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No. 077/2020

# Amendments to the Clearing Conditions of Eurex Clearing AG

Eurex Clearing Circular 077/20

## 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) regarding the following topics:

- A. Amendment of prerequisites to be fulfilled for the granting of the Specific Repo License – exclusion of small non-financial entities from the Specific Repo License
- B. Representation by Clearing Members with regards to Eurex Clearing's offering of clearing services under the Ontario Securities Act
- C. Amendments to the Clearing Conditions regarding profit handling resulting from the failure to open KOSPI 200 derivatives positions on the Korea Exchange (KRX)
- D. C7 Release 7.0 - related amendments to Chapter II of the Clearing Conditions

The amendments under A. to C. will become effective as of **2 November 2020**, the amendments under D. will become effective as of **23 November 2020**.

## 2. Required action

There is no action required for the Participants.

## 3. Details

### A. Amendments of prerequisites to be fulfilled for the granting of the Specific Repo License

Eurex Clearing amends the prerequisites to be fulfilled for the granting of the Specific Repo License. If the applicant for a Specific Repo License is a non-financial counterparty as defined in Art. 3 (4) Regulation (EU) 2015/2365 on transparency of securities financing transactions ("SFTR"), the applicant's balance sheet dates shall exceed the limits of at least two of the three criteria laid down in Art. 3 (3) of Directive 2013/34/EU on the annual financial statements.

To reflect the changes, the following provision of the Clearing Conditions will be amended effective as of 2 November 2020, as outlined in Attachment 1:

- Chapter IV Part 3 Number 3.1 (5)

### B. Representation by Clearing Members with regards to Eurex Clearing's offering of clearing services under the Ontario Securities Act

Based on a permanent exemption order issued by the Ontario Securities Exchange, Eurex Clearing is offering clearing services to Ontario-based Clearing Members and their clients. For the clearing of OTC Derivative Transactions relating to Undisclosed Clients and Indirect Clients domiciled in Ontario, the following limitations apply and have been incorporated to the legal framework by adding a respective provision. Pursuant to this provision, the Clearing Member represents to Eurex Clearing that it will not clear OTC Interest Rate Derivative Transactions for

- any Undisclosed Direct Client that is domiciled in Ontario (Canada),
- any Indirect Client of a Disclosed Direct Client that is domiciled in Ontario (Canada) and
- any Indirect Client that is domiciled in Ontario (Canada) of any Direct Client.

COOKIE SETTINGS

To reflect the changes, the following provisions of the Clearing Conditions will be amended effective as of 2 November 2020, as outlined in Attachment 2 and in Attachment 3:

- Chapter I Part 1 Number 1.15
- Appendix 1

### **C. Amendments to the Clearing Conditions regarding profit handling resulting from the failure to open KOSPI 200 derivatives positions on the Korea Exchange (KRX)**

Each Clearing Member having open positions in Eurex Daily Futures Contracts on KOSPI Derivatives has to re-open such positions on the next business day at the latest 40 minutes before the start of trading on KRX.

In case a Clearing Member fails to re-open such positions on the KRX, Eurex Clearing re-opens the positions on behalf before start of trading and closes the respective position immediately after start of trading at KRX. The proposed changes to the Clearing Conditions, seek to amend the handling of potential profits resulting from the above described process.

To reflect the changes, the following provisions of the Clearing Conditions will be amended effective as of 2 November 2020, as outlined in Attachment 4:

- Chapter II Part 2 Number 2.15.4 (2)

### **D. C7 Release 7.0 - related amendments to Chapter II of the Clearing Conditions**

Eurex Clearing will extend the transaction duration (lifetime of a transaction) for Eurex Transactions. Eurex Clearing will permit transaction adjustments with respect to Eurex Transactions executed on the respective Business Day and the five subsequent Business Days instead of the three subsequent Business Days.

To reflect the changes, the following provisions of the Clearing Conditions will be amended effective as of 23 November 2020, as outlined in Attachment 5:

- Chapter II Part 1 Numbers 1.3.2.(7) and 1.3.3.(2)

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

[Rules & Regs > Clearing Conditions](#)

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 or FCM Clearing of Eurex Clearing AG, as applicable.

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:**

- 1 – Chapter IV Part 3 Number 3.1 (5) of the Clearing Conditions
- 2 – Chapter I Part 1 Number 1.15 of the Clearing Conditions
- 3 – Appendix 1 to the Clearing Conditions
- 4 – Chapter II Part 2 Number 2.15.4 (2) of the Clearing Conditions
- 5 – Chapter II Part 1 Numbers 1.3.2.(7) and 1.3.3.(2) of the Clearing Conditions

#### **Further information**

Recipients: All Clearing Members, Basic Clearing Members, Disclosed Direct Clients of Eurex Clearing AG and vendors

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

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[COOKIE SETTINGS](#)

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## Further information

[Attachment 1 to Eurex Clearing Circular 077/20](#)

[Attachment 2 to Eurex Clearing Circular 077/20](#)

[Attachment 3 to Eurex Clearing Circular 077/20](#)

[Attachment 4 to Eurex Clearing Circular 077/20](#)

[Attachment 5 to Eurex Clearing Circular 077/20](#)

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Chapter IV of the Clearing Conditions of Eurex Clearing AG

## Clearing of Repo Transactions

As of 02.11.2020

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AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED

DELETIONS ARE CROSSED OUT

\*\*\*\*\*

[...]

**Part 3 Special Conditions regarding the Clearing of GC Pooling Repo Transactions with holders of a Specific Repo License and corresponding GC Pooling Repo Transactions with Clearing Members**

[...]

**3.1 Specific Repo License**

[...]

- (5) The prerequisites to be fulfilled for the granting of the Specific Repo License are the following:

[...]

d) if the applicant is a non-financial counterparty as defined in Art. 3 (4) Regulation (EU) 2015/2365 on transparency of securities financing transactions (“SFTR”) (or any successor or replacement regulation thereto), the applicant’s balance sheet dates shall exceed the limits of at least two of the three criteria laid down in Art. 3 (3) of Directive 2013/34/EU on the annual financial statements (or any successor or replacement regulation thereto);

~~e)~~ the applicant has access to Eurex Clearing AG’s Common Report Engine;

~~f)~~ the applicant has provided evidence of an own participation authorisation regarding the Collateral Management System Xemac of Clearstream Banking AG (“Xemac”) including the possibility of participation in the international Collateral Management;

~~g)~~ the applicant has

(i) a cash account with Clearstream Banking AG in the name of the applicant, pursuant to Chapter I Part 1 Number 2.1.2 Paragraph (4) (b) (aa) or

(ii) a dedicated cash account of the applicant with Clearstream Banking S.A. for the settlement of GC Pooling Repo Transactions;

- gh) the applicant has securities settlement accounts pursuant to Chapter I Part 1 Number 2.1.2 Paragraph (4) (a) (gg);
- hi) the applicant has provided evidence of the applicant having granted an appropriate power of attorney and authorisation to Clearstream Banking AG or Clearstream Banking S.A. for all declarations, actions, deliveries and payments in connection with the fulfilment of the delivery and payment obligations pursuant to this Part 3, in particular with regard to the notification of the statements of account regarding the cash account pursuant to Item (fg), such evidence having to be provided by Clearstream Banking AG or Clearstream Banking S.A. in the name of the holder of the Specific Repo License.
- ij) to the extent Eurex Clearing AG raises fees for the Clearing of GC Pooling Repo Transactions, the applicant undertakes to allow Eurex Clearing AG to collect the fees from an account to be specified by the applicant.
- jk) Eurex Clearing AG may require the applicant to submit a legal opinion by a leading legal counsel recognised by Eurex Clearing AG, such legal opinion having been produced at the cost of the applicant and providing proof for the legal effectiveness and enforceability of the Clearing Conditions within the relevant legal system in accordance with the requirements set by Eurex Clearing AG for each individual case.
- kl) The granting of a Specific Repo License requires that Eurex Clearing AG has obtained all licenses and approvals that are required for the provision of Clearing towards the applicant in the relevant jurisdiction.

[...]

[...]

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Chapter I of the Clearing Conditions of Eurex Clearing AG

## General Provisions

As of 02.11.2020

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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

[...]

#### 1.15 Limitations regarding the Clearing of OTC Derivative Transactions for Ontario Clients

In relation to OTC Interest Rate Derivative Transactions, the Clearing Member represents and warrants by way of an independent guarantee and irrespective of fault (*selbständiges, verschuldensunabhängiges Garantieversprechen*) to Eurex Clearing AG that it will not clear OTC Interest Rate Derivative Transactions for (i) any Undisclosed Direct Client that is domiciled in Ontario (Canada), (ii) any Indirect Client of a Disclosed Direct Client that is domiciled in Ontario (Canada), and (iii) for any Indirect Client that is domiciled in Ontario (Canada) of any Direct Client.

#### **1.156 FIC Board Advisory Committee**

1.156.1 Eurex Clearing AG will establish a FIC board advisory committee (the “**FIC Board Advisory Committee**”) 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**”) with respect to the FIC Matters (as defined in Number 1.156.2), 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.

1.156.2 “**FIC Matters**” with respect to the FIC Board Advisory Committee shall be exclusively the following:

[...]



1.156.3 The FIC Board Advisory Committee consists of up to 10 (ten) committee members ("**FIC Committee Members**"). 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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Appendix 1 to the Clearing Conditions of Eurex Clearing AG:

# Clearing Agreement

between Eurex Clearing AG and a Clearing Member

As of 02.11.2020

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AMENDMENTS ARE MARKED AS FOLLOWS:  
INSERTIONS ARE UNDERLINED,  
DELETIONS ARE CROSSED OUT.

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[...]

6. The Clearing Member makes to Eurex Clearing AG amongst others the representations and warranties, and provides the undertakings, set out in the following provisions of the Clearing Conditions:

[...]

(4) Chapter I Part 1 Number 1.13 (Singapore-related Clearing limitations);

(5) Chapter I Part 1 Number 1.15 (Ontario-related Clearing limitations); and

~~(65)~~ Chapter VIII Part 3 Number 3.1.3 Paragraph (5) (OTC Currency Products Clearing License).

Eurex Clearing AG makes the representations and warranties set out in Chapter I Part 1 Number 1.7.6 of the Clearing Conditions.

[...]

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Chapter II of the Clearing Conditions of Eurex Clearing AG

# Transactions Concluded at Eurex Deutschland

(Eurex Exchange)

As of 02.11.2020

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AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

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[...]

## **Part 2 Clearing of Futures Contracts**

[...]

### **2.15 Clearing of Eurex Daily Futures Contracts on KOSPI 200 Derivatives of the Korea Exchange (KRX)**

[...]

[...]

#### **2.15.4 Failure to open contracts**

[...]

- (2) The costs arising from the aforementioned measures plus any losses occurring due to fulfilment of obligations of the defaulting Clearing Member by Eurex Clearing AG shall be borne by the defaulting Clearing Member. ~~Possible profits occurring from fulfilment of the obligations of the defaulting Clearing Member by Eurex Clearing AG shall be added to the Dedicated Amounts of Eurex Clearing AG after deduction of all costs incurred by Eurex Clearing AG.~~

[...]

[...]

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Chapter II of the Clearing Conditions of Eurex Clearing AG

# Transactions Concluded at Eurex Deutschland

(Eurex Exchange)

As of 23.11.2020

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AMENDMENTS ARE MARKED AS FOLLOWS:  
INSERTIONS ARE UNDERLINED,  
DELETIONS ARE CROSSED OUT.

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[...]

**Part 1 General Provisions**

[...]

**1.3 Internal Accounts**

[...]

**1.3.2 Account Management**

[...]

- (7) Adjustments to Eurex Transactions (trade adjustments) and adjustment to positions (position adjustments) in accordance with the following Numbers 1.3.3 to 1.3.5 can be entered before, during or after the trading period of each Business Day. Adjustments to Eurex Transactions are permitted with respect to Eurex Transactions executed on the respective Business Day and the five~~three~~ preceding Business Days.

[...]

**1.3.3 Eurex Transaction transfers and Position transfers**

[...]

- (2) In addition to the prerequisites set out in Paragraph (1), a transfer of Eurex Transactions using the 'give-up/take-up' functionality is only possible under the following conditions:

- (i) the transfer request is entered into the systems of Eurex Clearing no later than on the ~~third~~fourth Business Day following the conclusion of the respective Eurex Transactions,

[...]

[...]

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