

05 May 2023
Eurex Clearing

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

Eurex Clearing Circular 028/23 Amendments to the Clearing Conditions and to 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 Clearing Conditions of Eurex Clearing AG (Clearing Conditions) and the FCM Default Rules of Eurex Clearing AG (FCM Default Rules) with respect to the following topic:

- ◆ Adjustments to the Default Fund Contribution delivery period

The amendments are subject to a consultation process (Consultation). The Consultation will end with the expiry of **6 June 2023** (Consultation Period). The planned effective date is **3 July 2023**, depending on the outcome of the Consultation which will be communicated in a separate Eurex Clearing circular.

2. Required action

The amendments outlined in the Attachments are subject to a Consultation which will end **with the expiry of 6 June 2023**.

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

3. Details

Adjustments to the Default Fund Contribution delivery period

In accordance with Article 42 of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR), Eurex

Clearing maintains a pre-funded Default Fund to cover losses that exceed the losses to be covered by the margin provided by the relevant Clearing Member.

The Clearing Conditions in their current version foresee that Clearing Members, which have to provide additional Contributions to the Default Fund due to an increased Contribution Requirement, shall do so within five business days. Possible delays in the provision of Default Fund Contribution could lead to inconsistencies between theoretically determined cover-2 requirements and available pre-funded resources. Due to this reason, Eurex Clearing considers a five-day delivery period as too long.

With the contemplated amendment, the five-business day period will be reduced to a one-business day delivery period. Eurex Clearing holds the view that such change is needed to increase the robustness of the Default Fund and to align with the industry standards.

To reflect the amendments as proposed above, Eurex Clearing will amend its rulebooks as outlined in Attachments 1 and 2:

- ◆ Chapter I Part 1 Number 6 of the Clearing Conditions, and
- ◆ Number 3 of the FCM Default Rules.

Consultation with respect to the amendments to the Clearing Conditions

Pursuant to Chapter I Part 1 Number 17 of the Clearing Conditions, the proposed changes and amendments to the Clearing Conditions are subject to a Consultation which will end with the expiry of **6 June 2023**.

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

During the Consultation Period, comments on proposed changes or amendments shall only be submitted through a web-based commenting service for which a registration form is available on the Eurex Clearing website under the following link:

Find > Forms: Consultation Form

The form has to be duly signed and returned to Eurex Clearing via e-mail to SpecialProvisions@eurex.com in order to obtain a User ID and Password together with a link for accessing the web-based commenting service.

To the extent that Eurex Clearing decides to implement any comments received during the Consultation, the so-amended version of the Clearing Conditions will be published after the Consultation.

The currently envisaged effective date of the changes to the Clearing Conditions is **3 July 2023**. However, after the Consultation Period, Eurex

Clearing will issue a separate circular to announce the concrete date on which the proposed changes (as the case may be, implementing comments received during the Consultation) will come into effect.

This announcement will be made with at least 15 Business Days' notice (Regular Notification Period). However, if Eurex Clearing should receive a request for a Prolonged Notification Period from more than two Affected Customers during the Consultation Period, a Prolonged Notification Period as set out in the Clearing Conditions will be applied and Eurex Clearing will notify all affected parties accordingly.

Publication of amendments to the Clearing Conditions and the FCM Default Rules

As of the effective date, the full versions of the amended legal framework of Eurex Clearing will be available for download on the Eurex Clearing website under the following link:

Rules and Regulations > Eurex Clearing Rules and Regulations

The amendments to the legal framework of Eurex Clearing AG published by this circular are deemed accepted by each affected contractual party of Eurex Clearing AG, unless the respective contractual party objects by written notice to Eurex Clearing AG prior to the relevant effective date(s) as stipulated in this circular. In case of an objection by the respective contractual party pursuant the preceding sentence, Eurex Clearing AG is entitled to terminate the respective contract (including a Clearing Agreement, if applicable). Instead of submitting an objection, the respective contractual party may submit in writing to Eurex Clearing AG comments to any amendments of the legal framework of Eurex Clearing AG within the first 10 Business Days after the publication of the amendments. Eurex Clearing AG shall assess whether these comments prevent the published amendments from becoming effective taking into account the interests of Eurex Clearing AG and all contractual parties.

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:

Updated sections of the following rules and regulations:

- ◆ 1 – Chapter I Part 1 Number 6 of the Clearing Conditions of Eurex Clearing AG
- ◆ 2 – Number 3 of the FCM Default Rules of Eurex Clearing AG

Further information

Recipients: All Clearing Members, ISA Direct Clearing Members, all FCM Clearing Members, vendors, and other affected contractual parties

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

Contact: client.services@eurex.com

Web: www.eurex.com/ec-en/

Authorized by: Dmitrij Senko

Further information

[↓ Attachment 1 to Eurex Clearing Circular 028/23](#)

[↓ Attachment 2 to Eurex Clearing Circular 028/23](#)

A member of

Eurex Clearstream Eurex Clearing Qontigo Eurex Repo EEX 360T Xetra Börse Frankfurt

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Chapter I of the Clearing Conditions of Eurex Clearing AG

General Provisions

As of 03.07.2023

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED;

DELETIONS ARE CROSSED OUT

[...]

Part 1 General Clearing Provisions

[...]

6 Default Fund

[...]

6.1 Contributions to the Default Fund

6.1.1 Contributions and Calculation of the Contributions to the Default Fund

- (1) Notwithstanding any margin requirement applicable to the Clearing Member in accordance with the Clearing Conditions, (i) each Clearing Member and (ii) subject to Subpart A Number 9 of the ISA Direct Provisions (in relation to Indemnifying Clearing Agents, as modified by Subpart B Number 2.4 of the ISA Direct Provisions), each Clearing Agent, separately with respect to each of its ISA Direct Clearing Members (and each ISA Direct Clearing Agreement), shall make contributions to the Default Fund as further set out in this Number 6 (a contribution pursuant to (i) a **“CM Contribution”**, each contribution pursuant to (ii) an **“ISA Direct Clearing Member Contribution”** and each such contribution to the Default Fund and each FCM Contribution a **“Contribution”**).

[...]

- (3) The obligation of a Clearing Member to make a CM Contribution becomes first due and payable as of the date of the granting of its first Clearing License and the obligation on a Clearing Agent to make an ISA Direct Clearing Member Contribution with respect to a particular ISA Direct Clearing Member becomes first due and payable as of the date it enters into an ISA Direct Clearing Agreement with Eurex Clearing AG and such ISA Direct Clearing Member.

~~Thereafter, a Clearing Member or a Clearing Agent shall be obliged to make provide additional CM Contribution or ISA Direct Clearing Member Contribution whenever Eurex Clearing AG has made an adjustment to the relevant CM Contribution Requirement of the relevant Clearing Member or the relevant Clearing Agent with respect to a particular ISA Direct Clearing Member Contribution Requirement, respectively. Such obligation becomes due and payable upon notification of the adjusted CM Contribution Requirement or ISA Direct Clearing Member Contribution Requirement by Eurex Clearing AG.~~

~~If a Clearing Member or a Clearing Agent does not provide the relevant CM Contribution or ISA Direct Clearing Member Contribution in full within one Business Day after it has become due and payable, Eurex Clearing AG shall be entitled to collect any outstanding CM Contribution or ISA Direct Clearing Member Contribution in accordance with the daily cash clearing procedure pursuant to Number 1.4.1.~~

[...]

6.1.2 Provision of the Contributions to the Default Fund

[...]

~~(4) If a Clearing Member or a Clearing Agent does not provide the relevant CM Contribution or ISA Direct Clearing Member Contribution within five Business Days in full, Eurex Clearing AG shall be entitled to collect the (outstanding parts of the) relevant CM Contributions or ISA Direct Clearing Member Contributions to the Default Fund from the relevant Clearing Member or Clearing Agent in accordance with the daily cash clearing procedure pursuant to Number 1.4.1.~~

(45) [...]

[...]

FCM Default Rules of Eurex Clearing AG

As of 03.07.2023

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AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED;

DELETIONS ARE CROSSED OUT

[...]

3 Contributions to the Default Fund by an FCM Clearing Member

3.1 Contributions to the Default Fund

3.1.1 Contributions and Calculation of the Contributions to the Default Fund

[...]

- (3) The obligation of an FCM Clearing Member to make an FCM Contribution becomes first due and payable as of the date of the granting of its FCM Clearing License.

Thereafter, an FCM Clearing Member shall be obliged to make an provide additional FCM Contribution whenever Eurex Clearing AG has made an adjustment to the FCM Contribution Requirement of the relevant FCM Clearing Member. Such obligation becomes due and payable upon notification of the adjusted FCM Contribution Requirement by Eurex Clearing AG.

If an FCM Clearing Member does not provide the relevant FCM Contribution in full within one Business Days after it has become due and payable, Eurex Clearing AG shall be entitled to collect any outstanding FCM Contributions from the relevant FCM Clearing Member Own Cash Account in accordance with the daily cash clearing procedure pursuant to Chapter I Number 1.4.1 of the FCM Regulations.

[...]

3.1.2 Provision of FCM Contributions to the Default Fund

[...]

- ~~(4) If an FCM Clearing Member does not provide the relevant FCM Contribution within five Business Days in full, Eurex Clearing AG shall be entitled to collect the (outstanding parts of the) relevant FCM Contributions to the Default Fund from~~

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~~the relevant FCM Clearing Member Own Cash Account in accordance with the daily cash clearing procedure pursuant to Chapter I Number 1.4.1 of the FCM Regulations.~~

(45) [...]
