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Eurex Clearing Resources Circulars & Mailings

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Release date: 23 Jan 2020 | Eurex Clearing

No. 009/2020

# Amendments to the Clearing Conditions and to the Auction Terms of Eurex Clearing AG

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Eurex Clearing Circular 009/20

## 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) and the Auction Terms of Eurex Clearing AG (Auction Terms) regarding the following topics:

- A. Additional representation for Clearing Members (CM) with regards to Eurex Transactions for Direct Clients domiciled in the United States (U.S.),
  - B. Introduction of the Direct Margin Transfer Agreement and amendments to the relevant provisions under the Individual Segregated Account (ISA) Provisions, and
  - C. Minor amendments to the liability clauses under the Clearing Conditions and the Auction Terms.
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The amendments above will become effective as of **2 March 2020**.

## 2. Required action

There is no required action for the participants.

## 3. Details of the initiative

### A. Additional representation for Clearing Members (CM) with regards to Eurex Transactions for Direct Clients domiciled in the United States (U.S.)

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In relation to Eurex Transactions, the Clearing Member represents and warrants to Eurex Clearing that it maintains policies and procedures reasonably designed to ensure that it will, with respect to Direct Clients located in the United States, only enter an order or quote for a Eurex Transaction, and only request the transfer of a Eurex Transaction, if such order, quote, or transfer complies with the applicable regulatory requirements and restrictions under U.S. law.

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

- Chapter I Part 1 Number 1.10 of the Clearing Conditions

### B. Form of agreement for the Direct Margin Transfer under the Individual Segregated Account (ISA) Provisions

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To facilitate the offering of direct margin transfers and retransfers with respect to ISA Transactions, as offered in Chapter I Part 4 Number 6.7 of the Clearing Conditions, the Direct Margin Transfer Agreement between Eurex Clearing, the Clearing Member and the Disclosed Direct Client will be made available on the website of Eurex Clearing.

To reflect the changes, the following provisions will be amended as outlined in Attachment 2:

- Chapter I Part 4 Number 6.7 of the Clearing Conditions

### C. Minor amendments to the liability clauses under the Clearing Conditions and the Auction Terms

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To provide more clarity with respect to the limitation of Eurex Clearing's liability under Chapter I Part 1 Number 14.1 of the Clearing Conditions, Eurex Clearing slightly adjusts the wording with respect to the explanation of "essential obligation".

To reflect the changes, the following provisions will be amended as outlined in Attachment 3 and 4:

- Chapter I Part 1 Number 14.1 of the Clearing Conditions
- Clause 9 of the Auction Terms.

As of the effective date, the full version of the amended Clearing Conditions and the Auction Terms will be available for download on the Eurex Clearing website [www.eurexclearing.com](http://www.eurexclearing.com) under the following link:

### **Resources > Rules and Regulations**

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.

The changes and 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 within the first ten (10) Business Days after publication. Any ordinary right of Eurex Clearing AG to terminate the respective contract (including a Clearing Agreement, if applicable) shall remain unaffected.

### **Attachments:**

- Attachment 1: Amended sections of Chapter I Part 1 Number 1.10 of the Clearing Conditions
- Attachment 2: Amended sections of Chapter I Part 4 Number 6.7 of the Clearing Conditions
- Attachment 3: Amended sections of Chapter I Part 1 Number 14.1 of the Clearing Conditions
- Attachment 4: Amended sections of Clause 9 of the Auction Terms

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

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

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

Web: [www.eurexclearing.com](http://www.eurexclearing.com)

Authorised by: Heike Eckert

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## Further information

[Attachment 1 to Eurex Clearing circular 009/20](#)

[Attachment 2 to Eurex Clearing circular 009/20](#)

[Attachment 3 to Eurex Clearing circular 009/20](#)

[Attachment 4 to Eurex Clearing circular 009/20](#)

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Chapter I of the Clearing Conditions of Eurex Clearing AG

## General Provisions

As of 02.03.2020

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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

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#### 1.10 Regulatory requirements and restrictions under U.S. law with respect to Eurex Transactions

In relation to Eurex Transactions, the Clearing Member represents and warrants by way of an independent guarantee and irrespective of fault (*selbständiges, verschuldensunabhängiges Garantieverprechen*) to Eurex Clearing AG that it maintains policies and procedures reasonably designed to ensure that it will, with respect to Direct Clients (other than a DC Market Participant) located in the United States d**U.S. Direct Client** e (i) only enter an order or quote into the trading systems of the Eurex Exchange with respect to a Client-Related Transaction relating to a U.S. Direct Client and (ii) only request the transfer of a Eurex Transaction to a Transaction Account of the Clearing Member relating to a U.S. Direct Client, if entering into the relevant Client-Related Transaction or the transfer of the relevant Eurex Transaction complies with the applicable regulatory requirements and restrictions under U.S. law. For the avoidance of doubt, this provision does not apply with respect to Indirect Client Market Participants.

#### 1.110 FIC Board Advisory Committee

1.110.1 Eurex Clearing AG will establish a FIC board advisory committee (the **FIC Board Advisory Committee** e for the purpose of consulting with and making recommendations to the executive boards of Eurex Clearing AG, Eurex Frankfurt AG and Eurex Repo GmbH (together the **Eurex Group** e with respect to the FIC Matters (as defined in Number 1.10.2), provided that this would not constitute a breach of law, a breach of an order of a court of a competent jurisdiction or of an applicable governmental, quasi-governmental or regulatory body.

1.110.2T **FIC Matters** with respect to the FIC Board Advisory Committee shall be exclusively the following:

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1.110.3 The FIC Board Advisory Committee consists of up to 10 (ten) committee members d**FIC Committee Members** e The FIC Committee Members shall be appointed in accordance with the procedure set out in in the statutes for the FIC Board Advisory Committee.

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Chapter I of the Clearing Conditions of Eurex Clearing AG

## General Provisions

As of 02.03.2020

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**Part 4 Individual Segregated Account Provisions**

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**6 Margin**

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**6.7 Direct Margin Transfers and Direct Margin Retransfers**

Eurex Clearing AG, the Clearing Member and the Disclosed Direct Client may separately agree that the Disclosed Direct Client may be entitled to directly transfer (by way of title transfer) to Eurex Clearing AG Eligible Margin Assets in the form of Securities in respect of Margin and that Eurex Clearing AG may, in respect of Redelivery Claims, deliver the relevant Securities directly to the Disclosed Direct Client by entering in an agreement in the form published by Eurex Clearing AG on its website ([www.eurexclearing.com](http://www.eurexclearing.com)) (the **Direct Margin Transfer Agreement**) h Eurex Clearing AG shall not be obliged to enter into such agreements.

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Chapter I of the Clearing Conditions of Eurex Clearing AG

## General Provisions

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## Part 1 General Clearing Provisions

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

#### 14.1 Liability, Emergency Actions

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14.1.2 Eurex Clearing AG shall only be liable for wilful misconduct (*Vorsatz*) or gross negligence (*grobe Fahrlässigkeit*), unless Eurex Clearing AG violates any of its essential obligations (*wesentliche Vertragspflichten*) under the Clearing Agreement (incorporating the Clearing Conditions). An essential obligation is an obligation, the performance of which is both necessary for the execution of the contract and which the ~~necessary for the execution of the contract and as well a performance of which the~~ Clearing Member or Basic Clearing Member, respectively, ~~trusts in and may trust in~~ can, and does, rely upon. In case of simple negligence (*einfache Fahrlässigkeit*), the liability of Eurex Clearing AG is restricted only to damages typically foreseeable at the time of granting the Clearing License. The provisions under the previous sentences above shall not affect the statutory liability for damages incurred as a result of injury to life, body or health as well as the liability pursuant to the German Product Liability Act (*Produkthaftungsgesetz*).

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DELETIONS ARE CROSSED OUT

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## 9 Liability

Eurex Clearing AG shall only be liable for wilful misconduct (*Vorsatz*) or gross negligence (*grobe Fahrlässigkeit*), unless Eurex Clearing AG violates any of its essential obligations (*wesentliche Vertragspflichten*) under these Auction Terms. An essential obligation is an obligation, the performance of which is ~~necessary for the execution of the contract and as well a performance of which the Participant trusts in and may trust in.~~ both necessary for the execution of the contract and which the Participant can, and does, rely upon. In case of simple negligence (*einfache Fahrlässigkeit*), the liability of Eurex Clearing AG is restricted only to damages typically foreseeable at the time of entering into these Auction Terms. The provisions under the previous sentences above shall not affect the statutory liability for damages incurred as a result of injury to life, body or health as well as the liability pursuant to the German Product Liability Act (*Produkthaftungsgesetz*).

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