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30 Dec 2024

Eurex Clearing

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

## Eurex Clearing Circular 099/24 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 topics:

- ◆ A. Inclusion of representations for Clearing Members out of the Netherlands and Switzerland
- ◆ B. Change to the specific provisions and additional continuing obligations for U.S. Clearing Members with respect to Repo Transactions.

The amendments for Topics A. and B. will become effective as of **1 February 2025**

- ◆ C. Clarification of appropriation rights in the Pledge Agreement

The amendments to Topic C. Clarification of appropriation rights in the Pledge Agreements are subject to a consultation process (Consultation). The



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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, FCM Clearing Members, 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 topic C. are subject to a Consultation which will end **with the expiry of 30 January 2025**.

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

## 3. Details of the initiative

### **Regarding Topic A.: Inclusion of representations for Clearing Members out of the Netherlands and Switzerland**

It will be clarified in the Clearing Conditions that for Swiss Clearing Members transactions and collateral provided to Eurex Clearing are classified as financial assets rather than administrative assets and are not subject to any Immunity. Furthermore, the governing law of the Clearing Agents' power of attorney will be clarified in the ISA Direct Clearing Agreement.

### **Regarding Topic B.: Change to the specific provisions and additional continuing obligations for U.S. Clearing Members with respect to Repo Transactions**

With regards to Clearing Conditions Chapter I Part 1 Number 2.6 (i), the date until a copy of form 1042-S has to be provided by the U.S. Clearing Member will be changed from 15 March to 28 February.

### **Regarding Topic C.: Clarifications of appropriation rights in the Pledge Agreement**

It will be clarified that the scope of the appropriation rights in the Pledge Agreement for Eurex Clearing with respect to Swiss Clearing Members is in line with the Swiss Act on pledges.

### **Consultation with respect to the proposed amendments to the Pledge Agreements**

Pursuant to Chapter I Part 1 Number 17 of the Clearing Conditions, the proposed changes and amendments to the Clearing Conditions regarding Topic C. are subject to a Consultation which will end with the expiry of **30 January 2025**.

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 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 **1 March 2025**. 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.

### **Publication of amendments**

As of the effective date, the full version 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 Rules & 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.



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CONDITIONS OF FCIM Clearing CONDITIONS OF EUREX CLEARING AG, as applicable.

### Attachments:

- ◆ 1 – Appendix 7 to the Clearing Conditions: Number 2.2.11 of the Pledge Agreement relating to pledges of Eligible Margin Assets in the form of Securities and pledges of eligible Securities as Contributions to the Default Fund
- ◆ 2 – Appendix 10 to the Clearing Conditions: Number 11 of the ISA Direct Clearing Agreement with a Clearing Agent and an ISA Direct Clearing Member
- ◆ 3 – Amended sections of Chapter I Part 1 Numbers 1 and 2.6 of the Clearing Conditions of Eurex Clearing AG
- ◆ 4 – Appendix 11 to the Clearing Conditions: Number 2.2.4 of the Pledge Agreement relating to pledges of Eligible Margins Assets in order to provide ISA Direct Margin in the form of Securities

### 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 + Backoffice, IT/System Administration, Auditing/Security Coordination

Contact: [client.services@eurex.com](mailto:client.services@eurex.com)

Web: [www.eurex.com/ec-en/](https://www.eurex.com/ec-en/)

Authorized by: Jens Janka

### Further information

[↓ Attachment 1 to Eurex Clearing Circular 099/24](#)

[↓ Attachment 2 to Eurex Clearing Circular 099/24](#)



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 Attachment 7 to Eurex Clearing Circular 033/24

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Appendix 7 to the Clearing Conditions of Eurex Clearing AG:

## Pledge Agreement

relating to pledges of Eligible Margin Assets in the form of Securities and  
pledges of eligible Securities as Contributions to the Default Fund

As of 01.03.2025

\*\*\*\*\*

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED;

DELETIONS ARE CROSSED OUT

\*\*\*\*\*

[...]

## **2 Granting of Pledges**

[...]

### **2.2 Pledges of Securities in German Securities Accounts**

[...]

#### **2.2.11 Common provisions for each of the pledges granted pursuant to Clauses 2.2.1 to 2.2.10**

[...]

The exercise of such appropriation right is subject to any further contractual restrictions set out in Chapter I Part 2 or Chapter I Part 4, respectively, of the Clearing Conditions. The aforesaid requirements for, and restrictions of, the exercise of the appropriation right apply notwithstanding any broader re-use entitlements under any collateral management documentation<sup>7</sup>. The right of Eurex Clearing AG to appropriate (and to make use of) one or more of the securities shall, with respect to Swiss Clearing Members, remain limited to the confines of Article 31 para. 2 FISA, i.e.

a. selling the Relevant Pledged Securities and offsetting the proceeds against the secured debt; or

b. appropriating the Relevant Pledged Securities whose value can be determined objectively and applying their value against the secured debt.

[...]

#### **2.2.12 Further cCommon provisions for each of the pledges granted pursuant to Clauses 2.2.1 to 2.2.10**

[...]

\*\*\*\*\*



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 01.02.2025





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AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED;

DELETIONS ARE CROSSED OUT

\*\*\*\*\*

[...]

11. This Agreement and any powers of attorney granted under or pursuant thereto is governed by the substantive laws (*Sachrecht*), excluding German private international law, of Germany. If the ISA Direct Clearing Member is represented by the Clearing Agent or any attorney in connection with the execution of this Agreement or any other agreement or document pursuant hereto, then the Parties to this Agreement agree and accept that as between the ISA Direct Clearing Member and Eurex Clearing AG, any matters referred to in article 11 of the Hague Convention on the Law Applicable to Agency of the fourteenth day of March nineteen hundred and seventy-eight are governed by German law.

Any non-contractual rights and obligations arising out of or in connection with this Agreement shall also be governed by the substantive laws (*Sachrecht*), excluding German private international law, of Germany.

[...]

\*\*\*\*\*

Chapter I of the Clearing Conditions of Eurex Clearing AG

# General Provisions

As of 01.02.2025

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AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED;

DELETIONS ARE CROSSED OUT

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[...]

## **Part 1 General Clearing Provisions**

### **1 General Rules**

[...]

#### **1.17 Limitations regarding the Clearing of Transactions by certain Swiss Clearing Members**

A Swiss Clearing Member that is a Public Entity and/or a cantonal bank represents and such representation shall be deemed repeated whenever the Clearing Member enters into a Transaction under the Clearing Agreement, that all Transactions and Eligible Margin Assets delivered to Eurex Clearing AG constitutes financial (*Finanzvermögen / patrimoine financier*) rather than administrative assets (*Verwaltungsvermögen / patrimoine administratif*) of the Clearing Member and are not subject to any immunity.

#### **1.17-18 FIC Board Advisory Committee**

1.187.1 [...]

1.187.2 [...]

1.187.3 [...]

[...]

### **2 Clearing Members**

[...]

**2.6 Specific provisions and additional continuing obligations for U.S. Clearing Members with respect to Repo Transactions**

An applicant legally organised and with its principal place of business in the United States of America (or any state thereof) intending to clear Repo Transactions needs to comply with the following additional requirements:

- (i) An U.S. Clearing Member admitted for trading at Eurex Repo shall provide Eurex Clearing AG – without any further request by Eurex Clearing AG - with a copy of Form 1042-S, which the U.S. Clearing Member submits to the U.S. Internal Revenue Service, by no later than 28 February~~15 March~~ of each calendar year.

[...]

[...]

\*\*\*\*\*

Appendix 11 to the Clearing Conditions of 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 01.03.2025

\*\*\*\*\*

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED;

DELETIONS ARE CROSSED 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 aforesaid requirements for the exercise of the appropriation right apply notwithstanding any broader re-use entitlements under any collateral management documentation. The right of Eurex Clearing AG to appropriate (and to make use of) one or more of the securities shall, with respect to Swiss Clearing Members, remain limited to the confines of Article 31 para. 2 FISA, i.e.

a. selling the Relevant Pledged Securities and offsetting the proceeds against the secured debt; or

b. appropriating the Relevant Pledged Securities whose value can be determined objectively and applying their value against the secured debt.

[...]

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