

## FrontLine SIX x-clear Ltd

Clearing Notice 02/2011

### **Supplementary information and clarifications regarding the Financing Agreement for the financing of Inter-CCP Collateral**

#### **1.0 Preliminary remarks**

In summer 2011, x-clear concluded a Financing Agreement for the financing of Inter-CCP Collateral with x-clear Members as a further component of the Contractual Relationship. Having received various queries from Members, this Clearing Notice will clarify certain fundamental aspects and provide more precise information on key individual points of the Agreement (see chapter 3.0).

The comments below should be read as a supplement to and in continuation of our comments contained in the FrontLine on interoperability dated 24 June 2011, which is published at [www.six-x-clear.com](http://www.six-x-clear.com) > Clearing > Exchanges > London Stock Exchange > Update info. Please also note that the purpose and scope of this Financing Agreement encompasses all the Contractual Agreements of x-clear with its Members (Membership Agreements) and it should be interpreted as such.

#### **2.0 Validity**

This Clearing Notice shall apply to all Financing Agreements concluded with x-clear.

#### **3.0 Clarifications**

##### **3.1 Revision of the entire Contractual Relationship**

Where permitted by law and operational factors, all Membership Agreements for all Trading Platforms served by x-clear (currently SIX Swiss Exchange (SSX), London Stock Exchange (LSE) and various MTFs) were harmonized with respect to their contents and the structure of the Contractual Relationship as a whole. This is one of the main aims of the ongoing revision of x-clear's Membership Agreements.

The drafts produced by x-clear for the SSX and LSE-related Agreements have each been submitted for consultation with a select group of x-clear Members. We are working to conclude this review process and send out the revised Membership Agreements before the end of 2011.

##### **3.2 Impact of this Financing Agreement on x-clear Contractual Relationships**

Direct consequences of the new Financing Agreement include the following:

- it was possible to eliminate the provisions in the Pledge Agreement for Margins relating to the re-use of collateral;
- a paragraph concerning (Additional) Financing Contributions has been added to the Clearing Terms.

## FrontLine SIX x-clear Ltd

Clearing Notice 02/2011

### 3.3 The three-pillar concept of x-clear and its quantitative impact

As mentioned in the FrontLine dated 24 June 2011, x-clear's collateral concept with respect to inter-CCP risk comprises three pillars:

- Pillar 1 is provided by the Members by means of an unsecured Financing Line in the amount of the Initial Amount (see below). The corresponding Financing Line used to provide the individual Financing Contributions by the x-clear Member was agreed in the Financing Agreement for the financing of Inter-CCP Collateral.
- Pillar 2 is the amount provided by x-clear itself in the same amount as the Initial Contribution.
- Pillar 3 is requested by means of a Credit Call issued by x-clear to its Members in the form of one or more Additional Financing Contributions, if it is probable that the funds from Pillars 1 and 2 will not be sufficient due to an increased requirement. The individual amount of the Additional Financing Contribution(s) of the individual members is determined similarly to Pillar 1 in accordance with the principle of the joint assumption of risk, i.e. based on the relative size of the open positions held by the respective Member (pursuant to section D, *Request and delivery of the financing contribution*).

The relevant regulatory authorities require that inter-CCP risk be hedged. x-clear can only have an indirect impact on the size of the **Initial Contribution (Pillar 1)** by increasing Pillar 2 (x-clear contribution). The size of Pillars 1 and 2 depends on the cross-CCP volumes generated by the x-clear Members and the resulting daily margin requirements of the respective Co-CCPs. As such, the size of Pillar 1 cannot be defined in the Financing Agreement with respect to its amount. At present, we do not see any reason to change the amount of the Initial Amount from CHF 100 million.

In section A *Definitions* of the Financing Agreement, the definition of **Pillar 3** states that the **Additional Financing Contribution** of all x-clear Members is limited to an amount of up to double the Initial Contribution. According to the FrontLine on interoperability dated 24 June 2011, the Initial Contribution was set at CHF 100 million, meaning the Additional Financing Contribution of all Members is currently limited to a maximum of CHF 200 million. For individual Members, this means that in the case of x-clear requesting Additional Financing Contributions, they must make available up to a maximum of twice their monthly financing contributions.

x-clear Members will be informed of any change – in particular any increase – in the Initial Contribution (and as a result, the other Pillars) 30 days prior to the change coming into effect by means of a Clearing Notice.

### 3.4 Segregation of financing contributions – concluding Inter-CCP Pledge Agreements

The (Additional) Financing Contributions paid by x-clear Members are held neither in the accounts/custody accounts of x-clear nor SIX SIS. In terms of the Financing Contributions, SIX SIS assumes the function of paying agent only. In line with industry-wide practice, the funds made available (i.e. the financing contributions from both the Members and x-clear) are instead transferred to an account at Clearstream Bank Luxembourg. This account is held in the name of the respective Collateral Provider (x-clear or its Co-CCP).

## FrontLine SIX x-clear Ltd

Clearing Notice 02/2011

As mentioned in the preamble to the Financing Agreement, x-clear requested the required CCP collateral under the Inter-CCP Pledge Agreements under Luxembourg law. So far, we have concluded Pledge Agreements with our existing Co-CCPs (LCH.Clearnet, EuroCCP and EMCF). Other such Pledge Agreements are being established by concluding Master Link Agreements. These are based on the principle of reciprocity, i.e. they are double-sided agreements: under one agreement x-clear acts as the Collateral Provider, while under the other x-clear is the Collateral Taker.

### 3.5 **Release of Inter-CCP Collateral in the event of x-clear declaring bankruptcy**

The Inter-CCP Collateral and thus the (Additional) Financing Contributions provided the x-clear Members become the property of x-clear; however, these may be withdrawn by the x-clear Member or x-clear in the amount of any Excess Funds and re-transferred to the Member. If this does not happen, the part of the amounts not required to cover the Co-CCP risk would have to be repaid to the x-clear Member in the event of x-clear declaring bankruptcy. In this respect the x-clear Member has a contractual right to restitution.

### 3.6 **Participation rights (clarification on para. 1, art. 14, lit. a)**

After securities have been credited to the Securities Funds Account, all legal rights (ownership, participation rights etc.) attached to the Intermediated Securities are transferred to x-clear. The Member may retain its participation rights by replacing the securities lent to x-clear (as for securities lending and borrowing), thus reclaiming these rights and being able to exercise them itself. This means that while the securities are credited to the Securities Funds Account, the Member cannot exercise the participation rights attached to the securities concerned. Consequently, with respect to the disclosure obligations specified in the Federal Law on Stock Exchanges and Securities Trading, the x-clear Member is not obliged to make any disclosures about securities holdings, as long as the securities are held by x-clear as an (Additional) Financing Contribution.

### 3.7 **x-clear Member Default (clarification on para. J, art. 16) – General clause regarding fair and equal treatment**

It should be understood that x-clear does not deem all minor failures or incidents occurring outside of the terms of the Agreement to be a "Default" with respect to "any obligation" within the meaning of art. 15 of the Financing Agreement.

In the revised Contract for Clearing Services, x-clear therefore guarantees in para. 2.1 that x-clear will treat its Members in an objective and non-discriminatory manner – particularly when admitting Members, providing services and terminating memberships (suspension, termination). In particular when exercising discretion as stipulated in the agreements, x-clear will adhere to the principles of proportionality and good faith in business transactions set out under Swiss law.

### 3.8 **Assumption of risk in postal communication (clarification on para. P, art. 27 (ii))**

This regulation corresponds to the Swiss regulation regarding mail sent to Swiss courts. In specific instances, if there is a problem with postal communication, x-clear will exercise its rights in a fair and orderly manner within the meaning of para. 2.1 of the Contract for Clearing Services.



## FrontLine SIX x-clear Ltd

Clearing Notice 02/2011

### **4.0      Contacts**

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