

## General Terms and Conditions of Scoach Europa AG for the Trading with Structured Products in the Regulated Unofficial Market on the Frankfurter Wertpapierbörse (FWB)

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## **First Part: General Provisions**

### **§ 1 Organization of the Regulated Unofficial Market (Open Market) on the Frankfurter Wertpapierbörse for the Trading with Structured Products**

- (1) For structured products not being admitted for or included in either the Official Market or the Regulated Market, the Frankfurter Wertpapierbörse (hereinafter referred to as "FWB") has admitted a Regulated Unofficial Market ("Open Market"). The Terms and Conditions regulate the organization of trading on the Open Market, the participation in trading on the Open Market and the inclusion of Structured Products according to Paragraph 2 in the trading on the Open Market. The procedure of trading including settlement in the Open Market shall be regulated by the Trading Regulation for the Regulated Unofficial Market on FWB.
- (2) Structured products within the meaning of these General Terms and Conditions are securities defined in the Annex to § 3 Paragraph 1 of the Exchange Rules of FWB.
- (3) The Administering Institution of the Open Market on FWB for the trading of structured products is Scoach Europa AG (hereinafter referred to as "Scoach"). Scoach organizes the Open Market for the trading with structured products upon approval of the Management Board of FWB.

### **§ 2 Scope of Application; Participants**

- (1) These General Terms and Conditions shall apply to the business relation between Scoach in its function as Administering Institution of the Open Market for the trading of structured products on FWB and the Participants of the Open Market. Other business relations of the Participants of the Open Market with Scoach remain unaffected thereof. Participation in the Open Market shall take place through trading of structured products included in the Open Market (Paragraph 2) and/or through application of admission of structured products in the Open Market trade (Paragraph 3).
- (2) Admitted for trading of structured products in the Open Market are all companies and exchange traders which are admitted for trading on FWB and which were granted access to the Exchange EDP. Access to the Exchange EDP as well as utilization of technical systems in the Open Market shall take place in accordance with the provisions applying to the Regulated Market and the decisions made by the Management Board of FWB based thereon.
- (3) The admission of structured products in the Open Market trade may be applied for by all companies which are admitted to trading on the Open Market pursuant to Paragraph 2.

- (4) Irrespective of whether the prerequisites pursuant to Paragraph 2 or 3 are fulfilled, Scoach may refuse the establishment of business relations with a Participant if reasonable cause in such Participant exist which may damage the reputation of Scoach or FWB.

### **§ 3 Termination upon Legitimate Reason**

- (1) Irrespective of § 2 Paragraph 2 to 4, Scoach may terminate all or individual business relations to a Trading Participant pursuant to these General Terms and Conditions upon legitimate reason. Legitimate reason exists if – even under consideration of the legitimate interests of the Participant – a business continuance of trade is unacceptable for Scoach. A legitimate reason exists in particular
- if, after effectless reminder, the Participant continues to violate against essential contractual obligations of these General Terms and Conditions
  - or
  - if circumstances in the person of the Participant retroactively occur which fulfil the prerequisites of § 2 Paragraph 4.
- (2) The right of the Participant for termination upon legitimate reason as well as the termination rights of Scoach and the participant according to § 13 shall remain unaffected.

### **§ 4 Amendments to the General Terms and Conditions**

- (1) Amendments to these General Terms and Conditions shall be announced to the Participants in writing or electronically prior to their effectiveness. They shall be deemed approved when the Participant does not object thereto with Scoach in writing or electronically within three weeks after announcement of the amendments. Scoach shall expressly point out this legal consequence to the Participant.
- (2) In case of an objection pursuant to Paragraph 1, Scoach may terminate its business relation to the Participant with a six months' notice. § 3 shall remain unaffected.

### **§ 5 Publication of Announcements**

Unless provided otherwise in the following, information which must be published by Scoach according to these General Terms and Conditions, shall be published on the Scoach website at [www.scoach.com](http://www.scoach.com) for at least three Exchange days. Scoach may determine other electronic media for publishing the General Terms and Conditions. § 4 shall remain unaffected.

### **§ 6 General Cooperation Obligations of the Participant**

Regardless of any particular service obligations according to these General Terms and Conditions, the Participant is obligated to contribute to an orderly operation of the business relation. This contains in particular

- the immediate transfer of all information made known to him/her to Scoach, such information being necessary for an orderly procedure of the business relation according to these GTC, in particular for an orderly trading and settlement of the Structured Products included in the Open Market,
- the punctuality, clarity and consistency of applications and notifications,
- a special note to any urgent matters or matters with a period of time
- the review of notifications of Scoach regarding correctness and completeness within the scope of these General Terms and Conditions and immediate raising of objections,
- the notification of Scoach in case of absence of expected or announced information of Scoach.

§ 8 Paragraph 2 shall remain unaffected.

## **§ 7 Secrecy**

Scoach is sworn to secrecy regarding all Participant-related facts it has gained knowledge about. Legal duties of disclosure of Scoach remain unaffected.

## **§ 8 Liability of Scoach; Contributory Negligence**

- (1) Scoach is liable regarding fulfilment of its obligations pursuant to these General Terms and Conditions for gross negligence of its employees and the persons it calls for fulfilment of its obligations. In cases of simple negligence, the liability of Scoach shall be limited to the violation of cardinal obligations as well as obligations being so relevant that their non-fulfilment would jeopardize the fulfilment of the contractual purpose. In case of simple negligence, DBAG is liable only for compensation of the typical foreseeable damage. The statutory liability of Scoach in case of damage of life, body and health as well as in other cases of statutory liability, e.g. according to the Product Liability Act, shall remain unaffected.
- (2) If, by culpable behaviour, in particular by violation of obligations according to these General Terms and Conditions, the Participant has contributed to the occurrence of the damage, the principles of contributory negligence determine to what extent Scoach and the Participant have to bear the damage.
- (3) Scoach is not liable for damages caused by force majeure, tumult, warlike events and phenomena or by other events not being caused by it (e.g. strike, lockout, traffic block, decrees by public authorities).

## **Second Part: Provisions for the Inclusion of Structured Products**

### **§ 9 Inclusion of Structured Products in the Open Market**

- (1) Structured products which are neither admitted nor included in the Regulated Market of FWB may be included in the Open Market. The trading in Structured Products shall take place in the electronic trading system.
- (2) In deviation to § 38 Paragraph 2 Exchange Act, Structured Products issued for public subscription may be included in the Open Market before termination of assignment to the subscriber already.
- (3) On application of a Participant (§ 2 Paragraph 3), Scoach shall decide upon the inclusion and shall define the trading currency. A claim of the Participant of the inclusion of particular structured products does not even exist if the inclusion prerequisites (§ 11) are fulfilled.
- (4) The application of inclusion of structured products may be refused also if the inclusion prerequisites (§ 11) are fulfilled, in particular if, in Scoach's view, the prerequisites for an orderly trade or for orderly business transaction are not fulfilled or if the inclusion results in an overreaching of the public or a severe damage of general interests.
- (5) Inclusions shall be published pursuant to § 5.

### **§ 10 Inclusion Application**

- (1) Participant Inclusion has to be applied for in writing. The inclusion application shall contain company and office of the Participant as well as issuer, category of the structured products to be included and the preferred trading currency. Scoach is authorized to require additional information in the application.
- (2) The application shall contain all supporting documents required for verification of the inclusion prerequisites (§ 11). Other supporting documents shall be submitted to Scoach upon request. Scoach may decide that certain information has to be transferred electronically and in a specific file format.

### **§ 11 Inclusion Prerequisites**

- (1) Structured products can be included if:
  - a) they possess an International Securities Identification Number (ISIN), and
  - b) they are unofficially tradable, and
  - c) the orderly fulfilment of the transactions is guaranteed, and

- d) there are no regulatory prohibitions against the Exchange trading, and
- e) they are either admitted for trading on a domestic or foreign Exchange-like market place already or if a prospectus made for them exists which is approved by a domestic or foreign authority recognized by Scoach. The prospectus shall not be older than 12 months and shall be written in either English or German language or contain a summary in either English or German.

If the prerequisites named in item e are not fulfilled, the Participant may create an exposé containing details about the structured product and the issuer. The information contained in the exposé shall be determined by Scoach. Subject to legal disclosure and publishing obligations, Scoach is not authorized to either publish or transfer this exposé to third persons.

- (2) In particular cases, Scoach is authorised to determine additional inclusion prerequisites.

## **§ 12 Disclosure Obligations of the Applying Participant**

The applying Participant is obligated, over the entire term of inclusion, to inform Scoach about all circumstances being essential for the assessment of the included structured product or issuer. Only circumstances which the Participant has actual knowledge about or which it can acquire information by generally accessible information sources in a reasonable way, underly such information obligation pursuant to Clause 1.

## **§ 13 Termination of Inclusion**

- (1) Regardless of the termination rights pursuant to § 3 Paragraph 1 and 2, the parties may terminate the inclusion of a structured product within an adequate term. When assessing the term, the justified interests of the Participant and the public shall be taken into consideration.
- (2) The right of the parties for termination of inclusion of a Structured Product without notice for legitimate reason shall remain unaffected. Scoach shall in particular be entitled to a termination without notice if the prerequisites for an inclusion have ceased to exist retroactively or if the orderly trading or settlement is jeopardized or if the public is in danger of damnification.
- (3) Upon effectiveness of the termination according to Paragraph 1 or 2, the trading of Structured Products whose inclusion has been terminated, shall be suspended in the Open Market. The suspension of trading shall be published pursuant to § 5.

### **Third Part: Provisions for Organization of Trading with Structured Products**

#### **§ 14 Commissioning and Monitoring of the Specialists**

- (1) For Structured Products traded in the Specialist Model, Scoach shall, each on basis of a written agreement, commission participants according to § 2 Paragraph 2 with the assumption of specialists' duties according to the Trading Regulation of the Regulated Unofficial Market on FWB. § 149 Paragraph 2 Clause 3 and 4, Paragraph 4 and 5 Exchange Rules FWB shall apply accordingly. The specialists shall assume the duties according to Clause 1 for the Structured Products included in the agreement. Provided it is required for maintenance of orderly exchange trading, the specialists are, upon request by Scoach, obligated to assume these duties for additional Structured Products. A claim to assumption of duties for specific Structured Products does not exist.
- (2) Scoach shall record and document if and to which extent the Specialists fulfil their duties according to the Trading Regulation for the Regulated Unofficial Market on FWB. Scoach may publish according data on its website, provided this is required for information of the trading participants. Scoach may interdict in whole or in part the activity of Specialists, provided the prerequisites for its commissioning have not existed or have ceased to exist retroactively or if the Specialists have not orderly fulfilled their duties in accordance with the Trading Regulation for the Regulated Unofficial Market on FWB.

### **Fourth Part: Measures in the case of violations, Final Provisions**

#### **§ 15 Measures in the case of violations**

- (1) Scoach is authorised to publish Participants' violations of obligations from these General Terms and Conditions, thereby naming the company of the respective Participant and specifying the relevant violation.

#### **§ 16 Applicable Law, Place of Jurisdiction**

- (1) For the business relation between the participants and Scoach according to these GTC, German law shall exclusively apply.
- (2) Sole place of jurisdiction for all disputes in connection with these GTC shall be Frankfurt am Main.

## § 17 Data Protection

- (1) In order to fulfil their obligation to monitor the orderly trading and trade settlement, Scoach shall record incoming and outgoing calls on telephone lines, such lines having been announced via circular. These recordings shall be deleted after expiration of ten years at the latest.
- (2) Data collected pursuant to Paragraph 1 whose nondisclosure is in the interests of the participant or third parties – in particular individual-related data as well as operating and business secrets – shall only be used for the purpose named in Paragraph 1 and only if the clarification of facts relevant therefore by other means of finding or evidence is not possible or acceptable. In cases of Clause 1, collected data may be transferred to the authorities named in § 10 Paragraph 1 Clause 3 Exchange Act, provided these authorities need to have knowledge of these data in order to fulfil their obligations.

## Fifth Part: Fees

### § 18 Fees

- (1) The fees for the one-time inclusion of structured products in the Open Market shall amount to EURO 150.
- (2) The fees to be paid by a participant for inclusion of structured products in the Open Market pursuant to paragraph 1 shall be limited to a total amount of EURO 50,000.00 per calendar year.
- (3) The participant who has submitted an application for inclusion of a Structured Product according to § 10 in a currency other than EURO (foreign currency), shall pay a yearly fee of EURO 500 (listing fee) for each included Structured Product, provided the trading currency corresponds to the preferred foreign currency. The obligation to pay the full listing fee arises at the time of inclusion and on 1 January of each calendar year. A pro-rata compensation of the listing fee does not take place.

Provided the quote provider of the Structured Product has submitted the application for inclusion in foreign currency according to § 10, it may reduce the listing fee by purchasing below-mentioned packages. Upon purchase of a package, the listing fee for the number of Structured Products in the respective foreign currency corresponding to the respective package is paid for the calendar year. A quote provider may purchase packages of up to a maximum number of 2,500 Structured Products per foreign currency. For each Structured Product included per foreign currency which exceeds the maximum number of 2,500, the listing fee of EUR 500 shall be levied. Non-used packages expire at the end of a calendar year. A pro-rata compensation of the listing fee does not take place.

The obligation to pay the listing fee is omitted at the time of inclusion, provided that a package was purchased and the included structured product is replacing a Structured Product

- for which a knock-out event occurred during the year,
- which expired due to maturity during the year,
- whose inclusion was terminated during the year.

Currency	Package Size	Listing Fee in EUR
CHF	250	50.000
	500	90.000
	1,000	150,000
	2,000	220,000
USD	250	50,000
	500	90,000
	1,000	150,000
	2,000	220,000
SEK	250	12,500
	500	22,500
	1,000	37,500
	2,000	55,000

- (4) For each application on cancellation of a transaction (mistrade application), a fee in the amount of EURO 500 shall be levied from the applicant. In case several mistrade applications requesting the cancellation of transactions are submitted – such transactions having been accomplished as a result of partial executions of the same order or the same binding quote of the applicant – the fee in the amount of EURO 500 shall only be levied once. In case several mistrade applications are submitted in writing, via telecopy or in electronic form at the same time, or if, upon prior application via telephone, the required details for several mistrade applications are submitted afterwards in writing, via telecopy or in electronic form at the same time,
1. the fee in the amount of EURO 500 shall only be levied once, provided that the mistrade applications refer to transactions in the same structured product
  2. a total fee of EURO 1,000 shall be levied, provided that the mistrade applications refer to transactions in structured products which belong to the same product type and have the same underlying.
- (5) Fees are payable with issuance of the invoice by Scoach.

Frankfurt/ Main, 1 January 2010

Scoach Europa AG