



Trading Appendix 4

# Clearing and Settlement Rules

CROATIAN POWER EXCHANGE Ltd.

**1. INTRODUCTION**

- 1.1. These Clearing and Settlement Rules apply to the Clearing and Settlement of Transactions in CROPEX Markets.
- 1.2. Clearing is conducted by CROPEX entering into a Transaction between Members as a central Counterparty and by registering the Transaction in CROPEX system. Clearing is subject to the Trading Fees set out in the Fee Schedule.

**2. PREREQUISITES FOR CLEARING**

**2.1. Membership Categories and Requirements**

- 2.1.1. Only legal entity under Applicable Law may apply for membership. CROPEX may under special circumstances and in its sole discretion deviate from this requirement.
- 2.1.2. A prospective member must upon request from CROPEX be able to document that it possesses all Required Authorisations for its applicable membership.

**2.2. Counterparty Eligibility**

- 2.2.1. Only Members are eligible as Counterparties to CROPEX in Clearing Transactions, and only for CROPEX Markets in which the Member participates. To be eligible as a Counterparty to Clearing Transactions on any of CROPEX Markets, the Member must at the time when each Clearing Transaction is registered:
  - a. have concluded a valid Self-Billing Invoicing Agreement;
  - b. have appointed a Clearing Responsible;
  - c. have been granted one or more Trading Portfolio(s) by CROPEX;
  - d. have paid Cash Collateral on a Deposit Account ascribed to respective Member or have provided a Bank Guarantee, and have met all of its outstanding Collateral Calls; and
  - e. not have its access to Clearing suspended or terminated in accordance with the Trading Rules or Membership Agreement.
- 2.2.2. Members must at all times, and immediately upon request from CROPEX, be able to document that they fulfil the criteria of this Section 2.2.

**2.3. Continuous Information Obligations of Members**

- 2.3.1. CROPEX may at any time request for and obtain credit information and otherwise monitor a Member's financial standing and soundness, level of competence and other matters relevant (in the opinion of CROPEX) to the financial and legal status of the Member, including Required Authorisations. Each Member agrees promptly to provide such information and documents as CROPEX may request, and to request any other party holding such information or documents on behalf of the Member to release such information or documents.
- 2.3.2. CROPEX may, without being prevented by any duty of confidentiality by any holder of information, request for and obtain such information and documents (where available) from the Member's bank(s) or other sources of relevant information as CROPEX considers appropriate. The Member shall promptly provide any additional waiver required for information to be provided to CROPEX.
- 2.3.3. A Member shall immediately notify CROPEX in writing as soon as the Member becomes aware of or finds it likely that any of the following events will occur in relation to it:
  - a. any Non-Compliance Event or Material Non-Compliance Event under the Trading Rules or Membership agreement or disciplinary, criminal, or regulatory proceedings related to Trading or Clearing activities involving the Member or its board of directors or employees involved in its Clearing with CROPEX;
  - b. any other matter relating to it of which a Member acting in good faith would reasonably expect to be of interest to CROPEX in relation to Clearing and its position as a Member.

### **3. ACCOUNT STRUCTURE**

#### **3.1. Trading Portfolio**

3.1.1. Each Member is granted Trading Portfolio(s) for each of CROPEX Markets on which it participates, in accordance with their Membership Agreement and Trading Rules.

#### **3.2. Cash Accounts**

3.2.1. CROPEX shall open and manage the following cash accounts:

- a. Settlement Account; and
- b. Deposit Accounts.

3.2.2. Accounts shall be opened by CROPEX in compliance with the Trading Rules. A Member is responsible for all liabilities and debts by any third party towards CROPEX for Deposit Account ascribed to the respective Member. Each Deposit Account shall be automatically charged for all costs and applicable fees arising from opening, keeping and operating of respective Deposit Account, thus reducing the amount of the Cash Collateral deposited on such account.

3.2.3. The CROPEX may lay down more detailed procedures to determine types of accounts and the method of managing the accounts for the implementation of the Clearing tasks and Settlement.

3.2.4. Member shall be obliged to settle its liabilities arising from Clearing Transactions by paying the applicable Trading Fees and the applicable amount of the price of the purchased Product(s) to the Settlement Account.

3.2.5. The sums of credit in a Deposit Accounts to the benefit of the Member may be used by CROPEX for payment of any liability of a Member towards CROPEX, deriving from the Member's membership, Transactions, Trading on any of CROPEX Markets or any other contractual or extra-contractual obligation in connection with the Member's membership and its activities on any of CROPEX Markets, in accordance with the Trading Rules.

3.2.6. If a Member fails to fulfil financial liabilities in time, CROPEX shall charge Statutory Default Interest on any unpaid due amounts. Interest is charged starting at the date of payment maturity and finishing at the date of the actual settlement of the debt.

#### **3.3. Settlement Account**

3.3.1. Settlement shall be made by CROPEX via the Settlement Account opened at the Settlement Bank.

3.3.2. The Settlement Bank shall keep and CROPEX shall manage the Settlement Account. Clearing Transactions are finally settled through set-off or through the transfer of cash payments on or from Settlement Account; in a way that the Member buying Product(s) in a Transaction pays the applicable amount of the Product(s) price and applicable Trading Fees to the Settlement Account and that CROPEX then forwards the applicable Product price to the Member selling the Product in a corresponding Transaction, reduced for the selling Member's applicable Trading Fees.

#### **3.4. Deposit Account**

3.4.1. Cash Collaterals shall be kept in the Deposit Account at the Settlement Bank. Cash Collaterals are pledged to CROPEX for Member's obligations in accordance with the Membership Agreement and the Trading Rules. Cash Collaterals are pledged from the moment when they are delivered to CROPEX (i.e. deposited to the Deposit Account), without need for any further actions or formalities. Any interest rates or other fruits or benefits regardless of their nature received for the Cash Collaterals deposited to the Deposit Account (e.g. interests paid by the Settlement Bank to the Deposit Account for the deposited Cash Collaterals) shall automatically become a pledged Collateral and will not be directly set-off with CROPEX's claims towards the respective Member to whom the Deposit Account is ascribed to.

3.4.2. CROPEX shall manage Cash Collateral for each Member on a separate Deposit Account.

3.4.3. Member is not entitled to dispose of the cash funds on the Deposit Account.

3.4.4. CROPEX uses the cash funds on the Deposit Account for payment of any outstanding liabilities of a Member towards CROPEX in accordance with these Clearing and Settlement

Rules, Membership Agreement, applicable Direct debit to/from Deposit Account Agreement and the rest of the Trading Rules.

- 3.4.5. CROPEX will refund the remaining Cash Collateral to Member in case of termination of the Membership Agreement, if there are any funds left in the Cash Collateral after settlement of all outstanding claims which CROPEX has towards the Member.

#### **4. CLEARING PROCEDURES**

##### **4.1. Transactions Concluded on CROPEX Markets**

- 4.1.1. Transactions concluded on any of CROPEX Markets are automatically and mandatory subject to Clearing in accordance with the applicable Trading Rules.
- 4.1.2. Each Transaction in any of CROPEX Markets which is deemed concluded on behalf and to the benefit of the Member who has concluded the Transaction, shall be provided to registration, invoicing, offsetting and settlement in the Clearing System.
- 4.1.3. The Members are under an obligation to deliver or off-take the Delivery Amounts. CROPEX does not have any obligation or liability regarding delivery and off-take of the Delivery Amounts. Non-delivery or non-off-take is to be settled in accordance with applicable Croatian legislation, with no liability for CROPEX.
- 4.1.4. Settlement will be based on the Transactions recorded in Clearing System with CROPEX only, and will not reflect non-delivery or non-off-take.

##### **4.2. Settlement**

- 4.2.1. CROPEX will provide information to each Member on respective Member's Deposit Account, including information about Settlement and Collateral.
- 4.2.2. CROPEX issues invoices and/or self-billing invoices separately to Members based on Transactions on CROPEX Markets. Separate invoices and/or self-billing invoices are issued to the same Member for Trading on each of CROPEX Markets in which the Member participates. In addition, the Members will be charged for the Volume Trading Fee and Volume Clearing Fee as set out in the Fee Schedule. The CROPEX shall forward the invoices and the self-billing invoices to a Member in written form by e-mail to the address stated in the Membership Agreement. Members are obliged to conclude a Self-Billing Invoicing Agreement substantially in the form set out in Trading Agreement 2 of the Trading Rules at the same time or immediately after concluding a Membership Agreement.
- 4.2.3. The invoice falls due the first Banking day following the Invoicing day for that invoice. The Member is obliged to provide the invoiced amount to the Settlement Account by 11:00 AM on the due date, and in the relevant settlement currency.
- 4.2.4. Self-billing invoice falls due the second day following the day on which the invoice was issued, as long as it is a Banking Day. If it is not a Banking Day, Self-billing invoice will fall due on the first next Banking Day. CROPEX is obliged to provide the self-invoiced amount to the Members bank account by end of the day on which it became due, and in the relevant settlement currency.
- 4.2.5. In case that Member and CROPEX have corresponding monetary claims towards each other arising from Transactions conducted on any or each of CROPEX Markets (for example but not limited to case when the Member was a buyer and a seller of Product(s) on the same Trading Day), CROPEX will set-off such amounts by delivering the set-off statement to relevant Member in a same way in which invoices and self-billing invoices are sent, irrelevant of whether claims arise from same or different CROPEX Markets. Such set-off shall be valid regardless whether the respective obligations are due or not.
- 4.2.6. Trading prices are indicated and matched in EUR, with Settlement for non-resident Members conducted in EUR and for resident Members in HRK contra-value calculated by translating the applicable amount of EUR into HRK based on the middle exchange rate of the Croatian National Bank published on the Invoicing Day of the respective Transaction.

### 4.3. Collateral Requirements

- 4.3.1. Each Member must at its own cost establish and maintain Collateral in accordance with the Trading Rules and these Clearing and Settlement Rules, and ensure that the value of its Collateral posted at all times meets the applicable Collateral Calls.
- 4.3.2. CROPEX shall accept Collateral of one or a combination of the following forms:
  - a. Cash deposited to the Deposit Account in form of a pledge for all the obligations of the Member towards CROPEX,
  - b. Bank Guarantee accepted by CROPEX.
- 4.3.3. The Collaterals which have been deposited by Members are used as collateral arising from Member's activities on each and any of CROPEX Markets and from its membership. Collaterals are not kept separately for participating in each of CROPEX Markets. Collaterals refer to all contractual or non-contractual obligations which may arise for Members, including but not limited to payment of due price for Products, Trading Fees, Statutory Interest Rate applicable to monetary obligations, as well as all indemnities owed to CROPEX, including those arising from damages or expenses incurred by CROPEX because of third parties' claims, VAT, customs or cross border capacity. The maximum amount of the security interest secured by the Collateral is the sum of the total posted Collaterals (including interest rates or any other fruits or benefits received for the posted Cash Collaterals in accordance with Section 3.4.1. above) and outstanding Collateral Call at any given moment.
- 4.3.4. If a Member in opinion and at discretion of CROPEX does not have sufficient cash deposits or has insufficient other Collaterals, the Member must deposit additional Collaterals in the form, in the manner and at the time set forth by the CROPEX.
- 4.3.5. CROPEX shall request that a Member deposits minimum Collaterals. Such Collaterals shall be deposited in the form of cash deposit or an unconditional Bank Guarantee without objection, on the first call, according to these Clearing and Settlement Rules and Trading Rules.
- 4.3.6. All costs arising in the procedure of encashment of the Collaterals shall be borne by the Member posting the respective Collateral that has been encashed.
- 4.3.7. According to its own judgement and with citing reasons, CROPEX shall be entitled to change the level of required Collateral or require additional Collaterals from a Member, or vice versa stipulate a lower amount of Collateral or return a part of Collaterals already deposited. Collaterals required on the basis of this point of the Rules shall be deposited upon request and in the form prescribed by CROPEX.
- 4.3.8. Member can make a claim to CROPEX for return of Collaterals in the writing form that is duly signed by the Members authorized representative.
- 4.3.9. Claim for return of Collaterals may not exceed the required Collaterals of Member reduced by the current financial liabilities of the respective Member towards CROPEX.
- 4.3.10. In case the claim for return of Collaterals from Section 4.3.9. above exceeds the required Collaterals of the Member, CROPEX shall refuse the submitted claim.
- 4.3.11. CROPEX requires minimum collateral from all Members. The minimum collateral call can be adjusted at CROPEX discretion. The required Collaterals must be established prior to the commencement of Trading. The Collateral Call can be set individually for each Member.
- 4.3.12. CROPEX shall stipulate the Collateral Calls for new Members, based on, inter alia, anticipated future net purchases.
- 4.3.13. Collateral Calls are stipulated by CROPEX each Settlement Day as the total purchase price for each Members net electricity purchase in Trading during a period of days decided by CROPEX, including VAT. The period can be changed with two (2) days' notice.
- 4.3.14. If a Member changes from net sale to net purchase, for the first such day, the Collateral Call is stipulated as net electricity purchase on the first day multiplied with a number of days, as set out by CROPEX. If the Member continues as a net purchaser, the Collateral Call shall be adjusted daily during the number of days set out by CROPEX and thereafter stipulated on ordinary terms. If the Member returns to a net sale position, the Collateral Call shall be reduced daily until the minimum amount is re-obtained.

- 4.3.15. The Collateral Call shall be set in HRK or in EUR depending on Members seat.
- 4.3.16. CROPEX may on its own discretion adjust the Collateral Call if the Members Trading change, or if special circumstances so require.
- 4.3.17. A Member shall be notified of any Collateral Calls by 16:00 CET each Settlement Day. Collateral Call must be met by 11:00 CET on the following Settlement Day.
- 4.3.18. CROPEX reserves the right to demand extraordinary Collateral in cash from a Member at any time on account of the risk assessment which it carries out in the course of the Settlement Day.
- 4.3.19. Extraordinary Collaterals have to be settled immediately in the corresponding currency to the Deposit Account of that Member.
- 4.3.20. CROPEX may also, in its sole discretion, apply any other risk calculation procedure that the CROPEX considers appropriate under the relevant circumstances. The Collateral Call can be set individually for all Members.
- 4.3.21. CROPEX is not liable towards Member for losses or lost profits, because of the change in price of one currency against another, if a Member submits cash deposit in currency different from currency in which the Transactions are concluded. Members affirm that they have properly hedged their positions, when submitting Cash Collateral to CROPEX in order to avoid eventual currency risk.
- 4.3.22. The Member can authorize CROPEX to transfer funds from Deposit Account, if Member is Net Debtor in respect to individual Settlement Day to its Settlement Account; and to settle CROPEX's obligation by transferring cash to the Deposit Account ascribed to respective Member, if the Member is Net Creditor in respect to individual Settlement Day. The contents, procedure and method of direct debit to/from Deposit Account for CROPEX Markets shall be defined in separate Direct debit to/from Deposit Account Agreement, substantially in the form set out in Trading Agreement 3 of the Trading Rules.
- 4.3.23. In case the amount of the Collaterals is not credited to the account of CROPEX within the period of time specified, CROPEX shall be entitled to use the Collaterals posted in Cash Collateral at its own discretion within the framework of its business activities in order to safeguard its own working order as a CROPEX.
- 4.3.24. The Member can cover its obligation to deliver required Collaterals by submitting a Bank Guarantee from a bank recognised by the CROPEX.
- 4.3.25. Prior to submitting a Bank Guarantee for the purpose of meeting Collaterals from the previous point the Member has to:
- a. notify CROPEX regarding the purpose of the submission of the Bank Guarantee on the prescribed form;
  - b. verify whether CROPEX accepts Bank Guarantees from the bank in question and for the amount stipulated before finally reaching agreement with the bank on the Bank Guarantee.
- 4.3.26. The Bank Guarantee has to be issued in the form prescribed by CROPEX.
- 4.3.27. The acceptance or refusal of a Bank Guarantee as a method of Collateral shall be the discretionary right of CROPEX. CROPEX shall not first-hand provide any argumentation for its decision to accept or refuse a Bank Guarantee. The same shall apply to the choice of bank and the limit (size) of the Bank Guarantee. However, if the Member requests argumentation on acceptance or refusal of a Bank Guarantee CROPEX shall provide it.
- 4.3.28. The recipient of the Bank Guarantee (the beneficiary) shall be CROPEX. The Bank Guarantee has to contain an unconditional, a no objection and irrevocable Guarantee by the guarantor to ensure the payment of the amount stipulated in the Bank Guarantee to CROPEX at the first request. The Bank Guarantee must also contain a clause under which the partial encashment of the Bank Guarantee is possible.
- 4.3.29. In case a Bank Guarantee has not been replaced by another Bank Guarantee or in cash by the Member concerned until ten (10) days before expiry of its effectiveness, CROPEX shall automatically reduce the Trade Limit of the Member concerned.

4.3.30. CROPEX shall cash in the Bank Guarantee if the Member fails to settle its liabilities by the deadlines described in Section 3. and Section 4. above. CROPEX shall notify the Member that the Bank Guarantee will be cashed in.

**5. VAT**

- 5.1. VAT shall be applied to all Members registered in Croatia (residents), and namely:
- a. To all amounts due as a result of concluded Transactions;
  - b. In calculating required Collaterals.
- 5.2. For Members registered outside of the Croatia (non-residents), payment of all taxes, VAT included, shall be an obligation of the respective Member in accordance with Applicable Law in the country of registration.
- 5.3. CROPEX is not liable for any sort of VAT indemnification towards Members.

**6. NON-COMPLIANCE**

- 6.1. Any breach of these Clearing and Settlement Rules (including any non-payment of due amounts owed by the Member to CROPEX) shall be considered as Non-Compliance Event or Material Non-Compliance Event (as the case may be) as defined by Section 9. of the Trading Rules – General Terms.
- 6.2. Upon occurrence of a Non-Compliance Event CROPEX shall be entitled to issue to the defaulting Member a written notice requesting that the Non-Compliance Event be remedied within fifteen (15) calendar days following the issuing of the respective written notice.
- 6.3. Immediately upon occurrence of a Material Non-Compliance Event as defined by Section 9. of the Trading Rules – General Terms (including a case of non-payment by Member to CROPEX of any of its payment obligations under the Trading Rules), CROPEX shall be entitled to either one, or a combination of, or all of the following remedies:
- a. to declare any or all claims of or against the defaulting Member arising from Trading on any of CROPEX Markets due on that date; and/or
  - b. to withhold any Settlement amount owed to the Member and to set-off such withheld amounts with the amount owed by the Member to CROPEX, whether due or not; and/or
  - c. to enforce, realise and apply its rights in the Collateral posted by the Member by:
    - (i) drawing upon Bank Guarantees provided to CROPEX by the Member, and/or
    - (ii) drawing upon the balance of the Deposit Accounts provided to CROPEX by the Memberand/or
  - d. without prejudice and in addition to the foregoing, in any case upon occurrence of a Material Non-Compliance Event (as defined by Section 9. of the Trading Rules – General Terms), the remedy under Section 9.5. of the Trading Rules – General Terms.

Zagreb, 18.12.2016

Director  
Silvio Brkić