

# **I Chapter Clearing of Transactions at Eurex Deutschland and Eurex Zürich**

## **1 Part General Provisions**

### **1.1 Subpart Clearing Licenses**

#### **1.1.1 Granting of Clearing Licenses**

- (1) A Clearing License is required in order to participate in Clearing in respect of the transactions carried out at the Eurex Exchanges as well as options and futures transactions entered into off the Exchange pursuant to subsection 1.9.1; Eurex Clearing AG shall grant such License upon written application.
- (2) A Clearing License is issued either as a General Clearing License or a Direct Clearing License. Such licenses shall be granted with the conclusion of the appropriate Clearing Agreement, in the form appended to these Conditions. A General Clearing License entitles the holder thereof to clear its own transactions, customers' transactions as well as transactions of Exchange Participants without Clearing Licenses (subsection 1.2.5 paragraph 1). A Direct Clearing License entitles the holder thereof to clear its own transactions, customers' transactions as well as transactions of affiliated Exchange Participants without Clearing Licenses (subsection 1.2.5 paragraph (2)).
- (3) A Clearing License may be applied for by:
  - a) Any institution domiciled in a country of the European Union or in Switzerland provided that this institution has been licensed by the responsible authorities of its country of origin, the license covers the conduct of safe custody business, lending operations and the receipt of collateral in the form of cash or securities, and said institution is under surveillance of the responsible authorities according to the regulatory standards of the European Union;
  - b) Any branch of institutions within the meaning of § 53, 53 b or 53 c KWG provided that the respective branch or institution shows compliance with the conditions set forth in subsection 1.1.1 paragraph 3 (a) and subsection 1.1.2;
  - c) Any branch within the meaning of Art. 2 paragraph 1 of the Swiss Federal Banking and Savings-Bank Act in connection with Section 1 et seq. of the Regulation of the Swiss Banking Commission (Eidgenössische Bankenkommission) concerning Foreign Banks in Switzerland, if said branch shows compliance with the conditions set forth in subsection 1.1.1 paragraph 3 (a) and 1.1.2.
  - d) Any other branch domiciled in a country of the European Union ("host member state") provided that the respective main office (financial institution, securities trading enterprise) domiciled in a country of the European Union ("home member state") has been licensed by, and is under the corresponding supervision of, its national supervisory authority for custodian services, lending operations and receipt of collateral in the form of securities and cash; that there are no legal restrictions in the home member state for institutions domiciled within the European Union to establish subsidiaries abroad; that a notification procedure has been

completed in the host member state; and that the subsidiary or the institution complies with the requirements of subsection 1.1.2.

Institutions within the meaning of paragraph (b) and (c) must guarantee in writing that, upon the first request of Eurex Clearing AG, they will meet all obligations of its branch offices or subsidiaries out of the clearing activities without limitation. In order to verify the legal validity of this guarantee, Eurex Clearing AG may demand from said institution at their expense all necessary information and evidence, including the opinion of a legal expert designated by Eurex Clearing AG.

#### 1.1.2 Prerequisites for Clearing Licenses

- (1) Prerequisite for a General Clearing License is liable equity capital (haftendes Eigenkapital) of the applying institution of at least EUR 125 million, or the corresponding equivalent in the currency of the country in which the applying institution is domiciled. For institutions beyond the scope of the KWG, own funds must be equivalent to the liable equity capital.

Prerequisite for a Direct Clearing License is liable equity capital of the applying institution of at least EUR 12.5 million or the corresponding equivalent in the currency of the country in which the applying institution is domiciled. For institutions beyond the scope of the KWG, own funds must be equivalent to the liable equity capital.

The liable equity capital or equivalent own funds shall be calculated in accordance with the legal provisions in force in the country in which the institution is domiciled. Evidence of the amount of the liable equity capital or the equivalent own funds shall be provided to Eurex Clearing AG together with the application as well as upon request at any time during the Clearing Membership. Eurex Clearing AG may assign an auditor for verification at the expense of the applying institution.

- (2) Should the applying institution have insufficient liable equity capital or equivalent own funds for a Clearing License, Eurex Clearing AG may determine that the shortfall may be made up by a bank guarantee and/or collateral in cash or securities.

The bank guarantee shall be furnished by a bank domiciled in the European Union or Switzerland recognised by Eurex Clearing AG. The applying institution and the bank which furnishes the guarantee must be different legal entities. The form and extent of an admissible group relation between the applying institution and the bank which furnishes the guarantee shall be determined by Eurex Clearing AG. The bank guarantee shall contain the bank's unconditional and irrevocable obligation to provide for payment of the guaranteed amount into an account indicated by Eurex Clearing AG upon its first demand. The type, contents and form of the bank guarantee shall be determined by Eurex Clearing AG.

Cash margin shall be provided according to subsection 1.3.4. Securities collateral shall be provided via transfer of ownership by way of security or assignment for security purposes onto a safe custody with Clearstream Banking AG or SegalInterSettle AG to be determined by Eurex Clearing AG.

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The bank guarantees as well as the cash and securities collateral shall safeguard compliance with the contractual obligations of the respective Clearing Member and with all other claims of Eurex Clearing AG vis-à-vis the respective Clearing Member in connection with the Clearing of its contracts (provision of margin).

- (3) Evidence will have to be provided for:
- (a) A securities account and a pledged securities account with Clearstream Banking AG or with SegalIntersettle AG;
  - (b) An account at the State Central Bank of Hessen - Main Office in Frankfurt of the German Federal Bank (Landeszentralbank in Hessen - Hauptstelle Frankfurt der Deutschen Bundesbank) ("LZB"), and an account at the Schweizerische Nationalbank "SNB"), including an SIC account, as well as the foreign currency accounts with a bank recognised by Eurex Clearing AG required for the settlement of the foreign currency products tradable at the Eurex Exchanges through which the Clearing Member will settle its transactions on the Eurex Exchanges; Eurex Clearing AG may allow the use of accounts of a correspondent bank recognised by Eurex Clearing AG for purposes of cash clearing with Eurex Clearing AG;
  - (c) The use of appropriate technical equipment (back-office facilities) to ensure the orderly recording, booking and supervision of all transactions, as well as the provision of margin and the calculation of margin requirements with respect to the customers pursuant to the minimum requirements of Eurex Clearing AG (clearing obligations); the Implementation Regulations of the Eurex Exchanges Concerning Technical Equipment shall apply mutatis mutandis in all other respects.
  - (d) The use of at least one sufficiently qualified member of staff in the back-office for the orderly fulfilment of the clearing obligations; a sufficient qualification shall be presumed if the aptitude test for members of staff of the back-office offered by Eurex Clearing AG ("Clearer Test") has been successfully passed; it is required that at least one sufficiently qualified member of staff is present at any time during the business day and that he or she is available by telephone or fax.
  - (e) Payment of the contribution to the Clearing Fund according to subsection 1.6.1.
- (4) Evidence of compliance with the prerequisites set forth in subsection 1.1.2 paragraphs (1) to (3) must be provided upon submission of the application. Clearing Members are obligated, upon request by Eurex Clearing AG, to provide Eurex Clearing AG with evidence of compliance with the prerequisites for a Clearing License as set forth in subsection 1.1.2 paragraph (1) by no later than six months after the end of each fiscal year of the Clearing Member.
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