



Eurex Clearing Circular 007/19

Amendments to the Clearing Conditions and FCM Regulations: Introduction of courses of action in case of market disorder, impossibility and force majeure

Summary

In order to account for the increasing degree of uncertainty Eurex Clearing AG (Eurex Clearing) is facing with regards to cross-border regulation, it will incorporate additional provisions on market disorder, legal impossibility and force majeure into the Clearing Conditions of Eurex Clearing (Clearing Conditions) and the FCM Regulations of Eurex Clearing (FCM Regulations).

This gives Eurex Clearing the necessary toolbox at hand to react to adverse developments in a way that is balanced and economically meaningful for all relevant stakeholders.

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

The amendments will come into effect on **18 February 2019**.

Terms used and not defined in this circular shall have the meanings given to them in the Clearing Conditions or FCM Regulations.

Attachments:

1. Amended sections of Chapter I of the Clearing Conditions
2. Amended sections of Chapter I of the FCM Regulations

Date: 25 January 2019

Recipients: All Clearing Members, Basic Clearing Member, FCM Clearing Members, Non-Clearing Members, Registered Customers, FCM Clients of Eurex Clearing AG and Vendors

Authorized by:
Heike Eckert

Target group:

- All departments

Contact:
Your Key Account Manager Clearing,
clearing.services-admission@eurexclearing.com



Amendments to the Clearing Conditions and FCM Regulations: Introduction of courses of action in case of market disorder, impossibility and force majeure

In order to account for the increasing degree of uncertainty Eurex Clearing is facing with regards to cross-border regulation, Eurex Clearing will introduce courses of action for certain special events.

The new provisions foresee the following three trigger events:

- "Market Disorder Event": cases in which an international organisation/government/authority has taken measures which have, not only temporarily, a material adverse impact on clearing of transactions;
- "Impossibility Event": situations in which the fulfilment of any obligation under any transaction/Clearing Agreement becomes impossible for any reason whatsoever; and
- "Force Majeure Event": which covers any failure, which is not only temporary, in discharging any obligations under any transaction/Clearing Agreement provided that such failure arises from events which are beyond Eurex Clearing's or the Clearing Member's reasonable control.

In case of the occurrence of any of the aforementioned events, Eurex Clearing may take one of the following three measures by submitting a written notice to the relevant Clearing Member, Basic Clearing Member or FCM Clearing Member:

- Any action or measure Eurex Clearing deems necessary to limit any adverse impacts arising from the special Event for itself and the Clearing Member;
- Order the cash settlement of all or specific Transactions as at the last available market or settlement price; or
- Enter into "Opposite Transactions" corresponding to certain transactions of the Clearing Member and book such opposite transactions on the same transaction account on which the corresponding transaction is booked at a price determined by Eurex Clearing.

This introduction gives the CCP the necessary toolbox at hand to react to adverse developments in a way that is balanced and economically meaningful for all relevant stakeholders.

To reflect the changes, the following provision of the Clearing Conditions will be amended as outlined in Attachment 1:

- Clearing Conditions, Chapter I Part 1 Number 13.4

To reflect the changes, the following provision of the FCM Regulations will be amended as outlined in Attachment 2:

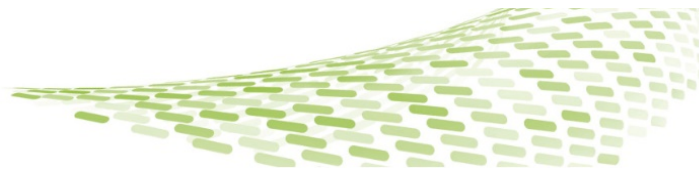
- FCM Regulations, Chapter I Part 1 Number 12.4

The amendments above will become effective on 18 February 2019.

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

[Resources > Rules and Regulations > Clearing Conditions](#)

Pursuant to Chapter I Part 1 Number 17.2.2 and Number 17.2.6 of the Clearing Conditions, each change and amendment to the Clearing Conditions published by this circular to Clearing Members, Basic Clearing Members, Non-Clearing Members and Registered Customer affected by such change or amendment (Affected Customers) at least fifteen (15) business days prior to the actual effective date indicated herein, is deemed accepted by each Affected Customer, unless it objects by written notice to Eurex Clearing within such period. The right of Eurex



Clearing AG to terminate the Clearing Agreement pursuant to Chapter I Part 1 Number 7.2.1 Paragraph (4) of the Clearing Conditions shall remain unaffected.

As of the effective date, the full version of the amended FCM Regulations will be available for download on the Eurex Clearing website under the following link:

[Resources > Rules and Regulations > FCM Regulations](#)

Pursuant to Chapter I Number 16.2.4 of the FCM Regulations, each change and amendment of the FCM Regulations published by this circular to FCM Clearing Members affected by such change or amendment (Affected Customers) at least fifteen (15) Business Days prior to the effective date indicated herein, is deemed accepted by each Affected Customer, unless it objects by written notice to Eurex Clearing AG within such period. The right of Eurex Clearing AG to terminate the Clearing Agreement pursuant to Chapter I Number 9.2.1 Paragraph (1)(d) of the FCM Regulations shall remain unaffected.

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

25 January 2019

Clearing Conditions of Eurex Clearing AG

Chapter I of the Clearing Conditions of Eurex Clearing AG

General Provisions

As of 18.02.2019

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:

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

Eurex Clearing AG may

(i) take any actions or measures 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 any directions or orders issued by Eurex Clearing AG in this regard;

- (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) Suspension of Clearing

In case of the occurrence of a Special Event Cash Settlement Time or Special Event Off-Setting Date, Eurex Clearing AG may suspend or limit the Clearing of new Own Transactions and new Client-Related Transactions of the relevant Clearing Member or Basic Clearing Member.

(3) Information of other third parties

In case of the occurrence of a Special Event Cash Settlement Time or Special Event Off-Setting Date, 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.

13.4.2 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, 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 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 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 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) "Opposite Transaction" shall mean a Transaction with terms identical to the relevant Special Event Off-Setting Transaction except that the Clearing Member or Basic Clearing Member has the opposite position than it has under the relevant Special Event Off-Setting Transaction.
- (2) The Opposite Transaction shall be booked into the relevant Transaction Account at a price which corresponds to the most recent price of the following prices: the last available settlement price of the relevant Special Event Off-Setting Transaction (if any), the last available market price of the relevant Special Event Off-Setting Transaction (if any), or a price determined by Eurex Clearing AG.

[...]

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Chapter I: Clearing Model Related Provisions

FCM Regulations of Eurex Clearing AG

As of 18.02.2019

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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) Actions with respect to the FCM Clearing Member

Eurex Clearing may

- (i) take any actions or measures 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 any directions or orders issued by Eurex Clearing AG in this regard; or
- (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

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(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) Suspension of Clearing.

In case of the occurrence of a Special Event Cash Settlement Time or Special Event Off-Setting Date, Eurex Clearing AG may suspend or limit the clearing of new Own Transactions and new FCM Client Transactions of the relevant FCM Clearing Member.

(3) Notification of third parties

In case of the occurrence of a Special Event Cash Settlement Time or Special Event Off-Setting Date, 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.

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 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 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 FCM Clearing Member, or (ii) if it is a negative figure for Eurex Clearing AG, be owed by it to the relevant FCM Clearing Member.
- (4) Eurex Clearing AG shall notify the Special Event Cash Settlement Amount to the FCM Clearing Member as soon as reasonably practicable, together with reasonable detail regarding the data and information forming the basis of the determination.

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12.4.4 Consequences of the occurrence of a Special Event Off-Setting Date

- (1) "Opposite Transaction" shall mean a Swap Transaction with terms identical to the relevant Special Event Off-Setting Transaction except that the FCM Clearing Member has the opposite position than it has under the relevant Special Event Off-Setting Transaction.
- (2) The Opposite Transaction shall be booked into the relevant Transaction Account at a price which corresponds to the most recent price of the following prices: the last available settlement price of the relevant Special Event Off-Setting Transaction (if any), the last available market price of the relevant Special Event Off-Setting Transaction (if any), or a price determined by Eurex Clearing AG.

[...]
