

13 Sep 2023
Eurex Clearing

Amendments to the Clearing Conditions of Eurex Clearing AG regarding ISA Direct provisions

Eurex Clearing Circular 059/23 Amendments to the Clearing Conditions of Eurex Clearing AG regarding ISA Direct provisions

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 ISA Direct provisions for the following topics:

- A. Introduction of multiple Clearing Agent relationships for the General ISA Direct Provisions
- B. Introduction of an Automatic Clearing Agent Default Trigger Event for the ISA Direct Indemnified Provisions

The amendments will become effective as of **16 October 2023**.

2. Required action

J. Details

A. Introduction of multiple Clearing Agent relationships for the General ISA Direct Provisions

The amendments to the Clearing Conditions allow ISA Direct Clearing Members the clearing of eligible products under the ISA Direct provision using multiple Clearing Agent relationships.

B. Introduction of an Automatic Clearing Agent Default Trigger Event for the ISA Direct Indemnified Provisions

Implementation of an option whereby the Clearing Agent and the ISA Direct Indemnified Clearing Member can elect an additional default trigger event as an automatic trigger which grants the Clearing Agent in the ISA Direct Indemnified model a termination right to the related ISA Direct Indemnified Clearing Member.

To reflect the changes, the following provisions will be amended as outlined in the Attachments:

- ◆ Chapter I Part 1, Part 6, Part 6 Subpart A and Subpart B of the Clearing Conditions (Attachment 1)
- ◆ Appendix 10 to the Clearing Conditions - Clearing Agreement with a Clearing Agent and an ISA Direct Clearing Member (Attachment 2)
- ◆ Appendix 11 to the Clearing Conditions – Pledge Agreement (Attachment 3)

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 link:

[Rules and Regulations > Eurex Clearing Rules and Regulations > 1. Clearing Conditions](#)

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 I of the Clearing Conditions
- ◆ 2 – Amendments to Appendix 10 to the Clearing Conditions
- ◆ 3 – Amendments to Appendix 11 to the Clearing Conditions

Further information

Recipients: All Clearing Members, ISA Direct Clearing Members, Disclosed Direct Clients of Eurex Clearing AG and vendors

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

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

Regulations > 1. Clearing Conditions

Authorized
by:

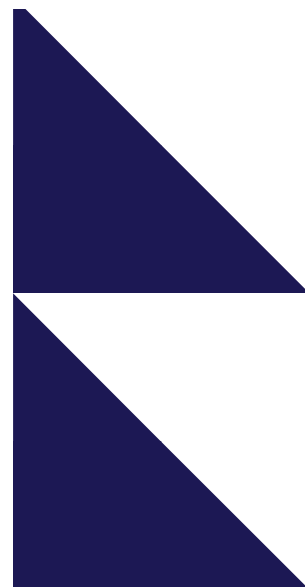
Matthias Graulich

Further information

- [!\[\]\(cdf2842d82858164c68c92720a337fb9_img.jpg\) Attachment 1 to Eurex Clearing Circular 059/23](#)
- [!\[\]\(3973dad7f2f3eafb2c144deb79d5c822_img.jpg\) Attachment 2 to Eurex Clearing Circular 059/23](#)
- [!\[\]\(78688513da7a924039ac16e546d7bf8b_img.jpg\) Attachment 3 to Eurex Clearing Circular 059/23](#)

STIR partnership program

Market-led solution to create an alternative liquidity pool for € short-term interest rate derivatives



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Chapter I of the Clearing Conditions of Eurex Clearing AG

General Provisions

As of 16.10.2023

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED;

DELETIONS ARE CROSED OUT

[...]

Part 1 General Clearing Provisions

[...]

7 Termination Rules with respect to the Clearing Member

[...]

7.5 Default Management Process

(1) Eurex Clearing AG maintains a default management process ("**DMP**") to reduce the risks following a default

- (i) by a Clearing Member or an ISA Direct Clearing Member and the occurrence of ~~in case of a ((i)) Clearing Member, a Termination Event or Insolvency Termination Event resulting in a Termination or ((ii)) an ISA Direct Clearing Member, an ISA Direct Clearing Member Insolvency Termination Event or ISA Direct Clearing Member Termination Event resulting in an~~ ISA Direct Clearing Member Termination (as defined in Part 6 Subpart A Number 10.5), and, in each case, the calculation of one or more Difference Claims, as described in these Clearing Conditions; and

[...]

Part 6 ISA Direct Provisions

[...]

2 For ISA Direct Clearing Members and their Clearing Agents (other than ISA Direct Indemnified Clearing Members and Indemnifying Clearing Agents (both as defined in Subpart B)), the provisions set out in Subpart A (the "**General ISA Direct Provisions**") apply.

[...]

Part 6 Subpart A: General ISA Direct Provisions

2 Admission Criteria; Continuing Obligations

[...]

2.1 ISA Direct Clearing Member

[...]

2.1.3 Use of multiple Clearing Agents by one and the same ISA Direct Clearing Member

One and the same entity may, in the capacity as an ISA Direct Clearing Member, act through more than one Clearing Agent. Such entity shall, in respect of each such Clearing Agent, enter into a separate ISA Direct Clearing Agreement.

2.1.34 Rejection and Termination of ISA Direct Clearing Licenses

[...]

2.1.45 Certain continuing Obligations of ISA Direct Clearing Members

[...]

7 ISA Direct Margin

[...]

7.6 Delivery of Eligible Margin Assets in the form of Securities

[...]

7.6.5 Pursuant to the relevant pledge agreement and subject to the provisions set out therein, each pledge granted by the ISA Direct Clearing Member to Eurex Clearing AG over Securities which are or will be credited to the relevant ISA Direct Pledged Securities Account (or the relevant securities account of the Clearing Agent or a Third Party Account Holder used for purposes of the ISA Direct Provisions) with Clearstream Banking AG, includes a right of Eurex Clearing AG (that is conditional upon the occurrence of an ~~an ISA Direct Clearing Member Termination-Event or an ISA Direct Clearing Member Insolvency Termination Event and an ISA Direct Clearing Member Termination-Date~~) to appropriate one or more of such Securities (the “**Relevant ISA Direct Pledged Securities**”) and to make use of the Relevant ISA Direct Pledged Securities. The following provisions apply with respect to such appropriation and re-use right:

[...]

10 ISA Direct Clearing Member Termination Event

10.1 Suspension of Clearing, Termination

[...]

10.3.1 "ISA Direct Clearing Member Termination- Event" means

- (a) the occurrence of any of the events set out in Part 1 Number 7.2.1 Paragraphs (1) to (11) with respect to the ISA Direct Clearing Member, provided that references therein to the Clearing Member shall be read as references to the ISA Direct Clearing Member;
- (b) the occurrence of any of the events set out in Part 1 Number 7.2.1 Paragraphs (1) to (11) with respect to the ISA Direct Clearing Member acting as Clearing Member under any other Standard Agreement entered into between Eurex Clearing AG and the ISA Direct Clearing Member acting as Clearing Member or ISA Direct Clearing Member,

[...]

An "ISA Direct Clearing Member Default Information Event" occurs if the Clearing Agent notifies Eurex Clearing AG that (i) the ISA Direct Clearing Member ~~has failed to perform~~ is in default of any of its obligations vis-à-vis the Clearing Agent (irrespective of whether such obligations arise under the ISA Direct Clearing Agreement) that the Clearing Agent considers material and/or (ii) an event has occurred which entitles the Clearing Agent to terminate the bilateral agreement between itself and the ISA Direct Clearing Member. Eurex Clearing AG may rely on, and is not obliged to verify the contents of, any such notification from the Clearing Agent.

[...]

10.5 ISA Direct Clearing Member Termination

[...]

- (b) in case of the occurrence of an ISA Direct Clearing Member Insolvency Termination Event, with immediate effect as of the time of the occurrence of such event; ~~or~~
- (c) in case of the occurrence of an Automatic CA Default Trigger Event subject to and in accordance with Subpart B Number 2.7, with immediate effect as of the time of the occurrence of such event; or
- (d) in all other cases, on the date and time specified in the ISA Direct Clearing Member Termination Notice

(the relevant date under (a) to (c) being the "ISA Direct Clearing Member Termination Date" and the relevant time being the "ISA Direct Termination Time").

As soon as reasonably practicable, Eurex Clearing AG shall publish the occurrence of an ISA Direct Clearing Member Termination with respect to the ISA Direct Clearing Member on the Eurex Clearing Website.

[...]

Part 6 Subpart B: ISA Direct Indemnified Provisions

1 ISA Direct Indemnified Clearing License for ISA Direct Indemnified Clearing Members

[...]

~~1.3 Use of multiple Indemnifying Clearing Agents by one and the same ISA Direct Indemnified Clearing Member~~

~~One and the same entity may, in the capacity as an ISA Direct Indemnified Clearing Member, act through more than one Indemnifying Clearing Agent. Such entity shall, in respect of each such Indemnifying Clearing Agent, enter into a separate ISA Direct Clearing Agreement.~~

~~1.34 Continuing Obligations of ISA Direct Indemnified Clearing Members~~

~~[...]~~

2 Indemnifying Clearing Agent; Clearing Agent Indemnity; Representations

[...]

2.6 By entering into the ISA Direct Clearing Agreement and the selection of such option in Clause 1 of Annex A to the ISA Direct Clearing Agreement, the Indemnifying Clearing Agent represents and warrants by way of an independent guarantee and irrespective of fault (*selbstständiges, verschuldensunabhängiges Garantieversprechen*) to Eurex Clearing AG that, following an analysis, it has concluded that (i) the granting of the Clearing Agent Indemnity in favor of Eurex Clearing AG does not trigger any banking license requirement for the applicant for providing guarantee business (*Garantiegeschäft*) pursuant to the German Banking Act (*Kreditwesengesetz*) or (ii) it is exempted from such license requirement or (iii) it meets such license requirement.

2.7 If the Indemnifying Clearing Agent and the ISA Direct Indemnified Clearing Member specified the provisions relating to an “Automatic CA Default Trigger Event” to be applicable in Annex A of the ISA Direct Clearing Agreement, then upon the occurrence of an Automatic CA Default Trigger Event, the ISA Direct Standard Agreement shall terminate with immediate effect, the Clearing of new ISA Direct Transactions of the ISA Direct Clearing Member will be suspended, and Chapter I Part 6 Subpart A Number 10.5 and 10.6 apply.

An **“Automatic CA Default Trigger Event”** shall occur, if and when all of the following conditions have been met:

- (1) The Indemnifying Clearing Agent and the ISA Direct Indemnified Clearing Member have specified the provisions relating to an “Automatic CA Default Trigger Event” to be applicable in Annex A of the ISA Direct Clearing Agreement;
- (2) an ISA Direct Clearing Member Default Information Event has occurred with respect to the ISA Direct Indemnified Clearing Member, and the Indemnifying Clearing Agent has specified in the notice resulting in the occurrence of the ISA Direct Clearing Member Default Information Event that such notice shall likewise result in an Automatic CA Default Trigger Event; and
- (3) the chairman of the Executive Board of Eurex Clearing AG, a member of the Executive Board of Eurex Clearing AG or any other senior personnel of Eurex Clearing AG that Eurex Clearing AG deems to be appropriate for such purpose has, following the receipt of the notice by Eurex Clearing AG pursuant to paragraph (2) above, determined that such notice:
 - (i) is genuine and legally binding for and against the Indemnifying Clearing Agent;
 - (ii) has been issued by the Indemnifying Clearing Agent by duly completing the form provided for such purpose by Eurex Clearing AG; and
 - (iii) has been received through the communication channel prescribed for such purpose by Eurex Clearing AG.

Eurex Clearing AG may rely on, and is not obliged to verify the contents of, any such notice from the Indemnifying Clearing Agent. Eurex Clearing AG shall inform the ISA Direct Indemnified Clearing Member and the Indemnifying Clearing Agent of the occurrence of an Automatic CA Default Trigger Event without undue delay.

[...]

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Appendix 10 to the Clearing Conditions of Eurex Clearing AG:

ISA Direct Clearing Agreement

with a Clearing Agent
and an ISA Direct Clearing Member

As of 16.10.2023



AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED;

DELETIONS ARE CROSED OUT

[...]

AUTHORISED SIGNATURES

to the ISA Direct Clearing Agreement

[...]

Annex A to the ISA Direct Clearing Agreement: Applicable Set of ISA Direct Provisions; Transaction Types included in the Clearing

- 1 Application of Chapter I Part 6 Subpart A as modified by the special provisions set forth in Chapter I Part 6 Subpart ~~Subpart B~~ (ISA Direct Indemnified Provisions)*

[...]

- 2 Application of Chapter I Part 6 Subpart A only (General ISA Direct Provisions)*

[...]

3 Automatic CA Default Trigger Event

- The provisions relating to an "Automatic CA Default Trigger Event" shall be applicable such that the occurrence of an Automatic CA Default Trigger Event shall result in the occurrence of a Termination with respect to the ISA Direct Indemnified Clearing Member, subject to and in accordance with Number 2.7 of Chapter I Part 6 Subpart B of the Clearing Conditions.



The ISA Direct Indemnified Clearing Member acknowledges that if this Number 3 is selected, the Indemnifying Clearing Agent is in a position to trigger an automatic termination and close out of all ISA Direct Transactions and Redelivery Claims of the ISA Direct Indemnified Clearing Member. Eurex Clearing AG may rely on, and is not obliged to verify the contents of, any notification from the Indemnifying Clearing Agent with respect to an Automatic CA Default Trigger Event.

[...]



AUTHORISED SIGNATURES
to Annex A to the ISA Direct Clearing Agreement

[...]

Annex B to the ISA Direct Clearing Agreement: Relevant Funds and Relevant Fund Segments*

[...]

AUTHORISED SIGNATURES
to Annex B to the ISA Direct Clearing Agreement

[...]

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Appendix 11 to the Clearing Conditions for Eurex Clearing AG:

Pledge Agreement

relating to pledges of Eligible Margin Assets in order to provide ISA
Direct Margin in the form of Securities

As of 16.10.2023



AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED;

DELETIONS ARE CROSED OUT

[...]

2 Granting of Pledges

[...]

2.2 Pledges of Securities in German Securities Accounts

[...]

2.2.4 Additional provisions for each of the pledges granted pursuant to Clauses 2.2.1 or 2.2.2

The ISA Direct Clearing Member and Eurex Clearing AG agree that each pledge granted by the ISA Direct Clearing Member to Eurex Clearing AG in accordance with Clause 2.2.1 and 2.2.2 shall include a right of Eurex Clearing AG to appropriate (and to make use of) one or more of the securities which, at the time of the exercise of such appropriation right, are credited to the relevant ISA Direct German Pledged Securities Account, ISA Direct German CmaX Pledged Securities Account or GC Pooling Re-use ISA Direct Pledged Securities Account (the "**Relevant Pledged Securities**"). Such right of Eurex Clearing AG to appropriate (and to make use of) the Relevant Pledged Securities shall be conditional upon the occurrence of an ~~ISA Direct Termination Event or an ISA Direct Insolvency Termination Event~~ and an ISA Direct Clearing Member Termination ~~Date~~ with respect to the ISA Direct Clearing Member.

[...]

[...]



**Schedule 1 –
Pledges relating to ISA Direct Margin
in (non-CmaX and CmaX) Luxembourg Securities Accounts held by the
ISA Direct Clearing Member**

[...]

1 Definitions and Interpretations

1.1 Definitions

[...]

“Enforcement Event” means

- (i) the non-delivery or non-payment of the Relevant Secured Liabilities on the due date of the relevant delivery or payment obligation; or
- (ii) irrespective of, including prior to the occurrence of, any of the events referred to in (i), the occurrence of an ~~ISA Direct Termination Event or an ISA Direct Insolvency Termination Event and an ISA Direct Clearing Member Termination Date~~ with respect to the ISA Direct Clearing Member.

[...]

[...]



**Schedule 2 –
Pledges relating to ISA Direct Margin
in (non-CmaX and CmaX) Luxembourg Securities Accounts held by the
Third Party Pledge Holder¹**

[...]

1 Definitions and Interpretations

1.1 Definitions

[...]

“Enforcement Event” means

- (i) the non-delivery or non-payment of the Relevant Secured Liabilities on the due date of the relevant delivery or payment obligation; or
- (ii) irrespective of, including prior to the occurrence of, any of the events referred to in (i), the occurrence of an ~~ISA Direct Termination Event or an ISA Direct Insolvency Termination Event and an ISA Direct Clearing Member Termination Date~~ with respect to the ISA Direct Clearing Member.

[...]

[...]
