

09 Nov 2020  
Eurex Clearing

# Amendment to the Clearing Conditions and the FCM Regulations of Eurex Clearing AG

## Eurex Clearing Circular 096/20 Amendment to the Clearing Conditions and the FCM Regulations of Eurex Clearing AG

### 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 and the FCM Regulations of Eurex Clearing AG regarding the following topics:

- A. Clarification of Representation by Clearing Members and FCM Clearing Members with regards to clients from the People's Republic of China (PRC)

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- B. Editorial change with regards to a reference in Chapter II Part 1 Number 1.1.2 (5)

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- C. Extension of EUR cash collateral withdrawal cut-off time

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- D. Introduction of permission for Eurex Clearing to direct debit Eurex-Fees on the basis of its price list in effect

The amendments under A. to C. will become effective as of **1 December 2020**, the amendments under D. will become effective as of **4 January 2021**.

### 2. Required action

There is no required action for the Participants.

### 3. Details

#### **A. Clarification of Representation by Clearing Members and FCM Clearing Members with regards to clients from the People's Republic of China (PRC)**

The representations with regards to Chinese Clients in the Clearing Conditions as well as FCM Regulations will be amended to provide additional clarity with regards to the definition of Chinese Clients as well as the obligations of Clearing Members and FCM Clearing Members.

Affected Clearing Members and FCM Clearing Members must ensure by obtaining representation from the respective Disclosed Direct Client, Indirect Client and/or FCM Client that any original bilateral transaction was not concluded OTC or off-book between two entities located in PRC. Additionally, the affected Clearing Members or FCM Clearing Members represent to Eurex Clearing that any entities domiciled in the PRC that they on-board as Disclosed Direct Clients, Indirect Clients and/or FCM Clients qualify as eligible investors under the relevant PRC laws. In the case of Indirect Clients, affected Clearing Members or FCM Clearing Members may also obtain such representation from the Direct Client.

Eurex Clearing does not hold any license under PRC laws and cannot provide services in the PRC.

To reflect the changes, the following provisions will be amended as outlined in Attachment 1 and Attachment 2:

- ◆ Chapter I Part 1 Number 1.14 of the Clearing Conditions
- ◆ Chapter I Number 1.7.2 of the FCM Regulations

#### **B. Editorial change with regards to a reference in Chapter II Part 1 Number 1.1.2 (5)**

Chapter II Part 1 Number 1.1.2 (5) of the Clearing Conditions currently refers to Chapter I Part 1 Number 2.1.2 (4) (a) (gg). Due to amendments made with respect to Chapter I Part 1 Number 2.1.2 (4) (a) in the past, the reference under Chapter II Part 1 Number 1.1.2 (5) of the Clearing Conditions is not correct anymore. As a result, the reference will be corrected accordingly.

To reflect the change, the following provision will be amended as outlined in Attachment 3:

- ◆ Chapter II Part 1 Number 1.1.2 (5) of the Clearing Conditions

#### **C. Extension of EUR cash collateral withdrawal cut-off time**

The cut-off time for EUR cash collateral withdrawal is 09:30 CET currently. This limits the possibility to substitute collateral once clients deliver their own collateral to the Clearing Member. Eurex Clearing is therefore going to extend until further notice the cut-off time for EUR cash collateral in order to provide more flexibility. The new cut-off time for EUR withdrawal will be set to 13:00 CET.

To reflect the change, all affected websites will be amended accordingly.

#### **D. Introduction of permission for Eurex Clearing to direct debit Eurex-Fees on the basis of its price list in effect**

Eurex Clearing shall be entitled to directly debit fees according to the Price List of Eurex Clearing AG. All possible account types are explicitly stated. A direct debit authorisation has to be given by the Clearing Member. Therefore, the respective permission will be introduced.

To reflect the change, the following provision will be amended as outlined in Attachment 4:

- ◆ Chapter I Part 1 Number 5.1 of the Clearing Conditions

As of the effective date, the full versions of the amended Clearing Conditions and FCM Regulations will be available for download on the Eurex Clearing website [www.eurex.com/ec-en/](http://www.eurex.com/ec-en/) under the following link:

#### **Rules & Regs > Rules and 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.

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 Conditions of Eurex Clearing AG, as applicable.

#### **Attachments:**

- ◆ Attachment 1: Chapter I Part 1 Number 1.14 of the Clearing Conditions
- ◆ Attachment 2: Chapter I Number 1.7.2 of the FCM Regulations
- ◆ Attachment 3: Chapter II Part 1 Number 1.1.2 (5) of the Clearing Conditions

◆ Attachment 4: Chapter I Part 1 Number 5.1 of the Clearing Conditions

### Further information

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

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

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Web: [www.eurex.com/ec-en/](http://www.eurex.com/ec-en/)

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Authorised by: Jens Janka

### Further information

- [Attachment 1 to Eurex Clearing Circular 096/20](#)
- [Attachment 2 to Eurex Clearing Circular 096/20](#)
- [Attachment 3 to Eurex Clearing Circular 096/20](#)
- [Attachment 4 to Eurex Clearing Circular 096/20](#)

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Chapter I of the Clearing Conditions of Eurex Clearing AG

## General Provisions

As of 01.12.2020

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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

[...]

#### 1.14 Limitations regarding Clearing of Transactions for Chinese Clients

- (1) The term “**Chinese Clients**” shall cover Direct Clients and Indirect Clients (i) that are domiciled in the People’s Republic of China (for this purpose, excluding Hong Kong, Macau and Taiwan – “**PRC**”), (ii) that are incorporated in accordance with PRC’s laws (but, in respect of (i) and (ii), excluding any clients insofar as they act through a branch outside the PRC) and/or (iii) insofar as they act through a branch in the PRC.
- ~~(2) Regarding the Clearing of Transactions for Direct Clients and Indirect Clients that are domiciled and/or incorporated in the People’s Republic of China (“**Chinese Clients**”), Chinese Clients that are Direct Clients, the Clearing Member represents and warrants by way of an independent guarantee and irrespective of fault (*selbständiges, verschuldensunabhängiges Garantieverprechen*) to Eurex Clearing AG that,~~
- ~~(i) it will limit the Clearing of Transactions for Chinese Clients to Transactions that relate to Chinese Clients that are allowed under the relevant Chinese regulations and/or hold the relevant approvals from Chinese regulators to enter the Original OTC Transactions and/or Eurex Off-Book Trades (as applicable) with another party that is not domiciled and/or incorporated in the People’s Republic of China; and that~~
- ~~(ii) with regard to Original OTC Transactions and/or Eurex Off-Book Trades relating to a Chinese Client, it will use reasonable endeavors ~~endeavours~~ to obtain a representation from its Chinese Clients that ~~they~~ (i) the Chinese Client will not submit for Clearing any such transaction that was originally concluded between the respective Chinese Client and another party that fulfils the requirements in Paragraph (1) (i) – (iii), and (ii) hold the necessary allowances and/or approvals to enter into the Original OTC Transactions and/or Eurex Off-Book Trades (as~~

~~applicable) with another party that is not domiciled and/or incorporated in the People's Republic of China; and that any such transaction submitted by or on behalf of these Chinese Clients for Clearing is entered into by these Chinese Clients in compliance with the laws of the People's Republic of China~~ PRC (including but not limited to PRC's restrictions on cross border transactions).

- (3) Regarding Chinese Clients that are Indirect Clients, Paragraph (2) shall apply *mutatis mutandis*, provided that the Clearing Member may obtain the representation either from its Direct Client through which the Chinese Client clears or from the Chinese Client itself. If the representation is obtained from the Direct Client, the Clearing Member shall use reasonable endeavors to oblige the Direct Client to obtain a comparable representation from its Indirect Client.

[...]

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Chapter I: Clearing Model Related Provisions

# FCM Regulations of Eurex Clearing AG

As of 01.12.2020

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[...]

## 1 General Provisions

[...]

### 1.7 Representations and Undertakings with Respect to the FCM Clearing Agreement

[...]

#### 1.7.2 Additional representations and undertakings by FCM Clearing Members

[...]

- (5) The term “Chinese Clients” shall cover Direct Clients and Indirect Clients (i) that are domiciled in the People’s Republic of China (for this purpose, excluding Hong Kong, Macau and Taiwan – “PRC”), (ii) that are incorporated in accordance with PRC’s laws (but, in respect of (i) and (ii), excluding any clients insofar as they act through a branch outside the PRC) and/or (iii) insofar as they act through a branch in the PRC.

Regarding Chinese Clients that are Direct Clients, the Clearing Member represents and warrants by way of an independent guarantee and irrespective of fault (*selbständiges, verschuldensunabhängiges Garantieversprechen*) to Eurex Clearing AG that, with regard to Original OTC Transactions and/or Eurex Off-Book Trades relating to a Chinese Client, it will use reasonable endeavors to obtain a representation from its Chinese Client that (i) the Chinese Client will not submit for Clearing any such transaction that was originally concluded between the respective Chinese Client and another party that fulfils the requirements in Paragraph (1) (i) – (iii), and (ii) any such transaction is entered into by the Chinese Client in compliance with the laws of the PRC (including but not limited to PRC’s restrictions on cross border transactions).

Regarding Chinese Clients that are Indirect Clients, Paragraph (2) shall apply *mutatis mutandis*, provided that the Clearing Member may obtain the representation

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~~either from its Direct Client through which the Chinese Client clears or from the Chinese Client itself. If the representation is obtained from the Direct Client, the Clearing Member shall use reasonable endeavors to oblige the Direct Client to obtain a comparable representation from its Indirect Client. Regarding the Clearing of Transactions for Direct Clients and Indirect Clients that are domiciled and/or incorporated in the People's Republic of China ("**Chinese Clients**"), the FCM Clearing Member represents and warrants by way of an independent guarantee and irrespective of fault (*selbständiges, verschuldensun-abhängiges Garantievorsprechen*) to Eurex Clearing AG that~~

- ~~(i) it will limit the Clearing of Transactions for Chinese Clients to Transactions that relate to clients that are allowed under the relevant Chinese regulations and/or hold the relevant approvals from Chinese regulators to enter into the relevant transactions with another party that is not domiciled and/or incorporated in the People's Republic of China; and that~~
- ~~(ii) it will use reasonable endeavours to obtain a representation from its Chinese Clients that they hold the necessary allowances and/or approvals to enter into the relevant transactions with another party that is not domiciled and/or incorporated in the People's Republic of China; and that any transaction submitted by or on behalf of these Chinese Clients for Clearing is entered into by these Chinese Clients in compliance with the laws of the People's Republic of China (including but not limited to restrictions on cross border transactions).~~

[...]

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Chapter II of the Clearing Conditions of Eurex Clearing AG

# Transactions Concluded at Eurex Deutschland

(Eurex Exchange)

As of 01.12.2020

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

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[...]

**Part 1    General Provisions**

[...]

**1.1        Clearing Licenses**

[...]

**1.1.2     Prerequisites for Clearing Licenses**

[...]

- (5) Upon request of the applicant, Eurex Clearing AG may grant an exemption from the requirement to maintain securities accounts (including a corresponding cash account) pursuant to Chapter I Part 1 Number 2.1.2 (4) (a) ~~(gg)~~ for the purpose of clearing Eurex Transactions, if Eurex Clearing AG determines that it would be impossible or impracticable for the applicant to open and/or maintain such a securities account (including a corresponding cash account). If Eurex Clearing AG grants such an exemption the following conditions shall apply:

[...]

[...]

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Chapter I of the Clearing Conditions of Eurex Clearing AG

## General Provisions

As of 04.01.2021

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AMENDMENTS ARE MARKED AS FOLLOWS:

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## Part 1 General Clearing Provisions

[...]

### 5 Fees

- 5.1 On the basis of its price list in effect (the **“Price List of Eurex Clearing AG”** (*Preisverzeichnis der Eurex Clearing AG*)), which will be published in accordance with Number 16.1, Eurex Clearing AG will charge to its Clearing Members and its Basic Clearing Members (i) a one-time fee upon conclusion of the first Clearing Agreement, (ii) an annual fee for the granting of a Clearing License or a Basic Clearing Member Clearing License, payable by the Clearing Member or the Basic Clearing Member, as applicable, on January 31 of each year, and (iii) further fees for certain actions and Transactions, as specified in the Price List of Eurex Clearing AG (together with fees (*“Entgelte”* and *“Gebühren”*)) payable to Eurex Frankfurt AG according to the Agreement on Technical Connection and Utilization of the Trading Systems of Eurex Deutschland (EFAG Connection Agreement) and to Eurex Deutschland according to the Fee Regulations for Eurex Deutschland the **“Eurex-Fees”**). Eurex Clearing AG shall be entitled to (and without having an obligation towards the Clearing Member or Basic Clearing Member to do so, will on or around the time specified) directly debit the RTGS Account, the euroSIC Account, the SIC Account, the Clearing Member Cash Account, the account with a Correspondent Bank, the account with a Settlement Bank and an account with a Settlement Bank maintained in the name of another bank, in an amount equal to the requested amount of Eurex-Fees in accordance with the daily cash clearing procedure pursuant to Number 1.4.1 of the General Clearing Provisions. Accordingly, the Clearing Member or the Basic Clearing Member is obliged to instruct the bank of the relevant accounts to honour the transfer instructions (*Lastschriften*) received from Eurex Clearing AG. The Price List of Eurex Clearing AG shall form part of the Clearing Conditions.

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