

The Futures and Options Association  
2nd Floor  
36-38 Botolph Lane  
London  
EC3R 8DE  
ENGLAND

Dear Sirs

## **CCP Opinion in relation to NASDAQ OMX Clearing AB (Clearing Rules of the NASDAQ OMX Derivatives Market)**

You have asked us to give an opinion in respect of the laws of the Kingdom of Sweden ("**this jurisdiction**") as to the effect of certain netting and set-off provisions and collateral arrangements in relation to NASDAQ OMX Stockholm AB (the "**CCP**") as between the CCP and its clearing members (each a "**Member**").

We understand that your requirement is for the enforceability and validity of such netting and set-off provisions and collateral arrangements to be substantiated by a written and reasoned opinion letter.

References herein to "**this opinion**" are to the opinion given in Section 3.

### **1. Terms of Reference**

- 1.1 Except where otherwise defined herein, terms defined in the Rules of the CCP have the same meaning in this opinion letter.
- 1.2 This opinion relates to the service provided by the CCP in respect of clearing of each of the types of transaction (each a "**Transaction**") set out in Chapter 3 of the Rules and defined as a "Contract" in the Rules and constituting the contractual relationship between the CCP and a Member.
- 1.3 We express no opinion as to any provisions of the Rules of the CCP other than those on which we expressly opine.
- 1.4 The opinion given in paragraph 3.7 is given only in relation to margin comprising securities credited to an account.

### **1.6 Definitions**

In this opinion, unless otherwise indicated herein or in the Rules:

- (a) "**Clearing Agreement**" means the clearing membership agreement entered into between each Member and the CCP;

- (b) "**Security Documentation**" means the security documents entered into between each Member and the CCP in the form attached hereto at Annex 2 (including the CCP's General Terms for Collateral Custody Accounts of 2 December 2013 (the "**General Terms**"));
- (c) "**CCP Documentation**" means the Clearing Agreement, Security Documentation and other documents, agreements, acts or other things pursuant to which the Rules are made contractually binding between the Parties;
- (d) "**Client Account**" has the meaning given to that expression in the Rules;
- (e) "**Netting Provisions**" means Clauses 1.10.2–1.10.7 of the Rules;
- (f) "**House Account**" means an account with the CCP opened in the name of a Member that is not a Client Account;
- (g) "**Party**" means the CCP or the relevant Member;
- (h) "**Set-off Provision**" means Clause 1.10.8 of the Rules;
- (i) "**Event of Default**" means (a) a Material Default as defined in the Clause 1.10.2 (which includes events prior to the CCP's entering Bankruptcy Proceedings) of Rules, that is if the CCP breaches a Settlement or Delivery obligation (other than to a defaulting Clearing Member or Customer) and the breach is not remedied within twenty (20) Bank Days after the relevant Settlement or Delivery is due and (b) the CCP enters Bankruptcy Proceedings;
- (j) references to the word "**enforceable**" and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge; we do not opine on the availability of any judicial remedy;
- (k) "**Rules**" means the Clearing Rules of the NASDAQ OMX Derivatives Market dated 31 December 2013;
- (l) references to a "**section**" or to a "**paragraph**" are (except where the context otherwise requires) to a section or paragraph of this opinion (as the case may be).

## 2. Assumptions

With your permission, we assume the following:

- 2.1 That, except with regards to the provisions discussed and opined on in this opinion letter, the CCP Documentation and Transactions are legally binding and enforceable against both Parties under their governing laws.
- 2.2 That each Party has the capacity, power and authority under all applicable law(s) to enter into the CCP Documentation and Transactions; to perform its obligations under the CCP Documentation and Transactions; and that each Party has taken all necessary steps to execute and deliver and perform the CCP Documentation and Transactions.

- 2.3 That each Party has obtained, complied with the terms of and maintained all authorisations, approvals, licences and consents required to enable it lawfully to enter into and perform its obligations under the CCP Documentation and Transactions and to ensure the legality, validity, enforceability or admissibility in evidence of the CCP Documentation in this jurisdiction.
- 2.4 That the CCP Documentation has been entered into by the Parties prior to the commencement of any insolvency procedure under the laws of any jurisdiction in respect of either Party.
- 2.5 That each Party acts in accordance with the terms of the CCP Documentation and Transactions; and that (save in relation to any non-performance leading to the taking of action by a relevant Member under the Netting Provisions), each Party performs its obligations under the CCP Documentation and each Transaction in accordance with their respective terms.
- 2.6 That, apart from any circulars, notifications and equivalent measures published by the CCP in accordance with the CCP Documentation, there are not any other agreements, instruments or arrangements between the Parties which modify or supersede the terms of the CCP Documentation.
- 2.7 For the purposes of the opinions set out in paragraphs 3.3 to 3.5, that the Member is at all relevant times able and not likely to become unable to meet its obligations in respect of one or more Contracts (whether due to winding-up, administration, receivership, bankruptcy, dissolution or analogous insolvency proceedings or any of the other events specified to be an event of default under the default rules of the CCP).

### 3. Opinion

On the basis of the foregoing terms of reference and assumptions and subject to the qualifications set out in Section 4 below, we are of the following opinion.

#### 3.1 Insolvency Proceedings

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which the CCP could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion, are:

- (A) bankruptcy (*konkurs*) (which employs a liquidity test) ("**Bankruptcy Proceedings**") and
- (B) compulsory liquidation (*likvidation*) (which employs a balance-sheet test) ("**Compulsory Liquidation**").

These procedures are together called "**Insolvency Proceedings**".

The legislation applicable to Insolvency Proceedings is:

- (1) for Bankruptcy Proceedings, the Bankruptcy Act 1987 (as amended) (*konkurslagen (1987:672)*) and

- (2) for Compulsory Liquidation, the Companies Act 2005 (as amended) (*aktiebolagslagen (2005:551)*).

Compulsory Liquidation is only available where all creditors may be paid in full. If this is not the case, Compulsory Liquidation will terminate and Bankruptcy Proceedings will be the mandatory alternative.

### 3.2 Recognition of choice of law

The choice of law provisions of Clause 1.24 of the Rules would be recognised under the laws of this jurisdiction, even if the Member is not incorporated, domiciled or established in this jurisdiction.

We are of this opinion because it is a long-standing principle in Swedish private international law to respect the choice of law of the parties to a contract. This principle has been reaffirmed by Article 3(1) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

### 3.3 Netting

The Netting Provisions will be immediately (and without fulfilment of any further conditions) enforceable in accordance with their terms so that, upon the occurrence of an Event of Default in relation to the CCP:

- 3.3.1 the Member would be entitled immediately to exercise its rights under the Netting Provisions; and
- 3.3.2 the Member would be entitled to receive or be obliged to pay only the net sum of the positive and negative mark-to-market values of the included individual Transactions, together with other losses or gains referable to the Transactions (as further detailed in Clause 1.10.5 of the Rules).

We are of this opinion because all instruments cleared by the CCP would qualify as “financial instruments” (*finansiella instrument*) and any Transaction or Contract would amount to “trade in financial instruments” (*handel med finansiella instrument*) between two parties, viz. the CCP and the Member (“Qualified Contracts”). The need for this classification arises from the fact that close-out netting contracted for in connection with Qualified Contracts is subject to a separate statutory regime that provides legal certainty under Chapter 5, Section 1 (the “**Netting Law**”) of the Financial Instruments Trading Act 1991 (as amended) (*lagen (1991:980) om handel med finansiella instrument*; the “FITA”).

Under the FITA, financial instruments include (following the definition of “financial instruments” in Section C of Annex I to Directive 2004/39/EC of 21 April 2004 on markets in financial instruments and Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards recordkeeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive) the following types of instruments:

- (1) transferable securities;
- (2) money-market instruments;
- (3) units in collective investment undertakings and alternative investment funds;
- (4) options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;
- (5) options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);
- (6) options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market and/or a multilateral trading facility;
- (7) options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in (6) and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls;
- (8) derivative instruments for the transfer of credit risk;
- (9) financial contracts for differences;
- (10) options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this catalogue, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or a multilateral trading facility, are cleared and settled through recognised clearing houses or are subject to regular margin calls; and
- (11) any instrument qualifying under Chapter VI of Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards recordkeeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive.

All Transactions qualify as financial instruments.

Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of such rights by the Member.

The Netting Law, first sentence, reads (in our translation into English):

“An agreement between two parties in conjunction with trade in financial instruments or in rights and obligations similar to financial instruments or currencies, pursuant to which a final settlement shall take place of all outstanding obligations in the event of one of the parties’ entering bankruptcy shall be valid against the bankruptcy estate and the bankruptcy creditors.”

*(“Ett avtal mellan två parter vid handel med finansiella instrument, med andra liknande rättigheter och åtaganden eller med valuta, om att förpliktelser dem emellan ska slutavräknas om en av parterna försätts i konkurs, gäller mot konkursboet och mot borgenärerna i konkursen.”)*

The Government committee responsible for the original draft of what later became the Netting Law came out in favour of the view that the uncodified common law would uphold procedures such as close-out netting. The committee was careful to point out that its proposal should not be construed to imply that, in the absence of legislation, procedures such as close-out netting would not be upheld. The preparatory works to the Netting Law accepted the analysis and arguments of the committee.

The Netting Law provides *substantive* protection for close-out netting arrangements, irrespective of the form in which the arrangements have been agreed. To some degree, *formal* protection is provided also under Section 13 of the Act on Settlement Systems 1999 (as amended) (*lagen (1999:1309) om system för avveckling av förpliktelser på finansmarknaden*) that protects “transfer orders” (*överföringsuppdrag*) in “notified settlement systems” (*anmälda avvecklingssystem*) in the system “operator’s” (*administratörens*) Bankruptcy Proceedings. The CCP is an operator of a notified settlement system (constituted by the Rules). To the extent that the Netting Provisions involve transfers orders, those transfer orders in themselves would be protected. However, the substance achieved by any such transfer orders would not be protected by the Act on Settlement Systems but would have to rely on the protection of the Netting Law. By “**formal protection**” we refer to the protection of the transfer order or other operation of the system constituted by the Rules, without also providing protection of the result of the transfer order. By “**substantive protection**” we refer to the protection of the result of the transfer order; substantive protection includes protection against claw-back actions (as further detailed in Section 3.4).

### 3.4 Set Off

The Set-off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that upon the occurrence of an Event of Default in relation to the CCP;

- 3.4.1 the Member would be immediately entitled to exercise its rights under the Set-Off Provision; and

3.4.2 any and all amounts owed by the Member to the CCP would be set off against any amounts owed by the CCP to the Member, so that in particular:

- the Termination Amount (once calculated); and
- the value of any margin (whether initial margin or variation margin) transferred by one Party to the other Party as collateral on a title transfer basis and owed by the second Party to the other (unless already set off in the calculations of the Termination Amount)

would be included in the set-off so that the Member would be entitled to receive or be obliged to pay only the net sum resulting from the set-off of such amounts. However, the value of any Default Fund contributions owing by the CCP to the Member would be excluded from the set off by virtue of Section 1.10.8 of the Rules.

- (a) We are of this opinion because set off is provided for in Clause 1.10.8 of the Rules. There is no rule of the laws of this jurisdiction which would, in our view, apply to prohibit the Parties from entering into a contract upon the terms of the Set-off Provision or which would render such terms ineffective; and Chapter 5 Section 15 & *seqq.* of the Bankruptcy Act 1987 allow (but do not mandate) set off over and above what may have been agreed between the bankrupt party and its counterparty. As set off in effect provides the counterparty with a preferential right, set off under the Bankruptcy Act 1987 may be characterised as a “super-priority” right which takes precedence over the formal ranking provisions of the Creditors’ Ranking Act 1970 (as amended) (*förmånsrättslagen (1970:979)*) (which does not address set off as it has been conclusively dealt with in the Bankruptcy Act 1987). In particular, the Bankruptcy Act 1987 allows set off also between debts that have not yet matured.

Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of such rights by the Member.

### **3.5 Netting and Set-Off: House Accounts and Client Accounts**

Where a Member has exercised its rights under the Netting Provision, a Termination Amount payable in respect of any Client Account of a Member would not be aggregated with or netted against a Termination Amount payable on any House Account of the Member.

This is because such netting is prohibited by Clause 1.10.5 of the Rules; and that Clause is not overridden by any mandatory Swedish law allowing for such netting.

### **3.6 Cash Collateral**

Payments made by a Member to the CCP as cash margin constitute an absolute transfer of cash, so that, in the event of Insolvency Proceedings relating to the CCP,

such cash would be treated as the property of the CCP available to its creditors generally in the event of Insolvency Proceedings in respect of the CCP.

However, the amount of cash so provided would constitute a debt owed by the CCP to the Member as principal.

This is because this follows from the way cash collateral is posted to the CCP; and it is reinforced by the provisions of Clause 10.1.6 that allows for set off between a claim of the CCP as a result of close-out netting and a Member's claim for the return of cash collateral.

To the extent that the posting of cash collateral involves transfer orders, formal protection would be provided under Section 13 of the Act on Settlement Systems as discussed (*mutatis mutandum*) under paragraph 3.3.

Clause 9.1 of the CCP's General Terms refer to the CCP's "appropriation" of Cash Amounts. Appropriation is not a procedure properly consistent with an absolute transfer of cash to the CCP but would be more appropriate to a pledge (*pant*) of cash. A characterisation of the Cash Security as a pledge could to some extent be supported by Clauses 4.4 (in part), 8.2 and 8.4 of the General Terms and the opinion of certain academics to the effect that virtually all security arrangements should be assimilated to pledges. If the Cash Security is characterised as a pledge it is arguable, on this theory, that set off would not be permitted between an amount owed by the Member to the CCP against the CCP's obligation to return the Cash Security. We do not share this theory. We base our rejection of the theory on two arguments:

- (a) Clauses 4.3 and (in particular) 4.4 of the General Terms are not consistent with a pledge, as they clearly and unambiguously seek to establish that the return of any Cash Amount will only be an unsecured personal claim by a Member against the CCP. Whereas Clauses 4.4 (in part), 8.2, 8.4 and 9.1 of the General Terms could be construed to apply to an absolute transfer in the light of Clauses 4.3 and 4.4 (in part)<sup>1</sup>, the opposite would not be possible without violating the reasonable import of the language used. Also, an absolute transfer is consistent with the manner in which we understand the CCP deals with the Cash Amount without challenge from Members.
- (b) Even if the Cash Security were to be construed as a pledge, the "return" of the pledged assets would take the form of a payment of money. As such, it is in our view strongly arguable that this monetary redelivery obligation should be treated as a payment obligation capable of being set off against another payment obligation between the two parties.

### 3.7 Non-cash Collateral

Any securities provided to the CCP as margin would not be treated as the property of the CCP available to its creditors generally in the event of Insolvency Proceedings in respect of the CCP. Such securities would be returnable to the Member in the event of

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<sup>1</sup> Clause 4.4 of the General Terms are internally not entirely consistent in this respect.



Insolvency Proceedings relating to the CCP, subject to the Member's satisfying its obligations to the CCP.

This is because non-cash collateral posted to the CCP by Members take the form of a pledge (pant) and it is trite law that pledged assets do not belong to the pledgee and therefore do not form part of the pledgee's bankruptcy estate but must be returned to the pledgor, subject to the Member's satisfying its obligations to the CCP.

To the extent that the posting of non-cash collateral involves transfer orders, formal protection would be provided under Section 13 of the Act on Settlement Systems as discussed (*mutatis mutandum*) under paragraph 3.3.

#### 4. Qualifications

The opinions in this opinion letter are subject to the following qualifications:

- 4.1 Pursuant to the Swedish Contracts Act 1915 (*lagen (1915:218) om avtal och andra rättshandlingar på förmögenhetsrättens område*) and general equitable principles of the law of contract and obligations, a contract term may be modified or set aside if it is adjudged to be unreasonable. Where any party to an agreement is vested with a discretion or may determine a matter in its opinion or at its discretion, the laws of this jurisdiction may require that such discretion be exercised reasonably or that such opinion be based on reasonable grounds and a provision that a certain determination is conclusive and binding will not serve to prevent or preclude judicial enquiry into the merits of any claim by an aggrieved party. The effectiveness of any provision which allows an invalid or unenforceable provision to be severed to save the remainder of the relevant document and its provisions will be determined by the courts of this jurisdiction or arbitral tribunals sitting in, or applying the procedural laws of this jurisdiction in their discretion. The courts of this jurisdiction are generally loath to utilise such equitable power in matters between two professional parties.
- 4.2 The enforcement of any agreement, guarantee or instrument may be limited by the provisions of the Moratorium Act 1940 (*lag (1940:300) ang. förordnande om anstånd med betalning av gäld m.m. (moratorielag)*) (which provides for a moratorium on the performance of obligations by persons or entities domiciled or resident in Sweden when the Kingdom is at war; where extraordinary circumstances obtain in the Kingdom as a result of war; or in retaliation for corresponding or commensurate measures in another state in respect of claims by Swedish creditors) and the Emergency Powers (Defence of the Realm) Act 1978 (*förfogandelag (1978:262)*) (which provides that property and assets situate in Sweden may be requisitioned or otherwise compulsorily disposed of by the authorities of the Kingdom when the Kingdom is at war; when there is a risk of the Kingdom becoming at war; where extraordinary circumstances obtain in the Kingdom as a result of war; or where there is an imperative need for the defence of the Kingdom).
- 4.3 Chapter 4, Sections 5–12 of the Bankruptcy Act 1987 set out the grounds on which legal acts of whatever nature may be "clawed-back" to the estate of a bankrupt debtor; there are no claw-back actions available outwith Bankruptcy Proceedings (and therefore not in Compulsory Liquidation). "Claw-back" for these purposes means that, at the suit of the administrator-in-bankruptcy (*konkursförvaltaren*) or, under certain

circumstances, one or more creditors, the relevant legal act is in effect rescinded such that each party reverse its performance. The claw-back actions would *ex hypothesi* be relevant in respect of a Transaction itself, netting and the posting of Cash Collateral and Non-cash Collateral; set off is dealt with under a separate legal head in the Bankruptcy Act 1987 and is addressed below at paragraph 4.4. The claw-back actions are:

- (a) the general grounds of unconscionable legal acts (Section 5);
- (b) gifts (Section 6);
- (c) certain matters pertaining to marital property (Section 7);
- (d) payments of salaries, wages, professional fees or pensions (Section 8);
- (e) transfers to pension funds for the debtor's staff (Section 9);
- (f) payments using non-customary means of payment (Section 10);
- (g) certain payments relating to cheques and bills of exchange (Section 11); and
- (h) collateral that is not agreed or posted at the time the debt secured by the collateral was contracted (including margin) (Section 12).

Claw-back actions under Sections 6 would not be relevant to Transactions as they are bilateral transactions on market terms; claw-back actions under Sections 7 or 8 would not be relevant to the CCP as they only apply to natural persons and the CCP is performe a legal entity; claw-back actions under Section 9 would not apply as a Transaction would not be a transfer of the requisite kind, even if the Member were a pension fund for the CCP's staff; claw-back actions under Section 10 would not apply as no non-customary means of payment are permitted under the Rules; and claw-back actions under Section 11 would not apply as no payments under the Rules would be made by cheques or bills of exchange (which are very rarely used in the Swedish payment system).

The requirements for a successful claw-back action under Section 5 are highly complex involving various sets of tests for the mental state of the parties and the objective circumstances. The mental state involves qualified bad faith as to the unconscionable nature of the relevant legal act and its causal relationship to the CCP's permanent incapacity to pay its debts as they fall due. Claw-back under Section 5 is precluded in respect of the Netting Provisions by the Netting Law. It is submitted that it is not necessary to analyse all the requirements to conclude that these requirement would only be fulfilled in respect of a Transaction or the posting of Cash Collateral or Non-cash Collateral in wholly exceptional and egregious circumstances. The analysis would also need to take into account that the posting of collateral is a legal requirement in respect of Transactions and that the Transactions are made on standard terms under the generally applicability of the Rules to Transactions and all Members irrespective of the particular circumstances of an individual Transaction or Member, all of which would strongly militate against the conclusion that a particular Transaction was unconscionable and that the Member acted in such qualified bad faith as is required by Section 5.

Claw-back action under Section 12 is precluded in respect of collateral posted in the ordinary course of business. As the posting of Cash Collateral and Non-cash Collateral is mandated by law in respect of Transactions and is done pursuant to standard terms under the generally applicability of the Rules to Transactions and all Members irrespective of the particular circumstances of an individual Transaction or Member it is submitted that such posting would always and necessarily be in the ordinary course of business involving Transactions.

4.4 Chapter 5 of the Bankruptcy Act 1987 deals inter alia with set off in Bankruptcy Proceedings. Under the provisions of this Chapter, protection of set-off rights may be withheld on certain limited grounds:

- (a) The nature of a claim proposed for set off is such that it would not have been permitted to be set off outwith the Bankruptcy Proceedings; very limited categories of claim – especially with respect to legal entities engaged in commerce – have this nature under Swedish law.
- (b) A Member may not set off a claim acquired by it within a three-month period prior to the “swearing of the oath” (*edgångssammanträdet*) (which is a formal procedure by which a representative of the CCP would certify the assets of the CCP under oath) or it was acquired under circumstances that were such that the Member did in fact understand, or ought to have understood, that the CCP was permanently unable to pay its debts as they fall due.

A Member that contracted a debt to the CCP in circumstances that would be tantamount to a payment with non-customary means of payment and that was not made in the ordinary course of business (as specified in Chapter 4, Section 10 of the Bankruptcy Act 1987) would not be permitted to use that debt in set off.

4.5 Provisions in an agreement specifying that its provisions may only be amended or waived in writing may not be enforceable to the extent that an oral agreement or implied agreement in trade practice or course of conduct has been created modifying provisions of the agreement; and to the extent that any matter is expressly to be determined by future agreement or negotiation, such provision may be unenforceable or void for lack of certainty.

4.6 The Rules and this opinion are expressed in the English language whilst addressing and explaining institutions and concepts of the laws of Sweden. Such institutions and concepts may be reflected in or described by the English language only imperfectly. We express no opinion on how the courts of this jurisdiction would construe contractual language expressed in English where the contract would be subject to the laws of Sweden. However, there is judicial support for the proposition that, in construing what the parties intended to put in writing for the purposes of the laws of this jurisdiction, such courts should pay attention to the meaning and import of the expressions used under the laws of any pertinent jurisdiction in which the English language is normally or habitually employed.

4.7 It is not certain whether Transactions that only permit physical settlement will be treated as Financial Instruments where they are traded on the last trading day for that type of Transaction. Such Transaction may rather be characterised as spot transactions

for the purchase of the relevant commodity and would then not be protected by the Netting Law. The Netting Law was enacted to provide legal certainty as to the enforceability in Swedish law of provisions such as the Netting Provisions; but it has never been clearly established that such provisions would be unenforceable outwith the remit of the Netting Law (and there are indications that they would be enforceable). There is no statutory definition of "spot transactions" (*avistatrasaktioner*) in Swedish law, but operationally the Swedish Financial Supervisory Authority (the "SFSA") has taken the view that contracts that are treated as spot contracts by the market will be treated so also by the SFSA and that contracts that are not so treated by the market will not be treated as spot contracts by the SFSA. Similar statements were made in the preparatory works to the Netting Law. The SFSA may also defer to or let itself be influenced by Article 38(2) of Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards recordkeeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive, which states that a spot contract (for the purposes of paragraph 1 of that Article) means "a contract for the sale of a commodity, asset or right, under the terms of which delivery is scheduled to be made within the longer of the following periods: (a) two trading days; (b) the period generally accepted in the market for that commodity, asset or right as the standard delivery period" but that a contract is not a spot contract if, "irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the underlying is to be postponed and not to be performed" within two trading days. Although the SFSA does not have jurisdiction in respect of the Netting Law – that jurisdiction devolves exclusively to the courts of plenary jurisdiction – it is likely that the courts will take cognisance of the SFSA's views and we believe that the courts would not take a different view from that of the SFSA. This view is supported by the fact that, in cases where the courts have had to determine whether investment firms and banks have complied with their contractual and extra-contractual obligations of care for the purposes of assessing liability, the views of the SFSA as to what would count as the effective standard against investment firms and banks are to be assessed have been accepted by the courts.

There are no other material issues relevant to the issues addressed in this opinion which we wish to draw to your attention.

This opinion is given for the sole benefit of the Futures and Options Association (the "FOA"). This opinion may not, without our prior written consent, be relied upon for any other purpose or be disclosed to or relied upon by any other person save that it may be disclosed without such consent to:

- (a) such of the FOA's members (excluding associate members) as subscribe to the FOA's opinions library and whose terms of subscription give them access to this opinion (each a "**subscribing member**") and the officers, employees, and professional advisors of such subscribing member;
- (b) any affiliate of a subscribing member (being a member of the subscribing member's group, as defined by the UK Financial Services and Markets Act 2000) and the officers, employees, and professional advisors of such affiliate;

- (c) any competent authority supervising a subscribing member or an affiliate of such subscribing member in connection with their compliance with their obligations under prudential regulation; and
- (d) the officers, employees and professional advisors of the FOA,

on the basis that (i) such disclosure is made solely to enable any such person to be informed that an opinion has been given and to be made aware of its terms but not for the purposes of reliance, and (ii) we do not assume any duty or liability to any person to whom such disclosure is made.

We accept responsibility to the FOA in relation to the matters opined on in this opinion. However, the provision of this opinion is not to be taken as implying that we assume any other duty or liability to the FOA's members or their affiliates. The provision of this opinion does not create or give rise to any client relationship between this firm and the FOA's members or their affiliates.

Yours faithfully,

Advokatfirman Roschier AB

Stockholm, 30 December 2013



Johan Häger



Dan Hanqvist

## **Annex 1: Form of Clearing Agreement**

# CLEARING AGREEMENT

between a General Clearing Member ("GCM") at NASDAQ OMX Clearing AB (the "Clearing House) and a Non Clearing Member ("NCM") at NASDAQ OMX Stockholm AB (the "Exchange")

1 General Clearing Member	
Company [REDACTED]	Company Registration No. [REDACTED]
Mailing address (street, P.O. Box) [REDACTED]	Telephone incl. area code [REDACTED]
City (Postal Code and country of domicile) [REDACTED]	
2 Non Clearing Member	
Company [REDACTED]	Company Registration No. [REDACTED]
Mailing address (street, P.O. Box) [REDACTED]	Telephone incl. area code [REDACTED]
City (Postal Code and country of domicile) [REDACTED]	

## 1 INTRODUCTION

- 1.1 This Clearing Agreement constitutes a part of the Clearing Rules. Terms defined in the Clearing Rules shall have the same meaning in the Clearing Agreement as in the Clearing Rules. The Clearing Rules are available on the Clearing House's web site.

## 2 GENERAL PROVISION

- 2.1 The parties agree to act in good faith and in accordance with the Clearing Rules.
- 2.2 For the avoidance of doubt; in case of any inconsistency between this Clearing Agreement (including any future supplementary provisions to this Clearing Agreement or enclosures to this Clearing Agreement and any other agreements or arrangements between the parties in respect of their respective capacities as GCM and NCM) and the Clearing Rules, the Clearing Rules shall prevail.

## 3 APPOINTMENT AND ACCEPTANCE

- 3.1 The NCM appoints the GCM to participate in the clearing activities of the Clearing House on behalf of the NCM regarding Transactions Registered or Recorded on an account administered by the GCM for the NCM.
- 3.2 The GCM accepts to participate in the clearing activities of the Clearing House on behalf of the NCM regarding Transactions Registered or Recorded on an account administered by the GCM for the NCM.

## 4 SUPPLEMENTARY PROVISIONS

- 4.1 Where the NCM and the GCM enter into an agreement regarding supplementary provisions to this Clearing Agreement, such provisions may not limit the obligations of the NCM or the GCM towards the Clearing House under this Clearing Agreement or the Clearing Rules in the form in effect from time to time.

## 5 TERM AND TERMINATION

- 5.1 This Clearing Agreement enters into force upon the day it has been signed by authorised representatives of both parties.
- 5.2 Termination of this Clearing Agreement can be made provided that the conditions in 5.3 are fulfilled. Termination of this Clearing Agreement shall be made with a notice period to be agreed between the NCM and the GCM. Notice of termination shall be served in writing by registered letter. The terminating party shall inform the Clearing House with 30 days' notice, on the address or e-mail address prescribed in section 6.1 of this Agreement, regarding the termination.
- 5.3 This Clearing Agreement may be terminated provided that
- i) the GCM has no further obligations to fulfil for the NCM or,
  - ii) the NCM provides the Clearing House with a Clearing Agreement with another GCM who has accepted that all outstanding obligations of the NCM are transferred to it. A transfer of positions and obligations to the new GCM must be completed before termination of this Clearing Agreement.

**6 MISCELLANEOUS PROVISIONS**

6.1 The party designated below shall send a signed and certified copy of this Clearing Agreement to the Clearing House by regular post service on the following address: NASDAQ OMX Clearing AB, SE-105 78 STOCKHOLM, or by e-mail to the following e-mail address: derivatives@nasdaqomx.com. The copy shall be sent to the Clearing House with immediate effect.

The GCM

The NCM

**7 GOVERNING LAW AND CONFLICT RESOLUTION**

7.1 The interpretation and application of this Clearing Agreement shall be governed by the laws of Sweden.

Any dispute between the GCM and the NCM arising under this Clearing Agreement shall be decided by a Swedish court of law and, in the first instance, by the Stockholm District Court, unless anything else is indicated below in sections 7.2, 7.3 or 7.4.

7.2  Any dispute that arises out of or in connection with this Agreement shall be finally settled by arbitration in accordance with the Swedish Act of Arbitration (*Lag (1999:116) om skiljeförfarande*) (or any act replacing or restating that act).

The seat of arbitration shall be Stockholm (unless otherwise agreed by the parties).

The language to be used in the arbitral proceedings shall be Swedish or, if so requested by either party, English.

7.3  Any dispute, controversy or claim arising out of or in connection with this Clearing Agreement, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.


The arbitral tribunal shall be composed of three (3) arbitrators (unless another number has been agreed by the parties).


The seat of arbitration shall be Stockholm (unless otherwise agreed by the parties).

The language to be used in the arbitral proceedings shall be Swedish or, if so requested by either party, English.

7.4  Other (please specify):

This Clearing Agreement has been signed by the parties in two (2) identical copies of which the parties have taken one (1) each.

<b>3 General Clearing Member's signature</b>	
Place, date 	Signature (authorised person) and name printed

<b>4 Non Clearing Member's signature</b>	
Place, date 	Signature (authorised person) and name printed



## **Annex 2: Form of Security Documentation**

## COLLATERAL CUSTODY ACCOUNT AGREEMENT

**Complete, sign and send two (2) originals to:**  
**NASDAQ OMX Clearing AB,**  
**Att: Memberships, Tullvaktsvägen 15, SE-105 78 Stockholm, Sweden**

Custody Account no (to be completed by NASDAQ OMX)

**ACCOUNT  
HOLDER  
DETAILS**

Name of the Account Holder			
Registered business address		Company registration number	Tax identification number
Postal code	Postal district/city	Country	Tax resident country
E-mail		Tel. No. (int. format) +	Fax. No. (int. format) +
Supplemental details (if any)			

*The Account Holder undertakes to notify NASDAQ OMX without delay of any change to the details provided above.*

**NOTICES**

Notices to the Account Holder under this Collateral Custody Account Agreement may be sent to the following person (please note that notices may also be sent to other Authorized Persons as further set out in the General Terms for Collateral Custody Accounts):

Authorized Person:

Address (if other than  
above):

Email address:

Office phone (int. format):    +

Mobile phone (int. format):    +

Notices to NASDAQ OMX under this Collateral Custody Account Agreement shall be sent to the address (or other point of reception as applies in connection with the relevant method of communication) stated on the Website at the time of notice.

**AGREEMENT**

This Collateral Custody Account Agreement is concluded between the Account Holder and NASDAQ OMX Clearing AB, corporate registration number 556383-9058, Tullvaktsvägen 15, SE-105 78 Stockholm, Sweden ("NASDAQ OMX").

This Collateral Custody Account Agreement is supplemented by NASDAQ OMX's General Terms for Collateral Custody Accounts, as may be amended from time to time, which sets out further terms and conditions for the Custody Account and governs the relation between NASDAQ OMX and the Account Holder in connection therewith. The General Terms for Collateral Custody Accounts shall form an integral part of this Collateral Custody Account Agreement. The Account Holder confirms that it has read and received a copy of the General Terms for Collateral Custody Accounts as in force at the time of execution of this Collateral Custody Account Agreement.

The Account Holder hereby creates, or undertakes to create, the Securities Pledge and the Cash Security contemplated by this Collateral Custody Account Agreement (including the General Terms for Collateral Custody Accounts), and undertakes to do all things necessary or reasonably requested by NASDAQ OMX in connection therewith (including provision of information).

This Collateral Custody Account Agreement is governed by the laws of Sweden.

**MEMBERSHIP**

The Custody Account is intended for the provision of margin collateral under the following NASDAQ OMX membership (please tick one box only):

- FIN – Rules and Regulations of NASDAQ OMX Derivatives Markets (Financial Derivatives)
- COM – Clearing Rules Commodities Derivatives

PURPOSE OF CUSTODY ACCOUNT

The Custody Account is intended for the provision of margin collateral in relation to the following clearing account or category of clearing accounts (please tick one box only):

- House Account
- Omnibus Account with account no \_\_\_\_\_
- Individual Client Segregated Account (ICA) with account no \_\_\_\_\_
- all Indirect Pledging Customer Accounts administered by the Account Holder
  
- Direct Pledging Customer Account with account no \_\_\_\_\_ (FIN only)
- Clearing Client Account with account no \_\_\_\_\_ (COM only)

CSD ACCOUNT SEGREGATION

By default, Securities in the Custody Account may be held in omnibus Securities Accounts with CSDs/ICSDs. Please indicate below, if Securities in the Custody Account shall instead be held in individually segregated Securities Accounts (i.e. Securities of the Account Holder will not be comingled in accounts with CSDs/ICSDs with property of other clients of NASDAQ OMX) with one or more of the following CSDs/ICSDs. Please note that additional fees apply.

- |  |   |
|--|---|
| <input type="checkbox"/> Clearstream       | <input type="checkbox"/> Euroclear Sweden |
| <input type="checkbox"/> Euroclear Bank    | <input type="checkbox"/> VP Denmark       |
| <input type="checkbox"/> Euroclear Finland | <input type="checkbox"/> VPS Norway       |

AUTHORIZED SIGNATURES

By signature below the Account Holder agrees to be bound by the terms and conditions of this Collateral Custody Account Agreement. This Collateral Custody Account Agreement has been signed in two (2) original counterparts, of which the parties receive one (1) each.

For NASDAQ OMX Clearing AB

For [Account Holder]

\_\_\_\_\_

\_\_\_\_\_

Clarification of signature:

Clarification of signature:

\_\_\_\_\_

\_\_\_\_\_

Place:

Place:

Date:

Date:

\_\_\_\_\_

\_\_\_\_\_

Clarification of signature:

Clarification of signature:

\_\_\_\_\_

\_\_\_\_\_

Place:

Place:

Date:

Date:

## GENERAL TERMS FOR COLLATERAL CUSTODY ACCOUNTS

### 1. APPLICATION

- 1.1 These General Terms for Collateral Custody Accounts set forth certain terms and conditions generally applicable to Custody Accounts with NASDAQ OMX, and apply to any and all Custody Accounts and govern the relation between NASDAQ OMX and the Account Holder in connection therewith.
- 1.2 These General Terms for Collateral Custody Accounts are a supplement to, and form an integral part of, the Collateral Custody Account Agreement which must be signed by the Account Holder and NASDAQ OMX in order to establish a Custody Account.
- 1.3 If any provision of these General Terms for Collateral Custody Accounts is inconsistent with a provision of the Collateral Custody Account Agreement, the latter shall prevail.

### 2. INTERPRETATION

- 2.1 Save where the context requires otherwise, the following capitalized expressions shall have the meaning ascribed to them below (including where used above):

<b>Account Holder</b>	means the person nominated as such in the Collateral Custody Account Agreement.
<b>Agreement</b>	means the Collateral Custody Account Agreement and these General Terms for Collateral Custody Accounts as from time to time may be amended, supplemented or restated.
<b>Authorised Person</b>	has the meaning ascribed to it in clause 12.4.
<b>Bank</b>	means a bank or similar financial institution, which is designated as eligible by NASDAQ OMX to receive Cash Amounts for the purposes of this Agreement at the relevant time.
<b>Bank Account</b>	means any account opened in the name of NASDAQ OMX with a Bank and designated by NASDAQ OMX for the purpose of receiving Cash Amounts under this Agreement.
<b>Business Day</b>	means a day (other than a Saturday or Sunday) on which commercial banks in the country in which the relevant Custody Account, Bank Account or Securities Account is held are generally open for business.
<b>Cash Amounts</b>	means any Collateral in the form of cash, and includes cash amounts deposited on a Bank Account and reflected on the Custody Account, cash amounts received as matured principal amounts or yield on Pledged Securities, or any other cash amounts which otherwise are related to the Pledged Securities, and accrued interest on cash amounts reflected on the Custody Account.
<b>Cash Security</b>	has the meaning ascribed to it in clause 8.2.
<b>Collateral</b>	has the meaning ascribed to it in the Rules, as may be amended from time to time.

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<b>CSD</b>	means a Central Securities Depository, or similar organisation holding securities to enable book entry transfer of Securities, and which is designated as eligible by NASDAQ OMX to register and/or hold Securities for the purposes of this Agreement at the relevant time.
<b>Custody Account</b>	means the account opened in the name of the Account Holder with NASDAQ OMX as account provider and nominated as such in the Collateral Custody Account Agreement.
<b>Instructions</b>	has the meaning ascribed to it in clause 12.5.
<b>Investment Policy</b>	means a policy document containing NASDAQ OMX' investment policies in respect of the cash provided as collateral to NASDAQ OMX, as may be amended from time to time.
<b>NASDAQ OMX</b>	NASDAQ OMX Clearing AB, corporate registration number 556383-9058 in the Swedish companies register, with its registered business address at Tullvaktsvägen 15, SE-105 78 Stockholm, Sweden.
<b>NASDAQ OMX Deposit Rate</b>	NASDAQ OMX's base rate for interest calculations of Account Holders' cash deposits with NASDAQ OMX. The current rate can be found on the Website.
<b>Other Security Interest</b>	means: <ul style="list-style-type: none"><li>(i) any mortgage, charge, pledge, assignment (whether or not expressed to be by way of security), hypothecation, lien, encumbrance or other priority or any security interest whatsoever, howsoever created or arising;</li><li>(ii) any deferred purchase, title retention, trust, sale-and-repurchase, sale-and-leaseback, hold back or "flawed asset" arrangement or right of set-off;</li><li>(iii) any other agreement or arrangement whatsoever having the same or a similar commercial or economic effect as security.</li></ul>
<b>Party</b>	means either the Account Holder or NASDAQ OMX (as the context requires) in their capacity as parties to the Agreement, and "Parties" shall be construed accordingly.
<b>Pledged Securities</b>	has the meaning ascribed to it in clause 8.1.
<b>Rules</b>	means the terms and conditions governing the relevant clearing activities, as designated in the Collateral Custody Account Agreement, conducted by NASDAQ OMX as a clearing organisation, as may be amended from time to time.
<b>Secured Sums</b>	means, in relation to a Custody Account, any and all claims NASDAQ OMX may have against the Account Holder in accordance with the Rules and subject to the limitations (including in relation to segregation of client assets) set out in the Rules and any amounts payable by the Account Holder under this Agreement.

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<b>Securities</b>	means any Collateral other than Cash Amounts.
<b>Securities Account</b>	means any securities account with a CSD opened in the name of NASDAQ OMX in its capacity as nominee or any securities account opened in the name of NASDAQ OMX on behalf of clients with a CSD or with any of NASDAQ OMX's appointed Sub-custodians, and designated by NASDAQ OMX for the purpose of depositing Securities under this Agreement.
<b>Security Interest</b>	means the security created in accordance with these General Terms for Collateral Custody Accounts and as specified under clause 8.
<b>Securities Pledge</b>	means the pledge created over the Pledged Securities under clause 8.1.
<b>Sub-custodians</b>	means an institution appointed by NASDAQ OMX in accordance with this Agreement to provide custody services to NASDAQ OMX.
<b>Website</b>	means the internet web page of NASDAQ OMX, and shall include any hyperlinks or other references directly incorporated by such Website.

- 2.2 References to clauses are, unless otherwise specified, references to clauses of the Agreement.
- 2.3 References to any agreement or document shall be construed as a reference to such agreement or document (including their respective schedules and appendices) as the same may from time to time be amended, varied, supplemented, novated, replaced or restated and shall include any document which is supplemental to, or is expressed to be collateral to, or is entered into pursuant to or in accordance with the terms of, such agreement or document.
- 2.4 References to statutes are, unless otherwise specified, references to statutes of Sweden, and include any statutory modifications or re-enactments thereof, or rules or regulations promulgated thereunder for the time being in force. References to "applicable law" shall include references to the relevant laws of any relevant jurisdiction.
- 2.5 Words importing one gender only shall include the other and words importing the singular number only shall include the plural and vice versa (unless the context otherwise requires).
- 2.6 Words importing persons include companies and associations or bodies of persons whether corporate or unincorporated.
- 2.7 Headings are for convenience only and shall not affect the construction hereof.
- 2.8 Any discretion, power or right conferred on NASDAQ OMX to make or vary any determination or to give any approval or to decide any matter or to form any opinion or judgment shall be construed to be a discretion, power or right exercisable by NASDAQ OMX, in its sole and unfettered discretion, at any time and from time to time.

### 3. CUSTODY ACCOUNT

- 3.1 The Account Holder hereby authorises NASDAQ OMX (and NASDAQ OMX so agrees) to establish and maintain, on the terms of the Agreement, a Custody Account with NASDAQ OMX for the purpose of registering Pledged Securities and reflecting Cash Amounts provided as Collateral in accordance with the Rules.
- 3.2 NASDAQ OMX shall be responsible for the safekeeping of any Pledged Securities registered to the Custody Account.

### 4. REGISTRATIONS AND REFLECTIONS ON THE CUSTODY ACCOUNT

- 4.1 The Account Holder will provide Collateral through either:
- (i) Securities deposited to the Custody Account; or
  - (ii) Cash Amounts deposited to one or more Bank Accounts and reflected on the Custody Account.
- 4.2 Securities shall be registered on the Custody Account and received by NASDAQ OMX on the same day that the Securities are registered on the relevant Securities Account in accordance with the rules of and market practice applicable to the applicable Securities Account, provided that the registration is made during the opening hours applicable to the relevant Securities Account (failing which the registration shall not be deemed made until the next day on which the relevant Securities Account is open for registration of the relevant Securities).
- 4.3 Cash Amounts shall be reflected on the Custody Account, representing a claim, and shall be received by NASDAQ OMX on the same day Cash Amounts are registered on the relevant Bank Account and NASDAQ OMX has received a confirmation from such Bank, provided that (i) the registration is made and the confirmation is received during the opening hours of the relevant Bank (failing which the registration shall not be deemed made until the next day on which the relevant Bank is open for registration of the relevant Cash Amounts) and (ii) the registration of the Cash Amounts on the relevant Bank Account is made with a valid reference to the Account Holder's Custody Account number (failing which the registration shall not be deemed made until the day on which NASDAQ OMX has received the valid reference).
- 4.4 Securities may be pooled and comingled with property of other clients of NASDAQ OMX, provided that any Securities Account(s) used shall be marked so as to indicate its nominee nature or that it is held on behalf of clients. Securities may not be pooled and comingled with NASDAQ OMX's own assets or the assets of NASDAQ OMX's appointed Sub-custodians. Any maturity proceeds following a corporate action in respect of Pledged Securities provided will be held by NASDAQ OMX as a Cash Amount until such time as it may be released in accordance with the Rules. Cash Amounts will be pooled and comingled with the funds of NASDAQ OMX. The Account Holder acknowledges that it will rank *pari passu* with NASDAQ OMX's other unsecured creditors in relation to the Cash Amounts. NASDAQ OMX is entitled to, at its own discretion, dispose of any amounts registered on a Bank Account, subject to NASDAQ OMX's Investment Policy. For avoidance of doubt, any disposal by NASDAQ OMX of any amount registered on a Bank Account will not affect the Cash Amount reflected on the Custody Account. A summary of the Investment Policy applicable from time to time shall be made available to the Account Holder upon request. Material changes to the Investment Policy shall be notified to the Account Holder with at least two (2) weeks' prior notice.

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## **5. DUTIES OF NASDAQ OMX**

NASDAQ OMX shall:

- 5.1 Comply with the terms of the Agreement and the Rules and shall not do any act or omit any act which is in conflict with the Agreement or the Rules.
- 5.2 Keep and maintain all Pledged Securities in accordance with the Agreement and the Rules, and shall not use or otherwise dispose of any Pledged Securities for any other purpose.
- 5.3 Keep and maintain the Custody Account in Sweden.
- 5.4 Keep separate records in respect of Pledged Securities that shall enable NASDAQ OMX to at any time, without delay, distinguish the Pledged Securities registered on the Custody Account from securities registered on any other custody account and from NASDAQ OMX's own assets.
- 5.5 Insofar as relevant to the Pledged Securities registered to the Custody Account:
  - (i) sign any certificates of ownership or other certificates relating to the Pledged Securities;
  - (ii) collect and receive all payments (whether income, capital or dividend) and distributions in respect of such Pledged Securities on behalf of the Account Holder, and take any action necessary and proper, and/or otherwise reasonably incidental in connection with the same, including (without limitation) the presentation of coupons and other interest items and reflect all such payments on the Account Holder's Custody Account, whereby income and dividend payments will be paid out to the Account Holder's designated bank account;
  - (iii) upon receipt of Instructions from the Account Holder and as far as reasonably practicable and unless in conflict with NASDAQ OMX's Securities Pledge, exercise subscription, purchase or other similar rights attaching to the Securities on behalf of the Account Holder, provided in each case that the Account Holder has furnished to NASDAQ OMX the funds and other documentation, etc. required and requested to cover any costs in relation to such actions and execute such actions; and
  - (iv) NASDAQ OMX shall have a duty of care with respect to the Pledged Securities in accordance with applicable laws, regulations, customs and market practice in the relevant market.

## **6. DUTIES OF THE ACCOUNT HOLDER**

The Account Holder shall:

- 6.1 Comply with the terms of the Agreement and the Rules and not do any act or omit any act which could reasonably impede or diminish NASDAQ OMX's Securities Pledge or Cash Security.
- 6.2 On the request of NASDAQ OMX execute and deliver such documents and give such Instructions as may be required to give effect to the Agreement.
- 6.3 On the request of NASDAQ OMX deliver or cause to be delivered to NASDAQ OMX from time to time any relevant material as NASDAQ OMX may require for the



performance of its duties hereunder, including evidence of ownership of any Pledged Securities and copies of any other documents or material which is reasonably requested by NASDAQ OMX.

## 7. REPRESENTATION AND WARRANTIES

7.1 Each of NASDAQ OMX and the Account Holder represents and warrants to the other that:

- (i) it is duly organized and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing (unless it is an individual);
- (ii) it has obtained all authorisations of any governmental or regulatory body required in connection with the execution and performance of the Agreement and such authorisations are in full force and effect;
- (iii) it will comply with all rules and regulations applicable to its operations under applicable law; and
- (iv) it has the power and authority to execute, deliver and to perform its obligations under the Agreement (and under any other documentation required in connection herewith).

7.2 The Account Holder further represents and warrants to NASDAQ OMX that:

- (i) it is the owner of any Pledged Securities and that it is fully empowered to enter into and perform its obligations under the Agreement and to grant the rights and remedies to NASDAQ OMX contained herein and therein;
- (ii) all right, title and interest in any Pledged Securities shall be pledged to NASDAQ OMX, free of any Other Security Interest in favour of any party other than NASDAQ OMX; and
- (iii) its obligations under the Agreement constitutes legal, valid and binding obligations enforceable against the Account Holder.

7.3 Each Party shall inform the other Party immediately if any representation or warranty in clauses 7.1 or 7.2 ceases, or will clearly cease, to be true and correct.

7.4 On each day on which a transfer of Pledged Securities is effected, all the representations and warranties stated in this clause 7 shall be deemed to be repeated.

## 8. CREATION OF SECURITY

8.1 As collateral for all of the Account Holder's present and future obligations under the Rules, subject to the limitations (including in relation to segregation of client assets) set out in the Rules, the Account Holder hereby pledges to NASDAQ OMX any and all securities which are registered on the Custody Account, from time to time ("**Pledged Securities**"), including:

- (i) any right to receive yield and matured principal amounts with respect to the Pledged Securities;
- (ii) any rights or claims relating to the Custody Account; and

(iii) any rights or claims relating to the Pledged Securities.

For the avoidance of doubt the pledge of Pledged Securities under this clause 8.1 shall not constitute a transfer of title (Sw. *äganderättsövergång*) from the Account Holder.

8.2 Any Cash Amounts transferred by the Account Holder to a Bank Account and reflected on the Custody Account, from time to time, shall be deemed transferred by way of security (Sw: *säkerhetsöverlåtelse*) (“**Cash Security**”) to NASDAQ OMX and shall constitute collateral for all of the Account Holder’s present and future obligations under the Rules, subject to the limitations (including in relation to segregation of client assets) set out in the Rules.

8.3 Any yield and matured principal amounts which have been received with respect to the Pledged Securities and reflected on the Custody Account and any interest accrued on Cash Amounts reflected on the Custody Account in accordance with clause 10.2 shall be deemed transferred by way of security in accordance with clause 8.2 and thus be subject to a Cash Security.

8.4 The Account Holder shall not, without the prior written consent of NASDAQ OMX:

- (i) create, or agree or attempt to create, or permit to subsist, any Other Security Interest than those created pursuant to clause 8.1 and 8.2 to arise or subsist over any Pledged Securities or Cash Amounts subject to a Cash Security; or
- (ii) sell, transfer or otherwise dispose of any part of the Pledged Securities or any of its right, title or interest therein.

8.5 The Parties intend that the Securities Pledge and the Cash Security created under the Agreement shall constitute a “financial collateral arrangement” for the purposes of EU Directive 2002/47/EC on Financial Collateral Arrangements (as implemented in applicable national laws).

8.6 The Agreement shall be in addition to and shall not prejudice or be prejudiced by any right of set-off, lien, pledge or other rights exercisable by NASDAQ OMX against the Account Holder or any security, guarantee or indemnity now or in the future held by NASDAQ OMX.

## 9. RIGHT OF APPROPRIATION

9.1 NASDAQ OMX may, at any time after the Securities Pledge or the Cash Security constituted by the Agreement has become enforceable, appropriate any Pledged Securities or Cash Amounts and apply it in such manner as NASDAQ OMX may determine in accordance with the Rules, including the sequence in which the Securities Pledge or the Cash Security shall be realised.

9.2 NASDAQ OMX will account for the appropriation to the Account Holder and pay any amount by which the value of the appropriated Pledged Securities or Cash Amounts exceeds the Secured Sums then due in accordance with the Rules and the Agreement.

9.3 NASDAQ OMX shall notify the Account Holder following the appropriation of any Pledged Securities or Cash Amounts.

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## 10. FEES AND INTEREST

- 10.1 NASDAQ OMX shall not pay any fees, interest or other remuneration to the Account Holder on any Pledged Securities or Cash Amounts unless explicitly set out in the Agreement and/or the Rules.
- 10.2 Account Holders may be entitled to interest for Cash Amounts reflected on the Custody Account whereby interest payments will be paid out to the Account Holder's designated bank account. To the extent the NASDAQ OMX Deposit Rate is below zero, NASDAQ OMX is entitled to charge the Account Holder for the negative interest rate for Cash Amounts reflected on the Custody Account. Interest shall accrue and be paid in accordance with the terms, including rates and intervals, set out on the Website from time to time.
- 10.3 Fees may be charged for custody and other services in accordance with the fees stipulated on the Website from time to time.

## 11. APPOINTMENTS AND AUTHORISATIONS

- 11.1 The Account Holder hereby appoints NASDAQ OMX to be its attorney (with full power to appoint substitutes and to sub-delegate, including power to authorise the person so appointed to make further appointments, in both cases, with regard to all or any part of the Pledged Securities) on behalf of the Account Holder and in its name or otherwise:
- (i) to execute any document or do any act or thing which NASDAQ OMX or such substitute or delegate may, in its discretion, consider appropriate in connection with the exercise of any of the powers of NASDAQ OMX or which the Account Holder is obliged to execute or do, whether under the Agreement, the Rules or otherwise;
  - (ii) to act on behalf of the Account Holder with full authority to communicate with the Banks and CSDs in all matters relating to the Pledged Securities and, without limitation, to send and receive messages and instructions on behalf of the Account Holder with respect to the Pledged Securities and to make any transfer of Pledged Securities registered to the Custody Account in accordance with the Agreement and the Rules;
  - (iii) to correct and/or reverse any erroneous entries in the Custody Account or any entry or deposit to any other account as soon as practically possible after discovery, provided that the Account Holder shall be informed following such action; and
  - (iv) to realise any Securities Pledge or otherwise to safeguard or exercise any rights in relation to a Securities Pledge.
- 11.2 The Account Holder acknowledges and agrees that the power of attorney given under clause 11.1:
- (i) is coupled with a pledge to the benefit of NASDAQ OMX, and that it may not be revoked for as long the Agreement is in effect; and
  - (ii) shall be exercisable by NASDAQ OMX at any time or times as NASDAQ OMX thinks fit.
- 11.3 NASDAQ OMX shall be authorized to appoint one or several Sub-custodians. NASDAQ OMX shall appoint such Sub-custodians with proper care and ensure that it at all times has
- (i) obtained all authorisations of any governmental or regulatory body required in

connection with the performance of its duties and that such authorisations are in full force and effect and (ii) sufficient knowledge, resources and organization to carry out its respective services. Furthermore, NASDAQ OMX shall be authorized to appoint one or several sub-contractors to perform parts of NASDAQ OMX's duties under the Agreement. NASDAQ OMX is responsible for any Sub-custodian or sub-contractor appointed by NASDAQ OMX to perform any of NASDAQ OMX's duties under this Agreement, as if NASDAQ OMX itself had performed such duties. For the avoidance of doubt, any CSD is not regarded as a Sub-custodian or sub-contractor. Nothing in this clause shall be construed as to allow any Party to transfer or assign this Agreement to a third party without the prior written consent of the other Party.

## 12. COMMUNICATIONS, NOTICES AND INSTRUCTIONS

- 12.1 All notices and other communications under the Agreement shall be in English and in case of Account Holders to and from the Authorised Persons and in case of NASDAQ OMX to and from its relevant officers or employees. NASDAQ OMX may in its discretion agree to communicate in any other language than English upon request from the applicable Account Holder(s).
- 12.2 Notices may be sent by mail, e-mail, or such other teleprocess or electronic instruction system acceptable to NASDAQ OMX which shall have been transmitted with such security features as NASDAQ OMX may determine and on such terms and conditions as NASDAQ OMX may specify. Communication which shall be in writing shall be sent by registered mail, e-mail (in which case receipt shall be confirmed by the recipient) or other form of written communication which NASDAQ OMX may accept to the relevant point of receipt specified by the receiving Party in writing (or such new address that a Party has acknowledged by the other Party in accordance with this clause 12).
- 12.3 Notices sent by mail shall be deemed received by the Account Holder no later than three (3) Business Days after the date of posting/ mailing, and notices sent by e-mail or other electronic communication shall be regarded as received by the Account Holder immediately upon confirmed transmission of the same.
- 12.4 The Account Holder shall upon the request of NASDAQ OMX provide NASDAQ OMX with a list of such officers, employees, agents or other persons (each an "**Authorised Person**") of or for the Account Holder as have been authorised, either alone or with others as specified, to act on its behalf in the giving of instructions and/or performance of any acts, discretions or duties under the Agreement, and NASDAQ OMX shall be entitled to rely upon the continued authority of an Authorised Person to given instructions and so act on behalf of the Account Holder as aforesaid until NASDAQ OMX receives written notice from the Account Holder to the contrary. The Account Holder may also give individual authorisations to individual Authorised Persons, subject to the consent of NASDAQ OMX which shall not be unreasonably withheld. In absence of explicit written and acknowledged instructions to the contrary, NASDAQ shall be entitled to deem any person who is either (i) generally authorised to act on behalf of the Account Holder or (ii) authorised by the Account Holder in relation to NASDAQ OMX to act on behalf of the Account Holder in relation to the relevant matters as an Authorised Person.
- 12.5 NASDAQ OMX may act upon instructions ("**Instructions**") from an Authorised Person (or otherwise given on behalf of the Account Holder) in such manner as may be agreed or required by NASDAQ OMX in its discretion. However, NASDAQ OMX shall not be obliged to take any action to comply with any Instructions or to take any other action hereunder if:

- (i) such Instructions in the opinion of NASDAQ OMX are in conflict with the Rules, the Agreement or other written arrangements in effect between NASDAQ OMX and the Account Holder;
- (ii) NASDAQ's fulfilment of such Instructions are prevented by any event falling within the scope of clause 13.2 (vi); or
- (iii) such Instructions in NASDAQ OMX's opinion are outside the scope of its duties under the Agreement or are contrary to any applicable law or NASDAQ OMX's policies or other requirement which NASDAQ OMX is subject to (whether arising from any governmental authority, or that of a relevant exchange, clearing organisation, settlement system, CSD, Bank or market).

12.6 When taking action upon Instructions NASDAQ OMX shall act in a reasonable and proper manner, provided that:

- (i) any Instructions shall give NASDAQ OMX reasonable time to evaluate and prepare for such Instructions prior to the time of execution;
- (ii) any Instructions shall continue in full force and effect until cancelled or superseded (except in respect of Instructions executed by NASDAQ OMX which can no longer be cancelled);
- (iii) any Instructions shall be carried out subject to the rules, operating procedures and market practice of any relevant stock exchange, clearing organisation, settlement system, CSD, Bank or market where or through which they are to be executed;
- (iv) NASDAQ OMX shall have a right to refuse to execute any Instructions that in the opinion of NASDAQ OMX are unreasonable or, if performed by NASDAQ OMX, may have adverse consequences to the reputation of NASDAQ OMX; and
- (v) NASDAQ OMX shall have a right to refuse to execute Instructions if that in the opinion of NASDAQ OMX are illegible, unclear and/or ambiguous, until any ambiguity or conflict has been resolved to its satisfaction.

12.7 NASDAQ OMX shall without undue delay give written notice to the Account Holder if an Instruction is refused pursuant to clause 12.6.

### **13. LIABILITIES AND INDEMNITIES**

13.1 NASDAQ OMX shall not be responsible for any loss or damage suffered by the Account Holder, provided that NASDAQ OMX has acted with normal care.

13.2 NASDAQ OMX shall, unless resulting from an act of fraud, willful default or gross negligence on the part of NASDAQ OMX, in any event not be responsible for:

- (i) any indirect or consequential losses;
- (ii) any losses exceeding the market value (as determined by NASDAQ OMX in any reasonable commercial manner) of the relevant Pledged Securities or Cash Amounts;
- (iii) any liabilities, losses, damages, costs and expenses caused by delay in the actual receipt by NASDAQ OMX, or occurrence, of Instructions or payments from the Account Holder hereunder;

- (iv) any liabilities, losses, thefts, damages, costs and expenses arising out of any unauthorised disposal of the Securities held and/or administered by or under the direction or control of any CSD (or by any third party instructed by or through such CSD), provided that NASDAQ OMX has exercised reasonable care in selecting and monitoring the relevant CSD;
- (v) any liabilities, losses, damages, costs and expenses arising out of NASDAQ OMX relying upon any Instructions believed by it in good faith to be given by an Authorised Person (or otherwise to have been given on behalf of the Account Holder) and upon any notice, request, consent, certificate or other instrument believed by it in good faith to be genuine and to be signed or furnished by the proper Party or parties thereto, including (without limitation) the Account Holder or any Authorised Person; and
- (vi) any event of force majeure or other event beyond NASDAQ OMX's reasonable control, including but not limited to nationalization, expropriation, currency restrictions, terrorism, acts of state, acts of god, labour disturbances, power failures, breakdowns in communications links or equipment of NASDAQ OMX or of its nominees or agents (or of any third parties as aforesaid), or the failure or disruption of any relevant exchange, clearing organisation, settlement system or market.

13.3 The Account Holder shall indemnify NASDAQ OMX against any reasonable liabilities, losses, damages, costs and expenses (including reasonable and evidenced legal fees) (“Losses”) incurred by NASDAQ OMX and arising out of any action taken or omitted to be taken by NASDAQ OMX hereunder or pursuant to any Instructions, and shall reimburse NASDAQ OMX (on the basis of a full indemnity) the amount of all reasonable costs and expenses (including reasonable and evidenced legal costs and VAT thereon) incurred by NASDAQ OMX in connection with the exercise, or the attempted or purported exercise, by or on behalf of NASDAQ OMX of any of its powers under the Agreement or any other action taken by or on behalf of NASDAQ OMX with a view to or in connection with the recovery of the Secured Sums, the realisation of a Securities Pledge created by the Agreement or, the preservation of a Securities Pledge or a Cash Security or any other purpose contemplated by the Agreement. The Account Holder shall, unless resulting from an act of fraud, willful default or gross negligence on the Part of the Account Holder, in no event be liable to indemnify NASDAQ OMX for any indirect or consequential Losses. Notwithstanding the above, the Account Holder shall in no event be liable to indemnify NASDAQ OMX under this Clause 13.3 for any Losses attributable to NASDAQ OMX's fraud, willful default or gross negligence.

#### 14. TAXES ETC

14.1 The Account Holder shall be responsible for all filings, tax returns and similar reports on any transactions undertaken pursuant to the Agreement or in connection with the Pledged Securities or Cash Amounts which must be made to any relevant authority whether governmental or otherwise and for the payment of all unpaid calls, taxes (including without limitation any valued added tax), imposts, levies or duties, or any other liability or payment arising out of or in connection with the Pledged Securities or Cash Amounts, and in so far as NASDAQ OMX is under any obligation (whether of a governmental nature or otherwise) to pay the same on behalf of the Account Holder it may do so without Instructions from the Account Holder out of the Custody Account.

14.2 NASDAQ OMX may, in accordance with Swedish/foreign law, Swedish/foreign public authorities' regulations or decisions or NASDAQ OMX's Agreement with Swedish/foreign

authorities, be obliged on account of the Account Holder to take actions concerning tax in relation to the Account Holder's securities. The Account Holder shall provide such information, including written documentation, as NASDAQ OMX deems to be necessary in order to fulfil such obligation.

**15. RELEASE OF PLEDGED SECURITIES OR CASH AMOUNTS AND TERMINATION**

15.1 The release of Pledged Securities and Cash Amounts shall take place to the extent that Secured Sums have been fully and unconditionally paid or discharged to NASDAQ OMX, subject to the limitations (including in relation to segregation of client assets) set out in the Rules, (or, if contingent, have wholly ceased to be capable of arising) and after the Account Holder has become entitled under the Rules to request the release of such Pledged Securities and Cash Amounts.

15.2 The Agreement may only be terminated by the Account Holder with the consent of NASDAQ OMX which shall not be unreasonably withheld or delayed. NASDAQ OMX shall consent to termination if the Account Holder is no longer subject to collateral requirements in relation to the relevant clearing account(s) and the Pledged Securities and Cash Amounts may otherwise be released in accordance with the Agreement and the Rules.

15.3 On termination of the Agreement, NASDAQ OMX shall transfer Pledged Securities and Cash Amounts in accordance with the Rules to the Account Holder or to such other person(s) as the Account Holder shall give Instructions. NASDAQ OMX may withhold amounts (as reasonably determined by NASDAQ OMX) for outstanding liabilities attaching to the Pledged Securities and Cash Amounts of which NASDAQ OMX is or becomes aware and of any fees and expenses owing to NASDAQ OMX under the Agreement or the Rules.

**16. CONFIDENTIALITY**

16.1 Except as otherwise set forth herein all information and data received by NASDAQ OMX from the Account Holder, including information relating to the Pledged Securities or Cash Amounts and information pertaining to the legal or financial status of the Account Holder, will be treated as confidential by NASDAQ OMX.

16.2 Notwithstanding clause 16.1, but subject to applicable and mandatory law:

- (i) the duty of confidentiality shall not extend to information which is or becomes public through no breach of NASDAQ OMX's confidentiality obligations hereunder, which NASDAQ OMX already possessed at the time of reception without any obligation of confidentiality, or which NASDAQ OMX receives from a third party through no breach of the third party's confidentiality obligations towards the Account Holder;
- (ii) NASDAQ OMX may share information with its Sub-custodians and any other person or entity advising or assisting NASDAQ OMX in its operations under the Agreement, provided that such persons and entities have a reasonable interest in such information under the Agreement, are subject to a corresponding duty of confidentiality, and shall only use the information for purposes related to the Agreement;

- (iii) NASDAQ may share information with any entity or body (including any financial supervisory authorities or governmental bodies) if NASDAQ OMX (a) reasonably believes that such entity or body exercises a legal or regulatory function under any applicable law, or a function comprising or associated with the enforcement of a legal or regulatory function which NASDAQ OMX or the Account Holder is subject to, or (b) considers such arrangement to be in furtherance of its purpose or duties under applicable law; or (c) deems such disclosure to be otherwise required by applicable law; and
- (iv) NASDAQ OMX shall not be required to keep confidential the fact that the Account Holder has entered into this Agreement.

## 17. MISCELLANEOUS

- 17.1 **Regulatory Cooperation.** The Account Holder acknowledges that NASDAQ OMX is subject to supervision by the Swedish Financial Supervisory Authority. The Account Holder undertakes to cooperate with NASDAQ OMX, the Swedish Financial Supervisory Authority and any other governmental authority that may supervise NASDAQ OMX in relation to any inspection or any other actions initiated by the Swedish Financial Supervisory Authority or any other competent governmental authority and provide such information that NASDAQ OMX, the Swedish Financial Supervisory Authority or a competent governmental authority may request.
- 17.2 **Account Statements.** NASDAQ OMX shall provide the Account Holder with periodical reports and/or statements of accounts relating to the Custody Account, the specific contents and format to be determined by NASDAQ OMX from time to time. In absence of the Account Holder filing with NASDAQ OMX objections to any information, report, statement, confirmation, note or other document within thirty (30) days of the date of such information becoming available to the Account Holder, NASDAQ OMX shall have no responsibility for any errors or omissions therein, if not caused by NASDAQ OMX's gross negligence, and the Account Holder shall be deemed to have approved the contents thereof and accepted responsibility for all of its obligations appearing therein.
- 17.3 **Amendments.** Any changes of these General Terms for Collateral Custody Accounts that are not material and changes to any fees charged by NASDAQ OMX, shall apply to the Account Holder from and including the thirtieth (30th) calendar day after the Account Holder shall be deemed to have received notice of the change in accordance with clause 12. Material changes shall be reported to the Swedish Securities Dealers Association or, should NASDAQ OMX deem it appropriate, to other representatives of the Account Holders. When these aforementioned representatives have not, within five Business Days of the report, requested consultations with regard to the changes (or if consultation has been requested, when such consultation has been made), NASDAQ OMX shall send a notice of the change to the Account Holders. The changes shall apply to the Account Holder from and including the thirtieth (30th) calendar day after the Account Holder shall be deemed to have received notice of the change in accordance with clause 12. Should a delay be hazardous, or should the changes be caused by legislation, judicial decision, or decision of any public authority, such notice may however be sent before such consultation has been made.
- 17.4 **Third Party Rights.** Other than as may follow from the Rules, no person other than a Party to the Agreement shall have any right to enforce any term (express or implied) of the Agreement. The Parties may vary any term of the Agreement without the necessity of obtaining any consent from any third party.



17.5 **No Waiver.** No failure to exercise and no delay on the part of either Party in exercising any right, remedy, power or privilege under the Agreement and no course of dealing between the Parties shall be construed or operate as a waiver of that right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of it or the exercise of any other right, remedy, power or privilege. The rights and remedies provided by the Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

17.6 **Severability.** If any provision of the Agreement is held to be illegal, invalid or unenforceable in whole or in part, the Agreement shall continue to be valid as to its other provisions and the remainder of the affected provision.

## 18. GOVERNING LAW AND DISPUTE RESOLUTION

18.1 The Agreement and all non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, Swedish law.

18.2 The Swedish courts shall have exclusive jurisdiction to settle any claim, dispute or difference which may arise out of or in connection with the Agreement.

18.3 Clause 18.2 shall not limit the right of NASDAQ OMX to seek interlocutory measures or similar, or to otherwise seek enforcement of the Securities Pledge and the Cash Security created by the Agreement, against the Account Holder in any other court of competent jurisdiction, nor shall the taking of proceedings in one or more jurisdictions preclude the taking of proceedings by NASDAQ OMX in any other jurisdiction, whether concurrently or otherwise.

18.4 The Account Holder irrevocably waives any objections on the ground of venue or inconvenient forum or any similar grounds and irrevocably agrees that any judgment in any proceedings brought in any court referred to in this clause 18 shall be conclusive and binding and may be enforced in any other jurisdiction.

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AUTHORIZED  
SIGNATURES

By signature below the Account Holder agrees to be bound by the terms and conditions of this Default Fund Custody Account Agreement. This Agreement has been signed in two (2) original counterparts, of which the parties receive one (1) each.

For NASDAQ OMX Clearing AB

For [Account Holder]

\_\_\_\_\_  
Clarification of signature:

\_\_\_\_\_  
Clarification of signature:

\_\_\_\_\_  
Place & Date:

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Place & Date:

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## GENERAL TERMS FOR DEFAULT FUND CUSTODY ACCOUNTS

### 1. APPLICATION

- 1.1 These General Terms for Default Fund Custody Accounts set forth certain terms and conditions generally applicable to Custody Accounts with NASDAQ OMX, and apply to any and all Custody Accounts and govern the relation between NASDAQ OMX and the Account Holder in connection therewith.
- 1.2 These General Terms for Default Fund Custody Accounts are a supplement to, and form an integral part of, the Default Fund Custody Account Agreement which must be signed by the Account Holder and NASDAQ OMX in order to establish a Custody Account.
- 1.3 If any provision of these General Terms for Default Fund Custody Accounts is inconsistent with a provision of the Default Fund Custody Account Agreement, the latter shall prevail.

### 2. INTERPRETATION

- 2.1 Save where the context requires otherwise, the following capitalized expressions shall have the meaning ascribed to them below (including where used above):

<b>Account Holder</b>	means the person nominated as such in the Default Fund Custody Account Agreement.
<b>Agreement</b>	means the Default Fund Custody Account Agreement and these General Terms for Default Fund Custody Accounts as from time to time may be amended, supplemented or restated.
<b>Authorised Person</b>	has the meaning ascribed to it in clause 12.4.
<b>Bank</b>	means a bank or similar financial institution, which is designated as eligible by NASDAQ OMX to receive Cash Amounts for the purposes of this Agreement at the relevant time.
<b>Bank Account</b>	means any account opened in the name of NASDAQ OMX with a Bank and designated by NASDAQ OMX for the purpose of receiving Cash Amounts under this Agreement.
<b>Business Day</b>	means a day (other than a Saturday or Sunday) on which commercial banks in the country in which the relevant Custody Account, Bank Account or Securities Account is held are generally open for business.
<b>Cash Amounts</b>	means any Eligible Funds in the form of cash, and includes cash amounts deposited on a Bank Account and reflected on the Custody Account, cash amounts received as matured principal amounts or yield on Pledged Securities, or any other cash amounts which otherwise are related to the Pledged Securities, and accrued interest on cash amounts reflected on the Custody Account.
<b>Cash Security</b>	has the meaning ascribed to it in clause 8.2.
<b>CSD</b>	means a Central Securities Depository, or similar organisation holding securities to enable book entry transfer of Securities, and

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	which is designated as eligible by NASDAQ OMX to register and/or hold Securities for the purposes of this Agreement at the relevant time.
<b>Custody Account</b>	means the account opened in the name of the Account Holder with NASDAQ OMX as account provider and nominated as such in the Default Fund Custody Account Agreement.
<b>Default Fund</b>	has the meaning ascribed to it in the Default Fund Rules.
<b>Default Fund Rules</b>	means the terms and conditions of NASDAQ OMX governing the composition and other arrangements relating to a member contributed default fund in respect of clearing activities conducted by NASDAQ OMX as a clearing organisation, as may be amended from time to time.
<b>Eligible Funds</b>	has the meaning ascribed to it in the Default Fund Rules.
<b>Instructions</b>	has the meaning ascribed to it in clause 12.5.
<b>Investment Policy</b>	means a policy document containing NASDAQ OMX's investment policies in respect of the cash contributions to NASDAQ OMX's Default Fund, as may be amended from time to time.
<b>NASDAQ OMX</b>	NASDAQ OMX Clearing AB, corporate registration number 556383-9058 in the Swedish companies register, with its registered business address at Tullvaktsvägen 15, SE-105 78 Stockholm, Sweden.
<b>NASDAQ OMX Deposit Rate</b>	NASDAQ OMX's base rate for interest calculations of Account Holders' cash deposits with NASDAQ OMX. The current rate can be found on the Website.
<b>Other Security Interest</b>	means: <ul style="list-style-type: none"> <li>(i) any mortgage, charge, pledge, assignment (whether or not expressed to be by way of security), hypothecation, lien, encumbrance or other priority or any security interest whatsoever, howsoever created or arising;</li> <li>(ii) any deferred purchase, title retention, trust, sale-and-repurchase, sale-and-leaseback, hold back or "flawed asset" arrangement or right of set-off;</li> <li>(iii) any other agreement or arrangement whatsoever having the same or a similar commercial or economic effect as security.</li> </ul>
<b>Party</b>	means either the Account Holder or NASDAQ OMX (as the context requires) in their capacity as parties to the Agreement, and "Parties" shall be construed accordingly.
<b>Pledged Securities</b>	has the meaning ascribed to it in clause 8.1.
<b>Secured Sums</b>	means any and all amounts which the Account Holder is obliged to contribute to the Default Fund under the Default Fund Rules and any amounts payable by the Account Holder under this Agreement.

<b>Securities</b>	means any Eligible Funds other than Cash Amounts.
<b>Securities Account</b>	means any securities account with a CSD opened in the name of NASDAQ OMX in its capacity as nominee or any securities account opened in the name of NASDAQ OMX on behalf of clients with a CSD or with any of NASDAQ OMX's appointed Sub-custodians, and designated by NASDAQ OMX for the purpose of depositing Securities under this Agreement.
<b>Security Interest</b>	means the security created in accordance with these General Terms for Default Fund Custody Accounts and as specified under clause 8.
<b>Securities Pledge</b>	means the pledge created over the Pledged Securities under clause 8.1.
<b>Sub-custodians</b>	means an institution appointed by NASDAQ OMX in accordance with this Agreement to provide custody services to NASDAQ OMX.
<b>Website</b>	means the internet web page of NASDAQ OMX, and shall include any hyperlinks or other references directly incorporated by such Website.

- 2.2 References to clauses are, unless otherwise specified, references to clauses of the Agreement.
- 2.3 References to any agreement or document shall be construed as a reference to such agreement or document (including their respective schedules and appendices) as the same may from time to time be amended, varied, supplemented, novated, replaced or restated and shall include any document which is supplemental to, or is expressed to be collateral to, or is entered into pursuant to or in accordance with the terms of, such agreement or document.
- 2.4 References to statutes are, unless otherwise specified, references to statutes of Sweden, and include any statutory modifications or re-enactments thereof, or rules or regulations promulgated thereunder for the time being in force. References to "applicable law" shall include references to the relevant laws of any relevant jurisdiction.
- 2.5 Words importing one gender only shall include the other and words importing the singular number only shall include the plural and vice versa (unless the context otherwise requires).
- 2.6 Words importing persons include companies and associations or bodies of persons whether corporate or unincorporated.
- 2.7 Headings are for convenience only and shall not affect the construction hereof.
- 2.8 Any discretion, power or right conferred on NASDAQ OMX to make or vary any determination or to give any approval or to decide any matter or to form any opinion or judgment shall be construed to be a discretion, power or right exercisable by NASDAQ OMX, in its sole and unfettered discretion, at any time and from time to time.
- 3. CUSTODY ACCOUNT**
- 3.1 The Account Holder hereby authorises NASDAQ OMX (and NASDAQ OMX so agrees) to establish and maintain, on the terms of the Agreement, a Custody Account with

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NASDAQ OMX for the purpose of registering Pledged Securities and reflecting Cash Amounts contributed to the Default Fund in accordance with the Default Fund Rules.

3.2 NASDAQ OMX shall be responsible for the safekeeping of any Pledged Securities registered to the Custody Account.

#### 4. REGISTRATIONS AND REFLECTIONS ON THE CUSTODY ACCOUNT

4.1 The Account Holder will provide Eligible Funds to the Default Fund through either:

- (i) Securities deposited to the Custody Account; or
- (ii) Cash Amounts deposited to one or more Bank Accounts and reflected on the Custody Account.

4.2 Securities shall be registered on the Custody Account and received by NASDAQ OMX on the same day that the Securities are registered on the relevant Securities Account in accordance with the rules of and market practice applicable to the applicable Securities Account, provided that the registration is made during the opening hours applicable to the relevant Securities Account (failing which the registration shall not be deemed made until the next day on which the relevant Securities Account is open for registration of the relevant Securities).

4.3 Cash Amounts shall be reflected on the Custody Account, representing a claim, and shall be received by NASDAQ OMX on the same day Cash Amounts are registered on the relevant Bank Account and NASDAQ OMX has received a confirmation from such Bank, provided that (i) the registration is made and the confirmation is received during the opening hours of the relevant Bank (failing which the registration shall not be deemed made until the next day on which the relevant Bank is open for registration of the relevant Cash Amounts) and (ii) the registration of the Cash Amounts on the relevant Bank Account is made with a valid reference to the Account Holder's Custody Account number (failing which the registration shall not be deemed made until the day on which NASDAQ OMX has received the valid reference).

4.4 Securities may be pooled and comingled with property of other clients of NASDAQ OMX, provided that any Securities Account(s) used shall be marked so as to indicate its nominee nature or that it is held on behalf of clients. Securities may not be pooled and comingled with NASDAQ OMX's own assets or the assets of NASDAQ OMX's appointed Sub-custodians. Any maturity proceeds following a corporate action in respect of Pledged Securities provided will be held by NASDAQ OMX as a Cash Amount until such time as it may be released in accordance with the Default Fund Rules. Cash Amounts will be pooled and comingled with the funds of NASDAQ OMX. The Account Holder acknowledges that it will rank *pari passu* with NASDAQ OMX's other unsecured creditors in relation to the Cash Amounts. NASDAQ OMX is entitled to, at its own discretion, dispose of any amounts registered on a Bank Account, subject to NASDAQ OMX's Investment Policy. For avoidance of doubt, any disposal by NASDAQ OMX of any amount registered on a Bank Account will not affect the Cash Amount reflected on the Custody Account. A summary of the Investment Policy applicable from time to time shall be made available to the Account Holder upon request. Material changes to the Investment Policy shall be notified to the Account Holder with at least two (2) weeks' prior notice.

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## 5. DUTIES OF NASDAQ OMX

NASDAQ OMX shall:

- 5.1 Comply with the terms of the Agreement and the Default Fund Rules and shall not do any act or omit any act which is in conflict with the Agreement or the Default Fund Rules.
- 5.2 Keep and maintain all Pledged Securities in accordance with the Agreement and the Default Fund Rules, and shall not use or otherwise dispose of any Pledged Securities for any other purpose.
- 5.3 Keep and maintain the Custody Account in Sweden.
- 5.4 Keep separate records in respect of Pledged Securities that shall enable NASDAQ OMX to at any time, without delay, distinguish the Pledged Securities registered on the Custody Account from securities registered on any other custody account and from NASDAQ OMX's own assets.
- 5.5 Insofar as relevant to the Pledged Securities registered to the Custody Account:
  - (i) sign any certificates of ownership or other certificates relating to the Pledged Securities;
  - (ii) collect and receive all payments (whether income, capital or dividend) and distributions in respect of such Pledged Securities on behalf of the Account Holder, and take any action necessary and proper, and/or otherwise reasonably incidental in connection with the same, including (without limitation) the presentation of coupons and other interest items and reflect all such payments on the Account Holder's Custody Account, whereby income and dividend payments will be paid out to the Account Holder's designated bank account;
  - (iii) upon receipt of Instructions from the Account Holder and as far as reasonably practicable and unless in conflict with NASDAQ OMX's Securities Pledge, exercise subscription, purchase or other similar rights attaching to the Securities on behalf of the Account Holder, provided in each case that the Account Holder has furnished to NASDAQ OMX the funds and other documentation, etc. required and requested to cover any costs in relation to such actions and execute such actions; and
  - (iv) NASDAQ OMX shall have a duty of care with respect to the Pledged Securities in accordance with applicable laws, regulations, customs and market practice in the relevant market.

## 6. DUTIES OF THE ACCOUNT HOLDER

The Account Holder shall:

- 6.1 Comply with the terms of the Agreement and the Default Fund Rules and not do any act or omit any act which could reasonably impede or diminish NASDAQ OMX's Securities Pledge or Cash Security.
- 6.2 On the request of NASDAQ OMX execute and deliver such documents and give such Instructions as may be required to give effect to the Agreement.



6.3 On the request of NASDAQ OMX deliver or cause to be delivered to NASDAQ OMX from time to time any relevant material as NASDAQ OMX may require for the performance of its duties hereunder, including evidence of ownership of any Pledged Securities and copies of any other documents or material which is reasonably requested by NASDAQ OMX.

## 7. REPRESENTATION AND WARRANTIES

7.1 Each of NASDAQ OMX and the Account Holder represents and warrants to the other that:

- (i) it is duly organized and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing (unless it is an individual);
- (ii) it has obtained all authorisations of any governmental or regulatory body required in connection with the execution and performance of the Agreement and such authorisations are in full force and effect;
- (iii) it will comply with all rules and regulations applicable to its operations under applicable law; and
- (iv) it has the power and authority to execute, deliver and to perform its obligations under the Agreement (and under any other documentation required in connection herewith).

7.2 The Account Holder further represents and warrants to NASDAQ OMX that:

- (i) it is the owner of any Pledged Securities and that it is fully empowered to enter into and perform its obligations under the Agreement and to grant the rights and remedies to NASDAQ OMX contained herein and therein;
- (ii) all right, title and interest in any Pledged Securities shall be pledged to NASDAQ OMX, free of any Other Security Interest in favour of any party other than NASDAQ OMX; and
- (iii) its obligations under the Agreement constitutes legal, valid and binding obligations enforceable against the Account Holder.

7.3 Each Party shall inform the other Party immediately if any representation or warranty in clauses 7.1 or 7.2 ceases, or will clearly cease, to be true and correct.

7.4 On each day on which a transfer of Pledged Securities is effected, all the representations and warranties stated in this clause 7 shall be deemed to be repeated.

## 8. CREATION OF SECURITY

8.1 As collateral for all of the Account Holder's present and future obligations in relation to the Default Fund under the Default Fund Rules, the Account Holder hereby pledges to NASDAQ OMX any and all securities which are registered on the Custody Account, from time to time ("**Pledged Securities**"), including:

- (i) any right to receive yield and matured principal amounts with respect to the Pledged Securities;

- (ii) any rights or claims relating to the Custody Account; and
- (iii) any rights or claims relating to the Pledged Securities.

For the avoidance of doubt the pledge of Pledged Securities under this clause 8.1 shall not constitute a transfer of title (Sw. *äganderättsövergång*) from the Account Holder.

- 8.2 Any Cash Amounts transferred by the Account Holder to a Bank Account and reflected on the Custody Account, from time to time, shall be deemed transferred by way of security (Sw: *säkerhetsöverlåtelse*) (“**Cash Security**”) to NASDAQ OMX and shall constitute collateral for all of the Account Holder’s present and future obligations in relation to the Default Fund under the Default Fund Rules.
- 8.3 Any yield and matured principal amounts which have been received with respect to the Pledged Securities and reflected on the Custody Account and any interest accrued on Cash Amounts reflected on the Custody Account in accordance with clause 10.2 shall be deemed transferred by way of security in accordance with clause 8.2 and thus be subject to a Cash Security.
- 8.4 The Account Holder shall not, without the prior written consent of NASDAQ OMX:
- (i) create, or agree or attempt to create, or permit to subsist, any Other Security Interest than those created pursuant to clause 8.1 and 8.2 to arise or subsist over any Pledged Securities or Cash Amounts subject to a Cash Security; or
  - (ii) sell, transfer or otherwise dispose of any part of the Pledged Securities or any of its right, title or interest therein.
- 8.5 The Parties intend that the Securities Pledge and the Cash Security created under the Agreement shall constitute a “financial collateral arrangement” for the purposes of EU Directive 2002/47/EC on Financial Collateral Arrangements (as implemented in applicable national laws).
- 8.6 The Agreement shall be in addition to and shall not prejudice or be prejudiced by any right of set-off, lien, pledge or other rights exercisable by NASDAQ OMX against the Account Holder or any security, guarantee or indemnity now or in the future held by NASDAQ OMX.
- 9. RIGHT OF APPROPRIATION**
- 9.1 NASDAQ OMX may, at any time after the Securities Pledge or the Cash Security constituted by the Agreement has become enforceable, appropriate any Pledged Securities or Cash Amounts and apply it in such manner as NASDAQ OMX may determine in accordance with the Default Fund Rules, including the sequence in which the Securities Pledge or the Cash Security shall be realised.
- 9.2 NASDAQ OMX will account for the appropriation to the Account Holder and pay any amount by which the value of the appropriated Pledged Securities or Cash Amounts exceeds the Secured Sums then due in accordance with the Default Fund Rules and the Agreement.
- 9.3 NASDAQ OMX shall notify the Account Holder following the appropriation of any Pledged Securities or Cash Amounts.

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## 10. FEES AND INTEREST

- 10.1 NASDAQ OMX shall not pay any fees, interest or other remuneration to the Account Holder on any Pledged Securities or Cash Amounts unless explicitly set out in the Agreement and/or the Default Fund Rules.
- 10.2 Account Holders may be entitled to interest for Cash Amounts reflected on the Custody Account whereby interest payments will be paid out to the Account Holder's designated bank account. To the extent the NASDAQ OMX Deposit Rate is below zero, NASDAQ OMX is entitled to charge the Account Holder for the negative interest rate for Cash Amounts reflected on the Custody Account. Interest shall accrue and be paid in accordance with the terms, including rates and intervals, set out on the Website from time to time.
- 10.3 Fees may be charged for custody and other services in accordance with the fees stipulated on the Website from time to time.

## 11. APPOINTMENTS AND AUTHORISATIONS

- 11.1 The Account Holder hereby appoints NASDAQ OMX to be its attorney (with full power to appoint substitutes and to sub-delegate, including power to authorise the person so appointed to make further appointments, in both cases, with regard to all or any part of the Pledged Securities) on behalf of the Account Holder and in its name or otherwise:
- (i) to execute any document or do any act or thing which NASDAQ OMX or such substitute or delegate may, in its discretion, consider appropriate in connection with the exercise of any of the powers of NASDAQ OMX or which the Account Holder is obliged to execute or do, whether under the Agreement, the Default Fund Rules or otherwise;
  - (ii) to act on behalf of the Account Holder with full authority to communicate with the Banks and CSDs in all matters relating to the Pledged Securities and, without limitation, to send and receive messages and instructions on behalf of the Account Holder with respect to the Pledged Securities and to make any transfer of Pledged Securities registered to the Custody Account in accordance with the Agreement and the Default Fund Rules;
  - (iii) to correct and/or reverse any erroneous entries in the Custody Account or any entry or deposit to any other account as soon as practically possible after discovery, provided that the Account Holder shall be informed following such action; and
  - (iv) to realise any Securities Pledge or otherwise to safeguard or exercise any rights in relation to a Securities Pledge.
- 11.2 The Account Holder acknowledges and agrees that the power of attorney given under clause 11.1:
- (i) is coupled with a pledge to the benefit of NASDAQ OMX, and that it may not be revoked for as long the Agreement is in effect; and
  - (ii) shall be exercisable by NASDAQ OMX at any time or times as NASDAQ OMX thinks fit.
- 11.3 NASDAQ OMX shall be authorized to appoint one or several Sub-custodians. NASDAQ OMX shall appoint such Sub-custodians with proper care and ensure that it at all times has

(i) obtained all authorisations of any governmental or regulatory body required in connection with the performance of its duties and that such authorisations are in full force and effect and (ii) sufficient knowledge, resources and organization to carry out its respective services. Furthermore, NASDAQ OMX shall be authorized to appoint one or several sub-contractors to perform parts of NASDAQ OMX's duties under the Agreement. NASDAQ OMX is responsible for any Sub-custodian or sub-contractor appointed by NASDAQ OMX to perform any of NASDAQ OMX's duties under this Agreement, as if NASDAQ OMX itself had performed such duties. For the avoidance of doubt, any CSD is not regarded as a Sub-custodian or sub-contractor. Nothing in this clause shall be construed as to allow any Party to transfer or assign this Agreement to a third party without the prior written consent of the other Party.

## 12. COMMUNICATIONS, NOTICES AND INSTRUCTIONS

- 12.1 All notices and other communications under the Agreement shall be in English and in case of Account Holders to and from the Authorised Persons and in case of NASDAQ OMX to and from its relevant officers or employees. NASDAQ OMX may in its discretion agree to communicate in any other language than English upon request from the applicable Account Holder(s).
- 12.2 Notices may be sent by mail, e-mail, or such other teleprocess or electronic instruction system acceptable to NASDAQ OMX which shall have been transmitted with such security features as NASDAQ OMX may determine and on such terms and conditions as NASDAQ OMX may specify. Communication which shall be in writing shall be sent by registered mail, e-mail (in which case receipt shall be confirmed by the recipient) or other form of written communication which NASDAQ OMX may accept to the relevant point of receipt specified by the receiving Party in writing (or such new address that a Party has acknowledged by the other Party in accordance with this clause 12).
- 12.3 Notices sent by mail shall be deemed received by the Account Holder no later than three (3) Business Days after the date of posting/ mailing, and notices sent by e-mail or other electronic communication shall be regarded as received by the Account Holder immediately upon confirmed transmission of the same.
- 12.4 The Account Holder shall upon the request of NASDAQ OMX provide NASDAQ OMX with a list of such officers, employees, agents or other persons (each an "**Authorised Person**") of or for the Account Holder as have been authorised, either alone or with others as specified, to act on its behalf in the giving of instructions and/or performance of any acts, discretions or duties under the Agreement, and NASDAQ OMX shall be entitled to rely upon the continued authority of an Authorised Person to given instructions and so act on behalf of the Account Holder as aforesaid until NASDAQ OMX receives written notice from the Account Holder to the contrary. The Account Holder may also give individual authorisations to individual Authorised Persons, subject to the consent of NASDAQ OMX which shall not be unreasonably withheld. In absence of explicit written and acknowledged instructions to the contrary, NASDAQ shall be entitled to deem any person who is either (i) generally authorised to act on behalf of the Account Holder or (ii) authorised by the Account Holder in relation to NASDAQ OMX to act on behalf of the Account Holder in relation to the relevant matters as an Authorised Person.
- 12.5 NASDAQ OMX may act upon instructions ("**Instructions**") from an Authorised Person (or otherwise given on behalf of the Account Holder) in such manner as may be agreed or required by NASDAQ OMX in its discretion. However, NASDAQ OMX shall not be

obliged to take any action to comply with any Instructions or to take any other action hereunder if:

- (i) such Instructions in the opinion of NASDAQ OMX are in conflict with the Default Fund Rules, the Agreement or other written arrangements in effect between NASDAQ OMX and the Account Holder;
- (ii) NASDAQ's fulfilment of such Instructions are prevented by any event falling within the scope of clause 13.2 (vi); or
- (iii) such Instructions in NASDAQ OMX's opinion are outside the scope of its duties under the Agreement or are contrary to any applicable law or NASDAQ OMX's policies or other requirement which NASDAQ OMX is subject to (whether arising from any governmental authority, or that of a relevant exchange, clearing organisation, settlement system, CSD, Bank or market).

12.6 When taking action upon Instructions NASDAQ OMX shall act in a reasonable and proper manner, provided that:

- (i) any Instructions shall give NASDAQ OMX reasonable time to evaluate and prepare for such Instructions prior to the time of execution;
- (ii) any Instructions shall continue in full force and effect until cancelled or superseded (except in respect of Instructions executed by NASDAQ OMX which can no longer be cancelled);
- (iii) any Instructions shall be carried out subject to the rules, operating procedures and market practice of any relevant stock exchange, clearing organisation, settlement system, CSD, Bank or market where or through which they are to be executed;
- (iv) NASDAQ OMX shall have a right to refuse to execute any Instructions that in the opinion of NASDAQ OMX are unreasonable or, if performed by NASDAQ OMX, may have adverse consequences to the reputation of NASDAQ OMX; and
- (v) NASDAQ OMX shall have a right to refuse to execute Instructions if that in the opinion of NASDAQ OMX are illegible, unclear and/or ambiguous, until any ambiguity or conflict has been resolved to its satisfaction.

12.7 NASDAQ OMX shall without undue delay give written notice to the Account Holder if an Instruction is refused pursuant to clause 12.6.

### **13. LIABILITIES AND INDEMNITIES**

13.1 NASDAQ OMX shall not be responsible for any loss or damage suffered by the Account Holder, provided that NASDAQ OMX has acted with normal care.

13.2 NASDAQ OMX shall, unless resulting from an act of fraud, willful default or gross negligence on the part of NASDAQ OMX, in any event not be responsible for:

- (i) any indirect or consequential losses;
- (ii) any losses exceeding the market value (as determined by NASDAQ OMX in any reasonable commercial manner) of the relevant Pledged Securities or Cash Amounts;

- (iii) any liabilities, losses, damages, costs and expenses caused by delay in the actual receipt by NASDAQ OMX, or occurrence, of Instructions or payments from the Account Holder hereunder;
- (iv) any liabilities, losses, thefts, damages, costs and expenses arising out of any unauthorised disposal of the Securities held and/or administered by or under the direction or control of any CSD (or by any third party instructed by or through such CSD), provided that NASDAQ OMX has exercised reasonable care in selecting and monitoring the relevant CSD;
- (v) any liabilities, losses, damages, costs and expenses arising out of NASDAQ OMX relying upon any Instructions believed by it in good faith to be given by an Authorised Person (or otherwise to have been given on behalf of the Account Holder) and upon any notice, request, consent, certificate or other instrument believed by it in good faith to be genuine and to be signed or furnished by the proper Party or parties thereto, including (without limitation) the Account Holder or any Authorised Person; and
- (vi) any event of force majeure or other event beyond NASDAQ OMX's reasonable control, including but not limited to nationalization, expropriation, currency restrictions, terrorism, acts of state, acts of god, labour disturbances, power failures, breakdowns in communications links or equipment of NASDAQ OMX or of its nominees or agents (or of any third parties as aforesaid), or the failure or disruption of any relevant exchange, clearing organisation, settlement system or market.

13.3 The Account Holder shall indemnify NASDAQ OMX against any reasonable liabilities, losses, damages, costs and expenses (including reasonable and evidenced legal fees) (“Losses”) incurred by NASDAQ OMX and arising out of any action taken or omitted to be taken by NASDAQ OMX hereunder or pursuant to any Instructions, and shall reimburse NASDAQ OMX (on the basis of a full indemnity) the amount of all reasonable costs and expenses (including reasonable and evidenced legal costs and VAT thereon) incurred by NASDAQ OMX in connection with the exercise, or the attempted or purported exercise, by or on behalf of NASDAQ OMX of any of its powers under the Agreement or any other action taken by or on behalf of NASDAQ OMX with a view to or in connection with the recovery of the Secured Sums, the realisation of a Securities Pledge created by the Agreement or, the preservation of a Securities Pledge or a Cash Security or any other purpose contemplated by the Agreement. The Account Holder shall, unless resulting from an act of fraud, willful default or gross negligence on the Part of the Account Holder, in no event be liable to indemnify NASDAQ OMX for any indirect or consequential Losses. Notwithstanding the above, the Account Holder shall in no event be liable to indemnify NASDAQ OMX under this Clause 13.3 for any Losses attributable to NASDAQ OMX's fraud, willful default or gross negligence.

#### 14. TAXES ETC

14.1 The Account Holder shall be responsible for all filings, tax returns and similar reports on any transactions undertaken pursuant to the Agreement or in connection with the Pledged Securities or Cash Amounts which must be made to any relevant authority whether governmental or otherwise and for the payment of all unpaid calls, taxes (including without limitation any valued added tax), imposts, levies or duties, or any other liability or payment arising out of or in connection with the Pledged Securities or Cash Amounts, and in so far as NASDAQ OMX is under any obligation (whether of a governmental nature or

otherwise) to pay the same on behalf of the Account Holder it may do so without Instructions from the Account Holder out of the Custody Account.

- 14.2 NASDAQ OMX may, in accordance with Swedish/foreign law, Swedish/foreign public authorities' regulations or decisions or NASDAQ OMX's Agreement with Swedish/foreign authorities, be obliged on account of the Account Holder to take actions concerning tax in relation to the Account Holder's securities. The Account Holder shall provide such information, including written documentation, as NASDAQ OMX deems to be necessary in order to fulfil such obligation.

## **15. RELEASE OF PLEDGED SECURITIES OR CASH AMOUNTS AND TERMINATION**

- 15.1 The release of Pledged Securities and Cash Amounts shall take place to the extent that Secured Sums have been fully and unconditionally paid or discharged to NASDAQ OMX (or, if contingent, have wholly ceased to be capable of arising) and after the Account Holder has become entitled under the Default Fund Rules to request the release of such Pledged Securities and Cash Amounts.

- 15.2 The Agreement may only be terminated by the Account Holder with the consent of NASDAQ OMX which shall not be unreasonably withheld or delayed. NASDAQ OMX shall consent to termination if the Account Holder is no longer subject to Default Fund Requirements and the Pledged Securities and Cash Amounts may otherwise be released in accordance with the Agreement and the Default Fund Rules.

- 15.3 On termination of the Agreement, NASDAQ OMX shall transfer Pledged Securities and Cash Amounts in accordance with the Default Fund Rules to the Account Holder or to such other person(s) as the Account Holder shall give Instructions. NASDAQ OMX may withhold amounts (as reasonably determined by NASDAQ OMX) for outstanding liabilities attaching to the Pledged Securities and Cash Amounts of which NASDAQ OMX is or becomes aware and of any fees and expenses owing to NASDAQ OMX under the Agreement or the Default Fund Rules.

## **16. CONFIDENTIALITY**

- 16.1 Except as otherwise set forth herein all information and data received by NASDAQ OMX from the Account Holder, including information relating to the Pledged Securities or Cash Amounts and information pertaining to the legal or financial status of the Account Holder, will be treated as confidential by NASDAQ OMX.
- 16.2 Notwithstanding clause 16.1, but subject to applicable and mandatory law:
- (i) the duty of confidentiality shall not extend to information which is or becomes public through no breach of NASDAQ OMX's confidentiality obligations hereunder, which NASDAQ OMX already possessed at the time of reception without any obligation of confidentiality, or which NASDAQ OMX receives from a third party through no breach of the third party's confidentiality obligations towards the Account Holder;
  - (ii) NASDAQ OMX may share information with its Sub-custodians and any other person or entity advising or assisting NASDAQ OMX in its operations under the Agreement, provided that such persons and entities have a reasonable interest in such information under the Agreement, are subject to a corresponding duty of

confidentiality, and shall only use the information for purposes related to the Agreement;

- (iii) NASDAQ may share information with any entity or body (including any financial supervisory authorities or governmental bodies) if NASDAQ OMX (a) reasonably believes that such entity or body exercises a legal or regulatory function under any applicable law, or a function comprising or associated with the enforcement of a legal or regulatory function which NASDAQ OMX or the Account Holder is subject to, or (b) considers such arrangement to be in furtherance of its purpose or duties under applicable law; or (c) deems such disclosure to be otherwise required by applicable law; and
- (iv) NASDAQ OMX shall not be required to keep confidential the fact that the Account Holder is participating in the Default Fund and has entered into this Agreement.

## 17. MISCELLANEOUS

- 17.1 **Regulatory Cooperation.** The Account Holder acknowledges that NASDAQ OMX is subject to supervision by the Swedish Financial Supervisory Authority. The Account Holder undertakes to cooperate with NASDAQ OMX, the Swedish Financial Supervisory Authority and any other governmental authority that may supervise NASDAQ OMX in relation to any inspection or any other actions initiated by the Swedish Financial Supervisory Authority or any other competent governmental authority and provide such information that NASDAQ OMX, the Swedish Financial Supervisory Authority or a competent governmental authority may request.
- 17.2 **Account Statements.** NASDAQ OMX shall provide the Account Holder with periodical reports and/or statements of accounts relating to the Custody Account, the specific contents and format to be determined by NASDAQ OMX from time to time. In absence of the Account Holder filing with NASDAQ OMX objections to any information, report, statement, confirmation, note or other document within thirty (30) days of the date of such information becoming available to the Account Holder, NASDAQ OMX shall have no responsibility for any errors or omissions therein, if not caused by NASDAQ OMX's gross negligence, and the Account Holder shall be deemed to have approved the contents thereof and accepted responsibility for all of its obligations appearing therein.
- 17.3 **Amendments.** Any changes of these General Terms for Default Fund Custody Accounts that are not material and changes to any fees charged by NASDAQ OMX, shall apply to the Account Holder from and including the thirtieth (30th) calendar day after the Account Holder shall be deemed to have received notice of the change in accordance with clause 12. Material changes shall be reported to the Swedish Securities Dealers Association or, should NASDAQ OMX deem it appropriate, to other representatives of the Account Holders. When these aforementioned representatives have not, within five Business Days of the report, requested consultations with regard to the changes (or if consultation has been requested, when such consultation has been made), NASDAQ OMX shall send a notice of the change to the Account Holders. The changes shall apply to the Account Holder from and including the thirtieth (30th) calendar day after the Account Holder shall be deemed to have received notice of the change in accordance with clause 12. Should a delay be hazardous, or should the changes be caused by legislation, judicial decision, or decision of any public authority, such notice may however be sent before such consultation has been made.



17.4 **Third Party Rights.** Other than as may follow from the Default Fund Rules, no person other than a Party to the Agreement shall have any right to enforce any term (express or implied) of the Agreement. The Parties may vary any term of the Agreement without the necessity of obtaining any consent from any third party.

17.5 **No Waiver.** No failure to exercise and no delay on the part of either Party in exercising any right, remedy, power or privilege under the Agreement and no course of dealing between the Parties shall be construed or operate as a waiver of that right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of it or the exercise of any other right, remedy, power or privilege. The rights and remedies provided by the Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

17.6 **Severability.** If any provision of the Agreement is held to be illegal, invalid or unenforceable in whole or in part, the Agreement shall continue to be valid as to its other provisions and the remainder of the affected provision.

## 18. GOVERNING LAW AND DISPUTE RESOLUTION

18.1 The Agreement and all non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, Swedish law.

18.2 The Swedish courts shall have exclusive jurisdiction to settle any claim, dispute or difference which may arise out of or in connection with the Agreement.

18.3 Clause 18.2 shall not limit the right of NASDAQ OMX to seek interlocutory measures or similar, or to otherwise seek enforcement of the Securities Pledge and the Cash Security created by the Agreement, against the Account Holder in any other court of competent jurisdiction, nor shall the taking of proceedings in one or more jurisdictions preclude the taking of proceedings by NASDAQ OMX in any other jurisdiction, whether concurrently or otherwise.

18.4 The Account Holder irrevocably waives any objections on the ground of venue or inconvenient forum or any similar grounds and irrevocably agrees that any judgment in any proceedings brought in any court referred to in this clause 18 shall be conclusive and binding and may be enforced in any other jurisdiction.

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## LOSS SHARING CUSTODY ACCOUNT AGREEMENT

**Complete, sign and send two (2) originals to:**  
**NASDAQ OMX Clearing AB,**  
**Att: Member Services, Tullvaktsvägen 15, SE-105 78 Stockholm, Sweden**

Custody Account no (to be completed by NASDAQ OMX)

**ACCOUNT  
HOLDER  
DETAILS**

Name of the Account Holder

Registered business address		Company registration number	Tax identification number
Postal code	Postal district/city	Country	Tax resident country
E-mail		Tel. No. (int. format) +	Fax. No. (int. format) +
Supplemental details (if any)			

*The Account Holder undertakes to notify NASDAQ OMX without delay of any change to the details provided above.*

**NOTICES**

Notices to the Account Holder under this Loss Sharing Custody Account Agreement may be sent to the following person (please note that notices may also be sent to other Authorized Persons as further set out in the General Terms for Loss Sharing Custody Accounts):

Authorized Person:

Address (if other than above):

Email address:

Office phone (int. format): +

Mobile phone (int. format): +

Notices to NASDAQ OMX under this Loss Sharing Custody Account Agreement shall be sent to the address (or other point of receipt as applies in connection with the relevant method of communication) stated on the Website at the time of notice.

**AGREEMENT**

This Loss Sharing Custody Account Agreement is concluded between the Account Holder and NASDAQ OMX Clearing AB, corporate registration number 556383-9058, Tullvaktsvägen 15, SE-105 78 Stockholm, Sweden ("NASDAQ OMX").

This Loss Sharing Custody Account Agreement is supplemented by NASDAQ OMX's General Terms for Loss Sharing Custody Accounts, as may be amended from time to time, which sets out further terms and conditions for the Custody Account and governs the relation between NASDAQ OMX and the Account Holder in connection therewith. The General Terms for Loss Sharing Custody Accounts shall form an integral part of this Loss Sharing Custody Account Agreement. The Account Holder confirms that it has read and received a copy of the General Terms for Loss Sharing Custody Accounts as in force at the time of execution of this Loss Sharing Custody Account Agreement.

The Account Holder hereby creates, or undertakes to create, the Securities Pledge and the Cash Security contemplated by this Loss Sharing Custody Account Agreement (including the General Terms for Loss Sharing Custody Accounts), and undertakes to do all things necessary or reasonably requested by NASDAQ OMX in connection therewith (including provision of information).

This Loss Sharing Custody Account Agreement is governed by the laws of Sweden.

**PURPOSE OF  
CUSTODY  
ACCOUNT**

The Custody Account is intended for contributions to NASDAQ OMX's Loss Sharing Pool in accordance with the Loss Sharing Rules.

**CSD ACCOUNT  
SEGREGATION**

By default, Securities in the Custody Account may be held in omnibus Securities Accounts with CSDs/ICSDs. Please indicate below, if Securities in the Custody Account shall instead be held in individually segregated Securities Accounts (i.e. Securities of the Account Holder will not be comingled in accounts with CSDs/ICSDs with property of other clients of NASDAQ OMX) with one or more of the following CSDs/ICSDs. Please note that additional fees apply.

- Clearstream  
 Euroclear Bank  
 Euroclear Sweden

- VPS Norway  
 VP Denmark

AUTHORIZED  
SIGNATURES

By signature below the Account Holder agrees to be bound by the terms and conditions of this Loss Sharing Custody Account Agreement.

This Loss Sharing Custody Account Agreement has been signed in two (2) original counterparts, of which the parties receive one (1) each.

For NASDAQ OMX Clearing AB

For [Account Holder]

\_\_\_\_\_

\_\_\_\_\_

Clarification of signature:

Clarification of signature:

\_\_\_\_\_

\_\_\_\_\_

Place:

Place:

Date:

Date:

\_\_\_\_\_

\_\_\_\_\_

Clarification of signature:

Clarification of signature:

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\_\_\_\_\_

Place:

Place:

Date:

Date:

## GENERAL TERMS FOR LOSS SHARING CUSTODY ACCOUNTS

### 1. APPLICATION

- 1.1 These General Terms for Loss Sharing Custody Accounts set forth certain terms and conditions generally applicable to Custody Accounts with NASDAQ OMX, and apply to any and all Custody Accounts and govern the relation between NASDAQ OMX and the Account Holder in connection therewith.
- 1.2 These General Terms for Loss Sharing Custody Accounts are a supplement to, and form an integral part of, the Loss Sharing Custody Account Agreement which must be signed by the Account Holder and NASDAQ OMX in order to establish a Custody Account.
- 1.3 If any provision of these General Terms for Loss Sharing Custody Accounts is inconsistent with a provision of the Loss Sharing Custody Account Agreement, the latter shall prevail.

### 2. INTERPRETATION

- 2.1 Save where the context requires otherwise, the following capitalized expressions shall have the meaning ascribed to them below (including where used above):

<b>Account Holder</b>	means the person nominated as such in the Loss Sharing Custody Account Agreement.
<b>Agreement</b>	means the Loss Sharing Custody Account Agreement and these General Terms for Loss Sharing Custody Accounts as from time to time may be amended, supplemented or restated.
<b>Authorised Person</b>	has the meaning ascribed to it in clause 12.4.
<b>Bank</b>	means a bank or similar financial institution, which is designated as eligible by NASDAQ OMX to receive Cash Amounts for the purposes of this Agreement at the relevant time.
<b>Bank Account</b>	means any account opened in the name of NASDAQ OMX with a Bank and designated by NASDAQ OMX for the purpose of receiving Cash Amounts under this Agreement.
<b>Business Day</b>	means a day (other than a Saturday or Sunday) on which commercial banks in the country in which the relevant Custody Account, Bank Account or Securities Account is held are generally open for business.
<b>Cash Amounts</b>	means any Eligible Funds in the form of cash, and includes cash amounts deposited on a Bank Account and reflected on the Custody Account, cash amounts received as matured principal amounts or yield on Pledged Securities, or any other cash amounts which otherwise are related to the Pledged Securities, and accrued interest on cash amounts reflected on the Custody Account.
<b>Cash Security</b>	has the meaning ascribed to it in clause 8.2.
<b>CSD</b>	means a Central Securities Depository, or similar organisation holding securities to enable book entry transfer of Securities, and

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	which is designated as eligible by NASDAQ OMX to register and/or hold Securities for the purposes of this Agreement at the relevant time.
<b>Custody Account</b>	means the account opened in the name of the Account Holder with NASDAQ OMX as account provider and nominated as such in the Loss Sharing Custody Account Agreement.
<b>Eligible Funds</b>	has the meaning ascribed to it in the “Default Fund Rules”, i.e. the terms and conditions of NASDAQ OMX governing the composition and other arrangements relating to a member contributed default fund in respect of clearing activities conducted by NASDAQ OMX as a clearing organisation, as may be amended from time to time.
<b>Instructions</b>	has the meaning ascribed to it in clause 12.5.
<b>Investment Policy</b>	means a policy document containing NASDAQ OMX’s investment policies in respect of the cash contributions to NASDAQ OMX’s default fund and the Loss Sharing Pool, as may be amended from time to time.
<b>Loss Sharing Pool</b>	has the meaning ascribed to it in the Loss Sharing Rules.
<b>Loss Sharing Rules</b>	means the terms and conditions of NASDAQ OMX governing the composition and other arrangements relating to a member contributed loss sharing pool in respect of clearing of certain interest rate derivatives, denominated in SEK, conducted by NASDAQ OMX as a clearing organisation, as may be amended from time to time.
<b>NASDAQ OMX</b>	NASDAQ OMX Clearing AB, corporate registration number 556383-9058 in the Swedish companies register, with its registered business address at Tullvaktsvägen 15, SE-105 78 Stockholm, Sweden.
<b>NASDAQ OMX Deposit Rate</b>	NASDAQ OMX’s base rate for interest calculations of Account Holders’ cash deposits with NASDAQ OMX. The current rate can be found on the Website.
<b>Other Security Interest</b>	means: <ul style="list-style-type: none"> <li>(i) any mortgage, charge, pledge, assignment (whether or not expressed to be by way of security), hypothecation, lien, encumbrance or other priority or any security interest whatsoever, howsoever created or arising;</li> <li>(ii) any deferred purchase, title retention, trust, sale-and-repurchase, sale-and-leaseback, hold back or ”flawed asset” arrangement or right of set-off;</li> <li>(iii) any other agreement or arrangement whatsoever having the same or a similar commercial or economic effect as security.</li> </ul>
<b>Party</b>	means either the Account Holder or NASDAQ OMX (as the context requires) in their capacity as parties to the Agreement, and “Parties” shall be construed accordingly.

<b>Pledged Securities</b>	has the meaning ascribed to it in clause 8.1.
<b>Secured Sums</b>	means any and all amounts which the Account Holder is obliged to contribute to the Loss Sharing Pool under the Loss Sharing Rules and any amounts payable by the Account Holder under this Agreement.
<b>Securities</b>	means any Eligible Funds other than Cash Amounts.
<b>Securities Account</b>	means any securities account with a CSD opened in the name of NASDAQ OMX in its capacity as nominee or any securities account opened in the name of NASDAQ OMX on behalf of clients with a CSD or with any of NASDAQ OMX's appointed Sub-custodians, and designated by NASDAQ OMX for the purpose of depositing Securities under this Agreement.
<b>Security Interest</b>	means the security created in accordance with these General Terms for Loss Sharing Custody Accounts and as specified under clause 8.
<b>Securities Pledge</b>	means the pledge created over the Pledged Securities under clause 8.1.
<b>Sub-custodians</b>	means an institution appointed by NASDAQ OMX in accordance with this Agreement to provide custody services to NASDAQ OMX.
<b>Website</b>	means the internet web page of NASDAQ OMX, and shall include any hyperlinks or other references directly incorporated by such Website.

- 2.2 References to clauses are, unless otherwise specified, references to clauses of the Agreement.
- 2.3 References to any agreement or document shall be construed as a reference to such agreement or document (including their respective schedules and appendices) as the same may from time to time be amended, varied, supplemented, novated, replaced or restated and shall include any document which is supplemental to, or is expressed to be collateral to, or is entered into pursuant to or in accordance with the terms of, such agreement or document.
- 2.4 References to statutes are, unless otherwise specified, references to statutes of Sweden, and include any statutory modifications or re-enactments thereof, or rules or regulations promulgated thereunder for the time being in force. References to "applicable law" shall include references to the relevant laws of any relevant jurisdiction.
- 2.5 Words importing one gender only shall include the other and words importing the singular number only shall include the plural and vice versa (unless the context otherwise requires).
- 2.6 Words importing persons include companies and associations or bodies of persons whether corporate or unincorporated.
- 2.7 Headings are for convenience only and shall not affect the construction hereof.
- 2.8 Any discretion, power or right conferred on NASDAQ OMX to make or vary any determination or to give any approval or to decide any matter or to form any opinion or judgment shall be construed to be a discretion, power or right exercisable by NASDAQ OMX, in its sole and unfettered discretion, at any time and from time to time.

### 3. CUSTODY ACCOUNT

- 3.1 The Account Holder hereby authorises NASDAQ OMX (and NASDAQ OMX so agrees) to establish and maintain, on the terms of the Agreement, a Custody Account with NASDAQ OMX for the purpose of registering Pledged Securities and reflecting Cash Amounts contributed to the Loss Sharing Pool in accordance with the Loss Sharing Rules.
- 3.2 NASDAQ OMX shall be responsible for the safekeeping of any Pledged Securities registered to the Custody Account.

### 4. REGISTRATIONS AND REFLECTIONS ON THE CUSTODY ACCOUNT

- 4.1 The Account Holder will provide Eligible Funds to the Loss Sharing Pool through either:
- (i) Securities deposited to the Custody Account; or
  - (ii) Cash Amounts deposited to one or more Bank Accounts and reflected on the Custody Account.
- 4.2 Securities shall be registered on the Custody Account and received by NASDAQ OMX on the same day that the Securities are registered on the relevant Securities Account in accordance with the rules of and market practice applicable to the applicable Securities Account, provided that the registration is made during the opening hours applicable to the relevant Securities Account (failing which the registration shall not be deemed made until the next day on which the relevant Securities Account is open for registration of the relevant Securities).
- 4.3 Cash Amounts shall be reflected on the Custody Account, representing a claim, and shall be received by NASDAQ OMX on the same day Cash Amounts are registered on the relevant Bank Account and NASDAQ OMX has received a confirmation from such Bank, provided that (i) the registration is made and the confirmation is received during the opening hours of the relevant Bank (failing which the registration shall not be deemed made until the next day on which the relevant Bank is open for registration of the relevant Cash Amounts) and (ii) the registration of the Cash Amounts on the relevant Bank Account is made with a valid reference to the Account Holder's Custody Account number (failing which the registration shall not be deemed made until the day on which NASDAQ OMX has received the valid reference).
- 4.4 Securities may be pooled and comingled with property of other clients of NASDAQ OMX, provided that any Securities Account(s) used shall be marked so as to indicate its nominee nature or that it is held on behalf of clients. Securities may not be pooled and comingled with NASDAQ OMX's own assets or the assets of NASDAQ OMX's appointed Sub-custodians. Any maturity proceeds following a corporate action in respect of Pledged Securities provided will be held by NASDAQ OMX as a Cash Amount until such time as it may be released in accordance with the Loss Sharing Rules. Cash Amounts will be pooled and comingled with the funds of NASDAQ OMX. The Account Holder acknowledges that it will rank *pari passu* with NASDAQ OMX's other unsecured creditors in relation to the Cash Amounts. NASDAQ OMX is entitled to, at its own discretion, dispose of any amounts registered on a Bank Account, subject to NASDAQ OMX's Investment Policy. For avoidance of doubt, any disposal by NASDAQ OMX of any amount registered on a Bank Account will not affect the Cash Amount reflected on the Custody Account. A summary of the Investment Policy applicable from time to time shall be made available to the Account Holder upon request. Material changes to the Investment Policy shall be notified to the Account Holder with at least two (2) weeks' prior notice.

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## **5. DUTIES OF NASDAQ OMX**

NASDAQ OMX shall:

- 5.1 Comply with the terms of the Agreement and the Loss Sharing Rules and shall not do any act or omit any act which is in conflict with the Agreement or the Loss Sharing Rules.
- 5.2 Keep and maintain all Pledged Securities in accordance with the Agreement and the Loss Sharing Rules, and shall not use or otherwise dispose of any Pledged Securities for any other purpose.
- 5.3 Keep and maintain the Custody Account in Sweden.
- 5.4 Keep separate records in respect of Pledged Securities that shall enable NASDAQ OMX to at any time, without delay, distinguish the Pledged Securities registered on the Custody Account from securities registered on any other custody account and from NASDAQ OMX's own assets.
- 5.5 Insofar as relevant to the Pledged Securities registered to the Custody Account:
  - (i) sign any certificates of ownership or other certificates relating to the Pledged Securities;
  - (ii) collect and receive all payments (whether income, capital or dividend) and distributions in respect of such Pledged Securities on behalf of the Account Holder, and take any action necessary and proper, and/or otherwise reasonably incidental in connection with the same, including (without limitation) the presentation of coupons and other interest items and reflect all such payments on the Account Holder's Custody Account, whereby income and dividend payments will be paid out to the Account Holder's designated bank account;
  - (iii) upon receipt of Instructions from the Account Holder and as far as reasonably practicable and unless in conflict with NASDAQ OMX's Securities Pledge, exercise subscription, purchase or other similar rights attaching to the Securities on behalf of the Account Holder, provided in each case that the Account Holder has furnished to NASDAQ OMX the funds and other documentation, etc. required and requested to cover any costs in relation to such actions and execute such actions; and
  - (iv) NASDAQ OMX shall have a duty of care with respect to the Pledged Securities in accordance with applicable laws, regulations, customs and market practice in the relevant market.

## **6. DUTIES OF THE ACCOUNT HOLDER**

The Account Holder shall:

- 6.1 Comply with the terms of the Agreement and the Loss Sharing Rules and not do any act or omit any act which could reasonably impede or diminish NASDAQ OMX's Securities Pledge or Cash Security.
- 6.2 On the request of NASDAQ OMX execute and deliver such documents and give such Instructions as may be required to give effect to the Agreement.



6.3 On the request of NASDAQ OMX deliver or cause to be delivered to NASDAQ OMX from time to time any relevant material as NASDAQ OMX may require for the performance of its duties hereunder, including evidence of ownership of any Pledged Securities and copies of any other documents or material which is reasonably requested by NASDAQ OMX.

## 7. REPRESENTATION AND WARRANTIES

7.1 Each of NASDAQ OMX and the Account Holder represents and warrants to the other that:

- (i) it is duly organized and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing (unless it is an individual);
- (ii) it has obtained all authorisations of any governmental or regulatory body required in connection with the execution and performance of the Agreement and such authorisations are in full force and effect;
- (iii) it will comply with all rules and regulations applicable to its operations under applicable law; and
- (iv) it has the power and authority to execute, deliver and to perform its obligations under the Agreement (and under any other documentation required in connection herewith).

7.2 The Account Holder further represents and warrants to NASDAQ OMX that:

- (i) it is the owner of any Pledged Securities and that it is fully empowered to enter into and perform its obligations under the Agreement and to grant the rights and remedies to NASDAQ OMX contained herein and therein;
- (ii) all right, title and interest in any Pledged Securities shall be pledged to NASDAQ OMX, free of any Other Security Interest in favour of any party other than NASDAQ OMX; and
- (iii) its obligations under the Agreement constitutes legal, valid and binding obligations enforceable against the Account Holder.

7.3 Each Party shall inform the other Party immediately if any representation or warranty in clauses 7.1 or 7.2 ceases, or will clearly cease, to be true and correct.

7.4 On each day on which a transfer of Pledged Securities is effected, all the representations and warranties stated in this clause 7 shall be deemed to be repeated.

## 8. CREATION OF SECURITY

8.1 As collateral for all of the Account Holder's present and future obligations in relation to the Loss Sharing Pool under the Loss Sharing Rules, the Account Holder hereby pledges to NASDAQ OMX any and all securities which are registered on the Custody Account, from time to time ("**Pledged Securities**"), including:

- (i) any right to receive yield and matured principal amounts with respect to the Pledged Securities;

- (ii) any rights or claims relating to the Custody Account; and
- (iii) any rights or claims relating to the Pledged Securities.

For the avoidance of doubt the pledge of Pledged Securities under this clause 8.1 shall not constitute a transfer of title (Sw. *äganderättsövergång*) from the Account Holder.

- 8.2 Any Cash Amounts transferred by the Account Holder to a Bank Account and reflected on the Custody Account, from time to time, shall be deemed transferred by way of security (Sw: *säkerhetsöverlåtelse*) (“**Cash Security**”) to NASDAQ OMX and shall constitute collateral for all of the Account Holder’s present and future obligations in relation to the Loss Sharing Pool under the Loss Sharing Rules.
- 8.3 Any yield and matured principal amounts which have been received with respect to the Pledged Securities and reflected on the Custody Account and any interest accrued on Cash Amounts reflected on the Custody Account in accordance with clause 10.2 shall be deemed transferred by way of security in accordance with clause 8.2 and thus be subject to a Cash Security.
- 8.4 The Account Holder shall not, without the prior written consent of NASDAQ OMX:
- (i) create, or agree or attempt to create, or permit to subsist, any Other Security Interest than those created pursuant to clause 8.1 and 8.2 to arise or subsist over any Pledged Securities or Cash Amounts subject to a Cash Security; or
  - (ii) sell, transfer or otherwise dispose of any part of the Pledged Securities or any of its right, title or interest therein.
- 8.5 The Parties intend that the Securities Pledge and the Cash Security created under the Agreement shall constitute a “financial collateral arrangement” for the purposes of EU Directive 2002/47/EC on Financial Collateral Arrangements (as implemented in applicable national laws).
- 8.6 The Agreement shall be in addition to and shall not prejudice or be prejudiced by any right of set-off, lien, pledge or other rights exercisable by NASDAQ OMX against the Account Holder or any security, guarantee or indemnity now or in the future held by NASDAQ OMX.
- 9. RIGHT OF APPROPRIATION**
- 9.1 NASDAQ OMX may, at any time after the Securities Pledge or the Cash Security constituted by the Agreement has become enforceable, appropriate any Pledged Securities or Cash Amounts and apply it in such manner as NASDAQ OMX may determine in accordance with the Loss Sharing Rules, including the sequence in which the Securities Pledge or the Cash Security shall be realised.
- 9.2 NASDAQ OMX will account for the appropriation to the Account Holder and pay any amount by which the value of the appropriated Pledged Securities or Cash Amounts exceeds the Secured Sums then due in accordance with the Loss Sharing Rules and the Agreement.
- 9.3 NASDAQ OMX shall notify the Account Holder following the appropriation of any Pledged Securities or Cash Amounts.

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## 10. FEES AND INTEREST

- 10.1 NASDAQ OMX shall not pay any fees, interest or other remuneration to the Account Holder on any Pledged Securities or Cash Amounts unless explicitly set out in the Agreement and/or the Loss Sharing Rules.
- 10.2 Account Holders may be entitled to interest for Cash Amounts reflected on the Custody Account whereby interest payments will be paid out to the Account Holder's designated bank account. To the extent the NASDAQ OMX Deposit Rate is below zero, NASDAQ OMX is entitled to charge the Account Holder for the negative interest rate for Cash Amounts reflected on the Custody Account. Interest shall accrue and be paid in accordance with the terms, including rates and intervals, set out on the Website from time to time.
- 10.3 Fees may be charged for custody and other services in accordance with the fees stipulated on the Website from time to time.

## 11. APPOINTMENTS AND AUTHORISATIONS

- 11.1 The Account Holder hereby appoints NASDAQ OMX to be its attorney (with full power to appoint substitutes and to sub-delegate, including power to authorise the person so appointed to make further appointments, in both cases, with regard to all or any part of the Pledged Securities) on behalf of the Account Holder and in its name or otherwise:
- (i) to execute any document or do any act or thing which NASDAQ OMX or such substitute or delegate may, in its discretion, consider appropriate in connection with the exercise of any of the powers of NASDAQ OMX or which the Account Holder is obliged to execute or do, whether under the Agreement, the Loss Sharing Rules or otherwise;
  - (ii) to act on behalf of the Account Holder with full authority to communicate with the Banks and CSDs in all matters relating to the Pledged Securities and, without limitation, to send and receive messages and instructions on behalf of the Account Holder with respect to the Pledged Securities and to make any transfer of Pledged Securities registered to the Custody Account in accordance with the Agreement and the Loss Sharing Rules;
  - (iii) to correct and/or reverse any erroneous entries in the Custody Account or any entry or deposit to any other account as soon as practically possible after discovery, provided that the Account Holder shall be informed following such action; and
  - (iv) to realise any Securities Pledge or otherwise to safeguard or exercise any rights in relation to a Securities Pledge.
- 11.2 The Account Holder acknowledges and agrees that the power of attorney given under clause 11.1:
- (i) is coupled with a pledge to the benefit of NASDAQ OMX, and that it may not be revoked for as long the Agreement is in effect; and
  - (ii) shall be exercisable by NASDAQ OMX at any time or times as NASDAQ OMX thinks fit.
- 11.3 NASDAQ OMX shall be authorized to appoint one or several Sub-custodians. NASDAQ OMX shall appoint such Sub-custodians with proper care and ensure that it at all times has

(i) obtained all authorisations of any governmental or regulatory body required in connection with the performance of its duties and that such authorisations are in full force and effect and (ii) sufficient knowledge, resources and organization to carry out its respective services. Furthermore, NASDAQ OMX shall be authorized to appoint one or several sub-contractors to perform parts of NASDAQ OMX's duties under the Agreement. NASDAQ OMX is responsible for any Sub-custodian or sub-contractor appointed by NASDAQ OMX to perform any of NASDAQ OMX's duties under this Agreement, as if NASDAQ OMX itself had performed such duties. For the avoidance of doubt, any CSD is not regarded as a Sub-custodian or sub-contractor. Nothing in this clause shall be construed as to allow any Party to transfer or assign this Agreement to a third party without the prior written consent of the other Party.

## 12. COMMUNICATIONS, NOTICES AND INSTRUCTIONS

- 12.1 All notices and other communications under the Agreement shall be in English and in case of Account Holders to and from the Authorised Persons and in case of NASDAQ OMX to and from its relevant officers or employees. NASDAQ OMX may in its discretion agree to communicate in any other language than English upon request from the applicable Account Holder(s).
- 12.2 Notices may be sent by mail, e-mail, or such other teleprocess or electronic instruction system acceptable to NASDAQ OMX which shall have been transmitted with such security features as NASDAQ OMX may determine and on such terms and conditions as NASDAQ OMX may specify. Communication which shall be in writing shall be sent by registered mail, e-mail (in which case receipt shall be confirmed by the recipient) or other form of written communication which NASDAQ OMX may accept to the relevant point of receipt specified by the receiving Party in writing (or such new address that a Party has acknowledged by the other Party in accordance with this clause 12).
- 12.3 Notices sent by mail shall be deemed received by the Account Holder no later than three (3) Business Days after the date of posting/ mailing, and notices sent by e-mail or other electronic communication shall be regarded as received by the Account Holder immediately upon confirmed transmission of the same.
- 12.4 The Account Holder shall upon the request of NASDAQ OMX provide NASDAQ OMX with a list of such officers, employees, agents or other persons (each an "**Authorised Person**") of or for the Account Holder as have been authorised, either alone or with others as specified, to act on its behalf in the giving of instructions and/or performance of any acts, discretions or duties under the Agreement, and NASDAQ OMX shall be entitled to rely upon the continued authority of an Authorised Person to given instructions and so act on behalf of the Account Holder as aforesaid until NASDAQ OMX receives written notice from the Account Holder to the contrary. The Account Holder may also give individual authorisations to individual Authorised Persons, subject to the consent of NASDAQ OMX which shall not be unreasonably withheld. In absence of explicit written and acknowledged instructions to the contrary, NASDAQ shall be entitled to deem any person who is either (i) generally authorised to act on behalf of the Account Holder or (ii) authorised by the Account Holder in relation to NASDAQ OMX to act on behalf of the Account Holder in relation to the relevant matters as an Authorised Person.
- 12.5 NASDAQ OMX may act upon instructions ("**Instructions**") from an Authorised Person (or otherwise given on behalf of the Account Holder) in such manner as may be agreed or required by NASDAQ OMX in its discretion. However, NASDAQ OMX shall not be

obliged to take any action to comply with any Instructions or to take any other action hereunder if:

- (i) such Instructions in the opinion of NASDAQ OMX are in conflict with the Loss Sharing Rules, the Agreement or other written arrangements in effect between NASDAQ OMX and the Account Holder;
- (ii) NASDAQ's fulfilment of such Instructions are prevented by any event falling within the scope of clause 13.2 (vi); or
- (iii) such Instructions in NASDAQ OMX's opinion are outside the scope of its duties under the Agreement or are contrary to any applicable law or NASDAQ OMX's policies or other requirement which NASDAQ OMX is subject to (whether arising from any governmental authority, or that of a relevant exchange, clearing organisation, settlement system, CSD, Bank or market).

12.6 When taking action upon Instructions NASDAQ OMX shall act in a reasonable and proper manner, provided that:

- (i) any Instructions shall give NASDAQ OMX reasonable time to evaluate and prepare for such Instructions prior to the time of execution;
- (ii) any Instructions shall continue in full force and effect until cancelled or superseded (except in respect of Instructions executed by NASDAQ OMX which can no longer be cancelled);
- (iii) any Instructions shall be carried out subject to the rules, operating procedures and market practice of any relevant stock exchange, clearing organisation, settlement system, CSD, Bank or market where or through which they are to be executed;
- (iv) NASDAQ OMX shall have a right to refuse to execute any Instructions that in the opinion of NASDAQ OMX are unreasonable or, if performed by NASDAQ OMX, may have adverse consequences to the reputation of NASDAQ OMX; and
- (v) NASDAQ OMX shall have a right to refuse to execute Instructions if that in the opinion of NASDAQ OMX are illegible, unclear and/or ambiguous, until any ambiguity or conflict has been resolved to its satisfaction.

12.7 NASDAQ OMX shall without undue delay give written notice to the Account Holder if an Instruction is refused pursuant to clause 12.6.

### **13. LIABILITIES AND INDEMNITIES**

13.1 NASDAQ OMX shall not be responsible for any loss or damage suffered by the Account Holder, provided that NASDAQ OMX has acted with normal care.

13.2 NASDAQ OMX shall, unless resulting from an act of fraud, willful default or gross negligence on the part of NASDAQ OMX, in any event not be responsible for:

- (i) any indirect or consequential losses;
- (ii) any losses exceeding the market value (as determined by NASDAQ OMX in any reasonable commercial manner) of the relevant Pledged Securities or Cash Amounts;

- (iii) any liabilities, losses, damages, costs and expenses caused by delay in the actual receipt by NASDAQ OMX, or occurrence, of Instructions or payments from the Account Holder hereunder;
- (iv) any liabilities, losses, thefts, damages, costs and expenses arising out of any unauthorised disposal of the Securities held and/or administered by or under the direction or control of any CSD (or by any third party instructed by or through such CSD), provided that NASDAQ OMX has exercised reasonable care in selecting and monitoring the relevant CSD;
- (v) any liabilities, losses, damages, costs and expenses arising out of NASDAQ OMX relying upon any Instructions believed by it in good faith to be given by an Authorised Person (or otherwise to have been given on behalf of the Account Holder) and upon any notice, request, consent, certificate or other instrument believed by it in good faith to be genuine and to be signed or furnished by the proper Party or parties thereto, including (without limitation) the Account Holder or any Authorised Person; and
- (vi) any event of force majeure or other event beyond NASDAQ OMX's reasonable control, including but not limited to nationalization, expropriation, currency restrictions, terrorism, acts of state, acts of god, labour disturbances, power failures, breakdowns in communications links or equipment of NASDAQ OMX or of its nominees or agents (or of any third parties as aforesaid), or the failure or disruption of any relevant exchange, clearing organisation, settlement system or market.

13.3 The Account Holder shall indemnify NASDAQ OMX against any reasonable liabilities, losses, damages, costs and expenses (including reasonable and evidenced legal fees) (“Losses”) incurred by NASDAQ OMX and arising out of any action taken or omitted to be taken by NASDAQ OMX hereunder or pursuant to any Instructions, and shall reimburse NASDAQ OMX (on the basis of a full indemnity) the amount of all reasonable costs and expenses (including reasonable and evidenced legal costs and VAT thereon) incurred by NASDAQ OMX in connection with the exercise, or the attempted or purported exercise, by or on behalf of NASDAQ OMX of any of its powers under the Agreement or any other action taken by or on behalf of NASDAQ OMX with a view to or in connection with the recovery of the Secured Sums, the realisation of a Securities Pledge created by the Agreement or, the preservation of a Securities Pledge or a Cash Security or any other purpose contemplated by the Agreement. The Account Holder shall, unless resulting from an act of fraud, willful default or gross negligence on the Part of the Account Holder, in no event be liable to indemnify NASDAQ OMX for any indirect or consequential Losses. Notwithstanding the above, the Account Holder shall in no event be liable to indemnify NASDAQ OMX under this Clause 13.3 for any Losses attributable to NASDAQ OMX's fraud, willful default or gross negligence.

#### 14. TAXES ETC

14.1 The Account Holder shall be responsible for all filings, tax returns and similar reports on any transactions undertaken pursuant to the Agreement or in connection with the Pledged Securities or Cash Amounts which must be made to any relevant authority whether governmental or otherwise and for the payment of all unpaid calls, taxes (including without limitation any valued added tax), imposts, levies or duties, or any other liability or payment arising out of or in connection with the Pledged Securities or Cash Amounts, and in so far as NASDAQ OMX is under any obligation (whether of a governmental nature or

otherwise) to pay the same on behalf of the Account Holder it may do so without Instructions from the Account Holder out of the Custody Account.

- 14.2 NASDAQ OMX may, in accordance with Swedish/foreign law, Swedish/foreign public authorities' regulations or decisions or NASDAQ OMX's Agreement with Swedish/foreign authorities, be obliged on account of the Account Holder to take actions concerning tax in relation to the Account Holder's securities. The Account Holder shall provide such information, including written documentation, as NASDAQ OMX deems to be necessary in order to fulfil such obligation.

## **15. RELEASE OF PLEDGED SECURITIES OR CASH AMOUNTS AND TERMINATION**

- 15.1 The release of Pledged Securities and Cash Amounts shall take place to the extent that Secured Sums have been fully and unconditionally paid or discharged to NASDAQ OMX (or, if contingent, have wholly ceased to be capable of arising) and after the Account Holder has become entitled under the Loss Sharing Rules to request the release of such Pledged Securities and Cash Amounts.
- 15.2 The Agreement may only be terminated by the Account Holder with the consent of NASDAQ OMX which shall not be unreasonably withheld or delayed. NASDAQ OMX shall consent to termination if the Account Holder is no longer subject to Loss Sharing Requirements and the Pledged Securities and Cash Amounts may otherwise be released in accordance with the Agreement and the Loss Sharing Rules.
- 15.3 On termination of the Agreement, NASDAQ OMX shall transfer Pledged Securities and Cash Amounts in accordance with the Loss Sharing Rules to the Account Holder or to such other person(s) as the Account Holder shall give Instructions. NASDAQ OMX may withhold amounts (as reasonably determined by NASDAQ OMX) for outstanding liabilities attaching to the Pledged Securities and Cash Amounts of which NASDAQ OMX is or becomes aware and of any fees and expenses owing to NASDAQ OMX under the Agreement or the Loss Sharing Rules.

## **16. CONFIDENTIALITY**

- 16.1 Except as otherwise set forth herein all information and data received by NASDAQ OMX from the Account Holder, including information relating to the Pledged Securities or Cash Amounts and information pertaining to the legal or financial status of the Account Holder, will be treated as confidential by NASDAQ OMX.
- 16.2 Notwithstanding clause 16.1, but subject to applicable and mandatory law:
- (i) the duty of confidentiality shall not extend to information which is or becomes public through no breach of NASDAQ OMX's confidentiality obligations hereunder, which NASDAQ OMX already possessed at the time of reception without any obligation of confidentiality, or which NASDAQ OMX receives from a third party through no breach of the third party's confidentiality obligations towards the Account Holder;
  - (ii) NASDAQ OMX may share information with its Sub-custodians and any other person or entity advising or assisting NASDAQ OMX in its operations under the Agreement, provided that such persons and entities have a reasonable interest in such information under the Agreement, are subject to a corresponding duty of

confidentiality, and shall only use the information for purposes related to the Agreement;

- (iii) NASDAQ may share information with any entity or body (including any financial supervisory authorities or governmental bodies) if NASDAQ OMX (a) reasonably believes that such entity or body exercises a legal or regulatory function under any applicable law, or a function comprising or associated with the enforcement of a legal or regulatory function which NASDAQ OMX or the Account Holder is subject to, or (b) considers such arrangement to be in furtherance of its purpose or duties under applicable law; or (c) deems such disclosure to be otherwise required by applicable law; and
- (iv) NASDAQ OMX shall not be required to keep confidential the fact that the Account Holder is participating in the Loss Sharing Pool and has entered into this Agreement.

## 17. MISCELLANEOUS

- 17.1 **Regulatory Cooperation.** The Account Holder acknowledges that NASDAQ OMX is subject to supervision by the Swedish Financial Supervisory Authority. The Account Holder undertakes to cooperate with NASDAQ OMX, the Swedish Financial Supervisory Authority and any other governmental authority that may supervise NASDAQ OMX in relation to any inspection or any other actions initiated by the Swedish Financial Supervisory Authority or any other competent governmental authority and provide such information that NASDAQ OMX, the Swedish Financial Supervisory Authority or a competent governmental authority may request.
- 17.2 **Account Statements.** NASDAQ OMX shall provide the Account Holder with periodical reports and/or statements of accounts relating to the Custody Account, the specific contents and format to be determined by NASDAQ OMX from time to time. In absence of the Account Holder filing with NASDAQ OMX objections to any information, report, statement, confirmation, note or other document within thirty (30) days of the date of such information becoming available to the Account Holder, NASDAQ OMX shall have no responsibility for any errors or omissions therein, if not caused by NASDAQ OMX's gross negligence, and the Account Holder shall be deemed to have approved the contents thereof and accepted responsibility for all of its obligations appearing therein.
- 17.3 **Amendments.** Any changes of these General Terms for Loss Sharing Custody Accounts that are not material and changes to any fees charged by NASDAQ OMX, shall apply to the Account Holder from and including the thirtieth (30th) calendar day after the Account Holder shall be deemed to have received notice of the change in accordance with clause 12. Material changes shall be reported to the Swedish Securities Dealers Association or, should NASDAQ OMX deem it appropriate, to other representatives of the Account Holders. When these aforementioned representatives have not, within five Business Days of the report, requested consultations with regard to the changes (or if consultation has been requested, when such consultation has been made), NASDAQ OMX shall send a notice of the change to the Account Holders. The changes shall apply to the Account Holder from and including the thirtieth (30th) calendar day after the Account Holder shall be deemed to have received notice of the change in accordance with clause 12. Should a delay be hazardous, or should the changes be caused by legislation, judicial decision, or decision of any public authority, such notice may however be sent before such consultation has been made.



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- 17.4 **Third Party Rights.** Other than as may follow from the Loss Sharing Rules, no person other than a Party to the Agreement shall have any right to enforce any term (express or implied) of the Agreement. The Parties may vary any term of the Agreement without the necessity of obtaining any consent from any third party.
- 17.5 **No Waiver.** No failure to exercise and no delay on the part of either Party in exercising any right, remedy, power or privilege under the Agreement and no course of dealing between the Parties shall be construed or operate as a waiver of that right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of it or the exercise of any other right, remedy, power or privilege. The rights and remedies provided by the Agreement are cumulative and are not exclusive of any rights or remedies provided by law.
- 17.6 **Severability.** If any provision of the Agreement is held to be illegal, invalid or unenforceable in whole or in part, the Agreement shall continue to be valid as to its other provisions and the remainder of the affected provision.
18. **GOVERNING LAW AND DISPUTE RESOLUTION**
- 18.1 The Agreement and all non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, Swedish law.
- 18.2 The Swedish courts shall have exclusive jurisdiction to settle any claim, dispute or difference which may arise out of or in connection with the Agreement.
- 18.3 Clause 18.2 shall not limit the right of NASDAQ OMX to seek interlocutory measures or similar, or to otherwise seek enforcement of the Securities Pledge and the Cash Security created by the Agreement, against the Account Holder in any other court of competent jurisdiction, nor shall the taking of proceedings in one or more jurisdictions preclude the taking of proceedings by NASDAQ OMX in any other jurisdiction, whether concurrently or otherwise.
- 18.4 The Account Holder irrevocably waives any objections on the ground of venue or inconvenient forum or any similar grounds and irrevocably agrees that any judgment in any proceedings brought in any court referred to in this clause 18 shall be conclusive and binding and may be enforced in any other jurisdiction.
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