



Eurex Clearing Resources Circulars & Mailings

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No. 004/2020

Amendments to the FCM Regulations of Eurex Clearing AG

Eurex Clearing Circular 004/20

1. Introduction

This circular contains information with respect to the LSOC (Legally Segregated Operationally Commingled) service offering of Eurex Clearing AG (Eurex Clearing).

In the following, required changes of the FCM Regulations of Eurex Clearing AG (FCM Regulations) and the FCM Clearing Agreement are described and outlined in detail via the relevant attachments.

The amended FCM Regulations and the FCM Clearing Agreement will come into effect on **3 February 2020**.

2. Required action

There are no required actions for the Participants.

3. Details

The FCM Regulations and FCM Clearing Agreement will be amended as follows:

A) Introduction of a process to ensure that bookings resulting from the charge of negative interest rates do not result in a reduction of US FCM customer funds on the relevant Cash Trust Account.

B) Introduction of the right for Eurex Clearing to charge negative interest:

For a transparent process, in case Eurex Clearing determines to charge negative interest, a publication on Eurex Clearing's website is required, as well as currently available benchmark interests need to be considered.

C) Clarification that Variation Settlement payments are considered in the calculation of the Difference Claim in case of a default of an FCM Clearing Member:

Despite of the default or insolvency of an FCM Clearing Member, Eurex Clearing remains obliged to pay Variation Settlements under those Transactions which are opposite the terminated Transactions of the defaulted FCM Clearing Member.

D) Introduction of a right for Eurex Clearing to disclose the identity of FCM Clearing Members to investment agents:

Due to regulatory requirements, Eurex Clearing needs to be enabled to disclose the identity of FCM Clearing Members to Eurex Clearing's Investments Agents. This amendment prepares the acceptance of US dollar as currency for initial margin payments, which is subject to final operational readiness and implementation of an investment scheme applying CFTC Rule 1.25. Eurex Clearing is currently in the process of finalization and will announce readiness for the acceptance of US dollar as initial margin currency with a separate Eurex Clearing circular.

E) Improvement of KYC process:

Eurex Clearing is obliged to thoroughly check all direct contractual counterparties (i.e. FCM Clearing Members), in particular with regards to funding of terrorist activities and money laundering (KYC). In order to improve the underlying process, a new requirement has been added, that direct contractual counterparties shall without undue delay provide all information required to Eurex Clearing, which Eurex Clearing may reasonably request at any time in order to comply with applicable laws, rules and regulations by its competent supervisory authorities.

F) The description of the Swap Transaction Netting and Accumulation process will be clarified and aligned more closely with the operational handling by FCM Clearing Members.

As of the effective date, the full version of the amended FCM Regulations will be available for download on the Eurex Clearing AG website www.eurexclearing.com under the following link:

Resources > Rules and Regulations > FCM Regulations

The changes and 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 within the first ten (10) Business Days after publication. Any ordinary right of Eurex Clearing AG to terminate the respective contract (including a Clearing Agreement, if applicable) shall remain unaffected.

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

Attachments:

- Amended sections of Chapter I of the FCM Regulations of Eurex Clearing AG
- Amended sections of Chapter II of the FCM Regulations of Eurex Clearing AG
- Amended sections of the FCM Clearing Agreement

Further information

Recipients: All FCM Clearing Members of Eurex Clearing AG

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

Contact: client.services@eurexclearing.com

Web: www.eurexclearing.com

Authorized by: Dmitrij Senko

Further information

[Attachment 1 to Eurex Clearing circular 004/20](#)

[Attachment 2 to Eurex Clearing circular 004/20](#)

[Attachment 3 to Eurex Clearing circular 004/20](#)

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Chapter I: Clearing Model Related Provisions

FCM Regulations of Eurex Clearing AG

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AMENDMENTS ARE MARKED AS FOLLOWS:

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[...]

Chapter I Clearing Model Related Provisions

[...]

2 FCM Clearing Members

[...]

2.3 Additional Continuing Obligations for FCM Clearing Members

[...]

(12) The FCM Clearing Member shall without undue delay provide all information to Eurex Clearing AG, which Eurex Clearing AG may reasonably request at any time to comply with applicable laws, rules, regulations or orders by its competent supervisory authorities (in particular those relating to funding of terrorist activities and money laundering - “KYC Information”). The FCM Clearing Member shall appoint one of its employees as contact for Eurex Clearing AG for all matters relating to KYC Information (“KYC Contact”). The FCM Clearing Member shall immediately notify Eurex Clearing AG about any changes relating to (i) the KYC Information it has previously provided to Eurex Clearing AG or (ii) the KYC Contact. The FCM Clearing Member shall also provide without undue delay all KYC Information relating to any of its FCM Clients, which Eurex Clearing AG may reasonably request at any time to comply with applicable laws, rules, regulations or orders by its competent supervisory authorities.

[...]

3 Margin

3.1 General Provisions

[...]

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3.1.3 Currency Conversion, Use of Eligible Margin Assets in the form of cash and Income on Margin Assets

[...]

- (3) Eurex Clearing AG may ~~agree~~ determine from time to time to either pay interest or charge negative interest on Eligible Margin Assets in the form of cash that is Actually Delivered by an FCM Clearing Member to Eurex Clearing AG in respect of Margin. Eurex Clearing AG publishes information on the calculation of interest rates or negative interest rates as well as any changes to the applicable calculation method due to extraordinary market conditions or market disruptions on its website (www.eurexclearing.com). Such information will be amended from time to time and published accordingly. When determining to charge negative interest, Eurex Clearing AG shall consider the currently applicable benchmark interest rates and interest rates charged by the central banks or commercial banks.

[...]

[...]

3.2 Margin Calls and Delivery of Eligible Margin Assets

[...]

3.2.2 Delivery of Eligible Margin Assets in the form of cash

[...]

- (3) In order to ensure insolvency protection in relation to Eligible Margin Assets in the form of cash delivered to Eurex Clearing AG by the FCM Clearing Member in respect of the FCM Client Margin Account, Eurex Clearing AG and the FCM Clearing Member are subject to specific German law governed provisions on the establishment of cash trust accounts as set out in Clause 6 of the FCM Clearing Agreement in the form attached to these FCM Regulations as Appendix 1 (each such account, a "**Cash Trust Account**"). The FCM Clearing Member agrees to hold its rights in respect of any such Cash Trust Account on trust for its FCM Clients from time to time.

In case the Account Bank with which the Cash Trust Account is maintained charges any expenses (such as charges on any account balances (including in connection with any applicable bank levies, taxes or similar regulatory instruments), negative interest rates, penalty fees, commissions and other payments with a similar effect) directly to the Cash Trust Account, Eurex Clearing AG or the Account Bank acting on behalf of Eurex Clearing AG shall in advance transfer own funds of Eurex Clearing AG ("**Eurex Clearing AG Funds**") to the relevant Cash Trust Account in an amount which is needed to cover such expenses. By such transfer, the Eurex Clearing AG Funds shall form part of the relevant FCM Client Margin Account and Eurex Clearing

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AG shall not have any redelivery claim with respect to such Eurex Clearing AG Funds. With respect to the FCM Clearing Member, Number 3.1.3 (4) shall apply.

[...]

9 Termination Rules with respect to the FCM Clearing Member

[...]

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

[...]

9.2.3 Declaration of Termination

[...]

(3) Consequences for FCM Client Transactions

(a) [...]

(aa) the Clearing of ~~all existing and~~ new FCM Client Transactions of all FCM Clients of the Affected FCM Clearing Member is immediately suspended; and

[...]

[...]

[...]

9.5 Consequences of a Termination

[...]

9.5.2 Difference Claim

Upon the occurrence of an FCM Clearing Member Termination Time or FCM Client Termination Time, Eurex Clearing AG shall determine a separate difference claim for the FCM Clearing Member Netting Set and each FCM Client Netting Set on the Last Valuation Date (each a "**Difference Claim**") by way of combining the Single Transaction Amounts of all Swap Transactions forming part of the relevant FCM Clearing Member Netting Set or FCM Client Netting Set.

(1) The final amount of the Difference Claim resulting from such combination shall ~~(1)(i)~~ if it is a positive figure, be owed by Eurex Clearing AG to the FCM Clearing Member (in case of an FCM Client Netting Set, on behalf of the relevant FCM Client), or ~~(2)(ii)~~

if it is a negative figure, shall be owed by the FCM Clearing Member (in case of an FCM Client Netting Set, on behalf of the relevant FCM Client) to Eurex Clearing AG.

- (2) The Difference Claim shall be denominated in the Clearing Currency or any other currency last agreed in writing between Eurex Clearing AG and the FCM Clearing Member (the "**Termination Currency**").
- (3) For the purpose of the determination of the Difference Claim:
- (4i) The "**DMP Valuation Date**" shall, with respect to a Swap Transaction, be any day on which a Liquidation Price is determined for such Swap Transaction. The latest DMP Valuation Date with respect to Swap Transactions under the relevant FCM Clearing Member Netting Set or FCM Client Netting Set shall be the "**Last Valuation Date**". Such Last Valuation Date shall occur upon completion of the default management process pursuant to this Number 9 and the FCM Default Rules.
- (2ii) The "**Single Transaction Amount**" shall be determined with respect to each Swap Transaction under the relevant FCM Clearing Member Netting Set or FCM Client Netting Set that is deemed terminated as of the FCM Clearing Member Termination Time or FCM Client Termination Time and shall equal its Liquidation Price as of the relevant DMP Valuation Date.
- [...]
- When making such calculation, (ia) any amount due to be paid as a primary obligation under the relevant Swap Transaction, but unpaid at the relevant DMP Valuation Date, and (bi) the value of any assets due to be delivered as a primary obligation under the relevant Swap Transaction, but not delivered at the relevant DMP Valuation Date (each an "**Unpaid Amount**"), shall be taken into account.
- (iii) "**Liquidation Price**" means, with respect to a Swap Transaction,
- (a) the price of a relevant replacement transaction entered into by Eurex Clearing AG with respect to the relevant Swap Transaction during and as part of the default management process pursuant to the FCM Default Rules at the latest on the fifth Business Day after the ~~date on which the FCM Clearing Member Termination Date~~Time has occurred, or, to the extent this is required for a value-preserving liquidation, use the price of such replacement transactions entered into by Eurex Clearing AG with respect to the relevant Swap Transaction on any Business Day after the fifth Business Day after the FCM Clearing Member Termination Date has occurred~~at the latest on the 20th Business Day after the date on which the FCM Clearing Member Termination Time has occurred, including relevant costs and expenses incurred by Eurex Clearing AG during the respective~~

~~default management process, in particular relevant DM Hedging Transaction Costs (as defined in Number 4.2 of the FCM Default Rules);~~

- (b) subject to Sub-Paragraph (c) below, if Eurex Clearing AG does not enter into a replacement transaction during and as part of the default management process pursuant to Number 4 of the FCM Default Rules, the last available Market Price for such Swap Transaction on the date on which the FCM Clearing Member Termination Time or FCM Client Termination Time has occurred; ~~or~~
- (c) if Eurex Clearing AG does not enter into a replacement transaction during and as part of the default management process pursuant to Number 4 of the FCM Default Rules and a Liquidation Group Deficiency (as defined in Number 9.6) occurs in relation to such Swap Transaction, the amount corresponding to the relevant Single Valuation Price for such Swap Transaction; ~~or~~
- (d) when determining the Liquidation Price pursuant to Paragraph (a) to (c), Eurex Clearing AG will consider (A) all relevant costs and expenses incurred by Eurex Clearing AG during the respective default management process, in particular relevant DM Hedging Transaction Costs (including potential profits and losses arising from such DM Hedging Transactions), and (B) all payment obligations arising from the Swap Transaction between Eurex Clearing AG and another FCM Clearing Member or Clearing Member corresponding to the relevant terminated Swap Transaction in the time as of the Clearing Member Termination Time until the entering into the relevant replacement transaction during and as part of the default management process pursuant to Number 4 of the FCM Default Rules.

[...]

[...]

Chapter II: Special Provisions for Clearing of Interest Rate Derivative Transactions

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[...]

Part 2 Clearing of Interest Rate Derivative Transactions

[...]

2.6 Trade Netting and Accumulation

[...]

2.6.1 Inclusion of Swap Transactions in the Netting and Accumulation Process

[...]

(3) Swap Transaction will be netted and/or accumulated, if the Swap Transactions have been designated for netting and/or accumulation, as the case may be, by the FCM Clearing Member, including when acting as agent on behalf of the relevant FCM Client, in the system of Eurex Clearing AG (~~“Interest Rate Optional Netting”~~). Such designation shall be submitted no later than by 10:00 p.m. (Frankfurt am Main time) on the relevant Business Day.

~~(4) Instead of Interest Rate Optional Netting, an FCM Clearing Member may select (i) that all Own Transactions are netted or accumulated, as the case may be, at the end of each Business Day and (ii) that all FCM Client Transactions in an FCM Client Transaction Account are netted or accumulated, as the case may be, at the end of each Business Day.~~

2.6.2 Netting and Accumulation Procedure

[...]

(3) If the Swap Transactions subject to netting or accumulation are all ISDA Interest Rate Derivative Transactions only, the remaining Swap Transactions for which there is no counterposition with which they can be netted will be novated to ISDA Interest Rate Derivative Transactions.

[...]

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“**Netting Levels**” are rule sets to be selected by the FCM Clearing Member for each FCM Clearing Member Own Transaction Account or FCM Client Transaction Sub-Account, respectively, defining to which degree tTrade cCriteria must match, where a higher level improves the netting efficiency by requiring a lower degree of matching tTrade cCriteria.

- (4) The netting and, if applicable, the accumulation, respectively, of the Swap Transactions will become effective when the Swap Trade Daily Summary Report, in which such event is included, is made available to the FCM Clearing Members, including when acting as agent on behalf of the relevant FCM Client.

[...]

Appendix 1 to the FCM Regulations of Eurex Clearing AG:

FCM Clearing Agreement

with an FCM Clearing Member for the Clearing of FCM Client
Transactions under the FCM Regulations of Eurex Clearing AG

As of 03.02.2020

THE FCM CLEARING AGREEMENT WILL BE AMENDED.

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[...]

6. Eurex Clearing AG and the FCM Clearing Member hereby enter into the following trust arrangements in relation to Initial Margin or Supplementary Margin for FCM Client Transactions in the form of cash:

[...]

- (3) Eurex Clearing AG shall disclose each bank with which a Cash Trust Account is maintained (each an “**Account Bank**”) that all amounts credited to such Cash Trust Account are held on trust (*treuhänderisch*) by Eurex Clearing AG. Eurex Clearing AG will inform the FCM Clearing Member of the account numbers of each Cash Trust Account to which any Initial Margin or Supplementary Margin for its FCM Client Transactions in the form of cash is credited. Eurex Clearing AG shall be entitled to provide the Account Bank on request with identifying information about the FCM Clearing Member, if the Account Bank proves to Eurex Clearing AG that such information are needed to comply with laws, rules regulations or executive orders (in particular those relating to funding of terrorist activities and money laundering) (the “**Relevant Laws**”). Eurex Clearing AG shall use reasonable endeavours to procure that the Account Bank treats such information confidential and only discloses the information to third parties as requested by the Relevant Laws.

[...]

7. Eurex Clearing AG and the FCM Clearing Member hereby enter into the following trust arrangements in relation to securities received as Deal Securities under repo transactions entered into between Eurex Clearing AG and commercial counterparties pursuant to Chapter I Number 3.1.3 (2) of the FCM Regulations:

[...]

- (3) Eurex Clearing AG shall disclose each Account Bank that all amounts credited to such Trust Account are held on trust (*treuhänderisch*) by Eurex Clearing AG. Eurex Clearing AG will inform the FCM Clearing Member of the account numbers of each Securities Trust Account to which any Deal Securities are credited. Eurex Clearing AG shall be entitled to provide the Account Bank on request with identifying information about the FCM Clearing Member, if the Account Bank proves to Eurex Clearing AG that such information are needed to comply with laws, rules regulations or executive orders (in particular those relating to funding of terrorist activities and money laundering) (the “**Relevant Laws**”). Eurex Clearing AG shall use reasonable endeavours to procure that the Account Bank treats such information confidential and only discloses the information to third parties as requested by the Relevant Laws.

[...]

[...]
