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Amendments to the Clearing Conditions and the FCM Default Rules of Eurex Clearing AG - Consultation

**Eurex Clearing Circular 093/21 Amendments to the Clearing
Conditions and the FCM Default Rules 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

- A. Inclusion of the requirements for proof of own fund requirements for entities subject to Directive (EU) 2019/2034 (IFD) and the Regulation (EU) 2019/2033 (IFR)
- B. Amendments to the Clearing Conditions in the context of re-design of the Eurex Clearing website
- C. Amendments to Chapter IV of the Clearing Conditions in the context of the migration of the collateral management system for GC Pooling Repo Transactions from Xemac to CmaX
- D. Deletion of the clause from the FCM Default Rules stipulating that the calculation methodology for Default Fund Contributions published on Eurex Clearing's website forms part of the FCM Default Rules of Eurex Clearing

The amendments regarding item A. fall within the scope of Special Provisions of the Clearing Conditions and are hence subject to a consultation process (Consultation). The Consultation will end with the expiry of **26 November 2021**. The planned effective date of these amendments is **3 January 2022**, depending on the outcome of the Consultation which will be communicated in a separate Eurex Clearing circular.

The amendments under B., C. and D. will become effective as of **1 December 2021**.

2. Required action

The amendments under A. are subject to a Consultation which will end with the expiry of **26 November 2021**.

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

steps required for the GC Pooling migration including the necessary account opening process with Clearstream. As of **21 October 2022**, Xemac will no longer be available. Thus, the new CmaX set-up must be fully tested well in advance before such date as will be separately announced as Final Implementation Date at a later point in time.

3. Details of the initiative

A. Inclusion of requirements for proof of own fund requirements for entities subject to Directive (EU) 2019/2034 (IFD) and the Regulation (EU) 2019/2033 (IFR)

The European Commission developed IFD and IFR to differentiate between the business model and respective risk profile of investment firms in contrast to credit institutions. Entities subject to IFD and IFR shall provide Eurex Clearing with proof of own fund requirements subject to IFD and IFR.

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

- ◆ Chapter I Part 1 Number 2.1.2 and 7.2.1 (7)

Consultation with respect to the inclusion of requirements for proof of own fund requirements for entities subject to Directive (EU) 2019/2034 (IFD) and the Regulation (EU) 2019/2033 (IFR) (Item A.)

Pursuant to Chapter I Part 1 Number 17 of the Clearing Conditions, the proposed changes to provide proof of own fund requirements for entities subject to Directive (EU) 2019/2034 (IFD) and the Regulation (EU) 2019/2033 (IFR) as outlined in Attachment 1 are subject to a Consultation which will end with the expiry of **26 November 2021**.

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

amendments shall be only submitted through a web-based commenting service for which a registration form is available on the Eurex Clearing website 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@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 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 **3 January 2022**. 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.

B. Amendments to the Clearing Conditions in the context of re-design of the Eurex Clearing website

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

- ◆ Chapter I Part 1 Number 8.1
- ◆ Chapter I Part 1 Number 8.2
- ◆ Chapter I Part 1 Number 15.2.4 (6)
- ◆ Chapter I Part 2 Subpart A Number 4.4.1
- ◆ Chapter I Part 4 Number 8.7

C. Amendments to Chapter IV of the Clearing Conditions in the context of the migration of the collateral management system for GC Pooling Repo Transactions from Xemac to CmaX

Eurex Clearing amends the Clearing Conditions in the context of the migration of the collateral management system for GC Pooling Repo Transactions from Xemac (current system of Clearstream Banking AG, Frankfurt (CBF)) to CmaX (current system of Clearstream Banking S.A., Luxemburg, (CBL) and which will be in the future the single collateral management system of CBF and CBL (Clearstream)).

Documentation, circulars, timeline and much more about C7 SCS Release 2.0 is available on our dedicated initiative page under the following link: Support > Initiatives & Releases > **C7 SCS Releases**.

Clearstream requires a new account structure for settlement of GC Pooling Repo Transactions in CmaX. Clearstream has already published the preliminary release notes to enable customers to be prepared for these changes and are available at the following links:

[Collateral Mobility: Preliminary Release Notes \(CBF Legacy\)](#)

[Collateral Mobility: Preliminary Release Notes \(CBL\)](#)

Chapter IV Part 1, Part 2 and Part 3 of the Clearing Conditions have been amended in general to cover GC Pooling migration aspects.

Additionally, a new section Number 1.5 (Changes to Settlement and Collateral Management Infrastructure) has been added to Chapter IV

- ◆ The handling of Non-Compliant Clearing Members (i.e. which fail to deliver the requested new account set up and the required relevant legal documentation thereto in due time) by Eurex Clearing is described. Eurex Clearing is entitled to terminate and close (accelerate) the outstanding GC Pooling Repo Transactions with such Non-Compliant Clearing Members in case the orderly settlement can not be guaranteed.
- ◆ It is described that on Friday before the migration weekend, i.e. 21 October 2022, settlement of GC Pooling Repo Transactions with Eurex Clearing will not be available (settlement holiday). The details can be found in Eurex Clearing Circular **066/21**.

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

- ◆ Chapter IV Preamble, Part 1 General Provisions, Numbers 1.1.2, 1.2, 1.3, 1.5; Part 2 Numbers 2.1, 2.1.1, 2.1.2, 2.2, 2.3, 2.4, 2.5, 2.11; Part 3 Numbers 3.1, 3.2.2, 3.3, 3.4, 3.5.1, 3.5.4, 3.8, 3.10

D. Deletion of the clause from the FCM Default Rules stipulating that the calculation methodology for Default Fund Contributions published on Eurex Clearing's website forms part of the FCM Default Rules of Eurex Clearing

Effective 3 August 2020, the Clearing Conditions of Eurex Clearing AG have been amended to remove the clause stipulating that the calculation methodology for Contributions to the Default Fund published on the website forms part of the Clearing Conditions. The change was introduced to shorten the governance process for changes to the calculation methodology and allow more timely reaction to unforeseen market conditions such as the emergence of the Covid-19 pandemic. While the amendment has been implemented in Chapter I Part 1 Number 6.1.1 of the Clearing Conditions of Eurex Clearing AG, the FCM Default Rules of Eurex Clearing AG still contain a respective clause.

published on the website forms part of the FCM Default Rules of Eurex Clearing.

Other steps of the governance process for model changes regarding the clearing offering under the FCM Regulations remain unchanged.

To reflect the amendment, the following provision of the FCM Default Rules of Eurex Clearing AG shall be amended as outlined in Attachment 4:

◆ Number 3.1.1

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/ under the following link:

Rules & Regs > Rules and Regulations > Clearing Conditions

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:

Chapter I Part 1 Number 15.2.4(6), Chapter I Part 2 Subpart A Number 4.4.1, Chapter I Part 4 Number 8.7 of the Clearing Conditions

- ◆ 3 - Chapter IV Preamble, Part 1 General Provisions, Numbers 1.1.2, 1.2, 1.3, 1.5; Part 2 Numbers 2.1, 2.1.1, 2.1.2, 2.2, 2.3, 2.4, 2.5, 2.11; Part 3 Numbers 3.1, 3.2.2, 3.3, 3.4, 3.5.1, 3.5.4, 3.8, 3.10 of the Clearing Conditions
- ◆ 4 - Number 3.1.1 of the FCM Default Rules

Further information

Recipients: All Clearing Members, Basic Clearing Members, Disclosed direct clients, all FCM Clearing Members of Eurex Clearing AG and vendors

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

Contact: client.services@eurex.com

Related circular: Eurex Clearing circular **066/21**

Web: Support > Initiatives & Releases > **C7 SCS Releases**

Authorized by: Matthias Graulich

Further information

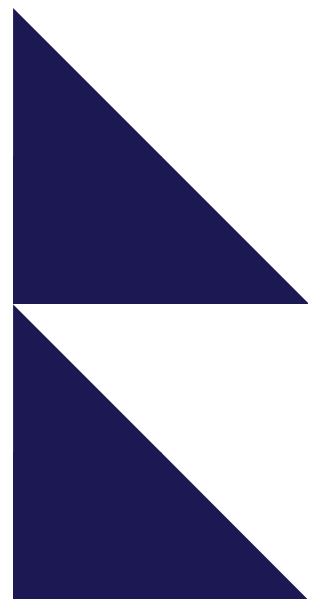
- Attachment 2 to Eurex Clearing circular 093/21
- Attachment 3 to Eurex Clearing circular 093/21
- Attachment 4 to Eurex Clearing circular 093/21

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Chapter I of the Clearing Conditions of Eurex Clearing AG

General Provisions

As of 03.01.2022

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED

DELETIONS ARE CROSSED OUT

Part 1 General Clearing Provisions

[...]

2 Clearing Members

[...]

2.1.2 General Prerequisites for Clearing Licenses

[...]

(2) Personal prerequisites

(a) Subject to Number 2.1.3 below, a Clearing License may only be granted to:

(aa) an EU credit institution or investment firm: a credit institution within the meaning of point (1) of Art 4 (1) of Regulation (EU) No 575/2013 (“CRR”) or an investment firm within the meaning of point (1) of Article 4 (1) of Directive 2014/65/EU ~~a n EU or Swiss institution: an institution domiciled in a member state of the European Union (“EU”);~~

(bb) a Swiss institution: - or in Switzerland which is (i) if domiciled in the EU, a credit institution or an investment firm pursuant to Art. 2 (b) of Directive 98/26/EC or to a subsequent legal act or, if domiciled in Switzerland, an undertaking domiciled in Switzerland ~~institution~~

(i) whose functions correspond to those of a credit institution or an investment firm as defined under Paragraph (aa) above ~~credit institution or an investment firm in the aforementioned sense, and~~

(ii) which is supervised ~~(ii) supervised by the competent authorities according to the applicable regulatory standards of the EU or, if domiciled in Switzerland, by the Swiss Financial Market Supervisory Authority (Eidgenössische Finanzmarktaufsicht – “FINMA”);~~

(c**cb**) an EU branch: a branch domiciled in a member state of the EU

- (i) qualifying as a branch of a credit institution pursuant to point (17) of Art 4 (1) of the CRR or as a branch of an investment firm pursuant point (30) of Article 4 (1) of Directive 2014/65/EU and the credit institution or investment firm is domiciled in a member state of the EU (“**Host Member State**”) ~~German branch office or branch of an institution: a branch office or branch of an institution within the meaning of Sections 53, 53 b or 53 c of the German Banking Act (*Gesetz über das Kreditwesen*, the “**KWG**”) provided that~~
- (ii) a notification procedure has been completed in the Host Member State, and
- (iii) the branch and the credit institution or investment firm comply with the conditions set forth in Paragraph (aa) above and Paragraph (2) (b) below; ~~such branch or branch office and the institution comply with the conditions set forth in Paragraph (2) (a) (aa) above and Paragraph (2) (b) below;~~
- (~~edd~~) ~~a Swiss branch of an institution: a branch within the meaning of Art. 2 Paragraph 1 of the Swiss Federal Banking and Savings-Bank Act (*Schweizer Bundesgesetz über die Banken und Sparkassen*) in connection with Section 1 et seq. of the Regulation of the Swiss Financial Market Supervisory Authority concerning Foreign Banks in Switzerland (*Verordnung der Eidgenössischen Finanzmarktaufsicht über die ausländischen Banken in der Schweiz*), provided that such branch complies with the conditions set forth in Paragraph (2) (b) below;~~
- (~~dd~~) ~~an EU branch of an institution: a branch of a credit institution or investment firm domiciled in a member state of the EU (“**host member state**”) provided that (i) the main office of such credit institution or investment firm is domiciled in another member state of the EU (“**home member state**”); (ii) a notification procedure has been completed in the host member state, and that (iii) the branch and the institution comply with the conditions set forth in Paragraph (2) (a) (aa) above and Paragraph (2) (b) below;~~
- (ee) a third country institution: an institution/undertaking domiciled outside the EU or Switzerland
- (i) whose functions correspond to those of a credit institution or an investment firm as defined under Paragraph (aa) above ~~credit institution or an investment firm pursuant to Art. 2 (b) of Directive 98/26/EC or to a subsequent legal act and~~
- (ii) which is supervised in its country of domicile according to standards equivalent – as determined by Eurex Clearing AG – to the applicable regulatory standards of the EU applicable to credit institutions or investment firms, as determined by Eurex Clearing AG, provided that ~~that~~ and

[...]

- (ff) ~~a third country branch of an institution: a branch of an institution not falling within one of the categories pursuant to Paragraphs (2) (a) (bb) or (cc) or (dd) above, provided that~~
- (i) ~~if either the branch and or the main office of the institution is are domiciled outside the EU or Switzerland, such branch or and main office comply ies with the conditions set forth in Paragraph (2) (a) (ee) above and Paragraph (2) (b) below,~~
 - (ii) the branch is domiciled outside the EU or Switzerland and the main office is domiciled in the EU or Switzerland, such branch complies with the conditions set forth in Paragraph (2) (a) (ee), the main office complies with the conditions set forth in Paragraph (2) (a) (aa) or (bb), and the branch and the institution comply with the conditions set forth in Paragraph (2) (b) below, or
 - (iii) the branch is domiciled in the EU or Switzerland and the main office is domiciled outside the EU or Switzerland, such branch complies with the conditions set forth in Paragraph (2) (a) (aa) or (bb), the main office complies with the conditions set forth in Paragraph (2) (a) (ee), and the branch and the institution comply with the conditions set forth in Paragraph (2) (b) below; if either the branch or the main office of the institution is domiciled in a member state of the EU or Switzerland, such branch or main office complies with the conditions set forth in Paragraph (2) (a) (aa) above, and that (iii) the branch and the institution comply with the conditions set forth in Paragraph (2) (b) below;
- (gg) certain other regulated entities: with respect to a Direct Clearing License for the Clearing of Own Transactions only, an applicant that

[...]

- (ii) ~~is domiciled in a country outside of the EU or Switzerland and whose functions correspond to those described in it under paragraph (i) above~~ and which is supervised in its country of domicile according to standards equivalent to the applicable regulatory standards of the EU as determined by Eurex Clearing AG; or

[...]

- (b) Applicants pursuant to Paragraphs (2) (a) (~~bb~~), (cc), (dd) and (ff) above must provide a written guarantee on first demand issued vis-à-vis Eurex Clearing AG by the institution to which the applicant belongs, to the effect that such institution will guarantee all obligations of its branch office, offices or branches arising out of, and in connection with, the Clearing of Transactions by these branches, offices and branch offices. In order to verify the legal validity and enforceability of this guarantee, Eurex Clearing AG may demand from the

relevant institution, at the institution's expense, all necessary information and evidence, including the opinion of a legal expert designated by Eurex Clearing AG.

[...]

(3) The applicant for a Clearing License must

- (i) if the applicant is subject to the own fund requirements under the European Capital Requirements Directive 2013/36/EU (“CRD IV”) ~~CRD IV~~ and the CRR: have available own funds (*Eigenmittel*) pursuant to the CRD IV and the CRR ~~the European Capital Requirements Directive 2013/36/EU (“CRD IV”) and the European Capital Requirements Regulation (EU) No. 575/2013 (“CRR”)~~ in an amount determined by Eurex Clearing AG from time to time,
- (ii) if the applicant is subject to the own fund requirements under the Investment Firm Regulation (EU) 2019/2033 (“IFR”) and the Investment Firm Directive (EU) 2019/2034 (“IFD”): have available own funds (*Eigenmittel*) pursuant to the IFR and the IFD in an amount determined by Eurex Clearing AG from time to time,
- (iii) if the applicant is not subject to the own fund requirements under the CRD IV and CRR ~~or the IFR and the IFD~~: have available equivalent regulatory capital or

[...]

[...]

7 Termination Rules with respect to the Clearing Member

[...]

[...]

7.2 Termination Events

7.2.1 Subject to Number 7.2.2, if at any time any of the termination events set out in Paragraphs (1) (12) (each a “**Termination Event**”) has occurred and is continuing with respect to a Clearing Member (including, where applicable, in its capacity as a Clearing Agent), Eurex Clearing AG may either

[...]

The following events constitute Termination Events under the Clearing Conditions:

[...]

(7) Regulatory Actions

Any administrative order issued to a Clearing Member pursuant to Sections 45 to 46g KWG, Sections 49 to 52, 79 and 80 of the German Securities Institution Act (*Wertpapierinstitutsgesetz*) as well as any similar measures issued in relation to a Clearing Member under foreign law.

[...]

(8) ~~Opening of Reorganisation or Restructuring Proceedings on Similar Measures~~
Application or Commencement of Restructuring Measures

~~Any application for, commencement or order of reorganisation or restructuring proceedings (Sanierungs- oder Reorganisationsverfahren) according to the Act on the Restructuring of Credit Institutions (Gesetz zur Reorganisation von Kreditinstituten), as well as any similar measure under foreign law, in respect of the Clearing Member.~~ Any application for or the commencement of restructuring proceedings and the use of any instruments under the stabilization and restructuring framework (Stabilisierungs- und Restrukturierungsrahmen) according to the German Act on the Stabilization and Restructuring Framework for Enterprises (Gesetz über den Stabilisierungs- und Restrukturierungsrahmen für Unternehmen) as well as any similar measure under foreign law, in respect of the Clearing Member.

[...]

[...]
