

08 Sep 2023
Eurex Clearing

Amendments to the Clearing Conditions of Eurex Clearing AG – Consultation

Eurex Clearing Circular 058/23 Amendments to the Clearing Conditions 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) regarding the following topics:

- A. Preponement of disclosure in case of Failure to Deliver Rights
- B. Adjustment of thresholds for contractual penalties in respect to a Failure to Deliver Securities
- C. Clarifications on Failure to Deliver Securities and harmonization of wording and referencing
- D. Invoicing of Buy-in Fees and Cash Settlement Fees in currency EUR

The amendments under items A. and B. will become effective as of **20 November 2023**.

The amendments under items C. and D. are subject to a consultation process (Consultation). The Consultation will end with the expiry of **13 October 2023** (Consultation Period). The planned effective date for amendments under items C. and D. is 20 November 2023, depending on the outcome of the Consultation which will be communicated in a separate Eurex Clearing circular.

Production start: 20 November 2023

2. Required action

Clearing Members, ISA Direct Clearing Members, Disclosed Direct Clients of Eurex Clearing AG, vendors and other affected contractual parties should take

the amendments to the Clearing Conditions into consideration.

The amendments of the Clearing Conditions with respect to topics C. and D. are subject to a Consultation which will end **with the expiry of 13 October 2023**.

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

3. Details

A. Preponement of disclosure in case of Failure to Deliver Rights

As announced in Eurex Clearing Circular 025/23, Eurex Clearing will adjust the timing for disclosure of belated subscription rights transactions as part of C7 SCS Release 3.0. The disclosure will be brought forward to the business day before the last day of the subscription period in case there are at least three business days between the trading date and the last date of the subscription period. For more details, please refer to the Release Notes for C7 SCS Release 3.0 published under the following link on the Eurex Clearing website www.eurex.com/ec-en/:

Support > Initiatives & Releases > C7 SCS Releases > **C7 SCS Release 3.0**

The changed rule on timing of the disclosure in case of Failure to Deliver Rights will be incorporated in the Clearing Conditions.

To reflect the changed rule, the following provision will be amended as outlined in Attachment 1:

- ◆ Chapter V Part 2 Number 2.2.2 in the second part of the first sentence of the Clearing Conditions

B. Adjustment of thresholds for contractual penalties in respect to a Failure to Deliver Securities

Eurex Clearing adjusts the minimum threshold in several foreign currencies for contractual penalties in respect to a Failure to Deliver Securities on dividend record dates so that the threshold matches an approximate equivalent of EUR 5,000 considering latest exchange rates.

To reflect this harmonization, the following provisions will be amended as outlined in Attachment 1:

- ◆ Chapter V Part 2 Number 2.2.1 (6) (b) Sub-paragraph 6 of the Clearing Conditions

C. Clarifications on Failure to Deliver Securities and harmonization of wording and referencing

Eurex Clearing proposes several amendments to the Clearing Conditions to streamline its legal framework in respect to the measures prescribed in case of a Failure to Deliver Securities. The amendments will harmonize wording and structure across Chapters I, II, IV and V of the Clearing Conditions and implement some clarifications on the applied procedure in relation to a Failure to Deliver Securities. Please note that the regime in respect to buy-in, cash settlement and disclosure and the related procedures has not been changed.

Furthermore, some paragraphs were removed as they became obsolete after introduction of the C7 Securities Clearing Service (C7 SCS) in September 2021.

To reflect these amendments, the following provisions of the Clearing Conditions will be amended as outlined in Attachments 1, 2, 3 and 4:

- ◆ Chapter V Part 1 Number 1.1.2 and Part 2 Numbers 2.1, 2.2, 2.3, 2.4 and 2.5 of the Clearing Conditions
- ◆ Chapter I Part 1 Number 1.4.4 of the Clearing Conditions
- ◆ Chapter II Part 1 Numbers 1.1 and 1.10, Part 2 Numbers 2.3, 2.5, 2.7, 2.16, 2.17 and 2.29 and Part 3 Numbers 3.5, 3.6, 3.9 and 3.11 of the Clearing Conditions and
- ◆ Chapter IV Part 2 Number 2.7 of the Clearing Conditions

D. Invoicing of Buy-In Fees and Cash Settlement Fees in currency EUR

Eurex Clearing decided to harmonize the invoicing of Buy-In Fees and Cash Settlement Fees related to an FWB Transaction, Eurex Transaction or Repo Transaction, and to charge such fees always in currency EUR – independent of the settlement currency of the related securities transaction. When converting fees into the invoice currency, Eurex Clearing will use a commercially reasonable exchange rate applicable at the relevant point in time.

For avoidance of doubt: Costs for Buy-Ins resulting from offsetting price differences and cash settlement amounts continue to be charged in the settlement currency of the respective securities transaction.

To reflect this harmonization, the following provisions will be amended as outlined in Attachments 1, 2 and 3:

- ◆ Chapter V Part 2 Numbers 2.2.1 (2) (b) and (3) (d) of the Clearing Conditions
- ◆ Chapter I Part 1 Number 1.4.4.1 of the Clearing Conditions
- ◆ Chapter II Part 2 Number 2.17.4 and Part 3 Numbers 3.6.7 and 3.11.5 of the Clearing Conditions

Consultation with respect to the amendments to the Clearing Conditions (topics C. and D.)

Pursuant to Chapter I Part 1 Number 17 of the Clearing Conditions, proposed amendments to the Clearing Conditions are subject to a Consultation which will end with the expiry of **13 October 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 **20 November 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

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

[Rules and Regulations > Eurex Clearing Rules and Regulations > 1. 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 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:

- ◆ 1 – Amendments to Chapter V of the Clearing Conditions
- ◆ 2 – Amendments to Chapter I of the Clearing Conditions
- ◆ 3 – Amendments to Chapter II of the Clearing Conditions
- ◆ 4 – Amendments to Chapter IV of the Clearing Conditions

Further information

Recipients: All Clearing Members, ISA Direct Clearing Members, Disclosed Direct Clients of Eurex Clearing AG, all FCM Clearing Members, vendors, and other affected contractual parties

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

Related circular: Eurex Clearing Circular **025/23**

Contact: client.services@eurex.com

Web: Support > Initiatives & Releases > C7 SCS Releases > **C7 SCS Release 3.0**

Authorized by: Jens Janka

Further information

[↓ Attachment 1 to Eurex Clearing Circular 058/23](#)

[↓ Attachment 2 to Eurex Clearing Circular 058/23](#)

[↓ Attachment 3 to Eurex Clearing Circular 058/23](#)

[↓ Attachment 4 to Eurex Clearing Circular 058/23](#)

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Chapter V of the Clearing Conditions of Eurex Clearing AG

Transactions Concluded at the Frankfurter Wertpapierbörse

As of 20.11.2023

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED;

DELETIONS ARE CROSED OUT

Part 1 General Provisions

[...]

1.1 Clearing Licenses

[...]

1.1.2 Prerequisites for Clearing Licenses

[...]

(2) ~~The applicant shall meet the following additional requirements:~~

~~— Evidence of authorisation to use the securities lending facility offered by Clearstream Banking AG for settlement purposes.~~

(3) ~~Upon written request and after submission of respective evidence by the applicant or a Clearing Member, Eurex Clearing AG may allow that the prerequisites for a Clearing License pursuant to Paragraph (2) (b) and additionally, as an option, the prerequisites pursuant to Paragraph (2) (a) are wholly complied with and evidence is provided for by one or more settlement institutions in the name and on behalf of the applicant or the Clearing Member. Chapter I Part 1 Number 2.1.2 Paragraph (7) and (8) apply *mutatis mutandis*.~~

[...]

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

2.1 General Obligations

[...]

(2) Eurex Clearing AG shall be the contractual counterparty to all sellers of securities and rights (“FWB Sell Transaction”) and all buyers of securities and rights (“FWB Buy Transaction”) for deliveries and payments under FWB Transactions.

[...]

~~(4) The following shall apply to the procedures for delivery and payment with respect to securities held in collective safe custody pursuant to Paragraph (1) to (3):~~

~~— All physical deliveries under FWB Transactions, shall be made versus payment (Zug-um-Zug) within the settlement period determined by Eurex Clearing AG on the second Business Day after the trading day unless otherwise specified (“**Contractual Settlement Date**”).~~

~~(5) The following shall apply to the procedures for delivery and with respect to WP Credits (Gutschriften in Wertpapierrechnung) pursuant to Paragraphs (1) to (3):~~

~~All transfers of WP Credits shall be made versus payments (Zug-um-Zug) on the Contractual Settlement Date.~~

~~(6) The usage of the T2S system for the settlement of securities transactions facilitates partial deliveries of securities during the day. Thus, deliveries Deliveries of securities may also occur by means of partial deliveries which, accordingly, have a discharging effect. This shall likewise apply for the settlement of securities transactions via central securities depositories (in particular (I)CSDs) through the relevant Settlement Locations that facilitate partial deliveries of securities during the day to the extent Eurex Clearing AG supports such functionality for the respective central securities depository Settlement Location.~~

2.2 Failure to Deliver

2.2.1 Failure to Deliver Securities

In case of a failure to deliver shares covered by Article 15 of Regulation (EU) No. 236/2012 (“**Shares**”) or other securities (“**Other Securities**”, and together with Shares “**Securities**”)⁴ owed under a FWB Sell Transaction on the Contractual Settlement Date until the applicable settlement cut-off time of the relevant Settlement Location (“**Settlement Cut-Off Time**”) (“**Failure to Deliver Securities**”), the following provisions apply.

For the avoidance of doubt, subscription rights are not considered as Securities and therefore, the provisions under to Number 2.2.2 apply.

(1) ~~General Provisions~~Buy-in

(a) Failure to Deliver Shares

~~If the Shares to be delivered by the Clearing Member having the delivery obligation (taking into account the results of a netting or aggregation pursuant to Number 2.5.2, if applicable) have not been delivered to the Settlement Location on the 4th Business Day following the delivery date at the latest until the~~

⁴ For subscription rights securitised and held in collective safe custody, the procedure pursuant Paragraph 2 applies.

~~respective End of Settlement time (as published by Eurex Clearing AG on the Eurex Clearing Website) (“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, 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. In case of a Failure to Deliver Securities by the Clearing Member obliged to deliver Shares under a FWB Sell Transaction (“Late Seller of Shares”), the following shall apply:~~

If the Late Seller of Shares did not deliver the Shares at the latest on the 4th Business Day following the Contractual Settlement Date until the respective Settlement Cut-Off Time, Eurex Clearing AG will initiate a buy-in within the meaning of Chapter I Part 1 Number 1.4.4.1 on the 4th Business Day following the Contractual Settlement Date.

(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 the non-delivered Other Securities Number 2.2.1 Paragraph (2) (a) shall apply and the buy-in can be made on the 5th, 10th and 27th 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 a buy-in, Eurex Clearing AG is entitled to perform a cash settlement pursuant to Number 2.2.1 Paragraph (3).~~

~~— 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.~~

In case of a Failure to Deliver Securities by the Clearing Member obliged to deliver Other Securities under a FWB Sell Transaction (“Late Seller of Other Securities”, and together with the Late Seller of Shares, “Late Seller”), the following shall apply:

If the Late Seller of Other Securities did not deliver the Other Securities at the latest on the 5th Business Day following the Contractual Settlement Date until the Settlement Cut-Off Time, Eurex Clearing AG is entitled to initiate a buy-in within the meaning of Chapter I Part 1 Number 1.4.4.1 on the 5th Business Day following the Contractual Settlement Date. In case such buy-in attempt fails, Eurex Clearing AG is entitled to initiate a further buy-in on the 10th and 27th Business Day following the Contractual Settlement Date.

(c) ~~Partial deliveries~~ General Provisions

~~— If only a partial delivery of securities occurs, the Paragraphs (a) and (b) above as well as the following rules shall apply accordingly with regard to the outstanding partial deliveries. Due to different average price calculation of the T2S system and the system of Eurex Clearing AG concerning partial deliveries, it may occur for incomplete deliveries on the delivery day, that the Clearing Member obliged to deliver is credited an amount which, in total, exceeds the selling price. Eurex Clearing AG shall notify the Clearing Member obliged to deliver accordingly and is authorised to debit any exceeding amounts accordingly and to credit these amounts to the buyer. The Clearing Member obliged to deliver must ensure that a respective amount is available on its relevant RTGS-DCA or euroSIC Account.~~

(aa) Consequences of a Buy-in

(i) Once Eurex Clearing AG has informed the Late Seller about the initiation of a buy-in, the Late Seller is no longer entitled to deliver the owed Securities to Eurex Clearing AG until a written notification of Eurex Clearing AG is received informing the Late Seller that the buy-in attempt was not successful.

If a buy-in is not successful, the Late Seller must be given time for delivery until the next buy-in attempt or the cash settlement according to Paragraph (3).

(ii) If a buy-in is successful, the Late Seller’s obligation to deliver and Eurex Clearing AG’s obligation to pay the amount resulting from the relevant FWB Sell Transaction expires with immediate effect as of the successful buy-in of the relevant Securities.

(iii) If only a partial delivery of Securities occurs, the provisions under this Number 2.2 shall apply accordingly with regard to the outstanding partial deliveries.

(bb) Deviating Provisions

(i) Eurex Clearing AG will not initiate a buy-in, if the Late Seller holds an identical claim against Eurex Clearing AG, which may be set off against the claim Eurex Clearing AG holds against the Late Seller.

(ii) Eurex Clearing AG may deviate from the deadlines set out in this Number 2.2.1 (1) in accordance with Number 2.2.4.

(2) Buy-in by auction, costs of buy-in~~Costs of the Buy-in; Buy-in Fees~~

(a) Buy-in according to Auction Terms~~Costs of the Buy-in~~

~~— If Eurex Clearing AG conducts an auction to acquire the Securities, such auction shall be conducted in accordance with the Auction Terms.~~

~~— Eurex Clearing AG reserves the right to postpone the auction by one or more Business Days in the case that the Securities are subject to a corporate action or to determine another Business Day for the execution of the auction for important reason (an important reason being, for instance, if the settlement day of the relevant Settlement Location ends after 15:00 CET).~~

~~— Once the buy-in has been announced, the Clearing Member having the delivery obligation is no longer entitled to deliver Securities to Eurex Clearing AG on the day of auction as well as until a written notification of Eurex Clearing AG.~~

~~— If the Securities to be delivered are replaced by means of an auction, the defaulting Clearing Member's obligation to deliver resulting from the original FWB Transaction expires with debt-discharging effect.~~

As far as the price paid by Eurex Clearing AG for the Securities in the buy-in exceeds the price under the FWB Sell Transaction, Eurex Clearing AG shall be entitled to claim the difference between the price under the FWB Sell Transaction and the price paid by Eurex Clearing AG for the Securities in the buy-in multiplied by the number of Securities purchased in the buy-in.

(b) Costs of the Auction~~Buy-in Fees~~

Eurex Clearing AG charges the ~~defaulting Clearing Member~~ Late Seller with a fee for each 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 securities to be delivered under the relevant FWB Sell Transaction, or

(ii) ~~in the case of Securities other than fixed income Securities~~ securities, 10 per cent of the value of the Securities to be delivered under the relevant FWB Sell 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 If~~ Eurex Clearing AG appoints a third party buy-in agent to acquire 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)~~ the maximum amount set out in Chapter I Part 1 Number 1.4.4.1 shall apply.

When converting fees into the invoice currency, Eurex Clearing AG will use a commercially reasonable exchange rate applicable at the relevant point in time.

(3) Cash Settlement

(a) ~~General Provisions~~ Determination of Cash Settlement

~~If a replacement of the non-delivered Securities pursuant to Paragraph (1) and (2) was not successful in whole or in parts, Eurex Clearing AG may determine, on a day after the delivery day (the "Determination Day") a cash settlement regarding the non-delivered and non-replaced shares. If the required Securities cannot be acquired wholly or partially by way of a buy-in according to Paragraph (1), Eurex Clearing AG is entitled to determine a cash settlement amount regarding the non-delivered Securities on a day after the Contractual Settlement Date ("Determination Day"). For the purpose of the cash settlement, Eurex Clearing AG shall allocate a FWB Buy Transaction of a Clearing Member to whom delivery has not been effected in due time ("Buyer") to the FWB Sell Transaction of the Late Seller ("Allocated FWB Buy Transaction").~~

The Determination Day ~~is~~ shall be

- (i) ~~in case of Shares, the 8th Business Day after the delivery day in the case of Shares~~ Contractual Settlement Date of the FWB Sell Transaction of the Late Seller of Shares and
- (ii) ~~in case of Other Securities, a point in time~~ Business Day between the 30th and the 36th Business Day after the delivery day in the case of Other Securities Contractual Settlement Date of the FWB Sell

Transaction of the Late Seller of Other Securities and the Allocated FWB Buy Transaction.

~~— If proceedings pursuant to Chapter 11 of the US American Bankruptcy Code are initiated against the issuer of the Securities to be delivered, Eurex Clearing AG may, determine such cash settlement on the 6th Business Day following the delivery day already.~~

(b) Cash Settlement Amount

The cash settlement amount is determined as follows:

(aa) The highest price of

- (i) the last available settlement price of the respective class of securities on the Business Day preceding the Determination Day as determined by Eurex Clearing AG plus a premium of 10 per cent;
- (ii) the selling agreed price per security under the non-performed FWB Sell Transaction; and
- (iii) the purchase agreed price of the relevant FWB Transaction per security under the respective Allocated FWB Buy Transaction.

~~For Notwithstanding the aforementioned determination, for FWB Transactions in fixed income Securities securities, the cash settlement amount is determined without taking into account accrued interest and by adding a premium of 300 basis points.~~

(bb) The highest price so determined is multiplied by the number of non-delivered Securities owed under the non-performed FWB Sell Transaction.

(c) General Provisions

(aa) Consequences of Cash Settlement

~~Upon determination of the cash settlement, the defaulting Clearing Member's delivery obligations under the non-performed FWB Transaction expire with debt discharging effect. The defaulting Clearing Member is obliged—~~Upon Determination Day, the Late Seller's delivery obligation under the relevant FWB Sell Transaction expires and is replaced by the obligation to pay to Eurex Clearing AG the determined cash settlement amount.

Eurex Clearing AG shall set off the cash settlement amount to be paid by the Late Seller with the amount to be paid for the non-delivered Securities under the relevant FWB Sell Transaction.

~~— In the case of Securities of the same class owed by Eurex Clearing AG to one or more other Clearing Member(s), which have not been delivered on the Determination Day at the latest, the provisions above shall apply accordingly to~~

~~the extent equalling the number of Securities owed and not delivered in time by the defaulting Clearing Member to Eurex Clearing AG.~~

~~After receipt Eurex Clearing AG will forward the cash settlement amount to the Clearing Member to whom delivery has not been effected in due time.~~

(bb) Deviating Provisions

(i) Eurex Clearing AG may deviate from the deadlines set out in this Number 2.2.1 (3) in accordance with Number 2.2.4.

(ii) If proceedings pursuant to Chapter 11 of the US-American Bankruptcy Code are initiated against the issuer of the Securities to be delivered, Eurex Clearing AG may already determine such cash settlement amount on the 6th Business Day following the Contractual Settlement Date.

(d) Specific ~~Special~~ Provisions for Other Securities

~~If a cash settlement pursuant to Number Paragraph (3) (a) and (b) to (c) in respect of non-delivered Other Securities should not be is not possible in whole or in part, Eurex Clearing AG will attempt to replace try to purchase the Other Securities (“Additional Purchase Attempt”). Such further replacement purchase takes place initially Additional Purchase Attempt shall take place on the 37th Business Day after the delivery day Contractual Settlement Date and will be effected pursuant to Paragraph (2) (a). Paragraph (1) and (2) shall apply accordingly.~~

~~If the Other Securities cannot be acquired by way of the relevant replacement purchase, Eurex Clearing AG will determine a further cash settlement initially between the 40th and the 46th Business Day after the delivery day. The cash settlement amount is determined pursuant to Paragraph (3) (b). The defaulting Clearing Member shall be given time to deliver the Other Securities before the determination of the cash settlement. If proceedings pursuant to Chapter 11 of the US-American Bankruptcy Code are initiated against the issuer of the Other Securities to be delivered, Eurex Clearing AG may determine a cash settlement on the 6th Business Day following the delivery day already. The consequences of the determination of the cash settlement are determined pursuant to Paragraph (3) (c). If the Additional Purchase Attempt fails, in whole or in part, **Eurex Clearing AG will attempt an additional cash settlement (“Additional Cash Settlement Attempt”).** Paragraph (3) (a) to (c) shall apply accordingly with the limitation that the Determination Day shall be between the 40th and the 46th Business Day after the Contractual Settlement Date.~~

~~The replacement and the cash settlement will~~ The Additional Purchase Attempt and the Additional Cash Settlement Attempt shall be repeated every 10 Business Days until all Other Securities required to be delivered owed under

the relevant FWB Sell Transaction have been delivered or until the cash settlement has been effected.

(e) Cash Settlement Fee

Eurex Clearing AG will charge a fee from the ~~defaulting Clearing Member~~ Late Seller for every ~~determined~~ cash settlement in an amount of 0.0025 per cent of the value of the respective class of Securities to be delivered under the relevant FWB Sell Transaction, however at least EUR 250 and at maximum EUR 1,000. When converting fees into the invoice currency, Eurex Clearing AG will use a commercially reasonable exchange rate applicable at the relevant point in time.

(4) Disclosure of Delivery Claim

(a) ~~Assertion~~ Enforcement of Temporary Rights

~~If the defaulting Clearing Member does not deliver Securities in time that provide for rights or are connected with rights that can be asserted within a specified period of time only, Eurex Clearing AG discloses its claim for delivery of these Securities to the Clearing Member to whom delivery has not been effected in due time in accordance with Number 2.2.2 Paragraph (1). If the Securities owed by the Late Seller provide for rights or claims or if the Securities owed by the Late Seller are connected with rights or claims and provided that such rights and claims can only be enforced within a specified period of time, Eurex Clearing AG is entitled to disclose its claim for delivery against the Late Seller with respect to such Securities to the Buyer.~~

The Late Seller and the Buyer to whom the delivery claim was disclosed by Eurex Clearing AG shall find a solution with respect to rights and claims arising from the Securities owed by the Late Seller bilaterally. Any claims of such Buyer against Eurex Clearing AG with respect to the rights and claims arising from the Securities shall be deemed as discharged.

The disclosure shall be processed in accordance with Number 2.2.2 (1) which shall apply accordingly.

(b) Exchange Offers for Securities (Umtauschangebote) and Election Rights

If

(i) ~~the defaulting Clearing Member does not deliver Securities in time that the Securities owed by the Late Seller can be exchanged against other Securities or cash in the context of a corporate action~~ Corporate Action, or

(ii) ~~which the Securities owed by the Late Seller are subject to an optional election right in the context as part of a mandatory corporate action~~ Corporate Action,

~~and if the Clearing Member to whom delivery has not been effected in due time provided that the Buyer has suffered a damage loss as a result thereof and has evidenced such damage loss vis-a-vis Eurex Clearing AG within the statutory limitation period, Eurex Clearing AG ~~may~~ is entitled to disclose its claim for delivery of ~~against the Late Seller~~ with respect to these Securities to the ~~Clearing Member to whom delivery has not been effected in due time in accordance with Number 2.2.2 Paragraph (1)~~ Buyer.~~

The disclosure may also be made if the delivery claim has already been ~~fulfilled~~ discharged.

~~The Late Seller and the Buyer to whom the delivery claim was disclosed by~~ Eurex Clearing AG shall find a solution with respect to the exchange offer or election right arising from the Securities owed by the Late Seller bilaterally. Any claims of such Buyer against Eurex Clearing AG with respect to the exchange offer or election right arising from the Securities shall be deemed as discharged.

~~The disclosure shall be processed in accordance with Number 2.2.2 (1) which shall apply accordingly.~~

(c) ~~Cash Distributions on ETFs~~ shares

~~If the defaulting Clearing Member Late Seller does not deliver ETF shares in time on Exchange Traded Funds (“ETFs”) with respect to which cash distributions are payable pursuant to Number 2.3 Paragraph (2) (a), as part of a Corporate Action and if the Clearing Member to whom delivery has not been effected in due time provided that the Buyer has suffered a damage loss as a result thereof and has evidenced such damage loss vis-a-vis Eurex Clearing AG within the statutory limitation period, Eurex Clearing AG ~~may~~ is entitled to disclose its claim for delivery of ~~these Securities~~ against the Late Seller with respect to these ETFs to the ~~Clearing Member to whom delivery has not been effected in due time in accordance with Number 2.2.2 Paragraph (1)~~ Buyer.~~

The disclosure may also be made if the delivery claim has already been ~~fulfilled~~ discharged.

~~The Late Seller and the Buyer to whom the delivery claim was disclosed by~~ Eurex Clearing AG shall find a solution with respect to the loss bilaterally. Any claims of such Buyer against Eurex Clearing AG with respect to the loss shall be deemed as discharged.

~~The disclosure shall be processed in accordance with Number 2.2.2 (1) which shall apply accordingly.~~

~~(5) Interest Payments in case of Fixed Income Securities~~

~~If the defaulting Clearing Member does not deliver fixed income Securities in time on which interest payments are payable, Eurex Clearing AG will collect the amount~~

~~of such interest payments from the defaulting Clearing Member at the relevant due date and transfer such amount to the Clearing Member to whom delivery is due.~~

(5) Consequences of a Failure to Deliver Securities for the Buyer

In case of a Failure to Deliver Securities, the following shall apply:

- (i) The Buyer shall not request from Eurex Clearing AG the delivery of the Securities owed under the FWB Buy Transaction unless Eurex Clearing AG has successfully performed a buy-in;
- (ii) Eurex Clearing AG is after performance of a buy-in obliged to deliver the Securities resulting from the buy-in to the Buyer;
- (iii) After performance of a cash settlement, Eurex Clearing AG's delivery obligation of the Securities under the relevant FWB Buy Transaction expires and is replaced by the obligation to pay to the Buyer the determined cash settlement amount.
- (iv) Eurex Clearing AG shall set-off the cash settlement amount to be paid by it with the amount to be paid for the non-delivered Securities under the relevant Allocated FWB Buy Transaction.

(6) Contractual Penalty

- (a) Penalties in respect of a non-delivery of Securities within the scope of the penalty regime of the CSD Regulation a Failure to Deliver Securities

~~In respect of a failure to deliver CSDR Penalty In-Scope Securities-Failure to Deliver Securities~~ the provisions on penalties set out in Chapter I Part 1 Number 1.4.4.2 ~~(2)~~ apply.

- (b) Other Additional penalties in respect of a non-delivery of Securities Failure to Deliver Securities

~~A Clearing Member-Late Seller~~ is obliged to pay a contractual penalty to Eurex Clearing AG and Eurex Clearing AG is obliged to pay a contractual penalty to the relevant ~~other Clearing Member expecting delivery~~ Buyer, if the ~~Clearing Member-Late Seller~~ or Eurex Clearing AG does not deliver ~~Shares and Other Securities on which dividend or bonus payments are payable~~ paid during a Failure to Deliver Securities. This contractual penalty applies regardless of ~~actual damages incurred by whether~~ Eurex Clearing AG or the ~~Clearing Member to whom delivery has not been effected, respectively~~ the relevant Buyer suffer any losses.

This Paragraph (6) (b) shall not apply to the delivery of Securities pursuant to Paragraph (4) (b) or the delivery of ETF shares pursuant to Paragraph (4) (c).

Eurex Clearing AG may waive the ~~assertion-enforcement~~ of contractual penalties in the case of non-delivery of certain Securities. Eurex Clearing AG will inform the Clearing Members thereof by circular.

The ~~assertion-enforcement~~ of the contractual penalty against Eurex Clearing AG by the ~~Clearing Member to whom delivery has not been effected-relevant Buyer~~ must be in written form by using a template accessible on the Eurex Clearing Website, within 30 days following the ~~delivery day-Contractual Settlement Date~~.

The amount of the relevant contractual penalty is calculated using the following criteria:

(aa) For the amount of the contractual penalty owed by the ~~Clearing Member Late Seller~~, the number of Securities due on the ~~delivery day-Contractual Settlement Date~~ is multiplied by the amount equal to 35 per cent of the net dividend. For the amount of the contractual penalty owed by Eurex Clearing AG, the number of Securities due on the ~~delivery day-Contractual Settlement Date~~ is multiplied by the amount equal to 15 per cent of the net dividend. The net dividend is calculated from the dividend due to the shareholder after deduction of payable taxes and duties.

(bb) The calculation of the relevant contractual penalty is made regardless of the delivery of the Securities by the ~~defaulting Clearing Member Late Seller~~ or a ~~replacement purchase and delivery buy-in~~ by Eurex Clearing AG.

(cc) The penalty is charged in the currency of the Securities.

The relevant contractual penalty may only be asserted if the calculation results in an amount in the relevant currency of at least EUR, ~~CHF~~ or GBP 5,000, USD ~~6,000~~, CAD ~~or CHF~~ 7,000, AUD 8,000, PLN ~~20,000~~23,000, DKK ~~38,000~~37,000, NOK ~~40,000~~50,000, SEK ~~48,000~~55,000 or JPY ~~550,000~~700,000.

If the relevant Settlement Location rewinds the Corporate Action being the basis for the relevant dividend or bonus payments, due to whatever reason, Eurex Clearing AG will also rewind any contractual penalties processed in accordance with this Paragraph (b) as the legal basis for the contractual basis ceased to exist. Eurex Clearing AG will only process the rewinding of the contractual penalties until 280 calendar days after the actual payment date of the relevant Corporate Action. With respect to the part of the contractual penalty, which has been transferred by Eurex Clearing AG to the ~~Clearing Member entitled to the delivery-relevant Buyer~~, Eurex Clearing AG shall only be obliged to re-transfer such part of the contractual penalty, if Eurex Clearing AG was able to retrieve such amount from the ~~Clearing Member entitled to the delivery-relevant Buyer~~. If Eurex Clearing AG is not able to retrieve such amount from the ~~Clearing Member entitled to the delivery-relevant Buyer~~, Eurex Clearing AG shall assign

to the Clearing Member, to which the contractual penalty shall be retransferred, with discharging effect any claims Eurex Clearing AG may have against the Clearing Member entitled to the delivery relevant Buyer, after having disclosed its claim for retransfer against the Buyer to the Late Seller.

(c) Consequence of Payment of the Penalty

As far as the Clearing Member obliged to deliver Late Seller has paid to Eurex Clearing AG a contractual penalty, Eurex Clearing AG will not ~~assert damages enforce any losses~~ up to the amount of the penalty. As far as Eurex Clearing AG has paid to the Clearing Member to whom delivery has not been effected relevant Buyer a contractual penalty, such Clearing Member will not ~~assert damages enforce any losses~~ up to the amount of the penalty. The ~~assertion of further damages enforcement of any other losses~~ by Eurex Clearing AG as well as the Clearing Member to whom delivery has not been effected in time relevant Buyer remains unaffected.

2.2.2 Non-Delivery of Rights

If the Clearing Member (such Clearing Member also being a Late Seller) does not deliver rights or rights resulting from Securities to be delivered, with the exception of partial rights pursuant to Number 2.2.3, in time on the delivery day on the Contractual Settlement Date until the respective Settlement Cut-Off Time ("Failure to Deliver Rights"), Eurex Clearing AG will, ~~following the respective shall be entitled, to take the following measures on the earlier of either (i) the expiry of the applicable Settlement Cut-Off Time on the last day of the subscription period, or, if this point in time occurs earlier, the 20th Business Day after the delivery day, take the following measures:~~ on the Business Day before the end of the subscription period, in case there are at least three Business Days between the last trading date and last date of subscription period, (ii) in case the requirements of (i) are not met, the expiry of the applicable Settlement Cut-Off Time on the last day of the subscription period in case of subscription rights traded at FWB:

- (1) Eurex Clearing AG ~~discloses shall disclose~~ its claim for transfer of the rights which have not been delivered in time by the defaulting Clearing Member Late Seller to the Clearing Member Buyer to whom delivery is due to the extent that the number of rights to be delivered by the defaulting Clearing Member Late Seller corresponds to the number of rights to be transferred by Eurex Clearing AG to the Clearing Member Buyer to whom delivery is due.
- (2) The disclosure pursuant to Paragraph (1) is made for the purpose to enable the defaulting Clearing Member Late Seller and the Buyer to enter into an assumption of debt (Section 414 of the German Civil Code) ~~with the Clearing Member to whom delivery is due~~.

A valid assumption of debt in favour of Eurex Clearing AG ~~presupposes that shall~~ only occur when the following requirements are met:

- (i) ~~both relevant Clearing Members agree the Late Seller and the Buyer agreed on a certain specific number of rights that shall be delivered to the Buyer by the defaulting Clearing Member Late Seller instead of Eurex Clearing AG to the Clearing Member to whom delivery is due and that~~
- (ii) ~~the standardised agreement for the assumption of the delivery obligation (“Obligation Assumption Agreement”) made available by Eurex Clearing AG has been signed by both Clearing Members and submitted the Late Seller and the Buyer have entered into and signed an agreement on the assumption of debt in the form as provided by Eurex Clearing AG (“Assumption of Debt Agreement”) and submitted a copy of such agreement to Eurex Clearing AG.~~

~~For the execution of such Obligation Assumption of Debt Agreement, Eurex Clearing AG authorises the Clearing Member to whom delivery is due Buyer to waive Eurex Clearing AG’s claim for the delivery of the rights vis-à-vis the defaulting Clearing Member Late Seller with debt-discharging effect its claim for the delivery of the rights in the number as agreed by both Clearing Members up to a number of rights equivalent to the ones as agreed between the Late Seller and the Buyer under Paragraph (i) as well as all present and future secondary claims in connection therewith.~~

- (3) ~~Eurex Clearing AG will set a time determine a period of no more than 10 Business Days at maximum during which the Obligation Assumption of Debt Agreement must be signed. ~~Both Clearing Members~~ The Late Seller and the Buyer shall submit the signed Obligation Assumption of Debt Agreement to Eurex Clearing AG at the latest until 10:00 CET on the Business Day following the last day of such ~~time~~ period.~~
- (4) ~~As soon as the signed Obligation Assumption of Debt Agreement has been received by Eurex Clearing AG, the obligation of Eurex Clearing AG to deliver the rights to the Clearing Member Buyer to whom delivery is due as well as all present or future secondary claims in connection therewith cease to exist with immediate debt-discharging effect in the number of rights to be transferred as agreed upon ~~by both Clearing Members~~ between the Late Seller and the Buyer under Paragraph (1).~~
- (5) ~~In the case that no Obligation Assumption of Debt Agreement ~~between the respective Clearing Members~~ has been submitted to Eurex Clearing AG within the ~~time period~~ as determined pursuant to Paragraph (3), Eurex Clearing AG will determine a cash settlement with respect to the rights to be delivered by the ~~defaulting Clearing Member Late Seller~~ in accordance with Number 2.2.1 Paragraph (3) (b) and (c) with the provision that the calculated value of the right at the time of the cash settlement shall replace the determined settlement price according to Number 2.2.1 Paragraph 3 (b) (aa) (i).~~
- (6) In case of a Failure to Deliver Rights by the Late Seller, the provisions set out in Number 2.2.1 Paragraph (3) (e) and (5) (i) and (iii) shall apply accordingly.
- (7) Eurex Clearing AG may deviate from the deadlines set in this Number 2.2.2 in accordance with Number 2.2.4.

2.2.3 Non-Delivery of Partial Rights

If the Clearing Member does not deliver partial rights or partial rights resulting from Securities ~~to be delivered~~ in time on the ~~delivery day~~ Contractual Settlement Date, Eurex Clearing AG will, following the respective Settlement Cut-Off Time on the last day of the subscription period, or, if this point in time occurs earlier, the 20th Business Day after the ~~delivery day~~ Contractual Settlement Date, determine a cash settlement in relation to the non-delivered partial rights.

The cash settlement amount is determined on the basis of the price ~~set~~ communicated for the partial right by the Settlement Location on the day on which Eurex Clearing AG determines the cash settlement. Number 2.2.1 Paragraph (3) (b) ~~and (c) and (e) and (5) (i) and (iii)~~ shall apply accordingly.

Eurex Clearing AG may deviate from the deadlines set in this Number 2.2.3 in accordance with Number 2.2.4.

2.2.4 Deviating Timing Provisions, ~~Obligation to Tolerate~~, Costs

At the earliest from the 1st Business Day after the ~~delivery date~~ Contractual Settlement Date, Eurex Clearing AG may, in its reasonable discretion and pursuant to Numbers 2.2.1 to 2.2.3, perform a ~~replacement buy-in~~, a cash settlement or a disclosure if due to extraordinary risks Eurex Clearing AG believes that the collateral deposited with Eurex Clearing AG by the ~~Clearing Member having the delivery obligation~~ Late Seller is no longer sufficient to secure its FWB Sell Transactions or if Eurex Clearing AG, due to other serious reasons, such as a Market Disorder Event, an Impossibility Event or a Force Majeure Event as defined in Chapter I Part 1 Number 13.3.2, deems the performance of the aforementioned measures necessary.

Eurex Clearing AG may in addition deviate from the deadlines set forth in Numbers 2.2.1 to 2.2.3 if compliance with these deadlines would lead to the result that measures pursuant to Numbers 2.2.1 to 2.2.3 cannot be performed or if their performance would cause disproportional effort or costs, or if such deviation is required by other deadlines or by obligations resulting from the Securities.

~~The measures pursuant to Number 2.2.1 to 2.2.4 shall be binding on the Clearing Member to whom delivery has not been made in due time.~~

The ~~defaulting Clearing Member~~ Late Seller is obliged to bear the costs resulting from measures pursuant to Numbers 2.2.1 to 2.2.4.

[...]

2.3 Corporate Actions

- (1) Any Corporate Action carried out in respect of Securities which relate to unperformed FWB Transactions, shall be processed by the relevant Settlement Location in accordance with the applicable rules of the relevant Settlement Location.