

clear to trade



eurex clearing circular 147/16

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Recipients: All Clearing Members, Non-Clearing Members and Registered Customers of Eurex Clearing AG and Vendors
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Amendments to the Clearing Conditions of Eurex Clearing AG

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Attachment:

Amended sections of the Clearing Conditions of Eurex Clearing

Summary:

This circular contains information with respect to Eurex Clearing AG's (Eurex Clearing) service offering and corresponding amendments to the Clearing Conditions of Eurex Clearing AG (Clearing Conditions) regarding the following topics:

1. Participation of Eurex Clearing in the GC Pooling segment to hedge effects from a Clearing Member's failure to provide cash for securities purchases
2. Handling of negative repo rates in repo front-leg failures

The amended sections of the Clearing Conditions, as decided by the Executive Board of Eurex Clearing, are attached to this circular. The amendments regarding both topics will come into effect on **9 January 2017**.



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Amendments to the Clearing Conditions of Eurex Clearing AG

This circular contains information with respect to Eurex Clearing AG's (Eurex Clearing) service offering and corresponding amendments to the Clearing Conditions of Eurex Clearing AG (Clearing Conditions) regarding the following topics:

1. Participation of Eurex Clearing in the GC Pooling segment to hedge effects from a Clearing Member's failure to provide cash for securities purchases
2. Handling of negative repo rates in repo front-leg failures

The amended sections of the Clearing Conditions, as decided by the Executive Board of Eurex Clearing, are attached to this circular. The amendments regarding both topics will come into effect on 9 January 2017.

1. Participation of Eurex Clearing in the GC Pooling segment to hedge effects from a Clearing Member's failure to provide cash for securities purchases

In order to enable Eurex Clearing to hedge effects resulting from the failure of a Clearing Member to provide cash for securities purchases when obliged to do so, Eurex Clearing introduces a new clause enabling it to enter into overnight GC Pooling transactions using the purchased securities from the Clearing Member obliged to deliver for liquidity management purposes.

In case of a Clearing Member's failure to provide a cash amount in securities transactions cleared by Eurex Clearing and where Eurex Clearing has already purchased respective securities on behalf of the Clearing Member obliged to pay the new provision in the Clearing Conditions allows Eurex Clearing to participate in the GC Pooling market and enter into overnight GC Pooling transactions using the purchased securities for liquidity management purposes.

The Clearing Member obliged to pay will not be released from its obligations. In the event that Eurex Clearing concludes transactions due to a Clearing Member's failure to provide a cash amount, the obligation to pay will be due on the next business day.

In all market segments where Eurex Clearing provides clearing services, target settlement times have been defined. If a Clearing Member fails to pay within the defined settlement timeframe, Eurex Clearing may enter into overnight GC Pooling transactions using the purchased securities. When Eurex Clearing decides to enter into such transactions, the transaction of the Clearing Member obliged to pay is being deferred to the next business day.

In markets where Eurex Clearing provides clearing services, settlement is completed in the course of the afternoon before trading in the GC Pooling segment closes. Hence, Eurex Clearing has a sufficiently long time frame to hedge effects from not settled transactions by entering into overnight GC Pooling trades.

The aforementioned amendments are reflected in the following provisions:

- Chapter I Part 1 Number 1.2.2 Paragraph 4 of the Clearing Conditions
- Chapter I Part 1 Number 1.4.3 Paragraph 3 of the Clearing Conditions
- Chapter II Part 2 Number 2.3.1 of the Clearing Conditions
- Chapter IV Part 2 Number 2.6 of the Clearing Conditions
- Chapter V Part 2 Number 2.1 of the Clearing Conditions

These amendments will become effective on 9 January 2017.

2. Handling of negative repo rates in repo front-leg failures

Eurex Clearing introduces a provision in the Clearing Conditions to compensate a negative repo rate in case the repo buyer makes use of its right pursuant to Chapter IV Part 2.6 lit. a) to set the term-leg settlement date of the repo to the current business date in case the repo seller fails to deliver the repo securities on the contractual frontleg settlement date. The compensation is conditional upon the feasibility to prepone the term-leg of the repo seller's transaction vis-a-vis Eurex Clearing. The compensation payment is processed by Eurex Clearing by debiting the repo seller and crediting the repo buyer with the repo interest amount.

The aforementioned amendment is reflected in the following provision:

- Chapter IV Part 2 Number 2.6 lit a) of the Clearing Conditions

These amendments will become effective on 9 January 2017.

Pursuant to Chapter I Part 1 Number 17.2.2 of the Clearing Conditions, the amendments to the Clearing Conditions communicated with this circular are deemed to have been accepted by each Clearing Member, Non-Clearing Member and each Registered Customer affected by such amendment unless they object in writing to Eurex Clearing at least fifteen (15) business days prior to the actual effective date of such amendment of the Clearing Conditions.

15 December 2016

Chapter I of the Clearing Conditions of Eurex Clearing AG

General Provisions

As of 09.01.2017

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AMENDMENTS ARE MARKED AS FOLLOWS:

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Part 1 General Clearing Provisions

1 General Rules

1.1 Scope of Application

[...]

1.2 Clearing Procedures

1.2.1 General

[...]

1.2.2 Conclusion of Transactions and Transfer of Transactions

Transactions pursuant to these Clearing Conditions will be concluded and may be transferred in accordance with this Number 1.2.2.

[...]

(4) Transactions pursuant to the Default Management Process; Settlement failures

(a) Eurex Clearing AG may conclude Transactions of any Transaction Type with a Clearing Member, a Clearing Agent or a Basic Clearing Member pursuant to the Clearing Conditions as part of Eurex Clearing AG's default management process pursuant to Number 7.5 below and include such Transactions in the Clearing.

(b) Eurex Clearing AG may conclude Transactions of any Transaction Type with a Clearing Member or a Basic Clearing Member pursuant to the Clearing Conditions as part of Eurex Clearing AG's procedurs to hedge or manage liquidity risks or any other risks that Eurex Clearing AG may be exposed to with respect to a failed settlement of a Transaction on the scheduled settlement day.

[...]

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1.4 Settlement of Transactions

Unless otherwise provided in the relevant Special Clearing Provisions, the following provisions shall apply in relation to the settlement of Transactions, in each case following a set-off (if any) effected pursuant to Number 1.3 or pursuant to any other provisions in the Clearing Conditions.

[...]

1.4.3 Rights of appropriation of Eurex Clearing AG

[...]

(2) Right of appropriation with regard to German book entry securities with a Custodian outside of Germany

(a) Each Clearing Member or Basic Clearing Member (or Clearing Agent acting on behalf of the Basic Clearing Member) authorises Eurex Clearing AG to partially or fully pledge for security purposes the German book entry securities with a custodian abroad and delivered by the Clearing Member or the Basic Clearing Member (or the Clearing Agent acting on behalf of the Basic Clearing Member) by way of book-entry credit in an account of Eurex Clearing AG with a Settlement Location in order to fulfil its obligations arising from securities Transactions concurrently (*Zug um Zug*) versus payment of the purchase price by Eurex Clearing AG. German book entry securities are pledged pursuant to Sentence 1 to a Settlement Location only.

(b) The pledge granted by Eurex Clearing AG in favour of the respective Settlement Location pursuant to Paragraph (2) (a) above expires either in case Eurex Clearing AG delivers the pledged German book entry securities with a custodian abroad to the receiving Clearing Member or Basic Clearing Member (or the Clearing Agent acting on behalf of the Basic Clearing Member) by book-entry credit or in case the pledge is exercised by the respective Settlement Location by means of appropriation in an event of default.

(3) If, at any time, a Clearing Member or Basic Clearing Member to whom delivery of Securities is to be made under a Transaction fails to perform when due any of its payment obligations towards Eurex Clearing AG for the delivery of these Securities (for the purpose of this Number 1.4.3 paragraph (3) a "Payment Default"), Eurex Clearing AG shall, notwithstanding that a settlement of the Transaction may still be technically possible on the same settlement day, be entitled to refuse the settlement of the relevant Transaction with such Clearing Member or Basic Clearing Member

(i) on the day on which the Payment Default occurs and

(ii) on any subsequent settlement day on which the Payment Default is not remedied at the first available settlement time on that day.

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Eurex Clearing AG may enter into trades, including but not limited to cleared Transactions, to hedge or manage liquidity risks or any other risks that Eurex Clearing AG may be exposed to with respect to the Payment Default.

For this purpose, Eurex Clearing AG shall be entitled to dispose of the Securities that the Clearing Member or Basic Clearing Member obliged to deliver has transferred to the custody account of Eurex Clearing AG with the relevant Settlement Location (and which have not yet been transferred to the Clearing Member or Basic Clearing Member to whom delivery was scheduled to be made), if

- (i) Eurex Clearing AG has discharged the related payment obligations owed by Eurex Clearing AG to the Clearing Member or Basic Clearing Member obliged to deliver and
- (ii) Eurex Clearing AG has due to the Payment Default refused to settle the related Transaction and deliver Securities to the Clearing Member or Basic Clearing Member to whom delivery of Securities was scheduled to be made on the relevant settlement day.

The Clearing Member or Basic Clearing Member that is in Payment Default shall bear the costs arising from such Payment Default, including but not limited to any costs of Eurex Clearing AG to hedge or manage liquidity risks or any other risks that Eurex Clearing AG may be exposed to with respect to the Payment Default.

For the avoidance of doubt, the foregoing shall neither

- (i) release the Clearing Member or Basic Clearing Member that is in Payment Default from any of its obligations under the relevant Transaction, nor
- (ii) prevent Eurex Clearing AG from exercising any of its other rights or remedies with respect to the Payment Default, including, but not limited to, any claims for further damages, contractual penalties and/or a Termination pursuant to Number 7.2.1.

[...]

Chapter II of the Clearing Conditions of Eurex Clearing AG

Transactions Concluded at Eurex Deutschland and Eurex Zürich

(Eurex Exchanges)

As of 09.01.2017

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[...]

Part 2 Clearing of Futures Contracts

The following provisions shall apply to the Clearing of futures contract transactions specified in Number 1 of the Contract Specifications for Futures Contracts and Options Contracts at Eurex Deutschland and Eurex Zürich ("**Eurex Contract Specifications**").

[...]

2.3 Clearing of Fixed Income Futures contracts

The following provisions shall apply to the Clearing of Fixed Income Futures contract transactions specified in Number 1.2 of the Contract Specifications for Futures Contracts and Options Contracts at Eurex Deutschland and Eurex Zürich.

2.3.1 Delivery and Payment Procedures

All matching payments shall be settled with physical delivery directly between the Clearing Members and Eurex Clearing AG within the settlement period determined by Eurex Clearing AG on the second Business Day after the notification day (Number 2.3.4 Paragraph (2)).

The Settlement Claims (as defined in Chapter I Part 1 Number 1.3) shall be settled via a Settlement Location and the payments shall be settled via the respective account determined by the respective Settlement Location.

All Clearing Members and Eurex Clearing AG must ensure that the transaction can be handled in the Gross Delivery Management pursuant to Chapter I Part 1 Number 1.4.2 Paragraph (2) and Number 1.3.1 Paragraph (1) (b) – (e) on that Business Day when the delivery notice is given. All Clearing Members must ensure their ability to effect deliveries and payments by having sufficient credit balances (i) in their account at the respective custody institution; (ii) on the RTGS Account or the euroSIC Account for euro-fixed Futures contracts; and (iii) on the SIC Account for CONF-Futures contracts.

[...]

Chapter IV of the Clearing Conditions of Eurex Clearing AG

Clearing of Transactions at Eurex Repo GmbH

(Eurex Repo)

As of 09.01.2017

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[...]

Part 2 Clearing of Transactions at Eurex Repo GmbH

[...]

2.6 Failure to Deliver

- (1) Any failure to make a payment or delivery when due shall be governed by the following procedure:

- (a) Failure to Deliver by the delivery day of the Front Leg:

In the event that a Clearing Member or Basic Clearing Member which is obliged to deliver fails to transfer the underlying securities on the delivery day of the Front Leg (as per Number 2.2 Paragraph (2) (a)) of the respective Eurex Repo Transaction and pursuant to the instructions of Eurex Clearing AG, Eurex Clearing AG shall be entitled and, on request of the Clearing Member or Basic Clearing Member (or the Clearing Agents acting in the name of the Basic Clearing Member) which did not receive delivery in time, obliged to set the present Business Day, at the latest the delivery day of the Term Leg, as an advanced repurchase date of the Term Leg. As a consequence thereto, the mutual obligations arising out of the Eurex Repo Transaction which had originally been agreed upon, shall be offset against each other so that the parties, with the exception of the Repo interests agreed upon, do not owe each other any further payment or delivery. The payable Repo interests shall be calculated on the basis of the period of default, in each case for the period from the purchase date (inclusive) until the Business Day to which the Term Leg was advanced (exclusive).

If a negative Repo interest has been agreed upon, the calculation of the Repo interest no longer applies, if Eurex Clearing AG is able to set the present Business Day as an advanced repurchase date of the Term Leg of the equivalent Eurex Repo Transaction concerned. Should it be unfeasible to set the present Business Day as an advanced Term Leg, Sentence 2 shall apply.

~~At the same time~~ Furthermore, Eurex Clearing AG shall be entitled to set an earlier date as repurchase date for the Term Leg of the equivalent Eurex Repo Transaction concerned between Eurex Clearing AG and the Clearing Member or Basic Clearing Member which did not receive delivery from Eurex Clearing AG in time; the legal consequence thereof will be the same as described above. In connection with the delivery of GC Pooling Repo transactions the procedure pursuant to Sentence 1 to 4 shall apply, if the Clearing Member or Basic Clearing Member obliged to deliver shall not dispose of the necessary bulk of securities, which are admissible for the delivery in the respective basket and the underlying currency, on delivery day in its collateral pool. Eurex Clearing AG shall be, if necessary, informed of this matter by CBF.

If, as opposed to the provisions in ~~Chapter IV~~ Number 2.2 Paragraph (2) (d), a Clearing Member or Basic Clearing Member does not comply with its obligation to perform until the time there mentioned, it may – irrespective of the above provision – be in intraday default. To the extent a Clearing Member or Basic Clearing Member is in intraday default, Eurex Clearing AG may charge an expense allowance of EUR 2,000 for each defaulting GC Pooling Repo Transaction to cover its operative additional expenditure. Furthermore, Eurex Clearing AG shall be entitled to invoice the Clearing Member or Basic Clearing Member – until such point in time on which the obligation to perform is fulfilled – for any interim financing costs incurred, up to the value of the STOXX GC Pooling EUR ON Index (“**SGCPON**”) published by Bloomberg or Reuters plus 50 basis points p.a., in relation to the value of the underlying GC Pooling Transaction or the due cash amount respectively.

(b) Failure to Deliver by the delivery day of the Term Leg

In the event that the Clearing Member or Basic Clearing Member obliged to deliver fails to deliver the underlying securities on the delivery day of the Term Leg (as per Number 2.2- Paragraph (2) (b)) of the respective Eurex Repo Transaction and pursuant to the instructions of Eurex Clearing AG, Eurex Clearing AG shall be entitled and, on request of the Clearing Member or Basic Clearing Member (or the Clearing Agents acting in the name of a Basic Clearing Member) which did not receive delivery in time, obliged to make a replacement purchase with respect to the undelivered securities as from the 5th day following the delivery date of the Term Leg and to deliver these to the Clearing Member or Basic Clearing Member (or the Clearing Agents acting in the name of a Basic Clearing Member) which did not receive delivery in time or, in the case of a wholly or partially unsuccessful replacement purchase, to perform a cash settlement. The replacement and the cash settlement are performed pursuant to Chapter V Part 2 Number 2.2, the provisions on contractual penalties apply accordingly. Notwithstanding Chapter V Part 2 Number 2.2.1 Paragraph (3) (b) (aa), the cash settlement amount is determined by the highest of (i) the settlement price of the respective class of securities as determined by Eurex Clearing AG, (ii) the selling price and (iii) the purchase price of the relevant Eurex Repo Transaction plus a premium of 300 basis points, accrued interest and the applicable repo rate. In connection with any

default in effecting performance with regard to GC Pooling Repo Transactions, the provisions of Number 2.6 Paragraph (1) (a) shall apply accordingly, taking into account that an executed Buy-In according to Number 2.6 Paragraph (1) (b) Sentence 1 shall be considered equivalent to reaching the point in time on which performance is effected.

[...]

Chapter V of the Clearing Conditions of Eurex Clearing AG

Transactions Concluded at the Frankfurter Wertpapierbörse

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[...]

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

2.1 General Obligations

- (1) With regard to the settlement of FWB Transactions, Chapter I Part 1 Numbers 1.2.5 and 1.4 apply, unless otherwise stated hereinafter.
- (2) Eurex Clearing AG shall be a contracting party to all deliveries and payments at the performance of FWB Transactions.
- (3) Clearing Members must fulfil their delivery and payment obligations in accordance with the instructions of Eurex Clearing AG.
- (4) The following shall apply to the procedures for delivery and payment for securities held in collective safe custody pursuant to Paragraph (1) to (3):

All physical deliveries and payments shall be concurrently performed between the Clearing Members and Eurex Clearing AG and, accordingly, between Eurex Clearing AG and the Clearing Members which are to receive delivery, within the settlement period determined by Eurex Clearing AG on the second Business Day after the trading day.

[...]
