

04 Jul 2022
Eurex Clearing

Amendments to the Clearing Conditions of Eurex Clearing AG and other related documents

Eurex Clearing Circular 048/22 Amendments to the Clearing Conditions of Eurex Clearing AG and other related documents

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 other related documents regarding the following topics:

- A. Amendments due to the reclassification of US OTC Clearing Members as Direct Clearing Members
- B. Amendments to the “US Person” definition
- C. Clarifying amendments to the Clearing Conditions with regards to several topics.

The amendments will become effective as of **1 August 2022**.

2. Required action

There is no required action.

3. Details of the initiative

A. Amendments due to the reclassification of US OTC Clearing Members as Direct Clearing Members

When the role of US OTC Clearing Members (US OTC CMs) was introduced, the category of Direct Clearing Members (DCM) had not existed yet. As a consequence, an US OTC Clearing Member was automatically categorized as a

General Clearing Member (GCM) and its entitlements were explicitly restricted under the definition of a GCM.

As the categorization of DCM has successfully been implemented in the meanwhile, US OTC CMs shall be setup as DCMs. Thus, the restrictions under the respective description of a GCM with regards to US OTC CMs shall be deleted from the Clearing Conditions.

To reflect these amendments, the following provisions will be amended as outlined in Attachment 1:

- ◆ Chapter I Part 1 Number 2.1.1 (4) of the Clearing Conditions of Eurex Clearing AG

B. Amendments to the “US Person” definition

To ensure that clearing for clients qualifying as “US Person” is conducted under the LSOC-compliant FCM Regulations, Eurex Clearing requires its Clearing Members to represent to Eurex Clearing that neither the Clearing Members nor any of their clients fall under one of the “US Person Categories” defined by the CFTC.

Currently, Eurex Clearing is only referring to the “Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations” (78 Fed. Reg. 45,292, Jul. 26, 2013) by the CFTC with regards to “US Person Categories”.

In 2020, the CFTC introduced further categories in the “Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants” (85 Fed. Reg. 56,924, Sept. 14, 2020). The 2020 Rules note that the 2013 Guidance can still be used until 2027.

In case of fund manager setups with the fund manager being located in the US, Eurex Clearing further requires the Clearing Member to sign the attached confirmation letter. By signing this confirmation letter, the relevant Clearing Member represents to Eurex Clearing that it has either obtained a representation from the fund manager, or has analyzed itself that all funds for which it acts as fund manager do not fall under one of the US Person Categories defined by the CFTC.

As a consequence of the introduction of further “US Person Categories” by the CFTC, Eurex Clearing intends to amend the Clearing Conditions and the Confirmation Letter accordingly. The Confirmation Letter is available via your Key Account Manager.

To reflect these amendments, the following provisions will be amended as outlined in Attachment 2:

- ◆ Chapter I Part 1 Number 1.8 and 1.9 of the Clearing Conditions

- ◆ OffshoreFund_USPerson_ConfirmationLetter

C. Clarifying amendments to the Clearing Conditions with regards to several topics

Some provisions of the Clearing Conditions still contain references to the decommissioned Individual Clearing Model (ICM) which are now without function.

These references will be removed with this amendment. Furthermore, in the context of the Third-Party CM Account Holder setup, it is clarified that a Third-Party CM Account Holder needs to qualify as a 'participant' in the system operated by Eurex Clearing AG within the meaning of Art. 1 (f) of the Settlement Finality Directive (unless waived by Eurex Clearing AG). Besides that, a reference to a Clearing Member in Part 2 Subpart A (currently referring to a Clearing Member as "Clearing Clearing Member") is corrected.

To reflect these amendments, the following provisions of the Clearing Conditions will be amended as outlined in Attachment 3:

- ◆ Chapter I Part 1 No. 1.1, 1.8, 3.6, 11 and 12.1
- ◆ Chapter I Part 2 Subpart A No. 4.6

The amendments with regards to topics A. to C. will become effective on **1 August 2022**. As of the effective date, the full versions of the amended legal framework of Eurex Clearing, as specified under items A. to C., will be available for download on the Eurex Clearing website www.eurex.com/ec-en/ under the following link:

Rules & Regulations > Eurex Clearing Rules & 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 within the first 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 Clearing Conditions or FCM Clearing Conditions of Eurex Clearing AG, as applicable.

Attachments: (Attachment 2b is available via your Key Account Manager):

1. Amended sections of Chapter I Part 1 Number 2.1.1 (4) of the Clearing Conditions corresponding to topic A

2 a. Amended sections of Chapter I Part 1 Number 1.8 and 1.9 of the Clearing Conditions corresponding to topic B

2 b. Amended sections of the “OffshoreFund_USPerson_ConfirmationLetter” corresponding to topic B

3. Amended sections of Chapter I Part 1 No. 1.1, 1.8, 3.6, 11 and 12.1 and amended sections of Chapter I Part 2 Subpart A No. 4.6 corresponding to topic C

Further information

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

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

Contact: client.services@eurex.com

Web: www.eurex.com/ec-en/

Authorized by: Dmitrij Senko

Further information

[!\[\]\(aa53ad6fea213b8b2226d3077e30533a_img.jpg\) Attachment 1 to Eurex Clearing circular 048/22](#)

[!\[\]\(dd161862f9164df98f62b726e9846241_img.jpg\) Attachment 2 to Eurex Clearing circular 048/22](#)

[!\[\]\(758ebdf4629c903da74c2e079717ae32_img.jpg\) Attachment 3 to Eurex Clearing circular 048/22](#)

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Chapter I of the Clearing Conditions of Eurex Clearing AG

General Provisions

As of 01.08.2022

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

[...]

Chapter I General Provisions

[...]

Part 1 General Clearing Provisions

[...]

2 Clearing Members

2.1 Clearing License

2.1.1 Granting of Clearing License

[...]

(4) As specified in the relevant Clearing Agreement, a Clearing License is issued either as a general clearing license (a "**General Clearing License**") or a direct clearing license (a "**Direct Clearing License**").

___ Unless otherwise provided in the relevant Special Clearing Provisions, a General Clearing License entitles the holder thereof (a "**General Clearing Member**")

(i) ___ to clear Own Transactions and ~~Client-Related Transactions~~ ~~or, in respect of OTC-IRS U.S. Clearing Members, Own Transactions and~~

(ii) ___ to participate in the Clearing of Basic Clearing Member Transactions as a Clearing Agent subject to further requirements as set out in the Basic Clearing Member Provisions.

A Direct Clearing License entitles the holder thereof (a "**Direct Clearing Member**") to clear Own Transactions, Client-Related Transactions (in the case of DC-Related

Transactions limited to Transactions relating to DC Market Participants, and in the case of Transactions relating to Indirect Client Market Participants limited to Indirect Client Market Participants, affiliated with it (as determined by Eurex Clearing AG and notified to the Clearing Members)). The Direct Clearing Member shall be obliged to inform Eurex Clearing AG promptly in the event that they cease to meet such prerequisites.

[...]

[...]

Chapter I of the Clearing Conditions of Eurex Clearing AG

General Provisions

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[...]

Chapter I General Provisions

[...]

Part 1 General Clearing Provisions

[...]

1.8 No Clearing of OTC Interest Rate Derivative Transactions for U.S. Persons

1.8.1 [...]

- (i) reasonably believes that it does not fall within any of the U.S. Person Categories and believes in good faith that it would not otherwise be deemed to be a **“U.S. person”** under the Interpretive Cross Border Guidance (the **“CM-OTC U.S. Person Representation”**) and
- (ii) will not submit any Client-Related Transaction for Clearing to Eurex Clearing AG, unless the Clearing Member (a) has either obtained a representation from the relevant Direct Client that such Direct Client reasonably believes that it does not fall within any of the U.S. Person Categories and/or believes in good faith that it would not otherwise be deemed to be a **“U.S. person”** under the Interpretative Guidance, or (b) in case the Clearing Member has not obtained a representation as described under (a) above, reasonably believes that the relevant Direct Client does not fall within any of the U.S. Person Categories and believes in good faith that the relevant Direct Client would not otherwise be deemed to be a **“U.S. person”** under the Interpretive Cross Border Guidance (the **“CM-Customer OTC U.S. Person Representation”**). Number 7.2.1 (2) shall apply accordingly.

[...]

[...]

1.8.3 In relation to OTC Interest Rate Derivative Transactions, the Clearing Agent represents and warrants by way of an independent guarantee and irrespective of fault (*selbständiges, verschuldensunabhängiges Garantieverprechen*) to Eurex Clearing AG that, at the time it enters into a Basic Clearing Member Clearing Agreement, it reasonably

believes that it does not fall within any of the U.S. Person Categories and believes in good faith that it would not otherwise be deemed to be a “**U.S. person**” under the Interpretive Cross Border Guidance (the “**CA OTC U.S. Person Representation**”); the Clearing Agent repeats such representation each time when any of its Basic Clearing Members enters into an OTC Interest Rate Derivative Transaction. Number 7.2.1 (2) shall apply accordingly.

[...]

1.8.5 In relation to OTC Interest Rate Derivative Transactions, the Basic Clearing Member represents and warrants by way of an independent guarantee and irrespective of fault (*selbständiges, verschuldensunabhängiges Garantieversprechen*) to Eurex Clearing AG that at the time it enters into a Basic Clearing Member Clearing Agreement, it reasonably believes that it does not fall within any of the U.S. Person Categories and believes in good faith that it would not otherwise be deemed to be a “**U.S. person**” under the Interpretive Cross Border Guidance (the “**Basic Clearing Member OTC U.S. Person Representation**”); the Basic Clearing Member repeats such representations at each time when it directly or through its Clearing Agent submits an Original OTC Transaction for clearing to Eurex Clearing AG. The Basic Clearing Member shall promptly inform Eurex Clearing AG if it becomes aware that the Basic Clearing Member OTC U.S. Person Representation ceases to be true.

1.8.6 “**U.S. Person Categories**” means the enumerated categories of “**U.S. persons**” that are provided in the in the “Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants”, (85 Fed. Reg. 56,924, Sept. 14, 2020) or the “**Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations**”, (78 Fed. Reg. 45,292, Jul. 26, 2013) by the Commodity Futures Trading Commission (the “**CFTC**”) (the “Cross Border Interpretive Guidance”) within its jurisdiction pursuant to Section 722 (d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as may be amended or otherwise interpreted in writing by the CFTC from time to time.

1.9 No Clearing of FX Options contracts, OTC XCCY Transactions and OTC NDF Transactions for U.S. Persons

1.9.1 [...]

- (i) reasonably believes that it does not fall within any of the U.S. Person Categories and believes in good faith that it would not otherwise be deemed to be a “**U.S. person**” under the Interpretive Cross Border Guidance (the “**CM-FX U.S. Person Representation**”) and
- (ii) will not enter an order or quote into the trading systems in relation to a Client-Related Transaction, unless the Clearing Member (a) has either obtained a representation from the relevant Direct Client that such Direct Client reasonably believes that it does not fall within any of the U.S. Person Categories and/or believes in good faith that it would not otherwise be deemed to be a “**U.S. person**” under the Interpretative Guidance, or (b) in case the Clearing Member has not obtained a representation as described under (a) above, reasonably believes that the relevant

Direct Client does not fall within any of the U.S. Person Categories and/or believes in good faith that the relevant Direct Client would not otherwise be deemed to be a **“U.S. person”** under the Interpretive Cross Border Guidance (the **“CM-Customer FX U.S. Person Representation”**).

[...]

[...]

1.9.3 In relation to FX Options contracts, the Clearing Agent represents and warrants by way of an independent guarantee and irrespective of fault (*selbständiges, verschuldensunabhängiges Garantieverprechen*) to Eurex Clearing AG that, at the time it enters into a Basic Clearing Member Clearing Agreement, it reasonably believes that it does not fall within any of the U.S. Person Categories and believes in good faith that it would not otherwise be deemed to be a **“U.S. person”** under the Interpretive Cross Border Guidance (the **“CA FX U.S. Person Representation”**); the Clearing Agent repeats such representations at each time when the Clearing Agent enters an order or quote into the trading systems in relation to an FX Options contract. Number 7.2.1 (2) shall apply accordingly.

[...]

1.9.5 In relation to FX Options contracts, each of the Basic Clearing Members represents and warrants by way of an independent guarantee and irrespective of fault (*selbständiges, verschuldensunabhängiges Garantieverprechen*) to Eurex Clearing AG that at the time it enters into a Clearing Agreement, it reasonably believes that it does not fall within any of the U.S. Person Categories and believes in good faith that it would not otherwise be deemed to be a **“U.S. person”** under the Interpretive Cross Border Guidance (the **“Basic Clearing Member FX U.S. Person Representation”**); the Basic Clearing Member repeats such representations at each time when it enters directly or through its Clearing Agent an order or quote into the trading systems. The Basic Clearing Member shall promptly inform Eurex Clearing AG if it becomes aware that the Basic Clearing Member FX U.S. Person Representation ceases to be true.

[...]

Chapter I of the Clearing Conditions of Eurex Clearing AG

General Provisions

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[...]

Part 1 Part 1 General Clearing Provisions

1 General Rules

1.1 Scope of Application

1.1.1 The procedures maintained and operated by Eurex Clearing AG for the Clearing of the Transactions specified in Number 1.1.2 (the "**Clearing Procedures**") shall be carried out on the basis of the following clearing agreements:

[...]

- (3) a clearing agreement between Eurex Clearing AG, the relevant Clearing Agent and a Basic Clearing Member with respect to their respective Basic Clearing Member Transactions under the Basic Clearing Member Provisions pursuant to Part 6 in the form appended hereto as Appendix 10,

which, in each case, incorporate the Clearing Conditions (each a "**Clearing Agreement**", ~~which term shall, unless the context otherwise requires, include each ICM Clearing Agreement~~).

[...]

1.8 No Clearing of OTC Interest Rate Derivative Transactions for U.S. Persons

1.8.1 [...]

Subparagraph (ii) of the preceding paragraph of this Number 1.8.1 shall not apply, if the Clearing Member submits Client-Related Transactions for Clearing to Eurex Clearing AG with respect to Direct Clients ~~(other than an ICM Client)~~ that fall within any of the U.S. Person Categories provided that the Direct Client (i) is an affiliate of the relevant Clearing Member and (ii) is considered as proprietary account of the relevant Clearing Member under CFTC Rule 1.3. Under this Number 1.8.1, "**affiliate**" means any entity that controls, directly or indirectly, the Clearing Member, any entity that the Clearing Member controls,

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directly or indirectly, and any entity in respect of which the Clearing Member and the entity are both under common control, directly or indirectly, of another entity.

[...]

3 General Provisions regarding Margin and Variation Margin

[...]

3.6 Use of third-party securities accounts to provide Eligible Margin Assets in the form of Securities by way of pledges or by way of full title transfer

[...]

(2) Unless explicitly waived by Eurex Clearing AG with respect to the relevant Third-Party CM Account Holder, a Third-Party CM Account Holder needs to meet the following requirements:

- (a) The Third-Party CM Account Holder fulfils the personal prerequisites for Clearing Members set out in in Number 2.1.2 Paragraph (2), applied *mutatis mutandis*;
- (b) the Third-Party CM Account Holder qualifies as a 'participant' in the system operated by Eurex Clearing AG within the meaning of Art. 1 (f) of the Settlement Finality Directive, and
- (c) the Third-Party CM Account Holder is not a Swiss entity.

[...]

11 Default Rules applicable to DCs With System Access/Basic DCs

11.1 If a DC With System Access or Basic DC fails to perform any of its obligations due under a transaction or if an event of default occurs in respect of the DC With System Access or Basic DC under a ~~Client Clearing Agreement or any other client clearing arrangement~~ entered into between the Clearing Member and the DC With System Access or Basic DC, as the case may be, Eurex Clearing AG will – upon written request by the Clearing Member – no longer clear DC-Related Transactions relating to such DC With System Access or Basic DC and reject novations of transactions relating to such DC With System Access or Basic DC for the duration of such failure or event of default.

[...]

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12 Other Agreements and terms in respect of DC Market Participants and Indirect Client Market Participants with regard to the Clearing of Eurex Transactions and FWB Transactions; Determination of limits for Clearing Members by Eurex Clearing AG with respect to Market Transactions

12.1 Additional Terms

A Clearing Member may (i) agree with any of its DC Market Participants on additional terms to their existing ~~ICM Clearing Agreement, Client Clearing Agreement or client clearing arrangement~~ between the Clearing Member and such DC Market Participant, as the case may be, with respect to the execution of Eurex Transactions and FWB Transactions and/or (ii) set out additional terms with respect to any of its Indirect Client Market Participants for the execution of Eurex Transactions and FWB Transactions (in each case (i) and (ii) together the “**Additional Terms**”) in accordance with the applicable rules of the relevant Market and the following provisions.

[...]

Part 2 Elementary Clearing Model Provisions

[...]

Part 2 Subpart A: General Elementary Clearing Model Provisions

[...]

4 Margin

[...]

4.6 Redelivery of Margin in the form of cash; Release of Eligible Margin Assets in the form of Securities

4.6.1 [...]

If Eurex Clearing AG has required the ~~Clearing~~ Clearing Member to provide a GC Pooling USD Cash Margin Contribution, the Redelivery Claim relating to the cash provided as a GC Pooling USD Cash Margin Contribution only becomes due if the following requirements are met in addition to the requirements set out in Sentence 1: (i) a termination of the Clearing Member’s Clearing License for Repo Transactions became effective or (ii) 90 days after all of the Clearing Member’s GC Pooling Repo Transactions denominated in USD have been cancelled, closed or fulfilled and the Clearing Member has agreed (in form and substance satisfactory to Eurex Clearing AG) not to clear any further GC Pooling Repo Transactions denominated in USD with Eurex Clearing AG.

[...]

[...]
