

**Eurex Clearing AG**  
**ECAG Rule Certification 007-24**  
**February 09, 2024**

1. The text of the proposed amendments to the Clearing Conditions (“Clearing Conditions”) of Eurex Clearing AG (“Eurex Clearing”) and FCM Regulations (“FCM Regulations”) of Eurex Clearing is appended as Attachment A. Any additions are underlined and any deletions are struck through.

2. The date of intended implementation for Amendments 2, 3, 4 and 5 below is March 1, 2024.

Amendment 1 below is subject to a consultation process (“Consultation”). The Consultation will end with the expiry of March 6, 2024 (“Consultation Period”). The planned effective date of Amendment 1 is April 1, 2024, depending on the outcome of the Consultation, which will be communicated in a separate Eurex Clearing circular.

3. Attached please find a certification that: (1) these amendments comply with the Commodity Exchange Act (the “Act”), and the Commission’s regulations thereunder; and (2) concurrent with the filing of this submission, Eurex Clearing is posting a copy of this filing to its website at: <https://www.eurex.com/ec-en/rules-regs/regulations/cftc-dco-filings>.

4. A concise explanation and analysis of the operation, purpose, and effect of the amended rule appears below.

5. There were no opposing views expressed regarding these amended rules.

6. Confidential treatment is not requested.

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CONCISE EXPLANATION AND ANALYSIS OF THE OPERATION, PURPOSE, AND EFFECT OF THE PROPOSED RULE AND ITS COMPLIANCE WITH APPLICABLE PROVISIONS OF THE ACT, INCLUDING CORE PRINCIPLES AND THE COMMISSION’S REGULATIONS THEREUNDER

Eurex Clearing is proposing the below amendments to the Clearing Conditions and FCM Regulations.

**1. Amendments to the (non-automatic) Termination Events**

The proposed amendments introduce minor amendments to the Termination Events Section in the Clearing Conditions and the FCM Regulations, with the main objective to remove outdated and unprecise terminology to further improve the clarity of the respective provisions. The amended Termination Events are outlined in detail in Eurex Clearing Circular 007-24, which is appended as Attachment A.

**2. Alignment of disclosure rights in case of a Clearing Suspension**

Eurex Clearing is currently not entitled to inform its Markets and CSDs about the issuance of a Clearing Suspension due to reasons which do not qualify as Termination Events. The proposed amendments include such disclosure rights for all Clearing Models under the Clearing Conditions and FCM Regulations.

### **3. Amendments to the exemptions provisions regarding Public Entities**

The Clearing Conditions provide Eurex Clearing with the right to exempt Public Entities from certain obligations under the Clearing Conditions. The proposed amendments align the wording of the Clearing Conditions with the corresponding provisions under Article 1 paras. (4) and (5) of EMIR (European Market Infrastructure Regulation).

### **4. Amendments to the creditworthiness requirement regarding Public Entities**

The Clearing Conditions define a specific creditworthiness requirement for the granting of exemptions for Public Entities. Currently, the creditworthiness of the relevant Public Entity is determined based on Eurex Clearing's internal credit assessment, which needs to correspond to a rating of A by Standard & Poor's Financial Services LLC (S&P). However, such minimum rating deviates from the minimum requirements stipulated by the Capital Requirements Regulation (CRR), which provides for a zero-risk weighting for Public Entities with a credit rating of at least AA-. Eurex Clearing intends to amend the minimum internal credit rating equivalent to AA- by S&P.

### **5. Alignment of the applicable transfer regime under German law with respect to WR Credits (*Gutschriften in Wertpapierrechnung*) under the ISA Provisions**

In 2021, Eurex Clearing amended the legal basis for the transfer of title in WR Credits (*Gutschriften in Wertpapierrechnung*) in the relevant parts of the Clearing Conditions. Instead of the transfer of a claim for surrender against the relevant CSD, Eurex Clearing followed the dominant view in German legal literature according to which the transfer of WR Credits is achieved by debit and credit entries in the relevant securities accounts. Eurex Clearing missed changing the transfer provisions regarding WR Credits under the ISA Provisions in the Clearing Conditions. The proposed amendments align the transfer provisions within the entire Clearing Conditions.

For avoidance of doubt, Eurex Clearing clears the ISA clearing model outside the scope of its DCO license.

Further information regarding the operation, purpose and effect of the proposed amendments is discussed in Attachment A.

Eurex Clearing has identified the following DCO Core Principles as potentially being relevant to the above amendments:

DCO Core Principle C (Participant and Product Eligibility): The proposed amendments will comply with DCO Core Principle C because the amendments provide for exemptions provisions regarding Public Entities and amend the specific creditworthiness requirement for the granting of exemptions for Public Entities, and the participation and membership requirements of Eurex Clearing will continue to comply with this Core Principle.

DCO Core Principle E (Settlement Procedures): The proposed amendments will comply with DCO Core Principle E because the amendments provide for alignment of the applicable transfer regime under German law with respect to WR Credits under the ISA Provisions, which are provisions for

a clearing model cleared outside of Eurex Clearing's DCO license, and all products cleared by Eurex Clearing under its DCO license will continue to be subject to appropriate standards in compliance with this Core Principle.

DCO Core Principle G (Default Rules and Procedures): The proposed amendments will comply with DCO Core Principle G because the amendments clarify certain language in the Termination Events Sections of the rulebooks and include disclosure rights in case of a suspension, and Eurex Clearing will continue to have rules and procedures to allow for the efficient, fair, and safe management of insolvency events in compliance with this Core Principle.

CERTIFICATIONS PURSUANT TO SECTION 5c OF THE COMMODITY EXCHANGE ACT, 7 U.S.C. §7a-2 AND COMMODITY FUTURES TRADING COMMISSION RULE 40.6, 17 C.F.R. §40.6

I hereby certify that:

- (1) the amendments comply with the Commodity Exchange Act, and the Commission's regulations thereunder; and
- (2) concurrent with the filing of this submission, Eurex Clearing is posting a copy of this filing to its website at: <https://www.eurex.com/ec-en/rules-regs/regulations/cftc-dco-filings>.

/s/ Eric Seinsheimer

By: Eric Seinsheimer

Title: US CCO, Eurex Clearing AG

Dated: February 09, 2024

# Amendments to the Clearing Conditions and the FCM Regulations of Eurex Clearing AG – Consultation

## **Eurex Clearing Circular 007/24 Amendments to the Clearing Conditions and the FCM Regulations of Eurex Clearing AG – Consultation**

### **1. Introduction**

This circular contains information with respect to the service offering of Eurex Clearing AG (Eurex Clearing) and introduces amendments to the Clearing Conditions of Eurex Clearing AG (Clearing Conditions) and the FCM Regulations of Eurex Clearing AG (FCM Regulations) regarding the following topics:

- A. Amendments to the (non-automatic) Termination Events
- B. Alignment of disclosure rights in case of a Clearing Suspension
- C. Amendments to the exemptions provisions regarding Public Entities
- D. Amendments to the creditworthiness requirement regarding Public Entities, and
- E. Alignment of the applicable transfer regime under German law with respect to WR Credits (*Gutschriften in Wertpapierrechnung*) under the ISA Provisions

The amendments to the Clearing Conditions under item A. are subject to a consultation process (Consultation). The Consultation will end with the expiry of **6 March 2024** (Consultation Period). The planned effective date of these amendments is **1 April 2024**, depending on the outcome of the Consultation which will be communicated in a separate Eurex Clearing circular.

The planned effective date of the amendments to the FCM Regulations under item A. is **1 April 2024**, depending on the outcome of the Consultation with respect to the Clearing Conditions relating to item A. The final effective date will be communicated in the same separate Eurex Clearing circular.

The amendments under items B., C., D. and E. will become effective as of **1 March 2024**.

## **2. Required action**

Clearing Members, ISA Direct Clearing Members, Disclosed Direct Clients, FCM Clearing Members, vendors and other affected contractual parties should take the amendments to the Clearing Conditions into consideration.

The amendments to the Clearing Conditions regarding topic A. are subject to a Consultation, which will end with the expiry of **6 March 2024**.

Eurex Clearing herewith invites all Affected Customers to submit comments on the proposed changes and amendments within the Consultation Period.

## **3. Details**

### **A. Amendments to the (non-automatic) Termination Events**

Eurex Clearing has defined non-automatic Termination Events in the Clearing Conditions and the FCM Regulations, which entitle Eurex Clearing to exercise a termination right.

There are minor amendments introduced to the "Termination Events" with the main objective to remove outdated and unprecise terminology to further improve the clarity of the respective provisions. Please note that the main purpose of the provisions shall not be changed and no additional termination events shall be introduced.

The amendments relate to the following Termination Events enumerated under Chapter I Part 1 Number 7.2.1 of the Clearing Conditions and Chapter I Number 9.2.1 of the FCM Regulations:

#### **i. Termination Event: (5) Insolvency related Events**

The current catalogue of insolvency related events applicable to non-German Clearing Members is rather inaccurate referring to terms (i.e. "winding-up", "bankruptcy", "liquidation", "administration" etc.), which in many foreign jurisdictions would rather constitute an actual insolvency case.

Further, a clarification was needed with respect to the ISA Direct Light Clearing Model to achieve a consistent application with respect to German and Non-German ISA Direct Light License Holders.

#### **ii. Termination Event: (7) Regulatory Actions**

The event shall be renamed to “(7) Regulatory Moratorium” and shall only cover scenarios in which an administrative order, court ruling, legal act or any other action is issued by a regulatory authority, court, or administrative body with respect to a Clearing Member that constitute the imposition of a moratorium (or a similar measure) resulting in a (temporary) ban on payments or other disposals by such Clearing Member.

Previously mentioned measures taken in accordance with the German Banking Act (KWG) and the German Securities Institution Act (*Wp/G*) are already captured by the non-automatic termination event “(6) Violation of Regulatory Provisions”, which shall further remain unchanged.

### **iii. Termination Event: (8) Application or Commencement of Restructuring Measures**

The event shall be renamed to “(8) Restructuring Proceedings and Measures”. The current provision is referring to the German transposition of Directive (EU) 2019/1023 on restructuring and insolvency, which is applicable only to corporates.

Thus, the provision shall be amended to include restructuring/reorganization proceedings based on other laws as well so that the application scope is extended to all Clearing Members’ types and not only corporates. For the avoidance of doubt this shall not relate to any recovery or resolution measures or proceedings.

### **iv. Termination Event: (10) Non-Compliance with Outsourcing Requirements**

The event shall be deleted since it is already captured by Termination Event “(2) Failure to comply with Clearing Conditions”.

To reflect the amendments, the following provisions shall be amended as outlined in Attachments 1 and 2:

- ◆ Chapter I Part 1 Number 7.2 of the Clearing Conditions (subject of the Consultation, Attachment 1)
- ◆ Chapter I Number 9.2 of the FCM Regulations (Attachment 2)

## **B. Alignment of disclosure rights in case of a Clearing Suspension**

Currently, Eurex Clearing is not entitled to inform its Markets and CSDs about the issuance of a Clearing Suspension due to reasons, which do not qualify as Termination Events (see events under Chapter I Part 2 Subpart A No 6.2.1 (i) to (v) of the Clearing Conditions.

Such disclosure rights are now included for all Clearing Models under the Clearing Conditions and the FCM Regulations.

To reflect the amendment, the following provisions shall be amended as outlined in Attachments 3 (Clearing Conditions) and 4 (FCM Regulations):

- ◆ Chapter I Part 2 Subpart A Number 6.2 of the Clearing Conditions
- ◆ Chapter I Part 4 Number 9.2 of the Clearing Conditions
- ◆ Chapter I Part 6 Subpart A Number 10.2 of the Clearing Conditions
- ◆ Chapter I Number 9.2 of the FCM Regulations

### **C. Amendments to the exemptions provisions regarding Public Entities**

Chapter I Part 1 Number 2.1.3 (1) of the Clearing Conditions provides Eurex Clearing with the right to exempt Public Entities from certain obligations under the Clearing Conditions.

Purpose of the amendments is to align the wording of the Clearing Conditions with the corresponding provisions under Article 1 paras. (4) and (5) of EMIR (European Market Infrastructure Regulation).

Content-wise, the amendments are not intended to lead to any changes.

To reflect the changes, the following provision shall be amended as outlined in Attachment 3:

- ◆ Chapter I Part 1 Number 2.1.3 (1) of the Clearing Conditions

### **D. Amendments to the creditworthiness requirement regarding Public Entities**

Chapter I Part 1 Number 2.1.3 (3) of the Clearing Conditions defines a specific creditworthiness requirement for the granting of exemptions for Public Entities.

Currently, the creditworthiness of the relevant Public Entity is determined based on Eurex Clearing's internal credit assessment which needs to correspond – at least – to a rating of A by Standard & Poor's Financial Services LLC (S&P). However, such minimum rating deviates from the minimum requirements stipulated by the Capital Requirements Regulation (CRR), which provides for a zero-risk weighting for Public Entities with a credit rating of at least AA-.

Eurex Clearing intends to amend the minimum internal credit rating equivalent to AA- by S&P.

To reflect the changes, the following provision shall be amended as outlined in Attachment 3:

- ◆ Chapter I Part 1 Number 2.1.3 (3) of the Clearing Conditions

### **E. Alignment of the applicable transfer regime under German law with respect to WR Credits (*Gutschriften in Wertpapierrechnung*) under the**



## ISA Provisions

In 2021, Eurex Clearing amended the legal basis for the transfer of title in WR Credits (*Gutschriften in Wertpapierrechnung*) in the relevant parts of the Clearing Conditions.

Instead of the transfer of a claim for surrender against the relevant CSD, Eurex Clearing followed the dominant view in German legal literature according to which the transfer of WR Credits (*Gutschriften in Wertpapierrechnung*) is achieved by debit and credit entries in the relevant securities accounts.

Eurex Clearing missed to change the transfer provisions reg. WR Credits (*Gutschriften in Wertpapierrechnung*) under the ISA Provisions (Chapter I Part 4 of the Clearing Conditions).

With this change, Eurex Clearing aligns the transfer provisions within the entire Clearing Conditions.

To reflect the changes, the following provision shall be amended as outlined in Attachment 3:

- ◆ Chapter I Part 4 Number 6.3.2.3 (3) of the Clearing Conditions

### **Consultation with respect to the proposed amendments to the Clearing Conditions under item A.**

Pursuant to Chapter I Part 1 Number 17 of the Clearing Conditions, the proposed changes and amendments to the Clearing Conditions regarding topic A.) are subject to a Consultation which will end with the expiry of **6 March 2024**.

Eurex Clearing herewith invites all Affected Customers to submit comments on the proposed changes and amendments within the Consultation Period.

### **Eurex Clearing herewith invites all Affected Customers to submit comments on the proposed changes and amendments within the Consultation Period.**

During the Consultation Period, comments on proposed changes or amendments shall only be submitted through a web-based commenting service for which a registration form is available on the Eurex Clearing website [www.eurex.com/ec-en/](http://www.eurex.com/ec-en/) under the following link:

#### **Find > Forms: Consultation Form**

The form has to be duly signed and returned to Eurex Clearing via e-mail to [SpecialProvisions@eurex.com](mailto:SpecialProvisions@eurex.com) in order to obtain a User ID and Password together with a link for accessing the web-based commenting service.

To the extent that Eurex Clearing decides to implement any comments received during the Consultation, the so-amended version of the Clearing Conditions will be published after the Consultation.

The currently envisaged effective date of the changes to the Clearing Conditions is **1 April 2024**. However, after the Consultation Period, Eurex Clearing will issue a separate circular to announce the concrete date on which the proposed changes (as the case may be, implementing comments received during the Consultation) will come into effect.

This announcement will be made with at least 15 Business Days' notice (Regular Notification Period). However, if Eurex Clearing should receive a request for a Prolonged Notification Period from more than two Affected Customers during the Consultation Period, a Prolonged Notification Period as set out in the Clearing Conditions will be applied and Eurex Clearing will notify all affected parties accordingly.

### **Publication of amendments as outlined under items A. to E.**

As of the effective date, the full version of the amended Clearing Conditions and FCM Regulations will be available for download on the Eurex Clearing website under the following link:

### **Rules and Regulations > Eurex Clearing Rules and Regulations**

The amendments to the legal framework of Eurex Clearing AG published by this circular are deemed accepted by each affected contractual party of Eurex Clearing AG, unless the respective contractual party objects by written notice to Eurex Clearing AG prior to the relevant effective date(s) as stipulated in this circular. In case of an objection by the respective contractual party pursuant the preceding sentence, Eurex Clearing AG is entitled to terminate the respective contract (including a Clearing Agreement, if applicable). Instead of submitting an objection, the respective contractual party may submit in writing to Eurex Clearing AG comments to any amendments of the legal framework of Eurex Clearing AG within the first 10 Business Days after the publication of the amendments. Eurex Clearing AG shall assess whether these comments prevent the published amendments from becoming effective taking into account the interests of Eurex Clearing AG and all contractual parties.

Unless the context requires otherwise, terms used and not otherwise defined in this circular shall have the meaning ascribed to them in the Clearing Conditions or FCM Clearing Conditions of Eurex Clearing AG, as applicable.

### **Attachments:**

- ◆ 1 – Amended sections of the Clearing Conditions of Eurex Clearing AG, effective 1 April 2024 (subject to the Consultation)

- ◆ 2 – Amended sections of the FCM Regulations of Eurex Clearing AG, effective 1 April 2024
- ◆ 3 – Amended sections of the Clearing Conditions of Eurex Clearing AG, effective 1 March 2024
- ◆ 4 – Amended sections of the FCM Regulations of Eurex Clearing AG, effective 1 March 2024

### Further information

Recipients: All Clearing Members, ISA Direct Clearing Members, Disclosed Direct Clients and FCM Clearing Members of Eurex Clearing AG, vendors and other affected contractual parties

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Target groups: Front Office/Trading, Middle + Back Office, IT/System Administration, Auditing/Security Coordination

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Contact: [client.services@eurex.com](mailto:client.services@eurex.com)

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Web: [www.eurex.com/ec-en/](http://www.eurex.com/ec-en/)

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Authorized by: Jens Janka

### Further information

[↓ Attachment 1 to Eurex Clearing Circular 007/24](#)

[↓ Attachment 2 to Eurex Clearing Circular 007/24](#)

[↓ Attachment 3 to Eurex Clearing Circular 007/24](#)

[↓ Attachment 4 to Eurex Clearing Circular 007/24](#)

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Chapter I of the Clearing Conditions of Eurex Clearing AG

## General Provisions

As of 01.04.2024

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AMENDMENTS ARE MARKED AS FOLLOWS:

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[...]

## Part 1 General Clearing Provisions

[...]

### 7 Termination Rules with respect to the Clearing Member

[...]

#### 7.2 Termination Events

7.2.1 [...]

Prior to the delivery of a Grace Period Notice or Termination Notice, as the case may be, with respect to a Termination Event, other than a Termination Event pursuant to Paragraph (1) (Failure to Pay; Failure to Deliver Margin), Paragraph (5) (Insolvency related Events), Paragraph (7) (Regulatory Actions), Paragraph (8) (~~Opening of Reorganisation or Restructuring Proceedings and Similar Measures~~) and Paragraph (14) (Termination for serious cause (*Kündigung aus wichtigem Grund*)) above, Eurex Clearing AG shall

[...]

##### (5) ~~Insolvency-related Events~~

When any of the following events occurs with respect to a Clearing Member:

~~(a) In relation to a Clearing Member having its registered seat and centre of main interest or, where it is a credit institution, being headquartered (*mit Hauptniederlassung*) in Germany:~~

~~(iaa) any event occurs which constitutes (a) a cause for the initiation of insolvency proceedings (*Eröffnungsgrund*) as set out in Sections 17 to 19 of the German Insolvency Code (*Insolvenzordnung*) such as illiquidity (*Zahlungsunfähigkeit*) pursuant to Section 17 InsO, over-indebtedness (*Überschuldung*) pursuant to Section 19 InsO or immanent illiquidity~~

(drohende Zahlungsunfähigkeit) pursuant to Section 18 InsO or (b) any similar cause for the initiation of insolvency proceedings under foreign law;

- ~~(iib)~~ a petition for insolvency proceedings in respect of the Clearing Member's assets ~~(Antrag auf Eröffnung eines Insolvenzverfahrens)~~ is filed in accordance with Section 13 InsO (Antrag auf Eröffnung eines Insolvenzverfahrens) or any similar provision under foreign law; or
- ~~(iic)~~ any preliminary insolvency proceedings are initiated by the insolvency court by ordering protection measures in accordance with Section 21 InsO or the initiation of any similar preliminary proceedings or measures pursuant to foreign law, actions are taken pursuant to Section 21 of the German Insolvency Code (Insolvenzordnung) by a competent court;
- ~~(b)~~ with respect to any Clearing Member not falling within the scope of Paragraph (5) (a) above, any action, legal proceedings or other procedure or step is taken in relation to any of the following events or any of the following events occurs:
  - ~~(aa)~~ the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, termination of existence, liquidation, administration, reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise), bankruptcy, insolvency, judicial management or curatorship;
  - ~~(bb)~~ a settlement, deferred payment, debt restructuring, transfer, restructuring, composition, compromise, assignment or similar arrangement of the Clearing Member with any of its creditors;
  - ~~(cc)~~ the appointment of a liquidator, trustee, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of that Clearing Member or any of its assets; or
  - ~~(dd)~~ or any analogous procedure or step is taken in any jurisdiction, provided that this Paragraph (5) (b) shall not apply to any procedure or step taken in relation to a solvent reorganisation of the relevant Clearing Member.

[...]

(7) **Regulatory Actions**~~Moratorium~~

Any administrative order, court ruling, legal act or any other action issued by the competent regulatory authorities, any court, the government or any other administrative body with respect to a Clearing Member that constitute the imposition of a moratorium (or a similar measure) resulting in a (temporary) ban on payments or other disposals by such Clearing Member for a specific period of time (moratorium), pursuant to Sections 45 to 46g KWG, Sections 49 to 52, 79 and 80 of the German Securities Institution Act (Wertpapierinstitutsgesetz) as well as any similar measures issued in relation to a Clearing Member under foreign law.

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(8) **Application or Commencement of Restructuring Proceedings and Measures**

The commencement of any of the following proceedings or the application of any of the following measures with respect to the Clearing Member:

(a) the Any application for or the commencement of restructuring proceedings and the application use of any instruments under the stabilization and restructuring framework (*Stabilisierungs- und Restrukturierungsrahmen*) according to measures in accordance with the relevant act implementing Directive (EU) 2019/1023 (Directive on restructuring and insolvency) or any similar proceedings or instruments in accordance with the relevant act under foreign law, or German Act on the Stabilization and Restructuring Framework for Enterprises (*Gesetz über den Stabilisierungs- und Restrukturierungsrahmen für Unternehmen*) as well as any similar measure under foreign law, in respect of the Clearing Member.

(b) the commencement of any other restructuring or reorganization proceedings or the application of any supporting measures, actions or tools in accordance with the laws applicable to the Clearing Member, provided that such applicable laws allow the exercise of termination rights.

[...]

~~(10) **Non-Compliance with Outsourcing Requirements**~~

~~Non-compliance with the obligation to terminate the Outsourcing or to re-assume the Outsourced Functions upon the exercise of the veto right by Eurex Clearing AG pursuant to Number 15.2.10.~~

~~(140) **Termination for serious cause (*aus wichtigem Grund*)**~~

[...]

7.2.2 [...]

~~(i) with respect to a Clearing Member having its registered seat and centre of main interest in Germany or, if it is a credit institution, being headquartered in Germany, when insolvency proceedings in Germany (*Insolvenzverfahren*) within the meaning of the German Insolvency Code (*Insolvenzordnung*) InsO are commenced over the estate of the Clearing Member (*Eröffnung des Insolvenzverfahrens*),~~

[...]

[...]

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Chapter I: Clearing Model Related Provisions

# FCM Regulations of Eurex Clearing AG

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## Chapter I Clearing Model Related Provisions

[...]

### 9 Termination Rules with respect to the FCM Clearing Member

[...]

#### 9.2 Termination Events, Insolvency Termination Event, Suspension of Clearing, and Declaration of Termination

##### 9.2.1 Termination in case of the occurrence of Termination Events

###### (1) Termination Events:

[...]

###### (e) Insolvency related Events

Any action, legal proceedings or other procedure or step is taken in relation to any of the following events or any of the following events occurs in relation to the FCM Clearing Member:

(aa) ~~The suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, termination of existence, liquidation, administration, reorganization (by way of voluntary arrangement, scheme of arrangement or otherwise), judicial management or curatorship; any event which constitutes a cause for the initiation of insolvency proceedings;~~

(bb) ~~A settlement, deferred payment, debt restructuring, transfer, restructuring, composition, compromise, assignment or similar arrangement of the FCM Clearing Member with any of its creditors; any preliminary insolvency~~

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proceedings initiated by the insolvency court by ordering protection measures prior to the commencement of insolvency proceedings;

~~(cc) The appointment of a liquidator, trustee, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the FCM Clearing Member or any of its assets;~~

~~(dd) Any application for commencement or an order of reorganization or restructuring proceedings; or~~

~~(ecc) The filing of an involuntary petition to commence a bankruptcy case against the FCM Clearing Member under Subchapter IV of Chapter 7 of the U.S. Bankruptcy Code, 11 U.S.C. § 101 et seq.; or~~

(dd) any other filing of a petition to commence insolvency proceedings against the FCM Clearing Member.

[...]

**(g) Regulatory Actions ~~Moratorium~~**

Any administrative order, court ruling, legal act or any other action issued by the competent regulatory authorities, any court, the government or any other administrative body with respect to the FCM Clearing Member that constitute the imposition of a moratorium (or a similar measure) resulting in a (temporary) ban on payments or other disposals by such FCM Clearing Member for a specific period of time (moratorium).

~~Any enforcement decision or action taken against the FCM Clearing Member by the CFTC (including the appointment of a temporary receiver pursuant to Section 6c (a) of the CEA), NFA, another regulator or a self-regulatory organization with jurisdiction over the FCM Clearing Member, provided that Eurex Clearing AG has determined in its reasonable opinion that such action may materially impair the FCM Clearing Member's proper fulfilment of the obligations under the FCM Clearing Agreement.~~

**(h) Restructuring Proceedings and Measures**

The commencement of any other restructuring or reorganization proceedings or the application of any supporting measures, actions or tools in accordance with the laws applicable to the Clearing Member, provided that such applicable laws allow the exercise of termination rights.

**(ih) Change in Law and other similar Causes**

[...]

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(i) ~~Non-Compliance with Outsourcing Requirements~~

~~Non-compliance with the obligation to terminate the Outsourcing or to re-assume the Outsourced Functions upon the exercise of the veto right by Eurex Clearing AG pursuant to Number 14.2.7.~~

[...]

[...]

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Chapter I of the Clearing Conditions of Eurex Clearing AG

## General Provisions

As of 01.03.2024

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## Clearing Conditions of Eurex Clearing AG

### Preamble

As provided for in these clearing conditions of Eurex Clearing AG (hereinafter referred to as "**Clearing Conditions**"), Eurex Clearing AG, having its registered office in Frankfurt am Main, acts as central counterparty for (a) (i) transactions in securities and *Wertrechte*, including German book-entry securities (*Gutschriften in Wertpapierrechnung*) (the "**WRP Credits**") and Swiss intermediated securities (*Schweizer Bucheffekten*) (hereinafter together the "**Securities**") and (ii) futures, options and other derivative transactions, which, in each case, result from either matching orders and quotes of trading participants (the "**Matching**") on the markets Eurex Deutschland, Eurex Repo or another multilateral trading facility for Repo Transactions and Frankfurter Wertpapierbörse (hereinafter collectively referred to as "**Markets**" and each a "**Market**", each transaction resulting from Matching a "**Market Transaction**") or (b) novations of transactions executed over-the-counter (each transaction resulting from an over-the-counter transaction an "**OTC Transaction**", and each Market Transaction and OTC Transaction, a "**Transaction**").

[...]

### Part 1 General Clearing Provisions

#### 1 General Rules

[...]

#### 1.2 Clearing Procedures

[...]

#### 1.2.5 Transfer of Securities and Rights

[...]

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- (2) A transfer of WRP Credits shall be effected by (i) a debit entry in the securities account of the transferor held with Clearstream Banking AG and (ii) a credit entry in the securities account of the transferee held with Clearstream Banking AG.

[...]

#### 1.4 Settlement of Transactions

[...]

##### 1.4.2 Settlement of Transactions in Securities

[...]

- (3) All transfers in Securities (including WRP Credits) shall be made versus payment (*Zug um Zug*), unless not regulated otherwise in the Special Clearing Conditions. Each such payment shall be made between the transferor Clearing Member, transferor ISA Direct Clearing Member or transferor Clearing Agent (acting on behalf of the ISA Direct Clearing Member) and Eurex Clearing AG and, accordingly, between Eurex Clearing AG and the transferee Clearing Member, transferee ISA Direct Clearing Member or transferee Clearing Agent (acting on behalf of the ISA Direct Clearing Member).

- (4) Each transfer of ownership in Securities (other than WRP Credits) shall be made in accordance with the relevant applicable laws and the relevant market practice.

[...]

- (5) The transfer of WRP Credits via Clearstream Banking AG is subject to the following provisions and Paragraphs (7):

- (a) With regard to the legal position underlying the WRP Credits transferred to Eurex Clearing AG, Eurex Clearing AG shall for a limited period of time act as fiduciary owner in favour of the acquiring Clearing Member or ISA Direct Clearing Member in order to transfer the legal position underlying the WRP Credits to the Clearing Member or the ISA Direct Clearing Member to whom delivery is to be made.
- (b) Based on instructions in the systems of Clearstream Banking AG issued by Eurex Clearing AG, the transfer of WRP Credits is effected by (i) a debit entry in the custody account of the transferor Clearing Member, ISA Direct Clearing Member or Clearing Agent (acting on behalf of the ISA Direct Clearing Member) held with Clearstream Banking AG and a credit entry in the custody account of Eurex Clearing AG held with Clearstream Banking AG and (ii) a debit entry in the such custody account of Eurex Clearing AG and a credit entry in the custody account of the transferee Clearing Member, ISA Direct Clearing Member or Clearing Agent (acting on behalf of the ISA Direct Clearing Member) held with Clearstream Banking AG.

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[...]

[...]

**2 Clearing Members**

**2.1 Clearing License**

[...]

**2.1.2 General Prerequisites for Clearing Licenses**

[...]

(4) The applicant (other than an applicant that intends to become an OTC IRS U.S. Clearing Member) shall have available the following accounts:

(a) Securities Accounts:

[...]

(ee) settlement securities accounts required for the Physical Delivery of Securities (including WRP Credits and Swiss intermediated securities) for the relevant Transaction Types, which shall be maintained with a Settlement Location and which must be connected with a corresponding cash account.

[...]

**2.1.3 Prerequisites for ~~Governmental Entities and Supranational Organisations~~ Public Entities**

(1) ~~Within the limits of Art 1 Paras. (4) and (5) of EMIR and Upon written request and upon the sole risk assessment of Eurex Clearing AG, Eurex Clearing AG may admit certain governmental entities and supranational organisations~~ Public Entities may be admitted as Clearing Members under the following modified conditions. These are:

“Public Entities” means all entities and bodies enlisted under Article 1 Paras. (4) and (5) of EMIR, in particular:

(a) the members of the European System of Central Banks, other bodies of member states of the European Union performing similar functions and other public bodies of member states of the European Union charged with the management of the public debt~~the member countries of the EU and Switzerland as well as other non-EU countries, their central governments, regional governments and ministries, as well as their legally dependent special funds;~~

(b) the central banks and public bodies charged with the management of the public debt of countries outside the European Union as enlisted under Article 1 Para. (4) (c) EMIR; ~~the central banks of the countries named under (a);~~



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- (c) ~~multilateral development banks and public sector entities within the meaning of Article 1 Para. (5) of EMIR; and the European Central Bank, multilateral development banks and international organisations within the meaning of Articles 117 and 118 of the CRR, including the Kreditanstalt für Wiederaufbau (KfW);~~
- (d) ~~the Bank for International Settlements, the European Financial Stability Facility and the European Stability Mechanism, legally independent institutions and companies which are commissioned with or responsible for the management of assets or liabilities of one of the countries named under (a); and~~
- (e) ~~public sector entities within the meaning of Article 4 Paragraph 1 Number 8 of the CRR and comparable institutions.~~

[...]

- (3) Any exemption pursuant to Paragraph (2) will be granted only upon written request and upon the sole risk assessment of Eurex Clearing with the option of revoking such exemption at any time.

An exemption from the requirements mentioned in Paragraph (2) (c) and (d) presupposes that the creditworthiness of the applicant determined on the basis of Eurex Clearing AG's internal assessment pursuant to Number 1.6.1 Paragraph (4) corresponds at least to a rating of AA- (AA minus) by Standard & Poor's Financial Services LLC, a part of McGraw Hill Financial Inc. ("**S&P**"). If the applicant has an unlimited guarantee or declaration of liability from a guarantor that falls within one of the categories listed in Paragraph (1), the rating of that guarantor is decisive.

[...]

[...]

## **Part 2 Subpart A: General Elementary Clearing Model Provisions**

[...]

### **6 Consequences of a Termination Event or Insolvency Termination Event**

[...]

#### **6.2 Suspension or Restriction of Clearing after the occurrence of a Termination Event or an Insolvency Termination Event**

6.2.1 If a Termination Event or any of the following events occurs with respect to a Clearing Member:

[...]

Eurex Clearing AG shall notify the affected Clearing Member and all affected Disclosed Direct Clients of such Clearing Member of the decision to suspend or limit the Clearing. Eurex Clearing AG shall specify in the notification a reasonable period of time during which such suspension or limitation shall apply. The provisions under Part 1 Number 7.4 shall apply accordingly.

[...]

[...]

**Part 4 Individual Segregated Account Provisions**

**6 Margin**

[...]

**6.3 Delivery and Booking of Eligible Margin Assets**

[...]

**6.3.2 Delivery of Eligible Margin Assets in the form of Securities**

[...]

**6.3.2.3 [...]**

(3) With respect to a transfer of Securities to an ISA Securities Margin Account with Clearstream Banking AG of which the Clearing Member is the account holder:

[...]

(b) In the case of a transfer of WRP Credits, the Clearing Member makes an offer to transfer its claim for transferring the ownership in WP Credits against Clearstream Banking AG to Eurex Clearing AG by means of the CBF Instruction. Eurex Clearing AG hereby accepts any such offer in advance subject to the credit of the WP Credits to the ISA Securities Margin Account. § 151 of the German Civil Code (*Bürgerliches Gesetzbuch*) applies. ~~Eurex Clearing AG and the Clearing Member agree and acknowledge that, with the completion of the credit on the ISA Securities Margin Account, Clearstream Banking AG accepts by way of abstract acknowledgement of debt (*abstraktes Schuldanerkenntnis*) the claim for surrender vis-à-vis Eurex Clearing AG.~~ The transfer of ownership in WR Credits is effected by (i) a debit entry with respect to the relevant WR Credits in the custody account of the Clearing Member held with Clearstream Banking AG and (ii) a credit entry in the ISA Securities Margin Account held with Clearstream Banking AG.

[...]

**9 Suspension or Restriction of Clearing after the occurrence of a Termination Event or an Insolvency Termination Event**

[...]

9.2 Eurex Clearing AG shall notify the affected Clearing Member and all affected Disclosed Direct Clients of such Clearing Member of the decision to suspend or limit the Clearing. Eurex Clearing AG shall specify in the notification a reasonable period of time during which such suspension or limitation shall apply. The provisions under Part 1 Number 7.4 shall apply accordingly.

[...]

[...]

**Part 6 Subpart A: General ISA Direct Provisions**

[...]

**10 ISA Direct Clearing Member Termination Event**

[...]

10.2 [...]

Eurex Clearing shall notify the relevant ISA Direct Clearing Member and its Clearing Agent of the decision to suspend or limit the Clearing and specify a reasonable period of time during which such suspension or limitation of the Clearing shall apply. The provisions under Part 1 Number 7.4 shall apply accordingly.

[...]

10.3 [...]

**10.3.1 “ISA Direct Clearing Member Termination Event” means**

- (a) the occurrence of any of the events set out in Part 1 Number 7.2.1 Paragraphs (1) to (104) with respect to the ISA Direct Clearing Member, provided that references therein to the Clearing Member shall be read as references to the ISA Direct Clearing Member;
- (b) the occurrence of any of the events set out in Part 1 Number 7.2.1 Paragraphs (1) to (104) with respect to the ISA Direct Clearing Member acting as Clearing Member under any other Standard Agreement entered into between Eurex Clearing AG and the ISA Direct Clearing Member acting as Clearing Member,

[...]

10.3.2 Prior to the delivery of an ISA Direct Clearing Member Termination Notice with respect to an ISA Direct Clearing Member Termination Event, other than an ISA Direct Clearing Member Termination Event pursuant to lit. (a) of the definition of "ISA Direct Clearing Member Termination Event" in conjunction with Part 1 Number 7.2.1 Paragraph (1) (Failure to Pay; Failure to Deliver Margin), Paragraph (5) (Insolvency related Events), Paragraph (7) (Regulatory Actions), ~~Paragraph (9) (Opening of Reorganisation or Restructuring Procedures and Similar Measures)~~ and Paragraph (10~~2~~) (Termination for serious cause (*Kündigung aus wichtigem Grund*)), Eurex Clearing AG shall

[...]

[...]

\*\*\*\*\*

Chapter I: Clearing Model Related Provisions

# FCM Regulations of Eurex Clearing AG

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\*\*\*\*\*

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED;

DELETIONS ARE CROSSED OUT

\*\*\*\*\*

[...]

## Chapter I Clearing Model Related Provisions

[...]

### 9 Termination Rules with respect to the FCM Clearing Member

[...]

#### 9.2 Termination Events, Insolvency Termination Event, Suspension of Clearing, and Declaration of Termination

##### 9.2.1 Termination in case of the occurrence of Termination Events

[...]

##### (2) Right to suspend Clearing upon occurrence of a Termination Event

[...]

Eurex Clearing AG shall notify the FCM Clearing Member and attempt to notify all FCM Clients of such FCM Clearing Member of the decision to suspend or limit the Clearing. Eurex Clearing AG shall specify in the notification a reasonable period of time during which such suspension or limitation shall apply. The provisions under Number 9.2.4 shall apply accordingly.

[...]

[...]

\*\*\*\*\*