



Release date: 07 Sep 2020 | Eurex Clearing

No. 074/2020

# Amendments to the Clearing Conditions of Eurex Clearing AG

Eurex Clearing Circular 074/20

## 1. Introduction

This circular contains information with respect to amendments of the Clearing Conditions of Eurex Clearing AG (Clearing Conditions).

In preparation to upcoming CSD Regulation, the amendments enable Eurex Clearing AG to conduct a replacement purchase or appoint a third party like a buy-in agent, in order to process a buy-in for failing securities deliveries towards the CCP, in accordance with the Clearing Conditions of Eurex Clearing AG.

All amendments will become effective as of **1 October 2020**.

## 2. Required action

There is no required action for Clearing Members, Basic Clearing Members and Disclosed Direct Clients of Eurex Clearing.

## 3. Details of the initiative

Eurex Clearing AG amends the Clearing Conditions Chapter I, II, V and IX as outlined in the Attachments of the circular in preparation of upcoming CSD Regulation. The amendments enable Eurex Clearing AG to conduct a replacement purchase or appoint a third party like a buy-in agent. This happens in order to process a buy-in for failing securities deliveries towards the CCP, in accordance with the Clearing Conditions of Eurex Clearing AG.

As of the effective date, the full versions of the Clearing Conditions will be available for download on the Eurex Clearing AG website [www.eurexclearing.com](http://www.eurexclearing.com) under the following link:

[Rules & Regs > Rules & Regulations > Clearing Conditions](#)

To reflect the amendments, the following provisions will be amended as outlined in the Attachments with effect as of **1 October 2020**:

- Chapter I Part 1 Number 1.4.4 of the Clearing Conditions
- Chapter II Part 2 Number 2.3.5, 2.17.4 of the Clearing Conditions
- Chapter II Part 3 Numbers 3.6.7, 3.11.5 of the Clearing Conditions
- Chapter V Part 2 Number 2.2.1 of the Clearing Conditions
- Chapter IX Part 2 Number 2.6.4, 2.6.6 of the Clearing Conditions

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.

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.

COOKIE SETTINGS

- Amended sections of Chapter I of the Clearing Conditions of Eurex Clearing AG
- Amended sections of Chapter II of the Clearing Conditions of Eurex Clearing AG
- Amended sections of Chapter V of the Clearing Conditions of Eurex Clearing AG
- Amended sections of Chapter IX of the Clearing Conditions of Eurex Clearing AG

### Further information

Recipients: All Clearing Members, Basic Clearing Members and Disclosed Direct Clients of Eurex Clearing AG

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

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### Further information

[Eurex Clearing Circular 074\\_20\\_Attachment\\_1](#)

[Eurex Clearing Circular 074\\_20\\_Attachment\\_2](#)

[Eurex Clearing Circular 074\\_20\\_Attachment\\_3](#)

[Eurex Clearing Circular 074\\_20\\_Attachment\\_4](#)

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Chapter I of the Clearing Conditions of Eurex Clearing AG

## General Provisions

As of 01.10.2020

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AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED

DELETIONS ARE CROSSED OUT

\*\*\*\*\*

[...]

## **Part 1 General Clearing Provisions**

### **1 General Rules**

[...]

#### **1.4 Settlement of Transactions**

[...]

[...]

##### **1.4.4 Buy-In Right and Buy-In Auction**

- (1) The Special Clearing Provisions may provide that in the event of a failure by a Clearing Member or Basic Clearing Member under a Transaction to deliver Securities to Eurex Clearing AG on the applicable delivery date, Eurex Clearing AG shall be entitled at the cost of the defaulting Clearing Member or the defaulting Basic Clearing Member to ~~enter into a replacement purchase by way of a transaction with a third party or by way of an~~ initiate a buy-in process whereby Eurex Clearing AG attempts to acquire the relevant Securities from a third party. For this purpose, Eurex Clearing AG may, subject to and in accordance with the Special Clearing Provisions (i) directly purchase the Securities from a third party, (ii) appoint a third party buy-in agent to acquire the Securities for Eurex Clearing AG and/or (iii) conduct an auction in accordance with, as further set out in the Special Clearing Provisions, Any replacement purchase by way of an auction shall be subject to the buy-in auction rules terms (“**Auction Terms**”) published by Eurex Clearing AG on its website ([www.eurexclearing.com](http://www.eurexclearing.com)). The ~~such published buy-in auction rules~~ Auction Terms shall form part of these Clearing Conditions. Eurex Clearing AG shall inform the Clearing Member when it attempts to execute a buy-in and the Clearing Member shall not be entitled to deliver the relevant Securities to Eurex Clearing AG during such time. The same applies to the extent the buy-in has been successfully executed by Eurex Clearing AG.

Where Eurex Clearing AG appoints a third party buy-in agent to acquire the Securities for Eurex Clearing AG, the rules of the buy-in agent may foresee maximum buy-in prices and these may be different from the maximum prices Eurex Clearing AG would accept when it conducts an auction pursuant to the buy-in auction rules. The Clearing Member or Basic Clearing Member having failed to deliver the relevant Securities to Eurex Clearing AG on the applicable delivery date, shall reimburse Eurex Clearing AG for the costs charged by the buy-in agent in relation to the buy-in process. Such obligation is in addition to any charges that may apply in relation to a buy-in in accordance with the Clearing Conditions, provided that any such additional charges shall be subject to a maximum amount of EUR 3,000, (or in case charges are calculated in CHF, USD or GBP, an amount of CHF 4,200, USD 4,200 or GBP 2,700, respectively).

In addition, contractual penalties may apply with respect to the failure by a Clearing Member or Basic Clearing Member under a Transaction to deliver Securities to Eurex Clearing AG on the applicable delivery date.

[...]

[...]

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Chapter II of the Clearing Conditions of Eurex Clearing AG

# Transactions Concluded at Eurex Deutschland

(Eurex Exchange)

As of 01.10.2020

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AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED

DELETIONS ARE CROSSED OUT

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[...]

## **Part 2 Clearing of Futures Contracts**

[...]

[...]

### **2.3 Clearing of Fixed Income Futures Contracts**

[...]

[...]

#### **2.3.5 Failure to Deliver**

- (1) In the event that a Clearing Member fails to deliver the bonds to be delivered notified by it on the delivery day (as per Number 2.3.1) according to the instructions of Eurex Clearing AG during the delivery times determined for the delivery day (as published by Eurex Clearing AG on its website ([www.eurexclearing.com](http://www.eurexclearing.com))), Eurex Clearing AG shall be entitled to take the following measures:

[...]

- In the event that the bonds to be delivered are not delivered to Eurex Clearing AG as part of the standard transfer arrangement of the respective Settlement Location by the 5<sup>th</sup> Business Day after the delivery day, Eurex Clearing AG shall be entitled to make a replacement purchase with respect to the undelivered bonds. Such purchase constitutes a buy-in as referred to in Chapter I Part 1 Number 1.4.4 (1), which shall be applicable with respect to the purchase.

[...]

[...]

## **2.17 Clearing of Futures Contracts on Exchange Traded Commodities Securities**

[...]

[...]

### **2.17.4 Failure to Deliver**

[...]

- (1) the defaulting Clearing Member shall be obligated to pay to Eurex Clearing AG for any ~~auction-buy-in process~~ performed pursuant to Part 3 Number 3.6.7 (1) an expense allowance in the amount of 10 per cent of the purchase price of the commodities securities owed at the time of the ~~auction~~buy-in attempt, however no less than USD 350.00 at minimum and not exceeding USD 7,000.00 at maximum;
- (2) a Clearing Member transferring commodities securities to Eurex Clearing AG after the obligation to deliver has been excluded shall be under the obligation to pay to Eurex Clearing AG an expense allowance in the amount of USD 700.00 for the retransfer to be performed.

If Eurex Clearing AG appoints a buy-in agent for the purposes of the buy-in, the maximum amounts set out in Chapter I Part 1 Number 1.4.4 (1) shall apply with respect to the purchase to the extent these maximum amounts are lower than those specified above.

[...]

## **Part 3 Clearing of Options Contracts**

[...]

[...]

### **3.6 Clearing of Options Contracts and Low Exercise Price Options on Shares**

[...]

[...]

#### **3.6.7 Failure to Deliver Options Contracts of Group ID GB11 and IE11**

- (1) In the event a Clearing Member fails to transfer shares not covered by Article 15 of Regulation (EU) 236/2012 on short selling or subscription rights from Options Contracts with the assigned group IDs GB11 and IE11 (hereinafter in Number 3.6.7



and Number 3.6.9 referred to as “**shares**”), Eurex Clearing AG is entitled to repurchase shares of the same kind and number ~~by means of an auction~~ upon expiration of the 5<sup>th</sup> Business Day. Such purchase constitutes a buy-in as referred to in Chapter I Part 1 Number 1.4.4 (1), which shall be applicable with respect to the purchase. Accordingly, Eurex Clearing AG may (i) directly purchase the Securities from a third party, (ii) appoint a third party buy-in agent to acquire the Securities for Eurex Clearing AG and/or (iii) conduct an auction in accordance with the Auction Terms.

~~Sentence 1~~ If Eurex Clearing AG ~~has opened~~ conducts an auction according to the Auction Terms, ~~Sentence 1~~ by notification of the defaulting Clearing Member, the defaulting Clearing Member is not authorised to transfer the owed shares to Eurex Clearing AG on the day of auction as well as until a written notification of Eurex Clearing AG. Eurex Clearing AG is obliged to publish a maximum price for the auction up to which it is willing to accept bids. The maximum price for the auction results from the settlement price determined by Eurex Clearing AG for the share plus a surcharge of 100 per cent. The obligation of the seller to assign the shares shall be accepted by Eurex Clearing AG instead of fulfilment for the obligation of the defaulting Clearing Member. Upon expiration of the tenth Business Day and the 20<sup>th</sup> Business Day, ~~Sentence 1 and 2~~ the foregoing shall apply accordingly, unless a surcharge has been given and the defaulting Clearing Member has assigned the owed shares until opening of a new auction. In case of a corporate action concerning the shares (hereinafter in Number 3.6.7 – 3.6.9 referred to as “**corporate action**”), Eurex Clearing AG reserves the right to postpone the auction by one Business Day or – due to a justified reason – to determine another Business Day for implementation of the auction (a justified reason being, for instance, if the settlement day of the relevant Settlement Location ends after 15.00 CE(S)T).

[...]

- (6) The defaulting Clearing Member is obliged to pay an allowance to Eurex Clearing AG for each auction executed according to Paragraph (1) in the amount of 10 per cent of the purchase price of the shares owed at the time of auction, however, at a minimum amount of GBP 225.00 with regard to Options Contracts with the assigned group ID GB11 and of EUR 250.00 with regard to Options Contracts with the assigned group ID IE11, and at a maximum amount of GBP 4,500 with regard to Options Contracts with the assigned group ID GB11 and EUR 5,000.00 with regard to Options Contracts with the assigned group ID IE11. If Eurex Clearing AG appoints a buy-in agent for the purposes of the buy-in, the maximum amounts set out in Chapter I Part 1 Number 1.4.4 (1) shall apply with respect to the purchase to the extent these maximum amounts are lower than those specified in the preceding sentence. If a Clearing Member assigns shares to Eurex Clearing AG after exclusion of the performance obligation, the Clearing Member is obliged to pay an allowance for implementation of the reassignment in the amount of GBP 450.00 with regard to Options Contracts with the assigned group ID GB11 and of EUR 500.00 with regard to Options Contracts with the assigned group ID IE11 to Eurex Clearing AG. Sentence 2 applies accordingly for the non-defaulting Clearing Member according to

Paragraph (2) if – upon existence of the claim for payment of a compensation amount – the Clearing Member has arranged for assignment of shares by Eurex Clearing AG by not deleting the instruction for assignment of shares given to Euroclear UK & Ireland Ltd.

[...]

**3.11 Clearing of Options Contracts and Low Exercise Price Options on Exchange-Traded Commodities Securities**

[...]

[...]

**3.11.5 Failure to Deliver**

[...]

- (2) a Clearing Member transferring commodities securities to Eurex Clearing AG after the obligation to deliver has been excluded shall be under the obligation to pay to Eurex Clearing AG an expense allowance in the amount of USD 700.00 for the retransfer to be performed.

If Eurex Clearing AG appoints a buy-in agent for the purposes of the buy-in, the maximum amounts set out in Chapter I Part 1 Number 1.4.4 (1) shall apply with respect to the purchase to the extent these maximum amounts are lower than those specified above.

[...]

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Chapter V of the Clearing Conditions of Eurex Clearing AG

# Transactions Concluded at the Frankfurter Wertpapierbörse

As of 01.10.2020

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AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED

DELETIONS ARE CROSSED OUT

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[...]

## Part 2 Clearing of Transactions concluded at the Frankfurter Wertpapierbörse (FWB)

[...]

### 2.2 Failure to Deliver

#### 2.2.1 Failure to Deliver Securities

[...]

##### (1) General Provisions

###### (a) Failure to Deliver Shares

If the Shares to be delivered by the Clearing Member having the delivery obligation have not been delivered to the Settlement Location on the 4<sup>th</sup> Business Day following the delivery date at the latest until the respective End-of-Settlement time (as published by Eurex Clearing AG on its website ([www.eurexclearing.com](http://www.eurexclearing.com))) ("**Settlement Cut-Off Time**"), Eurex Clearing AG will initiate a buy-in process within the meaning of Chapter I Part 1 Number 1.4.4 (1), whereby Eurex Clearing AG attempts to acquire the relevant Securities from a third party, replace the non-delivered Shares pursuant to Paragraphs (2) (a) unless the Clearing Member having the delivery obligation holds an identical claim against Eurex Clearing AG which may be set off against the claim Eurex Clearing AG holds against such Clearing Member. Where Eurex Clearing AG initiates a buy-in process, Eurex Clearing AG may (i) directly purchase the Securities from a third party, (ii) appoint a third party buy-in agent to acquire the Securities for Eurex Clearing AG and/or (iii) conduct an auction in accordance with the Auction Terms. If Eurex Clearing AG conducts an auction in accordance with the Auction Terms, to acquire the non-delivered Shares, Paragraph (2) (a) shall apply.

###### (b) Failure to deliver Other Securities

If the Clearing Member does not deliver the Other Securities owed under a FWB Transaction on the delivery date, Eurex Clearing AG is entitled to initiate a

buy-in process within the meaning of Chapter I Part 1 Number 1.4.4 (1). Where Eurex Clearing AG initiates a buy-in process, Eurex Clearing AG may (i) directly purchase the Other Securities from a third party, (ii) appoint a third party buy-in agent to acquire the Other Securities for Eurex Clearing AG and/or (iii) conduct an auction in accordance with the Auction Terms. If Eurex Clearing AG conducts an auction in accordance with the Auction Terms, to acquire ~~to make a replacement purchase with respect to the non-delivered Other Securities pursuant to Number 2.2.1 Paragraph (2) (a) shall apply and .~~ If the Securities consist of subscription rights that are certificated or held in collective safe custody, then the procedure pursuant to Number 2.2.2 applies.

~~The replacement purchase~~ the buy-in can be made on the 5<sup>th</sup>, 10<sup>th</sup> and 27<sup>th</sup> Business Day following the delivery date until the respective Settlement Cut-Off Time, provided that (i) the Clearing Member having the delivery obligation does not hold an identical claim against Eurex Clearing AG which may be set off against the claim Eurex Clearing AG holds against such Clearing Member and that (ii) the owed Other Securities have not been completely delivered. If a buy-in attempt fails, the defaulting Clearing Member must be given time for delivery until the next replacement purchase or the cash settlement.

If the required Other Securities cannot be acquired wholly or partially by way of ~~replacement purchases~~ a buy-in, Eurex Clearing AG is entitled to perform a cash settlement pursuant to Number 2.2.1 Paragraph (3).

~~If the relevant replacement purchase fails, the defaulting Clearing Member must be given time for delivery until the next replacement purchase or the cash settlement.~~

If the Securities consist of subscription rights that are certificated or held in collective safe custody, then the procedure pursuant to Number 2.2.2 applies.

[...]

(2) Buy-in by auction, costs of buy-in ~~Replacement by Auction~~

(a) Buy-in according to Auction Terms ~~General Provisions~~

If Eurex Clearing AG conducts an auction in accordance with the Auction Terms, to acquire the non-delivered Other Securities, ~~t~~ The replacement of the Securities will be performed by means of an auction. Eurex Clearing AG will publish for each class of Securities a maximum price for the respective auction up to which Eurex Clearing AG is ready to accept bids. The maximum price for this auction results from the settlement price determined by Eurex Clearing AG for the class of Securities in question plus a premium as determined in Number 5 of the Auction Terms of Eurex Clearing AG. Any company other than the defaulting Clearing Member ("**Seller**") which previously concluded a

corresponding contract with Eurex Clearing AG may participate in such auctions.

[...]

(b) Costs of the Auction

Eurex Clearing AG charges the defaulting Clearing Member with a fee for each ~~auction~~ buy-in carried out for the replacement in relation to a class of Securities in an amount of (i) 0.1 per cent of the value of the fixed income Securities to be delivered under the relevant FWB Transaction, or (ii) in the case of Securities other than fixed income Securities, 10 per cent of the value of the Securities to be delivered under the relevant FWB Transaction, however at least EUR 250 and (subject to the below) at maximum EUR 5,000. When converting fees into the invoice currency, Eurex Clearing AG will use a commercially reasonable exchange rate applicable at the relevant point in time. Where Eurex Clearing AG appoints a third party buy-in agent to acquire the Securities for Eurex Clearing AG, the Clearing Member having failed to deliver the relevant Securities to Eurex Clearing AG on the applicable delivery date, shall reimburse Eurex Clearing AG for the costs charged by the buy-in agent in relation to the buy-in process. Such obligation is in addition to the charges by Eurex Clearing AG as specified above, provided that in this case, these charges shall be subject to a maximum amount of EUR 3,000, (or in case charges are calculated in CHF, USD or GBP, an amount of CHF 4,200, USD 4,200 or GBP 2,700, respectively).

[...]

[...]

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Chapter IX of the Clearing Conditions of Eurex Clearing AG

# Clearing of Securities Lending Transactions

As of 01.10.2020

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AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED

DELETIONS ARE CROSSED OUT

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[...]

## **Part 2 Terms and Conditions of Securities Lending Transactions**

[...]

[...]

### **2.6 Failure to Deliver**

[...]

#### **2.6.4 Failure to Deliver by the Borrower Clearing Member on the Maturity Date**

[...]

- (3) With respect to any Non-Performed Transaction between Eurex Clearing AG and the Borrower Clearing Member which is a Securities Loan, Eurex Clearing AG is entitled vis-à-vis the Borrower Clearing Member to commence a buy-in and to purchase Underlying Securities equivalent to the Equivalent Loaned Securities in accordance with the terms and conditions of Paragraphs (6) through (9) below (a “**Buy-In**”) if the conditions for a Buy-In pursuant to Paragraph (4) or (5) below are satisfied. Where Eurex Clearing AG initiates a Buy-In, Eurex Clearing AG may (i) directly purchase Underlying Securities from a third party, (ii) appoint a third party buy-in agent to acquire Underlying Securities for Eurex Clearing AG and/or (iii) conduct an auction in accordance with the Auction Terms.

[...]

- (12) Eurex Clearing AG will charge a buy-in fee from the Borrower Clearing Member if a Buy-In has taken place (irrespective of whether it has been successful or not) (the “**Buy-In Fee**”). The Buy-In Fee shall be denominated in the Transaction Currency and amount to 10 per cent. of the market value of the Equivalent Loaned Securities bought or to be bought in the Buy-In, with a minimum of EUR 250 or CHF 375 and a



maximum of EUR 5,000 or CHF 7,000. Where Eurex Clearing AG appoints a third party buy-in agent to acquire the Securities for Eurex Clearing AG, the Clearing Member having failed to deliver the relevant Securities to Eurex Clearing AG on the applicable delivery date, shall reimburse Eurex Clearing AG for the costs charged by the buy-in agent in relation to the buy-in process. Such obligation is in addition to the charges by Eurex Clearing AG as specified above, provided that in this case, these charges shall be subject to a maximum amount of EUR 3,000, (or in case charges are calculated in CHF, an amount of CHF 4,200).

[...]

[...]

**2.6.6 Failure to Deliver by the Borrower Clearing Member on the due date for a Securities Distribution or a Dividend With Options with respect to Securities for which EUI acts as the settlement location**

[...]

- (8) Eurex Clearing AG will charge a buy-in fee from the Borrower Clearing Member if a Securities Buy-In has been conducted (irrespective of whether it has been successful or not) (the “**Securities Buy-In Fee**”). The Securities Buy-In Fee shall be denominated in the Transaction Currency and amount to 10 per cent of the market value of the securities (that are equivalent to the Non-Delivered Securities) bought or to be bought in the Securities Buy-In, with a minimum of EUR 250 or CHF 375 and a maximum of EUR 5,000 or CHF 7,000. Where Eurex Clearing AG appoints a third party buy-in agent to acquire the Securities for Eurex Clearing AG, the Clearing Member having failed to deliver the relevant Securities to Eurex Clearing AG on the applicable delivery date, shall reimburse Eurex Clearing AG for the costs charged by the buy-in agent in relation to the buy-in process. Such obligation is in addition to the charges by Eurex Clearing AG as specified above, provided that in this case, these charges shall be subject to a maximum amount of EUR 3,000, (or in case charges are calculated in CHF, an amount of CHF 4,200).

[...]

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