

22 Mar 2024  
Eurex Clearing

# Amendments to the Clearing Conditions of Eurex Clearing AG - Consultation

## Eurex Clearing Circular 021/24 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 topic:

- ◆ Introduction of the concept of Clearing Capacities with the provision to allow Eurex Clearing to assign Clearing Capacities to Clearing Members under strict requirements in a Default Management Process

The amendments to the Clearing Conditions are subject to a consultation process (Consultation). The Consultation will end with the expiry of **22 April 2024** (Consultation Period). The planned effective date of these amendments is **3 June 2024**, depending on the outcome of the Consultation which will be communicated in a separate Eurex Clearing Circular.

### 2. Required action

Clearing Members, ISA Direct Clearing Members, Disclosed Direct Clients, vendors and other affected contractual parties should take the amendments

### 3. Details

#### **Introduction of the concept of Clearing Capacities with the provision to allow Eurex Clearing to assign Clearing Capacities to Clearing Members under strict requirements in a Default Management Process**

Clearing Capacities are a composition of product types with comparable product properties falling under the same Clearing License as determined by Eurex Clearing. A Clearing Capacity is a notion to indicate which products a Clearing Member and Exchange Member is able to trade and clear.

In case of a default of a Clearing Member, Eurex Clearing initiates a Default Management Process with the objective to balance the clearing house after the default. The Default Management Process is conducted on the basis of Liquidation Groups.

As the margin methodology of Eurex Clearing grants margin offsets for positions within the same Liquidation Group, also the Default Management Process is performed on the basis of such Liquidation Groups, with the consequence that the terminated positions of the defaulted Clearing Member are liquidated within such Liquidation Groups via so-called Independent Trades or Default Management Auctions. The counterparty to an Independent Trade or, in case of a Default Management Auction, the auction winner is only able to take over the auction portfolio if such Clearing Member has the Clearing Capacities for all Transactions forming part of the relevant auction portfolio assigned.

To facilitate the establishment of the new Transactions between Eurex Clearing and the auction winner, the proposed amendments to the Clearing Conditions introduce a right for Eurex Clearing to assign Clearing Capacities during the Default Management Process. To protect the interests of the Clearing Members, the entitlement by Eurex Clearing AG to assign a Clearing Capacity will be conditional upon strict requirements. An assignment of additional Clearing Capacities can only occur, if the relevant Clearing Member fulfils all Clearing Capacity requirements and, particularly, is able to comply with any specific settlement requirements, reporting duties or applicable tax-related requirements.

To reflect the amendments, the following provisions in the Clearing Conditions shall be amended:

- ◆ Chapter I Part 1 Number 2.1.1 and
- ◆ Chapter I Part 1 Number 7.5.3 (3) (viii)

Consultation which will end with the expiry of 22 April 2024.

**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 be only 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](mailto: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 AG 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 is **3 June 2024**. However, after the Consultation Period, Eurex Clearing AG 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 AG 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 AG will notify all affected parties accordingly.

### **Publication of amendments**

As of the effective date, the full versions of the amended Clearing Conditions will be available for download on the Eurex Clearing website [www.eurex.com/ec-en/](http://www.eurex.com/ec-en/) under the following link:

**[Rules & Regs > Eurex Clearing AG Rules and Regulations](#)**

The amendments to the legal framework of Eurex Clearing AG published by this circular are deemed accepted by each affected contractual party of Eurex Clearing AG, unless the respective contractual party objects by written notice

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, as applicable.

### Attachment:

- ◆ Amended sections of the Clearing Conditions of Eurex Clearing AG, effective 3 June 2024 (subject to the Consultation)

### Further information

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

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

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Chapter I of the Clearing Conditions of Eurex Clearing AG

# General Provisions

As of 03.06.2024

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AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED;

DELETIONS ARE CROSED OUT

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[...]

## **Part 1 General Clearing Provisions**

### **1 General Rules**

[...]

#### **1.2 Clearing Procedures**

[...]

##### **1.2.2 Conclusion of Transactions and Transfer of Transactions**

Transactions pursuant to these Clearing Conditions will be concluded and may be transferred in accordance with this Number 1.2.2, unless regulated otherwise in the Special Clearing ~~Conditions~~ Provisions. However, the conclusion of Market Transactions and OTC Transactions between Eurex Clearing AG and an ISA Direct Clearing Member is exclusively subject to the ISA Direct Provisions.

[...]

[...]

##### **1.2.9 Finality**

[...]

(2) Payment orders and transfer orders within the meaning of Article 2 letter i of the Settlement Finality Directive from participants and indirect participants of the system operated by Eurex Clearing AG are entered into the system of Eurex Clearing AG and are irrevocable, as of the time as of which

[...]

(b) with regard to Transactions that are included in the Clearing by way of novation, a novation within the meaning of Number 1.2.2 takes effect in accordance with

the conditions specified in this regard in the Special Clearing  
~~Conditions~~Provisions.

[...]

[...]

## 1.4 Settlement of Transactions

[...]

### 1.4.2 Settlement of Transactions in Securities

[...]

- (3) All transfers in Securities (including WP Credits) shall be made versus payment (*Zug um Zug*), unless not regulated otherwise in the Special Clearing ~~Conditions~~Provisions. Each such payment shall be made between the transferor Clearing Member, transferor ISA Direct Clearing Member or transferor Clearing Agent (acting on behalf of the ISA Direct Clearing Member) and Eurex Clearing AG and, accordingly, between Eurex Clearing AG and the transferee Clearing Member, transferee ISA Direct Clearing Member or transferee Clearing Agent (acting on behalf of the ISA Direct Clearing Member).

[...]

[...]

## 2 Clearing Members

### 2.1 Clearing License

#### 2.1.1 Granting of Clearing License

[...]

- (6) With respect to specific Clearing Licences, the Clearing Member and Eurex Clearing AG may limit the scope of such Clearing Licence to specific Clearing Capacities.

“Clearing Capacity” means a composition of product types with comparable product properties falling under the same Clearing Licence as determined by Eurex Clearing AG.

Each Clearing Capacity may foresee specific additional requirements (“Clearing Capacity Requirements”) depending on the relevant product types covered by the relevant Clearing Capacity and as specified under the Special Clearing Provisions.

[...]



### **3 General Provisions regarding Margin and Variation Margin**

[...]

Furthermore, each of Eurex Clearing AG and the Clearing Member or the ISA Direct Clearing Member, as applicable, shall, in order to compensate daily profits or losses, be required to transfer (additional) cover in respect of Variation Margin for purposes of the Elementary Clearing Model Provisions or the ISA Provisions or ISA Direct Variation Margin, as applicable, subject to and in accordance with the specific provisions of the Elementary Clearing Model Provisions, the ISA Provisions or the ISA Direct Provisions, as applicable, and the Special Clearing ~~Conditions~~ Provisions.

[...]

### **4 Internal Accounts**

[...]

#### **4.6 Objections to Notifications or Reports regarding Internal Accounts, Transactions or Margin**

Whenever Eurex Clearing AG gives notices or provides reports to a Clearing Member or an ISA Direct Clearing Member (or the relevant Clearing Agent acting on behalf of such ISA Direct Clearing Member), including with respect to any of the internal accounts set out in this Number 4, the Elementary Clearing Model Provisions, the ISA Provisions, the ISA Direct Provisions or the Special Clearing ~~Conditions~~ Provisions, Transactions, Margin or Variation Margin, the relevant Clearing Member (also with respect to its Disclosed Direct Clients) or ISA Direct Clearing Member (or the relevant Clearing Agent acting on behalf of such ISA Direct Clearing Member) should check without undue delay all such notices and reports of Eurex Clearing AG, including with respect to all such information and data the Clearing Member (also with respect to its Disclosed Direct Clients) or ISA Direct Clearing Member (or the relevant Clearing Agent acting on behalf of such ISA Direct Clearing Member) has given to Eurex Clearing AG or received from Eurex Clearing AG, via third parties.

[...]

[...]

### **7 Termination Rules with respect to the Clearing Member**

[...]

#### **7.5 Default Management Process**

[...]

### 7.5.3 Establishment of Transactions by way of independent trades or by conducting DM Auctions

#### (3) General Provisions

Unless otherwise provided in Paragraphs (4) to (6), the following provisions shall apply:

[...]

(viii) If a Mandatory Participant does not hold all Clearing Capacities under a specific Clearing Licence, which are required to clear all DM Auction Transactions forming part of an Auction Unit for which the relevant Clearing Member was specified as Mandatory Participant, Eurex Clearing AG shall be entitled to assign the missing Clearing Capacities to such Mandatory Participant (“Clearing Capacity Assignment”; and each assigned Clearing Capacity, an “Assigned Clearing Capacity”).

(a) Eurex Clearing AG shall only perform a Clearing Capacity Assignment, if Eurex Clearing AG determines – in its own discretion – that the relevant Mandatory Participant fulfils all Clearing Capacity Requirements applicable to the relevant Assigned Clearing Capacity.

When making such determination, Eurex Clearing AG shall use best efforts to ensure a fair and reasonable determination of whether the Mandatory Participant is able to meet the Clearing Capacity Requirements taking into account (i) the interests of the relevant Mandatory Participant and (ii) whether the Mandatory Participant is able to comply with the Clearing Capacity Requirements relating particularly to specific settlement requirements, reporting requirements or obligations arising from applicable tax laws.

(b) Upon the Clearing Capacity Assignment, the relevant Mandatory Participant is able to clear and trade (if applicable) the relevant product types forming part of the relevant Clearing Capacity.

(c) After the Mandatory Participant has either settled, transferred, cancelled or closed any DM Auction Transactions relating to an Assigned Clearing Capacity, the Mandatory Participant may terminate the Clearing Capacity by submitting a written notice to Eurex Clearing AG in accordance with the provisions under Number 13.1.1.

[...]

[...]

**13 Termination of Clearing Agreements, Clearing Licenses, ISA Direct Clearing Licenses and Client Related Standard Agreements; Market Disorders Event, Impossibility Event, Force Majeure Event**

[...]

**13.3 Market Disorder Event, Impossibility Event, Force Majeure Event**

[...]

**13.3.3 Consequences of the occurrence of a Special Event Off-Setting Time**

[...]

(2) Definitions

[...]

“**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 Provisions, (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).

[...]

[...]

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