

To:

Consultation participants

16 November 2009

Revised draft version of the Standard Terms for Clearing Trades in Equity Market Instruments

We refer to the letter from Oslo Clearing ASA (“Oslo Clearing”) dated 2 July 2009 and the accompanying draft of the Norwegian version of the Standard Terms for Clearing Trades in Equity Market Instruments and the English version published on our website on 6 July 2009.

Oslo Clearing announced by letter dated 17 August 2009 that the deadline for responses to the consultation on the Oslo Clearing rulebook would be extended to 15 October to give consultation participants the opportunity to take into account the revised rules for Oslo Børs and Oslo Axess issued by Oslo Børs in relation to the introduction of mandatory central counterparty clearing, and also the revised VPO Rules proposed by Verdipapirsentralen. These documents were circulated in September.

Oslo Clearing received responses during the consultation period from the following consultation participants:

- The Norwegian Financial Services Association (Finansnæringens Hovedorganisasjon) and the Norwegian Savings Banks Association (Sparebankforeningen)
- Goldman Sachs International Plc
- Norges Bank
- The Norwegian Securities Dealers Association (Norges Fondsmeglerforbund)

Oslo Clearing is grateful for the comments received, and wherever possible we have taken the comments into account in preparing the revised version. Further explanation of the comments received on specific points and our response to the comments is provided below.

The current revised draft version is distributed only in an English language version. A number of the changes incorporated reflect the differences that have been identified, with the help of consultation participants, between the previous Norwegian and English drafts.

The structure of the rules and appendices is largely unchanged from the previous draft, save that the VPO Registration Mandate is now included as Schedule A to Appendix 7: Settlement of Clearing Transactions in VPO, and a number of the provisions relating to the requirements for clearing membership have been moved to Appendix 2: Clearing Membership Requirement. We also now enclose Appendix 4: Clearing Schedule. The appendix dealing with clearing of OTC transactions has been deleted since, in the first phase, Oslo Clearing will not offer this service.

1. GENERAL COMMENTS ON THE RULEBOOK

1.1 Choice of language for the rulebook

A number of consultation participants have expressed the view that the contractually binding language for the rulebook should be Norwegian, citing factors such as the predominance of Norwegian investment firms as clearing members, that disputes will be subject to Norwegian law, the interplay with the Norwegian language rulebooks for settlement systems, etc.

Oslo Clearing is sympathetic to the views that have been expressed in the consultation process, and has accordingly reconsidered the question of choice of language. However, we have concluded that it is most appropriate to use English as the contractually binding language. We note in this connection that the trading rules for Oslo Børs and Oslo Axess are only available in English. In view of the relationship between clearing activities and the marketplaces, we consider it to be natural that the rules for clearing should use the same language as the marketplace rules. Oslo Børs and Oslo Axess are becoming increasingly international in character, and the proportion of market participants that have little familiarity with Norwegian as the contractual language for trading (including member firms from other Nordic countries) continues to increase. The Norwegian participants in these marketplaces are investment firms and banks that in any case use English when communicating with their international clients. In terms of communication with foreign clients, and for that matter professional Norwegian clients as well, we consider it to be an advantage that the terms and expressions used correspond as far as possible with international terminology. It is self-evident that the terminology and concepts that apply to clearing are largely expressed in English.

1.2 Rules on amendments to the Clearing Rules

In respect of subsequent amendments to the Clearing Rules, Section 1.5 now includes wording to take into account the interests of clearing members when considering the need for immediate changes, while the reference to making an immediate change by “agreement with a Marketplace or Co-operating Clearing House” has been deleted.

Clearing members will, in general, be able to terminate their agreement with Oslo Clearing by giving two weeks’ notice. In respect of the consultation provisions at Section 1.5, first paragraph, it does not seem necessary to specify a particular minimum notice period for prior written notice of intended amendments, noting that there are various specific notice periods for the implementation of such changes.

1.3 Exercise of discretion by Oslo Clearing

We note by way of introduction that it is common market practice for clearing rulebooks to include provisions where the clearing house has the competence to exercise discretion to a greater or lesser extent. We do not believe that the draft rulebook proposed by Oslo Clearing includes a wider range of aspects that are subject to discretion than is usual, nor do we believe that the scope of discretion in these cases is wider than is usual. However, in view of consultation responses, we have reviewed the need for provisions that involve the exercise of discretion. In respect of the calculation of extraordinary margin requirements, we refer to Section 2.4 below. Elsewhere, the wording of Section 5.9, second paragraph, and Section 5.10 has been revised in an attempt to clarify the exercise of discretion.

1.4 Definitions, terms and expressions used and minor textual errors

We wish to thank all respondents for their valuable assistance in clarifying the definitions and correcting the use of various terms and expressions. Such responses have been taken into account in the revised draft to the extent that they are relevant to the revised English text.

2. DEFAULTS AND LINES OF DEFENCE

2.1 Events of default and measures in the event of default

A clearing house will normally consider the fact that a clearing member has been suspended from membership of another clearing house to be very relevant information, particularly since such an event would typically reflect deterioration in the member's creditworthiness and capacity to conduct settlement. Oslo Clearing therefore considers it obvious that such an event should be treated as an event of default. It may be very important that the clearing house is able to react quickly, not least to ensure the interests of other clearing members. In terms of the measures to be implemented in the event of default, Section 9.2 of the Clearing Rules provides precisely the flexibility of response that several consultation respondents consider desirable, not least if the suspension is a result of circumstances where the member is not at fault.

The provisions of this section also allow Oslo Clearing to await developments, which means an event of default does not automatically trigger a legal response, and this flexibility meets the concerns expressed by the Financial Services Association/Savings Banks Association. It will be natural for Oslo Clearing to investigate any such situation before deciding on specific measures.

In respect of the definition of material default, we agree with the Financial Services Association and the Savings Banks Association that certain of the definitions of material default may be seen to be particularly strict in comparison with other types of defaults that are not deemed as material. E.g. a breach of the delivery obligations of financial instruments will not necessarily represent a material default. To our understanding, it is a preferred solution for the market participants that such breach not automatically is regarded as a material default.

The measures applied by Oslo Clearing will assess the specific circumstances applicable to a default situation. E.g. upon a voluntarily winding up of a clearing member's business that poses no risk, Oslo Clearing will apply measures which are appropriate taking this into consideration.

2.2 Oslo Clearing's lines of defence

Oslo Clearing will offer clearing services for both equity market instruments and derivatives contracts. The services will be structured with different lines of defence, and margin collateral for each clearing service will be held on separate accounts.

In addition, the clearing service for equity market instruments will involve the establishment of a clearing fund that will be used to meet any losses caused by default that exceed the available margin collateral. In such circumstances, up to NOK 30 million of Oslo Clearing's available equity will be applied *before* the clearing fund contributions provided by the non defaulting clearing members is applied.

In the case of clearing of derivatives contracts, Oslo Clearing relies on the joint and several liability of clearing members, as well as the right to transfer end-clients from a defaulting

clearing member to another clearing member. These mechanisms will be applied before Oslo Clearing's available equity is applied to meet any remaining loss.

In the event of a material default, Oslo Clearing will manage the termination of members' activities in respect of each of the clearing services separately, and will apply the established lines of defence for each clearing service in the order defined in the rules in question. In the case of a clearing member that participates in both clearing services, this implies individual treatment of each default until all collateral has been exhausted except for Oslo Clearing's own capital, i.e. however so that Oslo Clearing's contribution of up to NOK 30 million is applied before the non defaulting Clearing Member's contribution to the clearing fund is applied.

Oslo Clearing is required to maintain 'own funds appropriate to the operations conducted', cf. Section 13-2, first paragraph, of the Securities Trading Act, and this means that its primary capital must be sufficient to operate both clearing services. Oslo Clearing carries out regular evaluations of the appropriate level of primary capital based on stress testing methodology in accordance with ECSB-CESR Recommendation No. 5.

2.3 Additional comments on the margin model

Oslo Clearing has issued more detailed rules on margin requirements and collateral. We refer to the revised version of Appendix 6. A further description of the margin methodology and process used will be issued in due course as a separate document. This will be made available after Oslo Clearing has reviewed the margin model with the Norwegian Computing Center (Norsk Regnesentral).

The intention is that the margin model should be consistent with established market standards and apply risk-based margin parameters, so that it is in all material respects compliant with the ECSB-CESR recommendations issued in May 2009. As mentioned above, the margin rate and other relevant risk parameters applied will be made available for members on the Oslo Clearing website. In addition to the normal margin requirements imposed during the course of the clearing day, Oslo Clearing will continually evaluate the margin coverage of each individual member. If a member's margin coverage is considered to be inadequate in relation to its exposure, Oslo Clearing will impose an extraordinary margin requirement. Oslo Clearing will impose a deadline for the member to satisfy the extraordinary margin requirement, but such deadline will not be less than one hour.

Oslo Clearing, however, reserves the right to evaluate this with regard to the specific member's financial condition, and this evaluation will of necessity include elements of discretion.

In addition, the need to impose extraordinary margin requirements has to take into account the market conditions at any time, as well as other events of material significance, and in our view it is important that the clearing house is responsible for the exercise of discretion in carrying out this evaluation. It is noted that a clearing house is expected to have the legal basis and operational capacity to impose intra-day margin requirements in order to comply with the ECSB-CESR recommendations, cf. Recommendation 4, Item B.4.

2.4 Additional comments on the clearing fund model

As recipients will already know, members will be required to contribute to a clearing fund. A member's contribution will be the highest of the three alternatives set out in Appendix 3, which stipulates the alternatives of a minimum contribution, a proportionate contribution

based on a percentage of the member's margin over the last 30 clearing days and a proportionate contribution based on a percentage of the member's margin over the last 250 clearing days (a more detailed explanation is provided below and in Appendix 3).

Oslo Clearing will announce the percentage to be used for calculating contributions to the clearing fund no later than 30 days before the start of its clearing service for equities.

The basis for calculating clearing fund contributions will be the calculated margin (known as the initial margin) without taking into account accumulated losses and gains on clearing positions (known as the variation margin) and collateral in the form of equity market instruments that is included in the margin calculations. Initial margin will be calculated at the same time as the normal margin requirement, and only the most recent 30 or 250 previous clearing days on which the member had open positions will be included in the calculation.

We are of the opinion that the alternative time periods provide a good basis for capturing market dynamics in the cleared markets, and to our understanding these periods are in line with market practice in other cleared markets. The clearing fund represents an important element in the lines of defence for Oslo Clearing, and it is therefore in the mutual interest of Oslo Clearing and its members that the size of the fund reflects changes in values and risk exposure in the market. It should be noted in this connection that a defaulting clearing member's contribution to the clearing fund will be applied to meet losses arising from its default before the contribution from Oslo Clearing's equity or the contributions of other non defaulting clearing members are applied. This will accordingly reduce the risk that non-defaulting clearing members are affected by another member's default.

With regard to the application of subsequent "top up" contributions (such contributions will be required if it is necessary to draw upon the clearing fund contributions of non-defaulting clearing members) the rules specify that such contributions cannot be applied to cover losses that relate to the default that caused the drawdown from the clearing fund.

The revised draft of the rulebook specifies that Oslo Clearing's contribution from its available equity shall be subject to a limit of NOK 30 million in aggregate for losses resulting from all events of default occurring on the same day, with an overall limit of NOK 60 million in total over a period of 30 days.

2.5 Financial Collateral Agreement

In our opinion, it is reasonable and proportionate that in the event of default by a member, Oslo Clearing should be entitled to make use of collateral pledged to meet all the losses that Oslo Clearing incurs, regardless of whether the losses relate to derivatives trading or trading in equity market instruments. We also take the view that this approach is in the best interests of other clearing members. If the collateral is not applied in this way, there is a risk that the clearing house, after having closed a defaulting clearing member's positions in both markets, could be required to transfer surplus collateral in one market to the liquidation estate of the defaulting member even if the clearing house was still having a loss on the clearing member related to the other clearing service. This would thus lead to a weakening of Oslo Clearing's solidity. This approach is not the same as a "cross default" clause as some consultation respondents have suggested.

The wording of Section 5 of the Financial Collateral Agreement has been amended to bring it into line with Section 9.2 of the General Terms which refers to "material default".

3. SETTLEMENT ETC.

3.1 General

The provisions previously included in Chapter 7 of the draft rulebook have for the most part now been moved to Appendix 7.

3.2 Clearing of trades following suspension of the clearing member

In the event of suspension of a clearing member, Oslo Clearing will refuse to register any new trades from the clearing member in question as soon as Oslo Clearing has received confirmation of the suspension from the relevant marketplace, cf. Section 11.2, third paragraph, of the Clearing Rules.

3.3 Registration of clearing transactions - Oslo Clearing's participation in VPO

Oslo Clearing's participation in VPO will be regulated by the general rules for VPO, cf. the draft revised VPO Rules circulated by VPS. Oslo Clearing will therefore operate as a settlement participant in VPO. In order to allow cancellations of, and changes to, notified settlement instructions, clearing members (or where appropriate their settlement agents) must issue a mandate, cf. Appendix 7, Schedules A and B, in favour of Oslo Clearing that authorises Oslo Clearing to carry out such registrations in VPO on behalf of the clearing member.

As can be seen from the draft rules circulated by VPS, it is intended that there will no longer be a requirement for any participant in VPO - including Oslo Clearing - to provide third party guarantees of liquidity available on accounts with Norges Bank.

3.4 Settlement, compensation and default rules (including buy-in)

A range of discussions have taken place between various market participants over the need to introduce buy-in rules to deal with failed delivery, and over which entity (Oslo Børs, VPS or Oslo Clearing) is most appropriate to operate such rules. We have concluded that it is most appropriate for Oslo Clearing to introduce and manage buy-in rules.

In its original proposal for buy-in rules, Oslo Clearing took into account international recommendations in this area. We were aware when drafting the provisions that a number of Norwegian market participants were sceptical about such rules, while on the other hand international participants anticipated clearer operating rules for the Norwegian market. Our original proposal should accordingly be seen as a compromise intended to satisfy all parties. Following comments received on the original proposal, we now present the market with a revised proposal.

The rules now proposed for buy-in (Section 6 of Appendix 7) stipulate that under normal circumstances buy-ins will only take place for transactions that have not been settled by the 14th day after the initial settlement date. The provisions in respect of calculating compensation to be paid by the defaulting clearing member (Section 6.4), notification of a buy-in (Section 6.1), buy-in execution (Section 6.1 et seq.) and subsequent cash compensation where appropriate (Section 7), are on the whole compliant with the relevant standard issued by the European Securities Forum.

It should also be noted that the rules give Oslo Clearing the right to carry out buy-ins with a shorter notice period than mentioned above if a member is in material default.

We also wish to stress that the clearing rules (including the provisions on buy-ins) will apply to all cleared transactions in equity market instruments, regardless of what may apply as a result of other rulebooks/standards with which market participants comply (including the Norwegian Securities Dealers Association's Industry Standard No. 4 on disputes between investment firms and the Association's proposals for general business terms and conditions). Investment firms may therefore have a need to update their business terms and conditions in order to ensure that the basis for events of default also applies to their clients.

The proposals also permit Oslo Clearing to defer cash settlement for one clearing day if any clearing member fails to meet its payment obligations in a settlement (Appendix 7, Section 8).

Rules on cash compensation for corporate events in circumstances where settlement is deferred are included at Appendix 7, Section 9.

The wording of the requirement for a clearing member that is in default to repay all losses incurred by Oslo Clearing as a result of the measures mentioned above has been amended for the sake of clarity. The most important category of loss will be the compensation amounts to be paid to other clearing members, but the clearing house may also incur other costs etc. in such circumstances.

The provision previously proposed at Section 7.1 of the General Terms, whereby Oslo Clearing's duty to carry out clearing in relation to a clearing member was subject to the clearing member meeting its obligations to Oslo Clearing, has been deleted.

3.5 VPO Loan Pool

The rules in respect of Oslo Clearing's participation in the VPO Loan Pool have been transferred to Appendix 7. Oslo Clearing will participate in the automated securities lending system, and if the securities for which delivery has failed are available in the loan pool Oslo Clearing will be able to complete delivery to the receiving clearing member and so avoid deferred delivery. Oslo Clearing will cover the borrowing costs, but the clearing member that fails to deliver will be subject to a penalty fee pursuant to Appendix 7, Section 5.1.3 (cf. Appendix 5 – to be distributed later). The purpose of the penalty fee includes incentivising members to ensure full delivery of securities at the time of settlement. It is not mandatory for individual clearing members to participate in the automated securities lending system, and members will continue to be able to make their own arrangements for delivery of securities and borrowing securities as they see fit.

3.6 Rules on complaints

The rules on complaints have been improved and clarified, and the procedures for objections are now clearer (cf. Appendix 7, Sections 3.1.2 – 3.1.4 and 3.2.2 – 3.2.4).

4. PROVISIONS ON LIABILITY AND DAMAGES

4.1 Liability

A clearing member will always be responsible for settlement of the transactions to which the member is a party.

In respect of settlement carried out for an NCM through a GCM, the GCM will therefore always be responsible for settlement, regardless of whether the transaction relates to its own trading or trading carried out by an NCM. It is neither common practice internationally or

nationally, nor would it be timely, for a GCM to be allowed extra time to contact the NCM in question to try and resolve a problem before the GCM is deemed to be in default.

Similar principles apply in circumstances where a clearing member uses a settlement agent for registration and settlement of its transactions. Any failure of settlement caused by the settlement agent would, in relation to Oslo Clearing, be treated as default by the clearing member.

4.2 Damages

The provisions on liability clarify that losses caused by wilful misconduct or negligence are not included in the exemption from liability provided by the former Section 11.1 (now Section. 10.1).

We do not propose any change to the provisions of former Section 11.1, second paragraph. The key point here is that Oslo Clearing is not liable for losses arising from errors in marketplace trading information. We find it difficult to see how it could be considered relevant to qualify this exemption in respect of wilful misconduct or negligence on the part of Oslo Clearing in respect of this type of error.

The clearing member is subject to strict liability ('objektivt ansvar') as defined by Norwegian law for the consequences of default. We have included in former Section 11.2, second paragraph, (now Section 10.2, second paragraph) wording to clarify that a defaulting clearing member is liable to repay all amounts paid out by the Clearing Fund as result of a default situation caused by the clearing member in question.

The third paragraph of the former Section 11.1 has been deleted. The objective of this paragraph was to exclude Oslo Clearing from liability for indirect losses, and it is therefore superfluous given the content of the first paragraph. It is nonetheless an important basic principle that Oslo Clearing is liable to other clearing members as the central counterparty, even in a situation where a clearing member is in default of its liability to Oslo Clearing.

4.3 Definition of "Force Majeure"

It is unfortunately a feature of the times in which we live that it is not unknown for countries in which clearing members are incorporated to be involved in wars or situations akin to war or the like. At the same time the risk of major wars is less relevant. We therefore consider it to be good practice to limit the definition of force majeure to situations where the consequence is that settlement and banking systems cease to operate.

5. OTHER MATTERS

5.1 Duty to provide information/Reporting

The rules on a clearing member's duty to provide information are now found at Section 5.5 of the General Terms.

The wording of the final paragraph of the former Section 5.6 has been clarified to the effect that it now only applies to decisions that are relevant to whether the clearing member continues to satisfy the conditions for membership of Oslo Clearing or is in default of other legal requirements.

In respect of the fifth paragraph of the former Section 5.6, in which Oslo Clearing reserves the right to request and receive other financial information as it may see fit, and to monitor the

Clearing Member's financial condition in any other way, Oslo Clearing does not consider it appropriate to restrict this right to circumstances where it has a justifiable suspicion that the clearing member no longer satisfies the conditions for membership etc. Oslo Clearing may need additional or updated information from a clearing member, and may also have a more general need for information. In particular, Oslo Clearing may request information on a member's operational capacity (cf. new draft Section 5.5).

We do not consider it appropriate that the duty to provide information pursuant to the sixth paragraph of former Section 5.6 should be limited to situations of material default.

In respect of Oslo Clearing's equivalent duty to respond to enquiries from members, we refer to Section 3 of the General Terms.

5.2 Prices, fees etc.

The provision in Appendix 6 for a fee to be charged for releasing assets pledged as collateral has been deleted.

5.3 Duty of confidentiality

The fourth paragraph of former Section 13.2 has been deleted.

5.4 Clearing membership, duties of members etc.

The rules on membership have been rewritten and now refer to the European directives relevant to credit institutions and investment firms. The basic assumption will be that credit institutions and investment firms authorised to provide the investment services referred to will in general be granted clearing membership of Oslo Clearing, whereas a case-by-case assessment of suitability will be of greater importance for other categories of members. Other types of entity may be granted membership, including granting GCM membership for credit institutions that do not provide investment services to the extent that this is permitted by the legislation that applies to their activities.

It will also be possible for institutions other than limited companies to apply for clearing membership, and the wording has been amended to reflect this.

In terms of the financial requirements for membership, reference is made to Section 5.1 of the General Terms, which stipulates that the two categories of members must have regulatory capital of at least NOK 40 million and NOK 500 million respectively, or such higher regulatory capital as may be required by current legislation for their activities. The levels of NOK 40 million and NOK 500 million are accordingly minimum requirements, and are not in addition to the capital required to meet capital adequacy requirements.

The former Section 5.2 whereby Oslo Clearing reserved the right to impose further requirements on the organisation of a Clearing Member's business activities has been deleted.

In respect of the former Section 5.6, fourth paragraph, (cf. new Section 5.5, third paragraph) on providing Oslo Clearing with capital adequacy reports, Oslo Clearing now provides for this reporting to be at the company level (not at the consolidated group level) and with a duty to report any subsequent corrections.

The provisions on notifications by Oslo Clearing to all clearing members or groups of clearing members have been redrafted, reflecting in part comments received through the consultation process.

Section 5.11, fifth paragraph, (cf. new Section 5.10, fifth paragraph) has been amended to stipulate that it is the NCM's responsibility to ensure that it does not have agreements for NCM Declarations with more than one GCM at any time.

5.5 Consultation process

In response to consultation responses from the Financial Services Association and the Savings Banks Association, we find it appropriate to explain that Oslo Clearing, Verdipapirsentralen and Oslo Børs carried out extensive consultation with major market participants prior to the formal consultation process. A number of reference groups discussed the proposals, including a reference group made up of in-house legal counsel from the major Norwegian banks and investment firms, and the latter group was given an early draft of the proposed revised rules. However, the group's members decided to await the formal consultation process before providing their comments. We therefore cannot agree with the view that there has been little contact with market participants and a lack of collaboration with such participants. It is Oslo Clearing's stated intention to give all potential members good opportunities to put forward their views, and we have structured the consultation process for the new rules in accordance with this aim.

6. NEXT STEPS

As mentioned in the introduction, Oslo Clearing aims to complete the preparation of the revised rulebook before the end of this year, and intends to hold open meetings for further discussions over the next few weeks. Oslo Clearing will provide further information on the time and place of such meetings in the near future.

Yours truly

OSLO CLEARING ASA

Christian Sjöberg

Chief Executive Officer