Rules.
- 2.3 The Member acknowledges that it is under a duty to notify the Exchange immediately in case it becomes aware of any breach of a representation or a warranty, as further provided for in the Trading Rules.

### **3 CONFIDENTIALITY**

- 3.1 Subject to the provisions in this clause 3, the Exchange shall ensure that no unauthorised party gains access to or knowledge of any matters relating to the business or personal affairs of the Member which it becomes aware of through the Member's Exchange Transactions, and the Exchange shall not make use of such information for any other purposes than those related to Exchange Transactions and membership related activities of the Exchange.
- 3.2 Subject to the provisions in this clause 3, the Member undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the Exchange.
- 3.3 Notwithstanding the other provisions of this clause 3:
- a. the Member acknowledges that the Exchange shall be allowed to provide information to the Clearinghouse when necessary for Clearing. The Exchange may also provide information to any other person or entity advising or assisting the Exchange in its operations, provided these persons and entities are subject to a corresponding duty of confidentiality;
  - b. the Member acknowledges the Exchange' rights to use and distribute Trade information as set out in the General Terms;
  - c. the duty of confidentiality shall not extend to information which is or becomes public through no breach of a Party's confidentiality obligations hereunder;
  - d. either Party shall be allowed to disclose any information as may be required by law, court order or any governmental or Regulatory Body; and
  - e. neither Party is required to keep confidential the fact that it has entered into this agreement or any suspension or termination of this agreement.
- 3.4 This Section 3 shall not limit either Party's confidentiality or disclosure obligations under applicable law. Unless otherwise agreed this clause 3 shall survive the termination of this agreement by ten (10) years.

### **4 TERMINATION**

- 4.1 Each Party may terminate this agreement with three (3) months written notice to the other Party.
- 4.2 The Exchange's right to suspend and/or terminate this agreement in the case of a Non-Compliance Event, and the effects of any termination of this agreement, is set out in the General Terms of the Trading Rules. Termination of this agreement will not affect the Parties' rights and obligations with respect to Transactions submitted before the date of such termination.

### **5 CHOICE OF LAW AND DISPUTE RESOLUTION**

- 5.1 This agreement shall be governed by, construed and take effect in accordance with Norwegian law.
- 5.2 Any dispute between the Parties concerning the understanding of this agreement or the Trading Rules or any dispute arising from any acts or omissions governed by them shall be decided by arbitration in Oslo pursuant to the Norwegian Arbitration Act.
- 5.3 Each Party irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any proceedings in accordance with clause 5.2 and any claim that any such proceedings have been brought in an inconvenient forum, and further irrevocably agrees that a judgement in any proceedings brought in accordance with clause 5.2 shall be conclusive and binding upon such Party and may be enforced in any jurisdiction in accordance with the enforcement law of the applicable jurisdiction.

## 6 AMENDMENTS

- 6.1 Changes to this agreement require the written consent of both Parties.
- 6.2 Notwithstanding clause 6.1, any annexes or additional arrangements to this agreement may be changed to the extent allowed by each such document, and the Exchange may make additions and/or amendments to the Trading Rules with 14 days written or electronic notice to the Member. Changes may be implemented with shorter notice if required by law or by Regulatory Bodies.
- 6.3 Changes and/or amendments which affect economic rights in Open Positions vested before the change require the consent of all Members with such Open Positions, unless the changes or amendments are required by law, regulations, Regulatory Bodies or a court of law or (in the view of the Exchange) are strictly necessary for the continued operation of the market.

## 7 MISCELLANEOUS

- 7.1 **Effective date.** This agreement shall not become binding on the Parties until it is both accepted and signed by the Parties and acknowledged by the General Clearing Member of the Member.
- 7.2 **Entire Agreement.** This agreement supersedes any previous arrangement, understanding or agreement between the Parties related thereto. The Parties each acknowledge that, on entering into this agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty other than as expressly set out in this agreement or other written arrangements in force between the Parties (including the Clearing Rules). Nothing in this clause shall limit or exclude any liability for fraud.
- 7.3 **Rights of Third Parties.** No person or entity who is not a Party to this agreement shall confer any benefit on, or give any right to enforce any provisions of the agreement or the Clearing Rules, except that the Clearinghouse shall have the rights expressly granted to it under this agreement or the Trading Rules.
- 7.4 **No Waiver.** No failure or delay by a Party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy.
- 7.5 **Counterparts.** This agreement may be executed in any number of counterparts, each of which when executed shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement.

\* \* \*

IN WITNESS OF THEIR AGREEMENT each Party has caused its authorised representative to execute this agreement effective as of the date of signature by both Parties.

This agreement has been made in three (3) originals, and the Parties and the General Clearing Member each keep one (1).

**For and on behalf of [insert name of Member]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and title (printed letters)

Date:

**For and on behalf of Nasdaq Oslo ASA**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and title (printed letters)

Date:  
  
\_\_\_\_\_

**ACKNOWLEDGEMENT AND AUTHORISATION BY THE GENERAL CLEARING MEMBER**

The undersigned, being a General Clearing Member of the Clearinghouse (as defined by the Clearing Rules), hereby authorises, represents and warrants to the Exchange and the Clearinghouse that:

- (i) The Member is authorised as, and shall be deemed a GCM Client of us, pursuant to the Clearing Rules;
- (ii) All Exchange Transactions entered into by the Member shall be registered as Clearing Transactions to the Clearing Portfolio nominated below and/or such other Clearing Portfolio as we may from time to time notify you in writing;
- (iii) We will notify the Exchange immediately and in writing if the Member for any reason ceases to be our GCM Client, in which case we will nevertheless remain responsible for any Exchange Transactions registered by the Member prior to your written confirmation of receipt of such notice, provided that such notice is expedited promptly and without undue delay.

Exchange Transactions executed by the Member shall be allocated to the following Clearing Portfolio (as may be amended by written agreement between us and the Clearinghouse):

\_\_\_\_\_ [insert reference]

**For and on behalf of [insert name of General Clearing Member]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and title (printed letters)

Date:

**Please attach when returning to the Exchange (check off):**

- Documentation evidencing the due authorisation of the signing person(s).
- Certified copy of list of signatories (with signature samples) and/or official ID of signing person(s) (passport, national ID etc).