



Eurex Clearing Resources Circulars & Mailings

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No. 070/2019

Amendments to the Clearing Conditions of Eurex Clearing AG regarding Eurex Clearing's access framework

Eurex Clearing Circular 070/2019 Amendments to the Clearing Conditions of Eurex Clearing AG regarding Eurex Clearing's access framework

1. Introduction

This circular contains information with respect to the service offering of Eurex Clearing and introduces amendments to the Clearing Conditions of Eurex Clearing AG (Clearing Conditions) regarding the following topics:

- A. Admission of affiliated Direct Clients qualifying as U.S. Persons for the Clearing of OTC Interest Rate Derivative Transactions through a non-U.S. Clearing Member;
- B. Enhancement of Multiple Clearing Relationships for Eurex DC Market Participants.

The amendments above will become effective as of **1 August 2019**.

2. Required actions

There are no required actions for the Participants.

3. Details of the initiative

A. Admission of affiliated U.S. Persons for the Clearing of OTC Interest Rate Derivative Transactions via a non-U.S. Clearing Member

As of today, Eurex Clearing does not allow the Clearing of OTC Interest Rate Derivative Transactions for Direct Clients under the Clearing Conditions if the relevant Direct Client qualifies as U.S. Person. Such OTC Interest Rate Derivative Transactions are supposed to be cleared under Eurex Clearing's LSOC framework (the FCM Regulations).

With the attached amendments, Eurex Clearing intends to change the Clearing Conditions to allow non-U.S. Clearing Members to clear OTC Interest Rate Derivative Transactions under the Clearing Conditions for Direct Clients qualifying as U.S. Persons, provided that such Direct Client is an affiliate of the non-U.S. Clearing Member. The reason for this service extension is that OTC Interest Rate Derivative Transactions cleared for affiliates qualify as proprietary business of the relevant Clearing Member pursuant to CFTC Rule 1.3.

To implement the amendments, the following provisions will be amended as outlined in Attachment 1:

- Chapter I Part 1 Number 1.8.1 of the Clearing Conditions

B. Enhancement of the maximum number of Clearing Members acting for one Eurex DC Market Participant

In light of Brexit, Eurex Clearing is enhancing the flexibility for DC Market Participants and Indirect Client Market Participants by increasing the maximum number of Clearing Members accepted by Eurex Clearing per participant for the clearing of Eurex transactions.

The current limit of three Clearing Members (CMs) per Eurex Market Participant will be enhanced to five CMs per Eurex Market Participant.

To implement the amendments, the following provisions will be amended as outlined in Attachment 2:

- Chapter II Part 1 Numbers 1.9.1 and 1.9.2 of the Clearing Conditions

The amendments above will become effective on 1 August 2019.

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

[Resources > Rules and Regulations](#)

Attachments:

- Attachment 1 – Updated sections in Chapter I of the Clearing Conditions
- Attachment 2 – Updated sections in Chapter II of the Clearing Conditions

Recipients:	All Clearing Members, Basic Clearing Members, Disclosed Direct Clients of Eurex Clearing AG and vendors
Target groups:	Front Office/Trading, Middle + Back Office, IT/System Administration, Auditing/Security Coordination
Contact:	client.services@eurexclearing.com
Web:	www.eurexclearing.com
Authorized by:	Manfred Matusza

Further information

[Attachment 1 to Eurex Clearing circular 070/19](#)

[Attachment 2 to Eurex Clearing circular 070/19](#)

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Chapter I of the Clearing Conditions of Eurex Clearing AG

General Provisions

As of 01.08.2019

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

[...]

Part 1 General Clearing Provisions

1 General Rules

[...]

1.8 No Clearing of OTC Interest Rate Derivative Transactions for U.S. Persons

1.8.1 In relation to OTC Interest Rate Derivative Transactions, the Clearing Member (other than any OTC IRS U.S. Clearing Member) represents and warrants by way of an independent guarantee and irrespective of fault (*selbständiges, verschuldensunabhängiges Garantieverprechen*) to Eurex Clearing AG that, at the time it enters into a Clearing Agreement and each time when entering into an OTC Interest Rate Derivative Transaction, it (i) reasonably believes that it does not fall within any of the U.S. Person Categories and believes in good faith that it would not otherwise be deemed to be a “**U.S. person**” under the Interpretive Guidance (the “**CM-OTC U.S. Person Representation**”) and (ii) will not submit any Client-Related Transaction for Clearing to Eurex Clearing AG, unless the Clearing Member (a) has either obtained a representation from the relevant Direct Client (other than an ICM Client) that such Direct Client reasonably believes that it does not fall within any of the U.S. Person Categories and/or believes in good faith that it would not otherwise be deemed to be a “**U.S. person**” under the Interpretive Guidance, or (b) in case the Clearing Member has not obtained a representation as described under (a) above, reasonably believes that the relevant Direct Client (other than an ICM Client) does not fall within any of the U.S. Person Categories and believes in good faith that the relevant Direct Client would not otherwise be deemed to be a “**U.S. person**” under the Interpretive Guidance (the “**CM-Customer OTC U.S. Person Representation**”). Number 7.2.1 (2) shall apply accordingly.

This Number 1.8.1 (ii) shall not apply, if the Clearing Member submits Client-Related Transactions for Clearing to Eurex Clearing AG with respect to Direct Clients (other than an ICM Client) that fall within any of the U.S. Person Categories provided that the Direct Client (i) is an affiliate of the relevant Clearing Member and (ii) is considered as proprietary account of the relevant Clearing Member under CFTC Rule 1.3. Under this Number 1.8.1, “**affiliate**” means any entity that controls, directly or indirectly, the Clearing Member, any entity that the Clearing Member controls, directly or indirectly, and any

entity in respect of which the Clearing Member and the entity are both under common control, directly or indirectly, of another entity.

[...]

2 Clearing Members

[...]

2.5 Specific provisions and additional continuing obligations for U.S. Clearing Members

[...]

2.5.1 Special prerequisites and provisions for U.S. Clearing Members

[...]

- (2) The applicant must either qualify as a futures commission merchant (as defined in the CEA) registered with the CFTC ("**FCM**") or as a Proprietary Trading Firm.

[...]

"**Affiliate**" means with respect to a Proprietary Trading Firm, any entity that controls, directly or indirectly, the Proprietary Trading Firm, any entity controlled, directly or indirectly, by the Proprietary Trading Firm or any entity directly or indirectly under common control with such Proprietary Trading Firm. For this purpose, "control" of an entity or of a Proprietary Trading Firm means ownership of a majority of the voting power of the entity or the Proprietary Trading Firm. The term Affiliate also covers any legal entity, corporation, partnership, association, trust, sovereign state, or agency whose account, when carried by the Proprietary Trading Firm, would be considered a proprietary account pursuant to CFTC Regulation Rule 1.3 (y) (or any successor or replacement regulation thereto).

[...]

[...]

Chapter II of the Clearing Conditions of Eurex Clearing AG

Transactions Concluded at Eurex Deutschland

(Eurex Exchange)

As of 01.08.2019

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED

DELETIONS ARE CROSSED OUT

Part 1 General Provisions

[...]

[...]

1.9 Multiple Clearing Relationships

1.9.1 General rules

Eurex Clearing AG will reject to set up a DC Market Participant or an Indirect Client Market Participant with a specific Clearing Member, if the relevant DC Market Participant or Indirect Client Market Participant is already set up as DC Market Participant or Indirect Client Market Participant with ~~three~~ five other Clearing Members. In this case, the provisions on the replacement of the Clearing Member (Chapter I Part 1 Number 8), on the non-fulfilment of duties of a DC Market Participant or Indirect Client Market Participant (Chapter I Part 1 Number 10), other agreements concluded between Clearing Members and DC Market Participants or Indirect Client Market Participants relating to the Clearing of Eurex Transactions (Chapter I Part 1 Number 12) as well as on the termination of the ICM Clearing Agreement in case of an ICM Client (Chapter I Part 1 Number 13) shall apply only insofar as the respective legal relationship between the relevant Clearing Member and the DC Market Participant, Indirect Client Market Participant or, under the Individual Clearing Model Provisions, the respective ICM Clearing Agreement is affected.

1.9.2 Information provided by Eurex Clearing AG

- (1) Notwithstanding Chapter I Part 1 Number 15.1, Eurex Clearing AG will inform a Clearing Member each time when ~~if~~ one of its DC Market Participants or Indirect Client Market Participants assigns the Clearing of Eurex Transactions to an additional ~~a second or third~~ Clearing Member. The name of the relevant Clearing Member or any further related information will not be disclosed.

[...]

[...]
