



eurex clearing circular 094/17

Date: 28 September 2017
Recipients: All Clearing Members, Non-Clearing Members and Registered Customers,
 FCM Clients and Basic Clearing Members of Eurex Clearing AG
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Consultation on amendments of Special Provisions regarding the Default Management Process

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Content may be most important for:

Ü All departments

Attachments:

1. Amended sections of the Clearing Conditions of Eurex Clearing AG
2. Form for appointment of individuals entitled to submit comments

Summary:

Against the background of the amended Section 104 of the German Insolvency Code ("Insolvenzordnung"), Eurex Clearing AG (Eurex Clearing) proposes to amend the Clearing Conditions of Eurex Clearing AG (Clearing Conditions).

The changes aim at clarifying certain aspects within the close-out-netting arrangements in line with what is permitted pursuant to the amended Section 104 of the German Insolvency Code in case of a Clearing Member default or a default of Eurex Clearing. The proposed changes

- detail the time frame and valuation principles under the Liquidation Price Method and Exchange Price Approach as part of the Default Management Process in case of a Clearing Member default;
- clarify the handling of primary obligations representing the market or exchange value of the transactions and Unpaid Amounts when calculating the single difference claim amount in case of a Failure to Pay or Insolvency Event with respect to Eurex Clearing.

The amended sections of the Clearing Conditions, as decided by the Executive Board of Eurex Clearing, are attached to this circular.

The planned amendments fall within the scope of Special Provisions of the Clearing Conditions and are subject to a consultation process (Consultation). Such Consultation will commence on **2 October 2017** and shall end on **3 November 2017** at midnight (Consultation Period).



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Aktiengesellschaft mit
 Sitz in Frankfurt/Main
 HRB Nr. 44828
 USt-IdNr. DE194821553
 Amtsgericht
 Frankfurt/Main

**Consultation on amendments of Special Provisions regarding the
Default Management Process**

Against the background of the amended Section 104 of the German Insolvency Code (“Insolvenzordnung”), Eurex Clearing AG (Eurex Clearing) proposes to amend the Clearing Conditions of Eurex Clearing AG (Clearing Conditions).

The changes aim at clarifying certain aspects within the close-out-netting arrangements in line with what is permitted pursuant to the amended Section 104 of the German Insolvency Code in case of a Clearing Member default or a default of Eurex Clearing. The proposed changes

- detail the time frame and valuation principles under the Liquidation Price Method and Exchange Price Approach as part of the Default Management Process in case of a Clearing Member default;
- clarify the handling of primary obligations representing the market or exchange value of the transactions and Unpaid Amounts when calculating the single difference claim amount in case of a Failure to Pay or Insolvency Event with respect to Eurex Clearing.

The amended sections of the Clearing Conditions, as decided by the Executive Board of Eurex Clearing, are attached to this circular.

The planned amendments fall within the scope of Special Provisions of the Clearing Conditions and are subject to a consultation process (Consultation). Such Consultation will commence on **2 October 2017** and shall end on **3 November 2017** at midnight (Consultation Period).

Eurex Clearing herewith invites all Affected Customers to submit comments on the proposed amendments of Special Provisions (see amended sections in Attachment 1 of this circular) within the Consultation Period.

Such Consultation period will be immediately followed by a Regular Notification Period of 15 business days, after which the proposed changes will come into effect on **4 December 2017**, provided that in total no more than two Affected Customers request a Prolonged Notification Period (three months).

If Eurex Clearing receives a request for a Prolonged Notification Period from more than two Affected Customers during the Consultation, Eurex Clearing will notify all affected parties promptly in an additional electronic circular.

Terms used and not otherwise defined in this circular shall have the meanings ascribed to them in the Clearing Conditions.

1. Time frame and valuation principles under the Liquidation Price Method and Exchange Price Approach in case of a Clearing Member default

The price of a relevant replacement transaction entered into by Eurex Clearing AG during the Default Management Process (DMP) should be determined at the latest on the fifth Business Day after the Termination Date, or, to the extent this is required for a value-preserving liquidation, at the latest on the 20th Business Day after the Termination Date.

If Eurex Clearing does not enter into a replacement transaction during the DMP, the market price on the termination date is used to value the transaction. If no market price is available, model-based prices are used.

For the Exchange Price Approach, it will be clarified that market prices are used to value the transactions.

To reflect the changes, the following provisions in the Clearing Conditions shall be amended as outlined in attachment 1:

- Chapter I Part 1 Number 7.3.2 and Number 7.3.3

2. Handling of primary obligations representing the market or exchange value of the transactions and Unpaid Amounts when calculating the single difference claim amount in case of a Failure to Pay or Insolvency Event with respect to Eurex Clearing

The primary obligations representing the market or exchange value of the transactions and Unpaid Amounts when calculating the single difference claim amount in case of a Failure to Pay or Insolvency Event with respect to Eurex Clearing are detailed.

To reflect the changes, the following provisions in the Clearing Conditions shall be amended as outlined in attachment 1:

- Chapter I Part 1 Number 9.1 and Number 9.2

During the Consultation period, comments on proposed changes or amendments shall be submitted through a web-based commenting service provided by Eurex Clearing, only. Any Affected Customer intending to submit comments shall appoint one or more individuals for the Consultation who may submit comments on behalf of the respective Affected Customer using the form in attachment 2 to this circular.

The form has to be duly signed and returned to Eurex Clearing via e-mail to **SpecialProvisions@eurexclearing.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 of Affected Customers, the so-amended version will be published again applying the initial notification period, i.e. either the Regular Notification Period or the Prolonged Notification Period, as applicable.

As of the effective date of the amended Clearing Conditions, they will be available for download on the Eurex Clearing website www.eurexclearing.com under the following link:

Resources > Rules and Regulations

If you have any questions or require further information, please contact Risk Control at tel. +49-69-211-1 24 52 or the Default Management Team by sending an e-mail to: DMP_Inbox@eurexclearing.com.

Chapter I of the Clearing Conditions of Eurex Clearing AG

General Provisions

As of 04.12.2017

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AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

[...]

General Provisions

Part 1 General Clearing Provisions

[...]

7 Termination Rules with respect to the Clearing Member

[...]

7.2 Termination Events

7.2.1 [...]

(1) Failure to Pay; Failure to Deliver Margin

The Clearing Member fails to pay any amount due under the Clearing Conditions (including, without limitation, in the case of a FCM Clearing Member, any amount due under any of its FCM Clearing Member Guarantees relating to the obligations of its FCM Clients) to Eurex Clearing AG or fails to deliver any Eligible Margin Assets to Eurex Clearing AG in respect of a due request for delivery of Margin or Variation Margin or fails to perform any Redelivery Claim when due under ~~a Standard Agreement between Eurex Clearing AG and the Clearing Member~~ the Clearing Conditions. ~~The occurrence of this Termination Event with respect to a Clearing Member under a Standard Agreement entitles Eurex Clearing AG to perform its rights under this Number 7.2.1 with respect to all Standard Agreements entered into between Eurex Clearing AG and the relevant Clearing Member.~~

[...]

(11) Termination for serious cause (aus wichtigem Grund)

Eurex Clearing AG declines to continue the Clearing of Transactions with the Clearing Member due to the occurrence of an event which gives rise to a serious cause (*wichtiger Grund*) and the continuation of the Clearing Agreement, taking into account all the circumstances of the specific case and weighing the interests of both parties, cannot reasonably be expected.

For the avoidance of doubt, if the occurrence of a Termination Event with respect to a Clearing Member relates to a specific Standard Agreement, Eurex Clearing AG is entitled to exercise its rights under this Number 7.2.1 with respect to all Standard Agreements entered into between Eurex Clearing AG and the relevant Clearing Member.

[...]

7.3 Consequences of a Termination

[...]

7.3.2 If the “**Liquidation Price Approach**” is the applicable Difference Claim Valuation Method, the value of the Difference Claim shall be determined in accordance with this Number 7.3.2 by the party specified in Paragraph (2) on the Last Valuation Date.

[...]

(3) For the purpose of the determination of the Difference Claim:

[...]

(b) “**Liquidation Price**” means:

(aa) with respect to a Transaction,

(A) the price of a relevant replacement transaction entered into by Eurex Clearing AG with respect to the relevant Transaction determined during and as part of the default management process pursuant to Number 7.5 at the latest on the fifth Business Day after the Termination Date, or, to the extent this is required for a value-preserving liquidation, at the latest on the 20th Business Day after the Termination Date, including relevant costs and expenses incurred by Eurex Clearing AG during the respective default management process, in particular relevant DM Hedging Transaction Costs;

(B) subject to (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 7.5,

(I) the last available Market Price for such Transaction on the Termination Date; and

(II) in the case of a Transaction under an Elementary Omnibus Standard Agreement or a Net Omnibus Standard Agreement, the last available Market Price for such Transaction on the Termination Date that applies to the Elementary Proprietary Standard Agreement of the Clearing Member; or

and

(C) if Eurex Clearing AG does not enter into a replacement transaction during and as part of the default management process pursuant to Number 7.5 and a Liquidation Group Deficiency occurs in relation to such Transaction, the amount corresponding to the relevant Single Valuation Price for such Transaction.

(bb) with respect to an expired Redelivery Claim, as applicable:

- (1) the amount in the Termination Currency of the relevant equivalent Eligible Margin Asset in form of cash on the relevant Margin Valuation Date; or
- (2) the price realised during the default management process in the Termination Currency of the relevant equivalent Eligible Margin Assets other than cash on the relevant Margin Valuation Date.

[...]

(e) **"Market Price"** means:

(aa) the market or exchange price for the relevant Transaction; and

(bb) if market events do not allow the determination of a market or exchange price in accordance with Sub-Paragraph (aa) above, the price determined on the basis of a model for the valuation of the market or exchange value of the relevant Transactions (which considers market risks and market prospects, inter alia, taking into account asset classes, volatility and liquidity).

7.3.3 If the **"Exchange Price Approach"** is the applicable Difference Claim Valuation Method, the value of the Difference Claim shall be determined in accordance with this Number 7.3.3 by the party specified in Paragraph (1) on the Termination Date.

[...]

(2) For the purpose of the determination of the Difference Claim:

[...]

(b) **"Exchange Price"** means, in case of a Termination Date with respect to a Clearing Member:

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(aa) with respect to a Transaction, the last available Market Price for the Transaction settlement price as of on the Termination Date published by Eurex Clearing AG; and

(bb) with respect to an expired Redelivery Claim, as applicable:

- (1) the amount in the Termination Currency of the relevant equivalent Eligible Margin Asset in form of cash on the Termination Date; or
- (2) the market or exchange price in the Termination Currency of the relevant equivalent Eligible Margin Assets other than cash as of the Termination Date.

[...]

(d) “Market Price” shall have the same meaning as stipulated under Number 7.3.2 Paragraph (3) (e).

[...]

7.5 Default Management Process

[...]

7.5.4 Cash Settlement of a Liquidation Group

[...]

(2) Consequences of Cash Settlement of a Liquidation Group

If a Liquidation Group Cash Settlement Time has occurred with respect to the Relevant Liquidation Group, the following provisions shall apply:

All current and future primary obligations (including payment and delivery obligations) of each party under the relevant Standard Agreement between Eurex Clearing AG and the Clearing Member, the FCM Client or the Basic Clearing Member, as relevant, arising from any Liquidation Group Transactions and all Redelivery Claims relating to the Variation Margin with respect to such Liquidation Group Transactions shall expire (*auflösende Bedingung*) as of the Liquidation Group Cash Settlement Time and shall no longer be required to be performed by the relevant obligor. Further, all due but unsatisfied obligations to deliver Variation Margin under the relevant Standard Agreement between Eurex Clearing AG and the Clearing Member, FCM Client or the Basic Clearing Member, as relevant, with respect to Liquidation Group Transactions shall expire (*auflösende Bedingung*) as of the Liquidation Group Cash Settlement Time. The expiration affects all claims arising from the Liquidation Group Transactions independently of the time they came into existence or would have come into existence otherwise. These expired primary obligations and delivery obligations, respectively, are reflected by the Liquidation Group Difference Claim (as defined in Number 7.5.4 ¶ Paragraph (3) below).

[...]

9 Termination Rules with respect to Eurex Clearing AG

If at any time a Failure to Pay Event (~~as defined below~~) or an Insolvency Event (~~as defined below~~) has occurred with respect to Eurex Clearing AG, the following applies:

- 9.1 All ~~current or future~~ primary obligations (including payment and delivery obligations but excluding Termination Unpaid Amounts) arising from all Transactions and all Redelivery Claims under the relevant Standard Agreement between Eurex Clearing AG and the relevant Clearing Member, FCM Client or Basic Clearing Member, as relevant, in accordance with Number 2.1.3 of the Elementary Clearing Model Provisions, Subpart A, Number 2.1.2 of the Individual Clearing Model Provisions, Number 2.1.3 of the Net Omnibus Clearing Model Provisions, Number 2.1.2 of the U.S. Clearing Model Provisions or Number 4.1.2 of the Basic Clearing Member Provisions, respectively, shall expire and may no longer be performed by the relevant obligor. These expired primary obligations representing the market or exchange value of the Transactions are reflected by the claim for non-performance (“**Claim for Non-Performance**” – *Forderung wegen Nichterfüllung*) which is determined pursuant to Number 9.2.

~~Further all due but unsatisfied obligations to deliver Elementary Proprietary Margin or Elementary Proprietary Variation Margin, Elementary Omnibus Margin or Elementary Omnibus Variation Margin, Segregated Margin or Segregated Variation Margin, Net Omnibus Margin or Net Omnibus Variation Margin, FCM Client Margin or FCM Client Variation Margin, Basic Clearing Member Margin or Basic Clearing Member Variation Margin, as applicable, under the relevant Standard Agreement expire. These expired primary obligations and delivery obligations, respectively, are reflected by the difference claim pursuant to Number 9.2 below.~~

- 9.2 ~~By signing the Clearing Agreement, or in the case of Part 3 Subpart A Number 11.1.5, by the Clearing Agreement to be established between the Interim Participant and Eurex Clearing AG, a difference claim of either party to the relevant Standard Agreement between Eurex Clearing AG and the relevant Clearing Member, FCM Client or Basic Clearing Member, as relevant, is created. This difference claim shall become unconditional and immediately due against the respective other party upon the expiry of the primary obligations and delivery obligations, respectively, referred to in Number 9.1, and shall be determined on the basis of the CCP Exchange Prices applicable with respect to the relevant terminated Transactions or Redelivery Claims on the second Business Day following (i) the Failure to Pay Event or (ii) the Insolvency Event (“**CCP Valuation Date**”). Numbers 7.3.1 and 7.3.3 shall apply *mutatis mutandis*.~~

The Claim for Non-Performance shall be determined by Eurex Clearing AG for the relevant Standard Agreement by way of combining (*saldieren*) the CCP Single Transaction Amounts of all terminated Transactions under the relevant Standard Agreement and the CCP Aggregate Value of the Redelivery Claims under such relevant Standard Agreement.

The Claim for Non-Performance for the relevant Standard Agreement resulting from such combination shall, following its determination in accordance with Number 9.2.1 or Number 9.2.2 below, be automatically (i) set off (*aufgerechnet*) with relevant Termination Unpaid Amounts and/or (ii) added to relevant Termination Unpaid Amounts in case they are payable by the debtor of the Claim for Non-Performance, as the case may be, in order to result in one single difference claim. If the difference claim is a positive figure for the party entitled to determine the difference claim, it is owed to it by the other party; if it is a negative figure for the party entitled to determine the difference claim, it is owed by it to the other party.

The Claim for Non-Performance and the difference claim shall be denominated in the Termination Currency.

Eurex Clearing AG shall notify the determined value of the difference claim with respect to the relevant Standard Agreement to the relevant Clearing Member as soon as reasonable practicable after its determination, together with reasonable detail regarding the data and information forming the basis of the determination. The debtor of the difference claim under the relevant Standard Agreement shall pay the determined value of the difference claim to the other party as soon as reasonable practicable following the notification of the payable amount by Eurex Clearing AG. The debtor of the difference claim shall not be obliged to pay any interest on the amount of the difference claim unless it is in default (*Verzug*) following the receipt of a payment reminder (*Mahnung*) by the other party. Default interest shall be paid on the basis of the effective overnight interest rate applicable to the currency of the difference claim.

“Termination Unpaid Amounts” means (i) any amount due to be paid as a primary obligation under the relevant Transaction, but unpaid on the date of expiry of primary obligations under Number 9.1 above, and (ii) the value of any assets due to be delivered as a primary obligation under the relevant Transaction, but not delivered, on the date of expiry of primary obligations under Number 9.1 above. All such amounts or values shall be denominated in the Termination Currency.

9.2.1 Calculation in case of a Failure to Pay Event

In the case of a Failure to Pay Event, the value of the Claim for Non-Performance for the relevant Standard Agreement shall be determined by Eurex Clearing AG in accordance with this Number 9.2.1.

If Eurex Clearing AG enters into replacement transactions in connection with the determination of the CCP Market Price, such replacement transactions will be entered into without undue delay (*unverzüglich*) on or after the occurrence of the Failure of Pay Event.

For the purpose of the determination of the Claim for Non-Performance, the following definitions shall apply:

- (1) The “**CCP Valuation Date**” shall, with respect to a Transaction, be any day until and including the Last CCP Valuation Date on which a CCP Market Price is

determined for such Transaction in accordance with the applicable determination mechanism set out in the definition of “CCP Market Price” in Number 9.2.1 Paragraph (3) below.

The “**Last CCP Valuation Date**” is (i) the fifth Business Day after the occurrence of the Failure to Pay Event, or (ii), to the extent this is required for a value-preserving liquidation, the 20th Business Day after the occurrence of a Failure to Pay Event.

The “**CCP Margin Valuation Date**” shall, with respect to any Eligible Margin Assets, be any day until and including the Last CCP Valuation Date on which such Eligible Margin Assets are actually realised by Eurex Clearing AG.

(2) The “**CCP Single Transaction Amount**” shall be determined with respect to each terminated Transaction under the relevant Standard Agreement and shall equal its CCP Market Price on the relevant CCP Valuation Date.

(3) “**CCP Market Price**” means:

(a) with respect to a Transaction,

(i) the price of the replacement transaction entered into by Eurex Clearing AG with respect to the relevant Transaction on the relevant CCP Valuation Date; or

(ii) if Eurex Clearing AG does not enter into a replacement transaction by or on the Last CCP Valuation Date, the last available Market Price for the Transaction on the fifth Business Day after the occurrence of the Failure to Pay Event; or

~~and in both cases, including relevant costs and expenses incurred by Eurex Clearing AG with respect to such Transaction until the relevant CCP Valuation Date;~~

(b) with respect to an expired Redelivery Claim, as applicable:

(i) the amount in the Termination Currency of the relevant equivalent Eligible Margin Asset in form of cash on the CCP Margin Valuation Date; and

(ii) the market or exchange price in the Termination Currency of the relevant equivalent Eligible Margin Asset other than cash on the CCP Margin Valuation Date.

(4) “**CCP Aggregate Value of the Redelivery Claims**” means, with respect to a party to the relevant Standard Agreement, the sum of the CCP Market Prices of the applicable number or amount of the relevant equivalent Eligible Margin Assets to which all of its expired Redelivery Claims against the other party relate. For any number or amount of remaining equivalent Eligible Margin Assets which were not realised by Eurex Clearing AG until the end of the Last CCP Valuation Date, if any,

the amount in the Termination Currency of the relevant equivalent Eligible Margin Asset in the form of cash on the Last CCP Valuation Date or market or exchange price in the Termination Currency of the relevant equivalent Eligible Margin Assets other than cash on the Last CCP Valuation Date, as relevant, shall be taken into account.

- (5) "Market Price" shall have the same meaning as stipulated under Number 7.3.2 Paragraph (3) (e).

9.2.2 Calculation in case of an Insolvency Event

In the case of an Insolvency Event, the value of the Claim for Non-Performance for the relevant Standard Agreement shall be determined by Eurex Clearing AG in accordance with this Number 9.2.2. For the purpose of the determination of the Claim for Non-Performance the following definitions shall apply:

- (1) The "CCP Single Transaction Amount" shall be determined with respect to each terminated Transaction under the relevant Standard Agreement and shall equal its CCP Market Price on the second Business Day following the Insolvency Event.
- (2) "CCP Aggregate Value of the Redelivery Claims" means, with respect to a party to the relevant Standard Agreement, the sum of the CCP Market Prices of the applicable number or amount of the relevant equivalent Eligible Margin Assets to which all of its expired Redelivery Claims against the other party relate.
- (3) "CCP Exchange Market Price" means

, in case of a Failure to Pay Event or an Insolvency Event with respect to Eurex Clearing AG:

- (a) with respect to a Transaction, the last available Market Price for the Transaction on the second Business Day following the Insolvency Event;:
- (1) ~~with respect to Eurex Transactions (Chapter II), FWB Transactions (Chapter V Part 1 and 2) and ISE Transactions (Chapter VI), in each case other than OTC Transactions, the applicable determined exchange price (festgestellter Börsenpreis) as of the CCP Valuation Date in the Market in which it has been concluded;~~
- (2) ~~with respect to OTC Transactions described in Chapter II and V, the determined exchange price (festgestellter Börsenpreis) that would apply to the corresponding exchange transaction described in Chapter II and V as of the CCP Valuation Date in the relevant Market;~~
- (3) ~~with respect to Transactions described in Chapter III and IV the applicable market price (Marktpreis) as of the CCP Valuation Date determined in the Market in which it has been concluded;~~

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~~(4) with respect to Transactions described in Chapter IX, the applicable determined exchange price (*festgestellter Börsenpreis*) or applicable market price (*Marktpreis*) of the Underlying Securities as of the CCP Valuation Date determined in the relevant market of the Underlying Securities; and~~

~~(5) with respect to Transactions described in Chapter VIII or if none of the cases set forth under (1) to (4) applies, a model for the valuation of the market value (*Marktpreis*) of Transactions (which may, depending on the circumstances, be the auction price), which considers market risks and market prospects, inter alia, taking into account asset classes, volatility and liquidity.~~

~~— The valuation model referred to in Sub-Paragraph (5) above and further procedures regarding the determination by Eurex Clearing AG of the prices referred to in Sub-Paragraphs (1) to (4) above will from time to time be published in accordance with Number 16.1; such published valuation model or further procedures shall form part of these Clearing Conditions; and~~

(b) with respect to an expired Redelivery Claim, as applicable:

(4i) the amount in the Termination Currency of the relevant equivalent Eligible Margin Asset in form of cash on the second Business Day following the Insolvency Event~~CCP Valuation Date~~; and

(2ii) the last available market or exchange price in the Termination Currency of the relevant equivalent Eligible Margin Assets other than cash on the second Business Day following the Insolvency Event~~as of the CCP Valuation Date~~.

(4) "Market Price" shall have the same meaning as stipulated under Number 7.3.2 Paragraph (3) (e).

9.3 The following events shall constitute a Failure to Pay Event or an Insolvency Event with respect to Eurex Clearing AG:

[...]

9.3.6 A "Redelivery Default" occurs if:

(1) Eurex Clearing AG fails, when due, to perform a redelivery claim of a **Clearing Member**, a FCM Client or a Basic Clearing Member against Eurex Clearing AG with respect to (i) **Eligible Margin Assets** provided as cover for Margin or Variation Margin, (ii) Contributions to the Default Fund, or (iii) collateral to cover a shortfall of own funds or equivalent regulatory capital as prerequisite for a Clearing License, or to release the relevant Securities in case of a pledge;

[...]
