

19 Jul 2021  
Eurex Clearing

# Amendments to the legal framework of Eurex Clearing AG - Consultation

## Eurex Clearing Circular 065/21 Amendments to the legal framework 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, FCM Regulations, the Statutes for the EMR Risk Committee and other documents of the legal framework of Eurex Clearing regarding the following topics:

- A. Amendments to the Clearing Conditions in the context of porting restrictions in non-EU jurisdictions
- B. Changes to the Clearing Conditions, FCM Regulations and other documents of the legal framework of Eurex Clearing regarding the re-design of the Eurex Clearing website
- C. Amendments to the EMIR Risk Committee (ERC) Statutes to enable the ERC to take decisions outside of meetings

The amendments under A. and C. will become effective on **1 September 2021**.

To the extent the amendments under B. are not subject to a Consultation, they will become effective on **20 September 2021**. To the extent the amendments under B. are subject to a Consultation; the Consultation will end on **19 August 2021** (Consultation Period).

The planned effective date of these amendments is **20 September 2021**, depending on the outcome of the Consultation which will be communicated in

a separate Eurex Clearing circular.

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

## **2. Required action**

The amendments under B. are subject to a Consultation which will end with the expiry of **19 August 2021**.

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 Clearing Conditions in the context of porting restrictions in non-EU jurisdictions**

In some non-EU Clearing Member jurisdictions, local insolvency law is not entirely compatible with the client asset protection rules set out by EMIR. Eurex Clearing detects such incompatibility in the context of its insolvency analyses. If detected, Eurex Clearing discloses on its website those jurisdictions in which it does not offer porting in accordance with the process described in the Clearing Conditions.

In this context, Eurex Clearing incorporates further clarifying rules into the Clearing Conditions:

- ◆ A right for Eurex Clearing to deviate from porting process in the Clearing Conditions to achieve porting by meeting local law requirements, and
- ◆ Introduction of additional termination right in case porting fails due to local law restrictions (general termination rights for Eurex Clearing do not really fit for these cases)

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

- ◆ Chapter I Part 2 Number 8.1
- ◆ Chapter I Part 4 Number 10.1

### **B. Changes to the Clearing Conditions, FCM Regulations and other documents of the legal framework of Eurex Clearing regarding the re-design of the Eurex Clearing website**

As the Eurex Clearing website address was changed as part of the rebranding, the references in the legal framework of Eurex Clearing to its website will be updated.

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

- ◆ Chapters II, IV, V, and VIII of the Clearing Conditions
- ◆ Appendices 1, 5, 7, 10, 11, 13, 14 of the Clearing Conditions
- ◆ Agreement on the Technical Connection to the Clearing EDP of Eurex Clearing AG
- ◆ General Terms and Conditions to the Agreement on Technical Connection to the Clearing EDP of Eurex Clearing AG (GTC to the Connection Agreement)
- ◆ Agreement on the Technical Connection to the Clearing EDP of Eurex Clearing AG for a Provider of the Multi-Member-Frontend System (Provider Connection Agreement)
- ◆ EMIR Risk Committee Statutes
- ◆ Statutes for the FIC Board Advisory Committee
- ◆ Statutes for the Disciplinary Committee
- ◆ Disciplinary Procedures Rules
- ◆ Chapter I, II of the FCM Regulations
- ◆ Appendix 2 to the FCM Regulations
- ◆ FCM Default Rules
- ◆ Price List

Further, the following provisions (which are subject to a Consultation) shall be amended as outlined in Attachment 3:

- ◆ Default Management Committee Rules

### **C. Amendments to the EMIR Risk Committee (ERC) Statutes to enable ERC to take decisions outside of meetings**

In order to take decisions in extraordinary cases more efficiently and faster, the EMIR Risk Committee shall have the ability to take decisions additionally outside of a meeting, by a circular resolution for example.

Therefore, Eurex Clearing will adjust the EMIR Risk Committee Statutes to allow decisions taken by a circular resolution if:

- ◆ the relevant matter was listed as an item on the agenda of a meeting,
- ◆ the relevant matter was discussed in detail at a meeting, and
- ◆ no participating EMIR Risk Committee Member has objected against such procedure.

The EMIR Risk Committee approved the proposed amendments in its meeting on 10 June 2021.

To reflect these amendments, the following provisions of the EMIR Risk Committee Statutes will be amended as outlined in Attachment 4:

- ◆ § 7 Paragraphs (2) and (3)

## **Consultation with respect to the amendments to the Default Management Committee Rules regarding the re-design of the Eurex Clearing website**

Pursuant to Chapter I Part 1 Number 17 of the Clearing Conditions, the proposed changes and amendments to the Default Management Committee Rules as outlined in Attachment 3 are subject to a Consultation which will end with the expiry of **19 August 2021**.

**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 be only submitted through a web-based commenting service for which a consultation 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**

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 is **20 September 2021**. 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 to the legal framework of Eurex Clearing**

As of the effective date, the full version of the amended documents will be available for download on the Eurex Clearing website [www.eurex.com/ec-en/](http://www.eurex.com/ec-en/) under the following link:

### **Rules & Regs > 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 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:

1. Amended sections of Chapter I Clearing Conditions (corresponding to topic A.)
2. Amended sections of Chapters II, IV, V, and VIII of the Clearing Conditions, Appendices 1, 5, 7, 10, 11, 13, 14 of the Clearing Conditions, Agreement on the Technical Connection to the Clearing EDP of Eurex Clearing AG, General Terms and Conditions to the Agreement on Technical Connection to the Clearing EDP of Eurex Clearing AG (GTC to the Connection Agreement), Agreement on the Technical Connection to the Clearing EDP of Eurex Clearing AG for a Provider of the Multi-Member-Frontend System (Provider Connection Agreement), EMIR Risk Committee Statutes, Statutes for the FIC Board Advisory Committee, Statutes for the Disciplinary Committee, Disciplinary Procedures Rules, Chapter I, II of the FCM Regulations, Appendix 2 to the FCM Regulations, FCM Default Rules, Price List (in each case corresponding to topic B.)
3. Amended sections of the Default Management Committee Rules (subject to a Consultation) (corresponding to topic B.)
4. Amended sections of the EMIR Risk Committee Statutes (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

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

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## Further information

- [Attachment 1 to Eurex Clearing Circular 065/21](#)
- [Attachment 2 to Eurex Clearing Circular 065/21](#)
- [Attachment 3 to Eurex Clearing Circular 065/21](#)
- [Attachment 4 to Eurex Clearing Circular 065/21](#)

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