

Eurex Clearing Circular 016/19

Amendments to the Clearing Conditions and FCM Regulations: Introduction of possible actions in case of a market disorder, impossibility and force majeure

Summary

On 25 January 2019, Eurex Clearing AG (Eurex Clearing) published in Circular 007/19 amendments to the Clearing Conditions of Eurex Clearing (Clearing Conditions) and the FCM Regulations of Eurex Clearing (FCM Regulations) introducing possible actions to be taken by Eurex Clearing in case of a market disorder, legal impossibility and force majeure (Force Majeure Clause).

Due to several comments received from Clearing Members and FCM Clearing Members, Eurex Clearing decided to further enhance the Force Majeure Clause in the Clearing Conditions and the FCM Regulations as outlined in this circular.

The amended sections of the Clearing Conditions and the FCM Regulations, as resolved by the Executive Board of Eurex Clearing, are attached to this Circular.

The amendments will come into effect on **11 March 2019**.

The amendments to the Clearing Conditions and the FCM Regulations announced in Circular 007/19 shall not enter into force on 18 February 2019.

Attachments:

1. Amended sections of Chapter I of the Clearing Conditions
2. Amended sections of Chapter I of the FCM Regulations
3. Compare version outlining further amendments to Clearing Conditions after publication of Circular 007/19
4. Compare version outlining further amendments to FCM Regulations after publication of Circular 007/19

Date: 15 February 2019

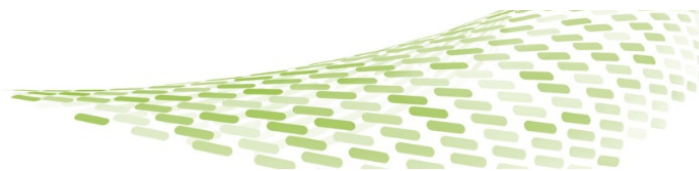
Recipients: All Clearing Members, Basic Clearing Members, FCM Clearing Members, Disclosed Direct Clients of Eurex Clearing AG and vendors

Authorized by:
Thomas Laux

Target group:
• All departments

Related Eurex Clearing circular:
007/19

Contact:
Your Key Account Manager Clearing,
[clearing.services-
admission@eurexclearing.com](mailto:clearing.services-admission@eurexclearing.com)



Amendments to the Clearing Conditions and FCM Regulations: Introduction of possible actions in case of a market disorder, impossibility and force majeure

On 25 January 2019, Eurex Clearing AG (Eurex Clearing) published in Circular 007/19 amendments to the Clearing Conditions of Eurex Clearing (Clearing Conditions) and the FCM Regulations of Eurex Clearing (FCM Regulations) introducing possible actions to be taken by Eurex Clearing in case of a market disorder, legal impossibility and force majeure (Force Majeure Clause).

Due to several comments received from Clearing Members and FCM Clearing Members, Eurex Clearing decided to further enhance the Force Majeure Clause in the Clearing Conditions and the FCM Regulations. Such enhancement includes the following limitations and restrictions for Eurex Clearing:

- Eurex Clearing shall generally contact the relevant Clearing Member/Basic Clearing Member/FCM Clearing Member before taking any actions pursuant to the Force Majeure Clause,
- Actions can only be taken with respect to those Transactions which are actually affected by the Special Event,
- Decision to take any action shall be taken by the Executive Board of Eurex Clearing,
- Clarification regarding the differentiation between Special Events and Termination Events/Insolvency Termination Event, and
- Introduction of objective criteria for the price determination.

To reflect the further amendments to the Force Majeure Clause, the following provisions of the Clearing Conditions and FCM Regulations will be amended:

- Clearing Conditions: Chapter I Part 1 Numbers 13.4, 14.1, 14.2 (as outlined in Attachment 1),
- FCM Regulations: Chapter I Numbers 12.4, 13.1, 13.2 (as outlined in Attachment 2).

The amendments above will become effective on **11 March 2019**.

The amendments to the Clearing Conditions and the FCM Regulations announced in Circular 007/19 shall not enter into force on 18 February 2019.

As of the effective date, the full version of the amended Clearing Conditions and FCM Regulations will be available for download on the Eurex Clearing AG website www.eurexclearing.com under the following link:

[Resources > Rules and Regulations](#)

The amendments to the legal framework of Eurex Clearing AG published by this circular at least fifteen (15) Business Days prior to the effective date indicated herein are deemed accepted by each affected contractual party of Eurex Clearing AG, unless the respective contractual party objects by written notice to Eurex Clearing AG within the first ten (10) Business Days of such period of such period. Any ordinary right of Eurex Clearing AG to terminate the respective contract (including a Clearing Agreement, if applicable) shall remain unaffected.

Unless the context requires otherwise, terms used and not otherwise defined in this circular shall have the meaning ascribed to them in the Clearing Conditions or FCM Clearing Conditions, as applicable.

If you have any questions or need further information please contact your Key Account Manager Clearing, e-mail: clearing.services-admission@eurexclearing.com.

15 February 2019

Chapter I of the Clearing Conditions of Eurex Clearing AG

General Provisions

As of 11.03.2019

THE CLEARING CONDITIONS WILL BE AMENDED.

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

[...]

Chapter I General Provisions

[...]

Part 1 General Clearing Provisions

[...]

13 Termination of Clearing Agreements, Clearing Licenses and Basic Clearing Member Clearing Licenses; Market Disorders Event, Impossibility Event, Force Majeure Event

[...]

13.4 Market Disorders Event, Impossibility Event, Force Majeure Event

13.4.1 If Eurex Clearing AG determines that a Market Disorder Event, an Impossibility Event or a Force Majeure Event (each a "**Special Event**") has occurred, the following shall apply:

(1) Before taking any action pursuant to Paragraph (2) or Paragraph (3) below, Eurex Clearing AG shall

(i) if reasonable in the circumstances considering the nature of the relevant Special Event, consult with the relevant Clearing Member or Basic Clearing

Member to find a mutual solution with respect to the relevant Special Event, and

- (ii) use best efforts to exercise its rights under Paragraph (2) and Paragraph (3) in a way which is proportionate (*verhältnismäßig*) taking into account the interests of the relevant Clearing Member or Basic Clearing Member.

(2) Actions with respect to the Clearing Member or Basic Clearing Member

Eurex Clearing AG may with respect to the existing Transactions entered into between Eurex Clearing AG and the Clearing Member or Basic Clearing Member and which are affected by the Special Event:

- (i) establish corresponding Opposite Transactions and book such Opposite Transactions into the same Transaction Accounts by giving written notice specifying the date and time at which the Opposite Transaction shall be established and booked (“**Special Event Off-Setting Time**”) and settle the relevant existing Transactions against the Opposite Transactions, or
- (ii) take, by giving written notice, any other action Eurex Clearing AG deems necessary to limit any adverse impacts arising from the Special Event for itself and the Clearing Member or Basic Clearing Member and require the Clearing Member or Basic Clearing Member to comply with such action, provided that such action does not provide for a settlement of any existing Transaction entered into between Eurex Clearing AG and the Clearing Member or Basic Clearing Member.

Any decision to take actions pursuant to paragraph (i) and (ii) above shall be taken by the Executive Board of Eurex Clearing AG.

(3) Suspension of Clearing

In case of the occurrence of a Special Event Off-Setting Time, Eurex Clearing AG may with respect to those Transaction Types which are affected by the relevant Special Event suspend or limit the Clearing of new Own Transactions and new Client-Related Transactions of the relevant Clearing Member or Basic Clearing Member.

(4) Information of other third parties

In case of the occurrence of a Special Event Off-Setting Time, Eurex Clearing AG

- (i) shall without undue delay notify BaFin, and
- (ii) may inform the Management Board of the respective Markets, Clearstream Banking AG, Clearstream Banking AG, and SIX SIS AG, the Clearing Agent of the relevant Basic Clearing Member, all affected Disclosed Direct Clients of the relevant Clearing Member, and other market participants and the public,

of any actions taken by Eurex Clearing AG pursuant to this Number 13.4.

(5) Priority of Special Events over Termination Events or Insolvency Termination Event

In case of the occurrence of any event which qualifies as a Special Event, such Special Event can never qualify as a Termination Event or Insolvency Termination Event with respect to the Clearing Member or Basic Clearing Member at the same time. For the avoidance of doubt, if after the occurrence of a Special Event other additional events occur, which qualify as Termination Event or Insolvency Termination Event with respect to the relevant Clearing Member or Basic Clearing Member, Eurex Clearing AG remains entitled to perform its termination rights pursuant to Number 7.

13.4.2 Definitions:

(1) "Market Disorder Event" means, under consideration of all applicable German laws, the occurrence of one of the following events:

- (a) the government of any nation, state or territory or any governmental entity, agency or authority thereof has taken or given notice of its intention to take actions or measures which may have, not only temporarily, a material adverse impact on the Clearing of Transactions, including, but not limited to, the fulfilment of any obligations under any Transaction or any Clearing Agreement; or
- (b) the EU or any international organisations, or any institution or agency thereof, has introduced, varied, terminated or allowed to lapse any provision, rule or order which may have, not only temporarily, a material adverse impact on the Clearing of Transactions, including, but not limited to, the fulfilment of any obligations under any Transaction or any Clearing Agreement.

(2) If, Eurex Clearing AG determines, under consideration of all applicable German laws, that the fulfilment of any obligation under any Transaction or any Clearing Agreement becomes impossible for any reason whatsoever (excluding the occurrence of any Market Disorder Event) ("Impossibility Event").

(3) "Force Majeure Event" (*höhere Gewalt*) means, under consideration of all applicable German laws, any failure or delay, which is not only temporary, in discharging in whole or in part any obligations under any Transaction or any Clearing Agreement by Eurex Clearing AG or the Clearing Member or Basic Clearing Member provided that such failure or delay arises from events which are beyond Eurex Clearing AG's or the Clearing Member's or Basic Clearing Member's reasonable control. Such events may include, without limitation, action of the elements, riot, insurrection, embargos, fire, flood, explosion, war, terrorism, power, communication or mechanical failure, unavailability or restriction of computer or data processing facilities, energy supplies, settlement systems or of bank transfer systems or wires, or any similar event, provided it is beyond Eurex Clearing AG's or the Clearing Member's or Basic Clearing Member's reasonable control.

13.4.3 Consequences of the occurrence of a Special Event Off-Setting Time

(1) If a Special Event Off-Setting Time has occurred, Eurex Clearing AG shall establish Opposite Transactions and book such Opposite Transactions into the same Transaction Accounts of the Clearing Member or Basic Clearing Member on which the relevant Off-Setting Transactions are booked at the Off-Setting Price and settle the open Off-Setting Transactions against the Opposite Transactions.

(2) Definitions

"Opposite Transaction" shall mean a Transaction with terms identical to an Off-Setting Transaction entered into between Eurex Clearing AG and the relevant Clearing Member or Basic Clearing Member except that the Clearing Member or Basic Clearing Member has the opposite position than it has under such Off-Setting Transaction.

"Off-Setting Transactions" means any open Transaction entered into between Eurex Clearing AG and the Clearing Member or Basic Clearing Member which shall be settled against the Opposite Transaction.

"Off-Setting Price" means the last available price of the following prices: (i) the last available settlement price of the relevant Off-Setting Transaction as determined in accordance with the applicable provisions under the Special Clearing Conditions, (ii) the last available market or exchange price of the relevant Off-Setting Transaction, or (iii) the price determined by Eurex Clearing AG on the basis of a model for the valuation of the market or exchange value of the relevant Off-Setting Transaction (which considers market risks and market prospects, *inter alia*, taking into account asset classes, volatility and liquidity).

(3) In addition to the establishment of Opposite Transactions pursuant to paragraph (1), Eurex Clearing AG shall also be entitled to establish Other Opposite Transactions between Eurex Clearing AG and other Clearing Members or other Basic Clearing Members (each an "Other Member") corresponding to the Opposite Transactions established pursuant to paragraph (1) above and book such Other Opposite Transactions into the relevant Transaction Accounts of such Other Member at the Off-Setting Price and settle the relevant open Transactions against the Other Opposite Transactions.

"Other Opposite Transaction" shall mean a Transaction with terms identical to the relevant Opposite Transaction except that the Other Member has the opposite position from the position the Clearing Member or Basic Clearing Member has under the Opposite Transaction.

Eurex Clearing AG shall use best efforts to find a fair and proportionate (*verhältnismäßig*) distribution of the Other Opposite Transactions between all Other Members which have open Transactions in the same Transaction Type of the relevant Off-Setting Transactions considering the interests of the relevant Other Member (including, *inter alia*, (i) the number of Transactions held by such Other Member with respect to the relevant Transaction Type, (ii) the notional amount of Transactions held by the relevant Other Member with respect to the relevant Transaction Type and (iii) the risks inherent in the Transactions held by the relevant Other Member with respect to the relevant Transaction Type.

14 Liabilities, Emergency Actions, Contractual Penalties (*Vertragsstrafen*), Delegation**14.1 Liability, Emergency Actions**

[...]

14.1.4 Neither Eurex Clearing AG nor the Clearing Members or Basic Clearing Members shall not be liable for damages arising out of a business disruption as a result of a Force Majeure Event ~~force majeure~~, riots, events of war and natural events or natural phenomena, or as a result of other events outside the control of Eurex Clearing AG (e.g. strikes, lock-outs, traffic blocks, disruptions of supply chains) or Market Disorder Event, events which occur as a result of actions of German or foreign governmental authorities.

[...]

14.2 Disciplinary Procedures; Contractual Penalties (*Vertragsstrafen*)

[...]

14.2.2 If a Termination Event pursuant to Number 7.2.1 Paragraph (1) or a Basic Clearing Member Termination Event pursuant to Part 6 Number 10 in conjunction with Number 7.2.1 Paragraph (1) (applied *mutatis mutandis*) occurs or in the event of a failure to deliver Securities or other assets or a failure to provide any cash amount where a Physical Settlement shall occur in accordance with the Special Clearing Provisions – irrespective of whether Eurex Clearing AG has suffered any damage – unless such failure to deliver Securities or other assets or such failure to provide a cash amount results from a Force Majeure Event ~~force majeure~~ (~~höhere Gewalt~~) and/or a Market Disorder Event ~~general market or system disruption that is outside the control of the Clearing Member or Basic Clearing Member~~, the Clearing Member or Basic Clearing Member shall pay, in accordance with the instructions received from Eurex Clearing AG, a contractual penalty in the amount of 0.025 per cent of the relevant unpaid due amount, but no less than EUR 2,500 – or the corresponding equivalent in any other Clearing Currency as determined by Eurex Clearing AG – per calendar day, however, no more than EUR 25,000 or the corresponding equivalent in any other Clearing Currency as determined by Eurex Clearing AG. If the amount calculated from the above percentage exceeds EUR 25,000, the amount of the contractual penalty shall – notwithstanding the provisions in Sentence 1 – be calculated according to a percentage of the relevant unpaid due amount, such percentage having been fixed and notified in advance by Eurex Clearing AG. Such percentage shall be based on the effective overnight interest rate applicable to the relevant Clearing Currency. The right of Eurex Clearing AG to claim further damages and/or default interest shall remain unaffected.

[...]

* * *

Chapter I: Clearing Model Related Provisions

FCM Regulations of Eurex Clearing AG

As of 11.03.2019

Attachment 2 to Eurex Clearing circular 016/19	Eurex05e
FCM Regulations of Eurex Clearing AG	As of 11.03.2019
	Page 2
Chapter I Clearing Model Related Provisions	

THE FCM CLEARING CONDITIONS WILL BE AMENDED.

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

Clearing Model Related Provisions

[...]

12 **Termination of Clearing Agreements and Clearing Licenses; Market Disorders Event, Impossibility Event, Force Majeure Event**

[...]

12.4 Market Disorders Event, Impossibility Event, Force Majeure Event

12.4.1 If Eurex Clearing AG determines that a Market Disorder Event, an Impossibility Event or a Force Majeure Event (each an "**Special Event**") has occurred, the following shall occur:

- (1) Before taking any action pursuant to Paragraph (2) or Paragraph (3) below, Eurex Clearing AG shall
 - (i) if reasonable in the circumstances considering the nature of the relevant Special Event, consult with the relevant FCM Clearing Member to find a mutual solution with respect to the relevant Special Event, and
 - (ii) use best efforts to exercise its rights under Paragraph (2) and Paragraph (3) in a way which is proportionate (*verhältnismäßig*) taking into account the interests of the relevant FCM Clearing Member.

- (2) Actions with respect to the FCM Clearing Member

Eurex Clearing may with respect to the existing Swap Transactions entered into between Eurex Clearing AG and the FCM Clearing Member (including Swap Transactions entered into as FCM Client Transactions) and which are affected by the Special Event:

Attachment 2 to Eurex Clearing circular 016/19	Eurex05e
FCM Regulations of Eurex Clearing AG	As of 11.03.2019
	Page 3
Chapter I Clearing Model Related Provisions	

- (i) establish corresponding Opposite Transactions and book such Opposite Transactions into the same FCM Clearing Member Own Transaction Account or FCM Client Transaction Account by giving written notice specifying the date and time at which the Opposite Transaction shall be established and booked (“**Special Event Off-Setting Time**”) and settle the relevant existing Swap Transaction against the Opposite Transaction, or
- (ii) take, by giving written notice, any other action Eurex Clearing AG deems necessary to limit any adverse impacts arising from the Special Event for itself and the FCM Clearing Member and require the FCM Clearing Member to comply with such action, provided that such action does not provide for a settlement of any existing Swap Transaction entered into between Eurex Clearing AG and the FCM Clearing Member.

Any decision to take actions pursuant to paragraph (i) and (ii) above shall be taken by the Executive Board of Eurex Clearing AG.

(3) Suspension of Clearing.

In case of the occurrence of a Special Event Off-Setting Time, Eurex Clearing AG may with respect to those Swap Transaction Types which are affected by the relevant Special Event suspend or limit the clearing of new Own Transactions and new FCM Client Transactions of the relevant FCM Clearing Member.

(4) Information of third parties

In case of the occurrence of a Special Event Off-Setting Time, Eurex Clearing AG

- (i) shall without undue delay notify the CFTC, and
- (ii) may inform the Management Board of Clearstream Banking AG, all affected FCM Clients of the relevant FCM Clearing Member; and other market participants and the public,

of any actions taken by Eurex Clearing AG pursuant to this Number 13.4.

(5) Priority of Special Events over Termination Events or Insolvency Termination Event

In case of the occurrence of any event which qualifies as a Special Event, such Special Event can never qualify as a Termination Event or Insolvency Termination Event with respect to the FCM Clearing Member at the same time. For the avoidance of doubt, if after the occurrence of a Special Event other additional events occur, which qualify as Termination Event or Insolvency Termination Event with respect to the relevant FCM Clearing Member, Eurex Clearing AG remains entitled to perform its termination rights pursuant to Number 9.

12.4.2 Definitions:

- (1) **"Market Disorder Event"** means one of the following events:

Attachment 2 to Eurex Clearing circular 016/19	Eurex05e
FCM Regulations of Eurex Clearing AG	As of 11.03.2019
	Page 4
Chapter I Clearing Model Related Provisions	

- (a) the government of any nation, state or territory or any governmental entity, agency or authority thereof has taken or given notice of its intention to take actions or measures which may have, not only temporarily, an material adverse impact on the Clearing of Swap Transactions, including, but not limited to, the fulfilment of any obligations under any Swap Transaction or the FCM Clearing Agreement; or
- (b) the EU or any international organisations, or any institution or agency thereof, has introduced, varied, terminated or allowed to lapse any provision, rule or order which may have, not only temporarily, a material adverse impact on the Clearing of Swap Transactions, including, but not limited to, the fulfilment of any obligations under any Swap Transaction or the FCM Clearing Agreement.
- (2) If, Eurex Clearing AG determines that the fulfillment of any obligation under any Swap Transaction or the FCM Clearing Agreement becomes impossible for any reason whatsoever (excluding the occurrence of any Market Disorder Event) ("**Impossibility Event**").
- (3) "**Force Majeure Event**" means any failure or delay, which is not only temporary, in discharging in whole or in part any obligations under any Swap Transaction or the FCM Clearing Agreement by Eurex Clearing AG or the FCM Clearing Member provided that such failure or delay arises from events which are beyond Eurex Clearing AG's or the FCM Clearing Member's reasonable control. Such events may include, without limitation, action of the elements, riot, insurrection, embargos, fire, flood, explosion, war, terrorism, power, communication or mechanical failure, unavailability or restriction of computer or data processing facilities, energy supplies, settlement systems or of bank transfer systems or wires, or any similar event, provided it is beyond Eurex Clearing AG's or the FCM Clearing Member's reasonable control.

12.4.3 Consequences of the occurrence of a Special Event Off-Setting Time

- (1) If a Special Event Off-Setting Time has occurred, Eurex Clearing AG shall establish Opposite Transactions and book such Opposite Transactions into the same FCM Clearing Member Own Transaction Account or FCM Client Transaction Account of the FCM Clearing Member on which the relevant Off-Setting Transactions are booked at the Off-Setting Price and settle the open Off-Setting Transactions against the Opposite Transactions.
- (2) Definitions
- "**Opposite Transaction**" shall mean a Swap Transaction with terms identical to an Off-Setting Transaction entered into between Eurex Clearing AG and the relevant FCM Clearing Member except that the FCM Clearing Member has the opposite position than it has under such Off-Setting Transaction.

Attachment 2 to Eurex Clearing circular 016/19	Eurex05e
FCM Regulations of Eurex Clearing AG	As of 11.03.2019
	Page 5
Chapter I Clearing Model Related Provisions	

"Off-Setting Transactions" means any open Swap Transaction entered into between Eurex Clearing AG and the FCM Clearing Member which shall be settled against the Opposite Transaction.

"Off-Setting Price" means the last available price of the following prices: (i) the last available settlement price of the relevant Off-Setting Transaction as determined in accordance with the applicable provisions under the Special Conditions, (ii) the last available market or exchange price of the relevant Off-Setting Transaction, or (iii) the price determined by Eurex Clearing AG on the basis of a model for the valuation of the market or exchange value of the relevant Off-Setting Transaction (which considers market risks and market prospects, *inter alia*, taking into account asset classes, volatility and liquidity).

- (3) In addition to the establishment of Opposite Transactions pursuant to paragraph (1), Eurex Clearing AG shall also be entitled to establish Other Opposite Transactions between Eurex Clearing AG and other FCM Clearing Members (each an **"Other FCM Clearing Members"**) corresponding to the Opposite Transactions established pursuant to paragraph (1) above and book such Other Opposite Transactions into the relevant FCM Clearing Member Own Transaction Account or FCM Client Transaction Account of such Other FCM Clearing Member at the Off-Setting Price and settle the relevant open Swap Transactions against the Other Opposite Transactions.

"Other Opposite Transaction" shall mean a Swap Transaction with terms identical to the relevant Opposite Transaction except that the Other FCM Clearing Member has the opposite position from the position the FCM Clearing Member has under the Opposite Transaction.

Eurex Clearing AG shall use best efforts to find a fair and proportionate distribution of the Other Opposite Transactions between all Other FCM Clearing Members which have open Swap Transactions in the same Swap Transaction Type of the relevant Off-Setting Transactions considering all interests of the relevant Other FCM Clearing Member (including, *inter alia*, (i) the number of Swap Transactions held by such Other FCM Clearing Member with respect to the relevant Swap Transaction Type, (ii) the notional amount of Swap Transactions held by the relevant Other FCM Clearing Member with respect to the relevant Swap Transaction Type and (iii) the risks inherent in the Swap Transactions held by the relevant Other FCM Clearing Member with respect to the relevant Swap Transaction Type.

[...]

13 Liabilities, Indemnification, Emergency Actions, Contractual Penalties, Delegation

13.1 Liability, Indemnification, Emergency Actions

[...]

Attachment 2 to Eurex Clearing circular 016/19	Eurex05e
FCM Regulations of Eurex Clearing AG	As of 11.03.2019
	Page 6
Chapter I Clearing Model Related Provisions	

13.1.5 Neither Eurex Clearing AG nor the FCM Clearing Member shall not be liable for damages arising out of a business disruption as a result of Force Majeure Event or Market Disorder Event. ~~force majeure, riots, events of war and natural events or natural phenomena, or as a result of other events outside the control of Eurex Clearing AG (e.g., strikes, lock-outs, traffic blocks, disruptions of supply chains) or events which occur as a result of actions of German or foreign governmental authorities.~~

13.2 **Disciplinary Procedures; Contractual Penalties**

[...]

13.2.2 If a Termination Event pursuant to Number 9.2.1 Paragraph (1) (a) (Failure to Pay) occurs or in the event of a failure to deliver securities or other assets or a failure to provide any cash amount where a Physical Settlement shall occur in accordance with the Special Provisions – irrespective of whether Eurex Clearing AG has suffered any damage – unless such failure to deliver securities or other assets or such failure to provide a cash amount results from a Force Majeure Event ~~force majeure~~ and/or a Market Disorder Event ~~general market or system disruption that is outside the control of the FCM Clearing Member~~, the FCM Clearing Member shall pay, in accordance with the instructions received from Eurex Clearing AG, a contractual penalty in the amount of 0.025 per cent of the relevant unpaid due amount, but no less than EUR 2,500 – or the corresponding equivalent in any other Clearing Currency as determined by Eurex Clearing AG – per calendar day, however, no more than EUR 25,000 or the corresponding equivalent in any other Clearing Currency as determined by Eurex Clearing AG. If the amount calculated from the above percentage exceeds EUR 25,000, the amount of the contractual penalty shall – notwithstanding the provisions in Sentence 1 – be calculated according to a percentage of the relevant unpaid due amount, such percentage having been fixed and notified in advance by Eurex Clearing AG. Such percentage shall be based on the effective overnight interest rate applicable to the relevant Clearing Currency. The right of Eurex Clearing AG to claim further damages and/or default interest shall remain unaffected.

[...]

Chapter I of the Clearing Conditions of Eurex Clearing AG

General Provisions

As of ~~18.02~~11.03.2019

THE CLEARING CONDITIONS WILL BE AMENDED.

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

[...]

Chapter I General Provisions

[...]

Part 1 General Clearing Provisions

[...]13 **Termination of Clearing Agreements, Clearing Licenses and Basic Clearing Member Clearing Licenses; Market Disorders Event, Impossibility Event, Force Majeure Event**

[...]

13.4 **Market Disorders Event, Impossibility Event, Force Majeure Event**

13.4.1 If Eurex Clearing AG determines that a Market Disorder Event, an Impossibility Event or a Force Majeure Event (each a "**Special Event**") has occurred, the following shall ~~occur~~ apply:

~~(1)~~ Before taking any action pursuant to Paragraph (2) or Paragraph (3) below, Eurex Clearing AG shall

(i) if reaonable in the circumstances considering the nature of the relevant Special Event, consult with the relevant Clearing Member or Basic Clearing

Clearing Conditions of Eurex Clearing AG

Member to find a mutual solution with respect to the relevant Special Event, and

- (ii) use best efforts to exercise its rights under Paragraph (2) and Paragraph (3) in a way which is proportionate (*verhältnismäßig*) taking into account the interests of the relevant Clearing Member or Basic Clearing Member.

(2) Actions with respect to the Clearing Member or Basic Clearing Member

Eurex Clearing AG may

- (i) take any actions or measures Eurex Clearing AG may with respect to the existing Transactions entered into between Eurex Clearing AG and the Clearing Member or Basic Clearing Member and which are affected by the Special Event:

- (i) establish corresponding Opposite Transactions and book such Opposite Transactions into the same Transaction Accounts by giving written notice specifying the date and time at which the Opposite Transaction shall be established and booked ("**Special Event Off-Setting Time**") and settle the relevant existing Transactions against the Opposite Transactions, or
- (ii) take, by giving written notice, any other action Eurex Clearing AG deems necessary to limit any adverse impacts arising from the Special Event for itself and the Clearing Member or Basic Clearing Member and require the Clearing Member or Basic Clearing Member by giving written notice to comply with such action, provided that such action does not provide for a settlement of any directions or orders issued by existing Transaction entered into between Eurex Clearing AG in this regard; and the Clearing Member or Basic Clearing Member.
- (ii) settle in cash some or all Transactions entered into between Eurex Clearing AG and the Clearing Member or Basic Clearing Member by giving written notice to such Clearing Member or Basic Clearing Member specifying the date ("**Special Event Cash Settlement Date**") and the time ("**Special Event Cash Settlement Time**") at which the cash settlement of the Transactions shall become effective and specifying the Transactions which shall be settled in cash ("**Cash Settlement Transactions**"); or
- (iii) determine some or all Transactions entered into between Eurex Clearing AG and the Clearing Member or Basic Clearing Member ("**Special Event Off-Setting Transactions**") and establish with respect to such Special Event Off-Setting Transactions corresponding Opposite Contracts, book such Opposite Transactions to the same Transaction Accounts on which the corresponding Special Event Off-Setting Transactions are booked and settle the open Special Event Off-Setting Transactions against the Opposite Transactions by giving written notice to such Clearing Member or Basic Clearing Member specifying the Special Event Off-Setting Transactions and the date ("**Special Event Off-Setting Date**") at which the Opposite Transaction shall be established and booked into the relevant Transaction Account.

~~(2)~~ Any decision to take actions pursuant to paragraph (i) and (ii) above shall be taken by the Executive Board of Eurex Clearing AG.

(3) Suspension of Clearing

In case of the occurrence of a Special Event ~~Cash Settlement Time or Special Event Off-Setting Date~~Time, Eurex Clearing AG may with respect to those Transaction Types which are affected by the relevant Special Event suspend or limit the Clearing of new Own Transactions and new Client-Related Transactions of the relevant Clearing Member or Basic Clearing Member.

(34) Information of other third parties

In case of the occurrence of a Special Event ~~Cash Settlement Time or Special Event Off-Setting Date~~Time, Eurex Clearing AG

- (i) shall without undue delay notify BaFin, and
- (ii) may inform the Management Board of the respective Markets, Clearstream Banking AG, Clearstream Banking AG, and SIX SIS AG, the Clearing Agent of the relevant Basic Clearing Member, all affected Disclosed Direct Clients of the relevant Clearing Member, and other market participants and the public,

of any actions taken by Eurex Clearing AG pursuant to this Number 13.4.

(5) Priority of Special Events over Termination Events or Insolvency Termination Event

In case of the occurrence of any event which qualifies as a Special Event, such Special Event can never qualify as a Termination Event or Insolvency Termination Event with respect to the Clearing Member or Basic Clearing Member at the same time. For the avoidance of doubt, if after the occurrence of a Special Event other additional events occur, which qualify as Termination Event or Insolvency Termination Event with respect to the relevant Clearing Member or Basic Clearing Member, Eurex Clearing AG remains entitled to perform its termination rights pursuant to Number 7.

13.4.2 Definitions:

- (1) **"Market Disorder Event"** means, under consideration of all applicable German laws, the occurrence of one of the following events:
 - (a) the government of any nation, state or territory or any governmental entity, agency or authority thereof has taken or given notice of its intention to take actions or measures which may have, not only temporarily, a material adverse impact on the Clearing of Transactions, including, but not limited to, the fulfilment of any obligations under any Transaction or any Clearing Agreement; or
 - (b) the EU or any international organisations, or any institution or agency thereof, has introduced, varied, terminated or allowed to lapse any provision, rule or order which may have, not only temporarily, a material adverse

impact on the Clearing of Transactions, including, but not limited to, the fulfilment of any obligations under any Transaction or any Clearing Agreement.

- (2) If, Eurex Clearing AG determines, under consideration of all applicable German laws, that the fulfilment of any obligation under any Transaction or any Clearing Agreement becomes impossible for any reason whatsoever (excluding the occurrence of any Market Disorder Event) ("**Impossibility Event**").
- (3) "**Force Majeure Event**" ~~means~~ (höhere Gewalt) means, under consideration of all applicable German laws, any failure or delay, which is not only temporary, in discharging in whole or in part any obligations under any Transaction or any Clearing Agreement by Eurex Clearing AG or the Clearing Member or Basic Clearing Member provided that such failure or delay arises from events which are beyond Eurex Clearing AG's or the Clearing Member's or Basic Clearing Member's reasonable control. Such events may include, without limitation, action of the elements, riot, insurrection, embargos, fire, flood, explosion, war, terrorism, power, communication or mechanical failure, unavailability or restriction of computer or data processing facilities, energy supplies, settlement systems or of bank transfer systems or wires, or any similar event, provided it is beyond Eurex Clearing AG's or the Clearing Member's or Basic Clearing Member's reasonable control.

13.4.3 ~~Consequences of the occurrence of a Special Event Cash Settlement~~ Off-Setting Time

~~If a Special Event Cash Settlement Time has occurred, all current and future primary obligations (including payment and delivery obligations) of each party under the relevant Cash Settlement Transactions and all Redelivery Claims relating to the Variation Margin with respect to the relevant Cash Settlement Transactions shall expire (auflösende Bedingung) as of the Special Event Cash Settlement Time and shall no longer be required to be performed by the relevant obligor. Further, all due but unsatisfied obligations to deliver Variation Margin with respect to the relevant Cash Settlement Transactions shall expire (auflösende Bedingung) as of the Special Event Cash Settlement Time. The expiration affects all claims arising from the relevant Cash Settlement Transactions independently of the time they came into existence or would have come into existence otherwise. These expired obligations under the relevant Cash Settlement Transactions are reflected by the Special Event Cash Settlement Amount.~~

- ~~(1) The Special Event Cash Settlement Amount shall be determined by Eurex Clearing AG on the Special Event Cash Settlement Date for each Cash Settlement Transaction separately. "**Special Event Cash Settlement Amount**" means, with respect to the relevant Cash Settlement Transaction, the price which corresponds to the most recent price of the following prices: the last available settlement price (if any), the last available market price (if any), or a price determined by Eurex Clearing AG.~~
- ~~(2) Each Special Event Cash Settlement Amount shall become unconditional and immediately due in the Clearing Currency as of the end of the Special Event Cash Settlement Date.~~

- (3) ~~The Special Event Cash Settlement Amount shall (i) if it is a positive figure for Eurex Clearing AG, be owed to it by the Clearing Member or Basic Clearing Member, as relevant, or (ii) if it is a negative figure for Eurex Clearing AG, be owed by it to the Clearing Member or Basic Clearing Member, as relevant.~~
- (4) ~~Eurex Clearing AG shall notify the Special Event Cash Settlement Amount to the Clearing Member or the relevant Basic Clearing Member (and its Clearing Agent) and, where applicable, to the Clearing Member's ICM Clients as soon as reasonably practicable, together with reasonable detail regarding the data and information forming the basis of the determination.~~

13.4.4 ~~Consequences of the occurrence of a Special Event Off-Setting Date~~

- (1) ~~(1) If a Special Event Off-Setting Time has occurred, Eurex Clearing AG shall establish Opposite Transactions and book such Opposite Transactions into the same Transaction Accounts of the Clearing Member or Basic Clearing Member on which the relevant Off-Setting Transactions are booked at the Off-Setting Price and settle the open Off-Setting Transactions against the Opposite Transactions.~~

(2) Definitions

"Opposite Transaction" shall mean a Transaction with terms identical to the relevant ~~Special Event~~ Off-Setting Transaction entered into between Eurex Clearing AG and the relevant Clearing Member or Basic Clearing Member except that the Clearing Member or Basic Clearing Member has the opposite position than it has under the relevant Special Events such Off-Setting Transaction.

"Off-Setting Transactions" means any open Transaction-

- (2) ~~The Opposite entered into between Eurex Clearing AG and the Clearing Member or Basic Clearing Member which shall be settled against the Opposite Transaction shall be booked into.~~

"Off-Setting Price" means the relevant Transaction Account at a price which corresponds to the most recent ~~last available~~ last available price of the following ~~following~~ prices: (i) the last available settlement price of the relevant ~~Special Event Off-Setting~~ Off-Setting Transaction as determined in accordance with the applicable provisions under the Special Clearing Conditions, (ii) the last available market or exchange price of the relevant Off-Setting Transaction (if any), the last available, or (iii) the price determined by Eurex Clearing AG on the basis of a model for the valuation of the market ~~price or exchange value~~ price or exchange value of the relevant ~~Special Event Off-Setting Transaction (if any), which considers market risks and market prospects, inter alia, taking into account asset classes, volatility and liquidity).~~

- (3) In addition to the establishment of Opposite Transactions pursuant to paragraph (1), Eurex Clearing AG shall also be entitled to establish Other Opposite Transactions between Eurex Clearing AG and other Clearing Members or other Basic Clearing Members (each an "Other Member") corresponding to the Opposite Transactions established pursuant to paragraph (1) above and book such Other Opposite Transactions into the relevant Transaction Accounts of such Other

Member at the Off-Setting Price and settle the relevant open Transactions against the Other Opposite Transactions.

"Other Opposite Transaction" shall mean a Transaction with terms identical to the relevant Opposite Transaction except that the Other Member has the opposite position from the position the Clearing Member or Basic Clearing Member has under the Opposite Transaction.

Eurex Clearing AG shall use best efforts to find a fair and proportionate (*verhältnismäßig*) distribution of the Other Opposite Transactions between all Other Members which have open Transactions in the same Transaction Type of the relevant Off-Setting Transactions considering the interests of the relevant Other Member (including, *inter alia*, (i) the number of Transactions held by such Other Member with respect to the relevant Transaction Type, (ii) the notional amount of Transactions held by the relevant Other Member with respect to the relevant Transaction Type and (iii) the risks inherent in the Transactions held by the relevant Other Member with respect to the relevant Transaction Type.

[...]

* * *

Chapter I: Clearing Model Related Provisions

FCM Regulations of Eurex Clearing AG

As of ~~18-02~~11.03.2019

Attachment 4 to Eurex Clearing circular 016/19	Eurex05e
FCM Regulations of Eurex Clearing AG	As of 18.02 11.03.2019
	Page 2
Chapter I Clearing Model Related Provisions	

THE FCM CLEARING CONDITIONS WILL BE AMENDED.

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

Clearing Model Related Provisions

[...]

12 Termination of Clearing Agreements and Clearing Licenses; Market Disorders Event, Impossibility Event, Force Majeure Event

[...]

12.4 Market Disorders Event, Impossibility Event, Force Majeure Event

12.4.1 If Eurex Clearing AG determines that a Market Disorder Event, an Impossibility Event or a Force Majeure Event (each an "**Special Event**") has occurred, the following shall occur:

~~(1)~~ Before taking any action pursuant to Paragraph (2) or Paragraph (3) below, Eurex Clearing AG shall

(i) if reasonable in the circumstances considering the nature of the relevant Special Event, consult with the relevant FCM Clearing Member to find a mutual solution with respect to the relevant Special Event, and

(ii) use best efforts to exercise its rights under Paragraph (2) and Paragraph (3) in a way which is proportionate (*verhältnismäßig*) taking into account the interests of the relevant FCM Clearing Member.

~~(2)~~ Actions with respect to the FCM Clearing Member

~~Eurex Clearing may~~ _____

~~(i)~~ Eurex Clearing may with respect to the existing Swap Transactions entered into between Eurex Clearing AG and the FCM Clearing Member (including Swap

Transactions entered into as FCM Client Transactions) and which are affected by the Special Event:

- (i) establish corresponding Opposite Transactions and book such Opposite Transactions into the same FCM Clearing Member Own Transaction Account or FCM Client Transaction Account by giving written notice specifying the date and time at which the Opposite Transaction shall be established and booked ("**Special Event Off-Setting Time**") and settle the relevant existing Swap Transaction against the Opposite Transaction, or
- (ii) take, by giving written notice, any actions or measures other action Eurex Clearing AG deems necessary to limit any adverse impacts arising from the Special Event for itself and the FCM Clearing Member and require the FCM Clearing Member by giving written notice to comply with such action, provided that such action does not provide for a settlement of any directions or orders issued by existing Swap Transaction entered into between Eurex Clearing AG in this regard; or and the FCM Clearing Member.
- (ii) settle in cash some or all Swap Transactions entered into between Eurex Clearing AG and the FCM Clearing Member by giving written notice to such FCM Clearing Member specifying the date ("**Special Event Cash Settlement Date**") and the time ("**Special Event Cash Settlement Time**") on which the close-out and the cash settlement of the Swap Transactions shall become effective and specifying the Transactions which shall be settled in cash ("**Cash Settlement Transactions**"), or
- (iii) determine some or all Swap Transactions entered into between Eurex Clearing AG and the FCM Clearing Member ("**Special Event Off-Setting Transactions**") and establish with respect to such Special Event Off-Setting Transactions corresponding Opposite Transactions, book such Opposite Transactions to the same Transaction Accounts on which the corresponding Special Event Off-Setting Transactions are booked and settle the open Special Event Off-Setting Transactions against the Opposite Transactions by giving written notice to such FCM Clearing Member specifying the Special Event Off-Setting Transactions and the date ("**Special Event Off-Setting Date**") on which the Opposite Transaction shall be established and booked into the relevant Transaction Account.

(2) Any decision to take actions pursuant to paragraph (i) and (ii) above shall be taken by the Executive Board of Eurex Clearing AG.

(3) Suspension of Clearing.

In case of the occurrence of a Special Event ~~Cash Settlement Time~~ or ~~Special Event Off-Setting Date~~ Time, Eurex Clearing AG may with respect to those Swap Transaction Types which are affected by the relevant Special Event suspend or limit the clearing of new Own Transactions and new FCM Client Transactions of the relevant FCM Clearing Member.

Attachment 4 to Eurex Clearing circular 016/19	Eurex05e
FCM Regulations of Eurex Clearing AG	As of 18.02.2011 11.03.2019
	Page 4
Chapter I Clearing Model Related Provisions	

~~(3) Notification~~ (4) Information of third parties

In case of the occurrence of a Special Event ~~Cash Settlement Time or Special Event Off-Setting Date~~ Time, Eurex Clearing AG

- (i) shall without undue delay notify the CFTC, and
- (ii) may inform the Management Board of Clearstream Banking AG, all affected FCM Clients of the relevant FCM Clearing Member; and other market participants and the public,

of any actions taken by Eurex Clearing AG pursuant to this Number 13.4.

(5) Priority of Special Events over Termination Events or Insolvency Termination Event

In case of the occurrence of any event which qualifies as a Special Event, such Special Event can never qualify as a Termination Event or Insolvency Termination Event with respect to the FCM Clearing Member at the same time. For the avoidance of doubt, if after the occurrence of a Special Event other additional events occur, which qualify as Termination Event or Insolvency Termination Event with respect to the relevant FCM Clearing Member, Eurex Clearing AG remains entitled to perform its termination rights pursuant to Number 9.

12.4.2 Definitions:

- (1) **"Market Disorder Event"** means one of the following events:
 - (a) the government of any nation, state or territory or any governmental entity, agency or authority thereof has taken or given notice of its intention to take actions or measures which may have, not only temporarily, an material adverse impact on the Clearing of Swap Transactions, including, but not limited to, the fulfilment of any obligations under any Swap Transaction or the FCM Clearing Agreement; or
 - (b) the EU or any international organisations, or any institution or agency thereof, has introduced, varied, terminated or allowed to lapse any provision, rule or order which may have, not only temporarily, a material adverse impact on the Clearing of Swap Transactions, including, but not limited to, the fulfilment of any obligations under any Swap Transaction or the FCM Clearing Agreement.
- (2) If, Eurex Clearing AG determines that the fulfillment of any obligation under any Swap Transaction or the FCM Clearing Agreement becomes impossible for any reason whatsoever (excluding the occurrence of any Market Disorder Event) ("**Impossibility Event**").
- (3) **"Force Majeure Event"** means any failure or delay, which is not only temporary, in discharging in whole or in part any obligations under any Swap Transaction or the FCM Clearing Agreement by Eurex Clearing AG or the FCM Clearing Member provided that such failure or delay arises from events which are beyond Eurex

Clearing AG's or the FCM Clearing Member's reasonable control. Such events may include, without limitation, action of the elements, riot, insurrection, embargos, fire, flood, explosion, war, terrorism, power, communication or mechanical failure, unavailability or restriction of computer or data processing facilities, energy supplies, settlement systems or of bank transfer systems or wires, or any similar event, provided it is beyond Eurex Clearing AG's or the FCM Clearing Member's reasonable control.

12.4.3 **Consequences of the occurrence of a Special Event Cash Settlement**~~Off-Setting Time~~

~~(1) If a Special Event Cash Settlement Off-Setting Time has occurred, all current and future primary obligations (including payment and delivery obligations) of each party under the relevant Cash Settlement Transactions shall expire as of the Special Event Cash Settlement Time and shall no longer be required to be performed by the relevant obligor. The expiration affects all claims arising from the relevant Cash Settlement Transactions independently of the time they came into existence or would have come into existence otherwise. These expired obligations under the relevant Cash Settlement Transactions are reflected by Special Event Cash Settlement Amount.~~

~~(1) The Special Event Cash Settlement Amount shall be determined by Eurex Clearing AG on the Special Event Cash Settlement Date for each Cash Settlement Transaction separately. "Special Event Cash Settlement Amount" means, with respect to the relevant Cash Settlement Transaction, the price which corresponds to the most recent price of the following prices: the last available settlement price as (if any), the last available market price (if any), or a price determined by Eurex Clearing AG.~~

~~(2) Each Special Event Cash Settlement Amount shall become unconditional and immediately due in the Clearing Currency as of the end of the Special Event Cash Settlement Date.~~

~~(3) The Special Event Cash Settlement Amount shall (i) if it is a positive figure for Eurex Clearing AG, be owed to it by the relevant shall establish Opposite Transactions and book such Opposite Transactions into the same FCM Clearing Member, or (ii) if it is a negative figure for Eurex Clearing AG, be owed by it to the relevant Own Transaction Account or FCM Clearing Member.~~

~~(4) Eurex Clearing AG shall notify the Special Event Cash Settlement Amount to the Client Transaction Account of the FCM Clearing Member as soon as reasonably practicable, together with reasonable detail regarding the data and information forming the basis of the determination. 12.4.4 **Consequences of the occurrence of a Special Event Off-Setting Date** on which the relevant Off-Setting Transactions are booked at the Off-Setting Price and settle the open Off-Setting Transactions against the Opposite Transactions.~~

~~(1)~~ ~~(2)~~ Definitions

"Opposite Transaction" shall mean a Swap Transaction with terms identical to the relevant ~~Special Event~~ an Off-Setting Transaction entered into between Eurex Clearing AG and the relevant FCM Clearing Member except that the FCM Clearing Member has the opposite position than it has under the relevant Special Events ~~such~~ Off-Setting Transaction.

(2) ~~The Opposite~~ **"Off-Setting Transactions"** means any open Swap Transaction shall be booked entered into the relevant Transaction Account at a price between Eurex Clearing AG and the FCM Clearing Member which corresponds to shall be settled against the most recent Opposite Transaction.

"Off-Setting Price" means the last available price of the following ~~following~~ prices:
(i) the last available settlement price of the relevant Special Event Off-Setting Transaction (if any), as determined in accordance with the applicable provisions under the Special Conditions, (ii) the last available available market or exchange price of the relevant Special Event Off-Setting Transaction (if any), or (iii) the price determined by Eurex Clearing AG on the basis of a model for the valuation of the market or a price-exchange value of the relevant Off-Setting Transaction (which considers market risks and market prospects, *inter alia*, taking into account asset classes, volatility and liquidity).

(3) In addition to the establishment of Opposite Transactions pursuant to paragraph (1), Eurex Clearing AG shall also be entitled to establish Other Opposite Transactions between Eurex Clearing AG and other FCM Clearing Members (each an "Other FCM Clearing Members") corresponding to the Opposite Transactions established pursuant to paragraph (1) above and book such Other Opposite Transactions into the relevant FCM Clearing Member Own Transaction Account or FCM Client Transaction Account of such Other FCM Clearing Member at the Off-Setting Price and settle the relevant open Swap Transactions against the Other Opposite Transactions.

"Other Opposite Transaction" shall mean a Swap Transaction with terms identical to the relevant Opposite Transaction except that the Other FCM Clearing Member has the opposite position from the position the FCM Clearing Member has under the Opposite Transaction.

Eurex Clearing AG shall use best efforts to find a fair and proportionate distribution of the Other Opposite Transactions between all Other FCM Clearing Members which have open Swap Transactions in the same Swap Transaction Type of the relevant Off-Setting Transactions considering all interests of the relevant Other FCM Clearing Member (including, *inter alia*, (i) the number of Swap Transactions held by such Other FCM Clearing Member with respect to the relevant Swap Transaction Type, (ii) the notional amount of Swap Transactions held by the relevant Other FCM Clearing Member with respect to the relevant Swap Transaction Type and (iii) the risks inherent in the Swap Transactions held by the relevant Other FCM Clearing Member with respect to the relevant Swap Transaction Type.

[...]
