



Eurex Clearing Resources Circulars & Mailings

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No. 069/2019

Amendments to the FCM Regulations of Eurex Clearing AG

Eurex Clearing Circular 069/2019 Amendments to the FCM Regulations of Eurex Clearing AG

1. Introduction

This circular contains information with respect to Eurex Clearing's LSOC (Legally Segregated Operationally Commingled) service offering.

Under its LSOC clearing model, Eurex Clearing currently only accepts euro as currency for initial margin payments. Eurex Clearing now decided to also accept US dollar as initial margin. In order to set the legal basis, Chapter I of the FCM Regulations and the FCM Clearing Agreement of Eurex Clearing AG will be amended, as set out in the attachments.

The amended FCM Regulations and FCM Clearing Agreement will come into effect on **1 August 2019**.

2. Required actions

There are no required actions for the Participants.

3. Details

The FCM Regulations and the FCM Clearing Agreement of Eurex Clearing AG will be amended as follows:

- Introduction of a right for Eurex Clearing to invest FCM Client Margin in the form of cash,
- Amendment of the existing trust arrangements with respect to cash accounts and introduction of a new trust arrangement with respect to the securities Eurex Clearing receives under the repo transactions resulting from the investment, and
- Introduction of a possibility to repay cash collateral provided in a non-clearing currency, which is analogous to the permanent US dollar offering under the European framework (for details please see Eurex Clearing Circular 022/19).

The acceptance of US dollar for initial margin payments is subject to operational readiness and implementation of an investment scheme applying CFTC Rule 1.25. Operational readiness and acceptance of US dollar as initial margin currency under the LSOC clearing model will be announced with a separate circular. In this context, it is planned to also extend the possibility for permanent cash holdings in US dollar to the LSOC model.

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

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

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

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 of the FCM Regulations
- Attachment 2: Amended sections of the FCM Clearing Agreement

Recipients: All FCM Clearing Members of Eurex Clearing AG

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

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Related circular: Eurex Clearing Circular [022/19](#)

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Further information

[Attachment 1 to Eurex Clearing circular 069/19](#)

[Attachment 2 to Eurex Clearing circular 069/19](#)

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Chapter I: Clearing Model Related Provisions

FCM Regulations of Eurex Clearing AG

As of 01.08.2019

THE FCM REGULATIONS WILL BE AMENDED.

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

[...]

1.2 Definitions and Interpretation

1.2.1 Unless the context requires otherwise, the following terms and expressions in the FCM Regulations shall have the following meanings:

[...]

“**Cash Trust Account**” has the meaning assigned to it in Number 3.2.2.

[...]

“**Securities Trust Account**” has the meaning assigned to it in Number 3.1.3.

[...]

[...]

3 Margin

3.1 General Provisions

[...]

3.1.2 Eligible Margin Assets and Valuation; Large Exposure

[...]

(5) If, in the opinion of Eurex Clearing AG, the sum of Eligible Margin Assets in the form of cash actually delivered to Eurex Clearing AG with respect to a Margin Requirement in a particular currency other than a Clearing Currency (the “**Relevant Currency**”) that is held by Eurex Clearing AG exceeds or will exceed any large exposure limit with respect to the Relevant Currency to which Eurex Clearing AG is subject pursuant to Art. 395 of the European Capital Requirements Regulation (EU) No. 575/2013 (“**CRR**”) or any other comparable regulatory requirement (the amount of such excess or prospective excess, as determined by Eurex Clearing AG, the “**Relevant Currency Surplus**”), then Eurex Clearing AG shall be entitled to take the following measures with a view to complying with such large exposure limit:

(a) Eurex Clearing AG may, with respect to FCM Clearing Members in respect of which an amount of Eligible Margin Assets in the Relevant Currency has been actually delivered to Eurex Clearing AG in excess of the applicable Margin Requirement and has not been returned, repaid or applied (“**Currency Margin Excess**”), pay to each such FCM Clearing Member (without prior notice) an amount in the Relevant Currency up to the relevant Currency Margin Excess.

The aggregate of any such payments to all relevant FCM Clearing Members and all payments to all relevant Non-FCM Clearing Members in accordance with the Clearing Conditions shall not exceed the Relevant Currency Surplus.

If one or more Currency Margin Excesses exist with respect to more than one FCM Clearing Member or Non-FCM Clearing Member, Eurex Clearing AG may distribute such payments (up to an aggregate of the Relevant Currency Surplus) across such FCM Clearing Members and Non-FCM Clearing Members in its reasonable discretion.

When exercising such discretion, Eurex Clearing AG may take into account, *inter alia*, the amount of the relevant Currency Margin Excess of the relevant FCM Clearing Members and Non-FCM Clearing Members and the absolute amount of Eligible Margin Assets in the form of cash in the Relevant Currency provided by each such FCM Clearing Member and Non-FCM Clearing Member.

Any such payment shall discharge the corresponding Redelivery Claim of the receiving Clearing Member or Basic Clearing Member.

(b) If Eurex Clearing AG concludes that the aggregate payments by Eurex Clearing AG pursuant to (a) above fall or will fall short of the Relevant Currency Surplus (the amount of such shortfall, the “**Residual Currency Surplus**”), Eurex Clearing AG may issue Margin Calls in accordance with Number 3.2 and Number 6.4.3 or Number 6.5.4 (in an aggregate equivalent value up to the Residual Currency Surplus), *provided that*

(i) for the purposes of the determination whether the aggregate value of the Eligible Margin Assets actually delivered to Eurex Clearing AG is insufficient to provide the cover required to comply with the applicable Margin Requirement, the Requested Substitution Amount shall be deemed to have a value of zero, and

(ii) only Eligible Margin Assets either in the form of cash in a Clearing Currency or in the form of Securities may be delivered in respect of such Margin Call.

Following the actual delivery of the Eligible Margin Assets delivered in respect of such Margin Call(s), Eurex Clearing AG shall redeliver Eligible Margin Assets in the Relevant Currency in an amount not exceeding the Requested Substitution Amount to the FCM Clearing Member. For the avoidance of doubt, for the purposes of the determinations which amount shall be redelivered to the

FCM Clearing Member, the Requested Substitution Amount shall no longer be deemed to have a value of zero.

“Requested Substitution Amount” means the relevant amount(s) of Eligible Margin Assets in the Relevant Currency provided by the relevant FCM Clearing Member with respect to the relevant Margin Requirement, requested to be substituted by Eurex Clearing AG pursuant to this lit. (b).

Eurex Clearing AG may distribute the requests for such substitutions in its reasonable discretion across all FCM Clearing Members and Non-FCM Clearing Members which have actually delivered Eligible Margin Assets in the Relevant Currency to Eurex Clearing AG. When exercising such discretion, Eurex Clearing AG may take into account, *inter alia*, the absolute amount of Eligible Margin Assets in the form of cash in the Relevant Currency provided by each FCM Clearing Member and Non-FCM Clearing Member.

Eurex Clearing AG's rights to conduct any further Margin Calls shall remain unaffected.

3.1.3 Currency Conversion, Use of Eligible Margin Assets in the form of cash and Income on Margin Assets

[...]

- (2) Eurex Clearing AG reserves the right to make use of Eligible Margin Assets in the form of cash that is Actually Delivered by an FCM Clearing Member to Eurex Clearing AG as cover in respect of Initial Margin or Supplementary Margin for all Own Transactions in its sole discretion in order to ensure its capacity to operate as a derivatives clearing organization as well as for investment purposes. Eurex Clearing AG shall also be entitled to use securities purchased in such investment transactions for purposes of liquidity management and liquidity generation in relation to its clearing activities in form of repo transactions.

Eurex Clearing AG reserves the right, in its sole discretion, to make use of Eligible Margin Assets in the form of cash that is Actually Delivered by an FCM Clearing Member to Eurex Clearing AG as cover in respect of Initial Margin or Supplementary Margin for FCM Client Transactions for investment purposes.

(a) Eurex Clearing AG shall be entitled to enter into repo transactions with commercial counterparties.

(b) In order to ensure insolvency protection of the Eligible Margin Assets in form of cash used for investment purposes, Eurex Clearing AG and the FCM Clearing Member are subject to specific German law governed provisions on the establishment of Cash Trust Accounts as set out in Clause 6 of the FCM Clearing Agreement in the form attached to these FCM Regulations as Appendix 1 (each such account qualifies as Cash Trust Account). The FCM Clearing Member agrees to hold its rights in respect of any such Cash Trust Account on trust for its FCM Clients from time to time.

(c) In order to ensure insolvency protection of the securities Eurex Clearing AG received as deal securities under repo transactions ("Deal Securities"), Eurex Clearing AG and the FCM Clearing Member are subject to specific German law governed provisions on the establishment of securities trust accounts as set out in Clause 7 of the FCM Clearing Agreement in the form attached to these FCM Regulations as Appendix 1 (each such account, a "Securities Trust Account"). The FCM Clearing Member agrees to hold its rights in respect of any such Securities Trust Account on trust for its FCM Clients from time to time.

(d) Any proceeds Eurex Clearing AG generates from the investment in repo transactions shall economically belong to the FCM Clearing Members and shall be transferred to the relevant Cash Trust Account immediately upon receipt of such proceeds by Eurex Clearing AG.

[...]

[...]

3.1.5 Provisions regarding holding of Eligible Margin Assets by Eurex Clearing AG

- (1) Any cash held at any time in any Cash Trust Account or Eurex Clearing AG FCM Client RTGS Account and any securities held at any time in any FCM Client Pledged Securities Account established by an FCM Clearing Member for the benefit of Eurex Clearing AG are part of the cleared swaps account class as defined in, and for purposes of, the CFTC Part 190 Regulations.

[...]

[...]

3.2.2 Delivery of Eligible Margin Assets in the form of cash

[...]

- (3) In order to ensure insolvency protection in relation to Eligible Margin Assets in the form of cash delivered to Eurex Clearing AG by the FCM Clearing Member in respect of the FCM Client Margin Account, Eurex Clearing AG and the FCM Clearing Member are subject to specific German law governed provisions on the establishment of cash trust accounts as set out in Clause 6 of the FCM Clearing Agreement in the form attached to these FCM Regulations as Appendix 1 (each such account, a "**Cash Trust Account**"). The FCM Clearing Member agrees to hold its rights in respect of any such Cash Trust Account on trust for its FCM Clients from time to time.

[...]

9.5.5 Realization of Margin

- (1) In case Eurex Clearing AG is, with respect to an FCM Clearing Member Netting Set or an FCM Client Netting Set, the creditor of the Difference Claim against the

Affected FCM Clearing Member, Eurex Clearing AG shall, in the case of Eligible Margin Assets in the form of cash, use such cash (where applicable, in accordance with the provisions relating to Cash Trust Accounts set out in the FCM Clearing Agreement) and, in the case of Eligible Margin Assets in the form of securities, be entitled to realize its security interest granted by the Affected FCM Clearing Member in accordance with the Pledge Agreement.

[...]

[...]

Appendix 1 to the FCM Regulations of Eurex Clearing AG:

FCM Clearing Agreement

with an FCM Clearing Member for the Clearing of FCM Client
Transactions under the FCM Regulations of Eurex Clearing AG

As of 01.08.2019

THE FCM REGULATIONS WILL BE AMENDED.

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[...]

6. Eurex Clearing AG and the FCM Clearing Member hereby enter into the following trust arrangements in relation to Initial Margin or Supplementary Margin for FCM Client Transactions in the form of cash:

(1) Eurex Clearing AG will open and maintain the following cash accounts in which Initial Margin and Supplementary Margin in the form of cash in respect of an FCM Client Margin Account have to be booked (each such account a "**Cash Trust Account**):

(a) the Eurex Clearing AG FCM Client RTGS Account, ~~and~~

(b) any account of Eurex Clearing AG with a Settlement Bank in any currency accepted by Eurex Clearing AG for the delivery of Initial Margin or Supplementary Margin for FCM Client Transactions in form of cash, maintained in the name of Eurex Clearing AG, and

(c) any account of Eurex Clearing AG with a commercial bank, which was established for investment purposes with respect to Eligible Margin Assets in the form of cash delivered by an FCM Clearing Member to Eurex Clearing AG as cover in respect of Initial Margin or Supplementary Margin for FCM Client Transactions in accordance with Chapter I Number 3.1.3 (2) of the FCM Regulations.

Each Cash Trust Account shall be opened and maintained as an open trust account (*offenes Treuhandkonto*) solely for purposes of holding Initial Margin or Supplementary Margin for FCM Client Transactions in the form of cash delivered by all FCM Clearing Members of Eurex Clearing AG in respect of any FCM Client Margin Account(s) and solely for the benefit of the FCM Clearing Members of Eurex Clearing AG.

(2) Eurex Clearing AG holds and will hold all amounts credited to any Cash Trust Account on trust (*treuhänderisch*) for the FCM Clearing Member and the other FCM Clearing Members.

(3) Eurex Clearing AG shall disclose each bank with which a Cash Trust Account is maintained (each an "**Account Bank**") that all amounts credited to such Cash Trust

Account are held on trust (*treuhänderisch*) by Eurex Clearing AG. Eurex Clearing AG will inform the FCM Clearing Member of the account numbers of each Cash Trust Account to which any Initial Margin or Supplementary Margin for its FCM Client Transactions in the form of cash is credited.

- (4) Eurex Clearing AG shall use reasonable endeavours to procure that the relevant Account Bank with which the Cash Trust Account is maintained waives any right of set-off against any amounts credited to the Cash Trust Account and any security interest, lien or charge it may have against any credit on the Cash Trust Account, except as provided in any acknowledgement letter that Eurex Clearing AG will obtain from the Account Bank in accordance with CFTC Regulation 22.5.
- (5) Eurex Clearing AG will, in its books and records, record any Initial Margin or Supplementary Margin for FCM Client Transactions in the form of cash credited to the Cash Trust Account in the relevant FCM Client Margin Account of each FCM Clearing Member and must not commingle any of its proprietary monies with any monies credited to any Cash Trust Account from time to time. If Eurex Clearing AG becomes aware of any such commingling, it shall immediately rectify the relevant credits to the relevant Cash Trust Account.
- (6) All payments of Initial Margin or Supplementary Margin for FCM Client Transactions in the form of cash with respect to any FCM Client Margin Account of the FCM Clearing Member shall be made by the FCM Clearing Member directly to the relevant Cash Trust Account, provided that if Eurex Clearing AG receives any payment by the FCM Clearing Member of Initial Margin or Supplementary Margin for FCM Client Transactions in the form of cash denominated in EUR in relation to an FCM Client Margin Account in a Cash Trust Account with a Settlement Bank, Eurex Clearing AG will, without undue delay, transfer a corresponding amount into the Eurex Clearing AG FCM Client RTGS Account.
- (7) The FCM Clearing Member hereby authorises and instructs Eurex Clearing AG to withdraw amounts (recorded and segregated in Eurex Clearing AG's books and records as Initial Margin or Supplementary Margin for FCM Client Transactions in the form of cash delivered by the FCM Clearing Member in respect of an FCM Client Margin Account) from any Cash Trust Account and to transfer amounts to any Cash Trust Account only in order to
 - (a) redeliver Excess Margin in accordance with the terms of the FCM Regulations,
 - (b) discharge any FCM Client Secured Claims relating to the relevant FCM Client(s) that are due but unsatisfied,
 - (c) transfer any such amounts to another Cash Trust Account, or
 - (d) otherwise release or repay amounts upon a termination of FCM Clearing Licenses, subject to and in accordance with the FCM Regulations,
 - (e) invest such amounts into repo transactions pursuant to Chapter I Number 3.1.3 (2) of the FCM Regulations and to transfer any such amounts to an Investment

Account of Eurex Clearing AG and to re-transfer any cash amounts Eurex Clearing AG receives from the commercial counterparties of the repo transaction on the applicable maturity date of such repo transaction into the relevant Cash Trust Account, or

(f) transfer any proceeds Eurex Clearing AG generates from the investment in repo transactions pursuant to Number 3.1.3 (2) of the FCM Regulations into the relevant Cash Trust Account.

7. Eurex Clearing AG and the FCM Clearing Member hereby enter into the following trust arrangements in relation to securities received as Deal Securities under repo transactions entered into between Eurex Clearing AG and commercial counterparties pursuant to Chapter I Number 3.1.3 (2) of the FCM Regulations:

(1) Eurex Clearing AG will open and maintain with Account Banks securities accounts in which the Deal Securities have to be booked (each such account a “**Securities Trust Account**”).

Each Securities Trust Account shall be opened and maintained as an open trust account (*offenes Treuhandkonto*) solely for purposes of holding Deal Securities and solely for the benefit of the FCM Clearing Members of Eurex Clearing AG.

(2) Eurex Clearing AG holds and will hold all Deal Securities credited to any Securities Trust Account on trust (*treuhänderisch*) for the FCM Clearing Member and the other FCM Clearing Members.

(3) Eurex Clearing AG shall disclose each Account Bank that all amounts credited to such Trust Account are held on trust (*treuhänderisch*) by Eurex Clearing AG. Eurex Clearing AG will inform the FCM Clearing Member of the account numbers of each Securities Trust Account to which any Deal Securities are credited.

(4) Eurex Clearing AG shall use reasonable endeavours to procure that the relevant Account Bank with which the Securities Trust Account is maintained waives any security interest, lien or charge it may have with respect to any Deal Securities credited to the Securities Trust Account, except as provided in any acknowledgement letter that Eurex Clearing AG will obtain from the Account Bank in accordance with CFTC Regulation 22.5.

(5) Eurex Clearing AG will (i) record in its books and records any Deal Securities credited to the Securities Trust Account separate from its own assets and assets it holds for its FCM Clearing Members or Non-FCM Clearing Members and (ii) must not commingle any of its own assets and assets it holds for its FCM Clearing Members or Non-FCM Clearing Members with any Deal Securities credited to any Securities Trust Account. If Eurex Clearing AG becomes aware of any such commingling, it shall immediately rectify the relevant credits to the relevant Securities Trust Account.

(6) Eurex Clearing AG shall deliver all Deal Securities Eurex Clearing AG receives from the commercial counterparties of the repo transactions directly to the relevant Securities Trust Account.

(7) In accordance with the relevant contractual arrangements entered into between Eurex Clearing AG and the commercial counterparties of the repo transactions, any payments of interest, dividends or other distributions Eurex Clearing AG receives with respect to the Deal Securities shall be paid or delivered to the commercial counterparty.

(8) The FCM Clearing Member hereby authorises and instructs Eurex Clearing AG to withdraw Deal Securities from any Securities Trust Account only in order to redeliver the Deal Securities to the commercial counterparties of the repo transactions on the relevant maturity date of the repo transactions.

8. This Agreement shall be entered into for an indefinite period of time and shall remain in effect until it is terminated by one of the Parties in accordance with the FCM Regulations.

This Agreement supersedes any previous written or oral agreement between the Parties in relation to the matters dealt with herein.

89. This Agreement shall be amended pursuant to Number 16.2 of the FCM Regulations, in the case of amendments to the form of this Agreement set out in Appendix 1 to the FCM Regulations. In addition, this Agreement may be amended at any time by written agreement between the Parties by executing an amended and restated version of this Agreement.

109. Unless otherwise provided for in the FCM Regulations, the FCM Clearing Member shall not assign any of its respective rights or claims under this Agreement except with the prior written consent of Eurex Clearing AG.

1149. This Agreement does not and is not intended to confer any rights to third parties.

1244. This Agreement (except for Clause 6 and except for the inclusion of any parts of the FCM Clearing Conditions that are stated to be governed by German law) is governed by the substantive laws of the United States of America and of the State of New York. Clause 6 as well as the inclusion of any part of the FCM Clearing Conditions that is stated to be governed by German law are governed by the substantive laws, excluding German private international law, of the Federal Republic of Germany.

Any non-contractual rights and obligations arising out of or in connection with this Agreement shall also be governed by the laws of the State of New York.

123. The courts in Frankfurt am Main, Germany shall have exclusive jurisdiction (*ausschließlicher Gerichtsstand*) over any action or other legal proceedings arising out of or in connection with this Agreement.

134. The place of performance shall be Frankfurt am Main, Germany.

145. The FCM Clearing Member acknowledges and agrees that, if Eurex Clearing AG becomes subject to any mandatory provisions of any statute or regulation on the recovery and/or resolution of regulated entities, such as central counterparties, any measures taken by a competent authority with respect to Eurex Clearing AG under such statute or

regulation with respect to rights or obligations arising under the FCM Clearing Conditions (such as, without limitation, any partial or full termination of contracts, any haircutting of margin or variation margin, any cash calls or any write-down or conversion of liabilities) shall also be binding upon the FCM Clearing Member.

156. If any provision contained in this Agreement is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected. Such invalid, illegal or unenforceable provision shall be replaced by means of supplementary interpretation by a valid, legal and enforceable provision, which most closely approximates the parties' commercial intention. This shall also apply *mutatis mutandis* to any gaps in this Agreement.

[...]
