

Eurex Clearing Circular 101/18

Amendments to the Clearing Conditions of Eurex Clearing AG

Summary

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

1. Novation of Original OTC Transactions
2. Clearing Members' Cash Account Infrastructure for euro and Swiss franc

The amendments regarding topics 1 and 2 will come into effect as of **7 January 2019**.

Terms used and not otherwise defined in this circular shall have the meanings ascribed to them in the Clearing Conditions.

Attachments:

- Updated sections of the Clearing Conditions of Eurex Clearing AG

Date: 29 November 2018

Recipients:

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

Authorized by:

Heike Eckert

Target group:

All departments

Contact:

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



Amendments to the Clearing Conditions of Eurex Clearing AG

1. Novation of Original OTC Transactions

Since EurexOTC Clear Release 8.0 and to comply with regulatory requirements, Eurex Clearing AG automatically rejects Original OTC Transactions transmitted to Eurex Clearing AG for Clearing which fail the incremental risk check without issuing further OTC direct debit margin calls. Therefore, within the scope of Chapter VIII of the Clearing Conditions of Eurex Clearing AG (Clearing Conditions), OTC direct debit margin calls are only issued with respect to the novation of CCP Transactions resulting from post-trade events and with respect to Bulk Back-loaded Original OTC Transactions.

In order to reflect the changes, the following provisions of the Clearing Conditions will be amended as outlined in Attachment 1:

- Chapter VIII Part 1 Number 1.2.3
- Chapter VIII Part 1 Number 1.2.8
- Chapter VIII Part 2 Number 2.5.2 Paragraph (2)

2. Clearing Members' Cash Account Infrastructure for euro and Swiss franc

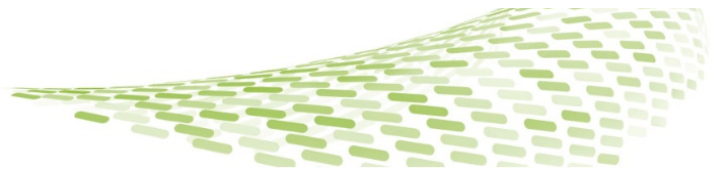
As of today, Eurex Clearing offers a central bank as well as a commercial bank infrastructure for Clearing Members to satisfy cash obligations in euro (EUR) and Swiss franc (CHF) arising from clearing. Eurex Clearing generally requires the usage of central bank money for cash payments in the clearing currencies EUR and CHF. However, if the Clearing Member provides evidence that the usage of an own central bank account for EUR or CHF is not possible, access to a Correspondent Bank for this currency may be granted. In case the Clearing Member evidences that access to a Correspondent Bank is not possible, access to a commercial bank recognised by Eurex Clearing ("Settlement Bank") may be granted. If it is evidenced by the Clearing Member that access to a Settlement Bank is also not possible, access to an account with a bank which maintains an account with a Settlement Bank may be granted.

In order to reflect the changes, the following provisions of the Clearing Conditions will be amended as outlined in Attachment 2:

- Chapter I Part 1 Number 2.1.2 (4) (b)

The amendments mentioned above will become effective on 7 January 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 of the Clearing Conditions published by this circular to Clearing Members, Non-Clearing Members, Registered Customers, OTC-IRS-FCM Clients and Basic Clearing Members affected by such change or amendment (Affected Customers) at least fifteen (15) Business Days prior to the effective date indicated herein, are 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 Part 1 Number 7.2.1 Paragraph (4) shall remain unaffected.

If you have any questions or need further information please contact your Key Account Manager Clearing or send an e-mail to: clearing.services-admission@eurexclearing.com.

29 November 2018

Chapter I of the Clearing Conditions of Eurex Clearing AG

General Provisions

As of 07.01.2019

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AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED

DELETIONS ARE CROSSED OUT

[...]

Part 1 General Provisions

[...]

2. Clearing Members

2.1 Clearing License

[...]

2.1.2 General Prerequisites for Clearing Licenses

[...]

- (4) The applicant (other than an applicant that intends to become an OTC IRS U.S. Clearing Member) shall have available the following accounts:

[...]

(b) Cash Accounts:

- (aa) for cash payments in EUR: (i) an account within the payment module at a central bank of the Euro system which participates in TARGET2 with its TARGET2 component system or an account at another central bank which is not a central bank of the Euro system and, due to a special agreement, connected to TARGET2 ("**RTGS Account**"), or (ii) an account with SECB Swiss Euro Clearing Bank GmbH ("**SECB Account**") and an euroSIC account with SIX Interbank Clearing AG (both accounts jointly the "**euroSIC Account**"), or, if it may be evidenced that neither (i) nor (ii) is possible, (iii) an account with a Correspondent Bank in accordance with (ee), or, if it may be evidenced that (iii) is not possible, (iv) an account with a Settlement Bank in accordance with (ff), or, if it may be evidenced that (iv) is not possible, ~~or~~ (v) an account with a bank which maintains an account with a Settlement Bank in accordance with (gg);

- (bb) for cash payments in CHF: (i) an account with the SNB (the "**SNB Account**") and an account with SIX Interbank Clearing AG (both accounts

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in the following jointly the “**SIC Account**”), or, if it may be evidenced that (i) is not possible, (ii) an account with a Correspondent Bank in accordance with (ee), or, if it may be evidenced that neither (i) nor (ii) is possible, (iii) an account with a Settlement Bank in accordance with (ff), or, if it may be evidenced that (iii) is not possible, (iv) an account with a bank which maintains an account with a Settlement Bank in accordance with (gg);

(cc) for cash payments in GBP: (i) an account with a Settlement Bank in accordance with (ff), or (ii) an account with a bank which maintains an account with a Settlement Bank in accordance with (gg)

(any RTGS Account and SIC Account each being referred to as a “**Central Bank Account**”); and

(dd) for payment of Eurex-Fees (as defined in Number 5.1) according to Number 1.4.1 Paragraph (6), an account with a bank for the respective currency

(all such accounts together with any other cash accounts provided for in the Special Clearing Provisions, the “**Clearing Member Cash Accounts**”).

(ee) The applicant may choose for EUR and CHF to use a Central Bank Account maintained in the name of a correspondent bank (“**Correspondent Bank**”).

(ff) The applicant may choose to use an account with a commercial bank recognized by Eurex Clearing AG (“**Settlement Bank**”). For cash payments in EUR, CHF and GBP the following provisions apply:

(i) The Settlement Bank shall not be an affiliate of the applicant. The scope of the term affiliate shall be determined by Eurex Clearing AG.

(ii) Any payment obligation of the applicant towards Eurex Clearing AG which may arise under the relevant Clearing Agreement, Standard Agreement or Transaction shall only be deemed discharged with the actual credit of the relevant cash amount to the designated TARGET2 account of Eurex Clearing AG, account of Eurex Clearing AG with the SNB or Bank of England (each an “**ECAG Central Bank Account**”) or an account of Eurex Clearing AG with the SIX Interbank Clearing AG or Swiss Euro Clearing Bank GmbH (each an “**ECAG euroSIC Account**”), respectively. Eurex Clearing AG ensures that it will instruct its Settlement Bank immediately after any cash amount has been credited to its account with the Settlement Bank to transfer such amounts to the relevant ECAG Central Bank Account or ECAG euroSIC Account.

(iii) Any payment obligation of Eurex Clearing AG towards the applicant which may arise under the relevant Clearing Agreement, Standard Agreement or Transaction shall already be deemed discharged with

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the actual credit of the relevant cash amount to Eurex Clearing AG's account maintained with the Settlement Bank. Eurex Clearing AG ensures that it will instruct its Settlement Bank immediately after any cash amount has been credited to its account with the Settlement Bank to transfer such amounts to the applicant's account with the Settlement Bank.

- (iv) At the time the applicant enters into a Clearing Agreement with Eurex Clearing AG, the applicant further represents and warrants by way of an independent guarantee and irrespective of fault (*selbständiges, verschuldensunabhängiges Garantieverprechen*) to Eurex Clearing AG that it will indemnify Eurex Clearing AG against any and all damages and losses which may arise from (a) a non-transfer of the relevant cash amounts from the account of Eurex Clearing AG with the Settlement Bank to the relevant ECAG Central Bank Account of Eurex Clearing AG or (b) a non-transfer of the relevant cash amounts from the account of Eurex Clearing AG with the Settlement Bank to the applicant's account with the Settlement Bank, unless such non-transfer has been caused by an wilful action or omission by Eurex Clearing AG. Eurex Clearing AG will assign any claim it may have against the Settlement Bank with respect to such non-transferred cash amount to the applicant.
- (gg) The applicant may choose to use an account with a Settlement Bank maintained in the name of another bank. The provisions under (ff) shall apply accordingly.

[...]

Chapter VIII of the Clearing Conditions of Eurex Clearing AG

Clearing of OTC Interest Rate Derivative Transactions, OTC FX Transactions and OTC XCCY Transactions

As of 07.01.2019

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Part 1 General Provisions

[...]

[...]

1.2.1 Novation of Original OTC Transactions

- (1) For the purposes of including OTC Interest Rate Derivative Transactions, OTC FX Transactions and/or OTC XCCY Transactions into the Clearing by Eurex Clearing AG, the trade record of the relevant Original OTC Transaction has to be transmitted to Eurex Clearing AG via an Approved Trade Source System / ATS (both as defined in Paragraph (7)(a) below).
- (2) Whenever the trade record of an Original OTC Transaction, including, as the case may be, a Credit Limit Token (as defined in Sub-Paragraph (b)(ii) below), is transmitted to Eurex Clearing AG via an ATS (such record, including, as the case may be, a Credit Limit Token, hereinafter referred to as a "**Trade Record**"); and

[...]
- (c) Eurex Clearing AG accepts such Original OTC Transaction for inclusion in the Clearing Procedures by making an OTC Trade Novation Report available to the Clearing Member or, if applicable, the Basic Clearing Member (or the Clearing Agent acting on behalf of the Basic Clearing Member) electronically via its system,

[...]

If one party to the Original OTC Transaction is an FCM Clearing Member or an FCM Client, the conclusion and content of the relevant Swap Transaction between Eurex Clearing AG and such FCM Clearing Member (or, as applicable, the FCM Clearing Member of such FCM Client) is subject to the provisions of the FCM Regulations.

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- (3) Any acceptance of the Original OTC Transaction by Eurex Clearing AG for inclusion in the Clearing and the related novation pursuant to Chapter I Part 1 Number 1.2.2 Paragraph (2) and, with respect to ECM Transactions, Chapter I Part 2 Subpart A Number 2.1, or, in the case of a Basic Clearing Member Transaction, Chapter I Part 6 Number 1.3, as applicable, will be subject to the novation criteria pursuant to Number 1.2.3 and will be based on the Trade Record including, as the case may be, the Credit Limit Token, provided by the ATS on behalf of the parties to the Original OTC Transaction. Eurex Clearing AG relies on the accuracy of the data set out in the Trade Record, including, as the case may be, the Credit Limit Token and is neither able nor obliged to verify whether the Trade Record received properly reflects the terms of the Original OTC Transaction entered into by the relevant parties, nor whether the respective Clearing Member – as indicated in the Credit Limit Token submitted to Eurex Clearing AG via the ATS – has actually approved that it will act as a Clearing Member for the respective party with respect to such Original OTC Transaction and resulting CCP- and CM-RC Transactions and clear such transaction.

[...]

[...]

1.2.3 Novation Criteria

- (1) Eurex Clearing AG will accept an Original OTC Transaction for inclusion in the Clearing in accordance with the novation process if all of the following novation criteria are fulfilled:

[...]

9. The Clearing Member must have complied with the scheduled intraday margin calls as further set out below and if applicable:

[...]

(b) Eurex Clearing AG shall notify the Clearing Member of (A) the Transactions arising pursuant to Part 2 Numbers 2.5, 2.6 and 2.7 and Part 4 Number 4.8 to be covered by the Shortfall Margin Requirement as well as (B) the Shortfall Margin Amount in both the relevant Preliminary OTC Margin Call Report and OTC Margin Call Report.

A “**Preliminary OTC Margin Call Report**” means a preliminary report produced by Eurex Clearing AG and made available at 12:00 noon, 2 p.m. and 6 p.m. (each Frankfurt am Main time) that specifies the CCP Transactions arising pursuant to Part 2 Numbers 2.5, 2.6 and 2.7 and Part 4 Number 4.8 as well as the Shortfall Margin Amount as calculated by Eurex Clearing AG as per the time when the relevant Preliminary OTC Margin Call Report is made available (the “**Preliminary Shortfall Margin Amount**”).

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An “**OTC Margin Call Report**” means a report produced by Eurex Clearing AG and made available at 1 p.m., 3 p.m., 7 p.m., and 10:30 p.m. (each Frankfurt am Main time) that specifies (i) ~~the Original OTC Transactions which are to be novated in the course of the Daily Novation,~~ (ii) the CCP Transactions arising pursuant to Part 2 Numbers 2.5, 2.6 and 2.7 and Part 4 Number 4.8 and (iii) the Final Shortfall Margin Amount.

[...]

[...]

1.2.8 Specific Provisions with respect to the Novation of CCP Transactions resulting out of Post-Trade Events

(1) Number 1.2 shall apply *mutatis mutandis* to the novation in connection with post-trade events pursuant to Part 2 Number 2.5 to 2.8 (in addition to the requirements set out in Part 2 Number 2.5 to 2.8, respectively) or pursuant to Part 4 Number 4.8 (in addition to the requirements set out therein), in each case (i) if an CCP Transaction shall be subject to such novation or shall result from such novation and (ii) unless explicitly stated otherwise.

(2) If a post-trade event pursuant to ~~Part 2 Number 2.7~~ Part 2 Number 2.5, 2.6 and 2.7 and Part 4 Number 4.8 would lead to a novation resulting in an CCP Transaction, and all novation criteria are fulfilled except for the requirement to provide sufficient Eligible Margin Assets, the submission for novation will be pending and will remain included in the daily novation process until the end of the relevant Business Day. At the end of each Business Day, all such pending submissions for novations which do not fulfil all novation criteria, including the requirement to provide sufficient Eligible Margin Assets, will be rejected. For the avoidance of doubt, this shall mean that the relevant CCP Transactions existing prior to such intended post-trade event will remain in place and no novation pursuant to the relevant post-trade event will take place.

[...]

Part 2 Clearing of OTC Interest Rate Derivative Transactions

2.1 General Provisions

[...]

2.1.5 Novation Criteria and Process Regarding OTC Interest Rate Derivative Transactions

With regard to the novation of OTC Interest Rate Derivative Transactions, the specific novation criteria set out in the following provisions shall apply in addition to the novation criteria pursuant to Part 1 Number 1.2.3.

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[...]

2.1.5.3 Bulk Backloading of Original OTC Transactions

[...]

- (7) For Bulk Backloaded Original OTC Transactions which, on the day of submission, fulfil all novation criteria except for the requirement to provide sufficient Eligible Margin Assets necessary to cover the relevant Margin Requirement, Eurex Clearing AG will debit the shortfall amount set forth in the OTC Margin Call Report produced and made available at 10:30 p.m. (Frankfurt am Main time) in the agreed Clearing Currency from the relevant Clearing Member Cash Account, relevant OTC IRS U.S. Clearing Member Cash Account or Basic Clearing Member Cash Account, as relevant, in accordance with the daily cash clearing procedure pursuant to Chapter I Part 1 Number 1.4.1. Such payment made by direct debit shall constitute cover in respect of the Margin to which the Margin Requirement referred to in the foregoing sentence relates and accordingly will constitute (i) Proprietary Margin or Omnibus Margin delivered by the Clearing Member pursuant to the Elementary Clearing Model Provisions, (ii) Segregated Margin delivered by the Clearing Member pursuant to the Individual Clearing Model Provisions, (iii) Margin delivered by the Clearing Member pursuant to the ICM for Specified Clients Provisions or (iv) Basic Clearing Member Margin delivered by the Basic Clearing Member pursuant to the Basic Clearing Member Provisions. Eurex Clearing AG will make available an OTC Trade Novation Report on the Business Day following the day of submission at or around 9:30 a.m. (Frankfurt am Main time) to the Clearing Member and the Registered Customer or the Basic Clearing Member (or the Clearing Agent acting on behalf of the Basic Clearing Member).

[...]

[...]

2.5 Interest Rate Derivatives Multilateral Compression

[...]

[...]

2.5.2 Acceptance of Interest Rate Derivatives Compression Proposal

[...]

- (2) Subsequent to a Clearing Member's acceptance of an Interest Rate Derivatives Compression Proposal but prior to the Interest Rate Derivatives Compression Time, Eurex Clearing AG may require the Clearing Member to provide additional Margin in relation to the CCP Transactions that will result from the Interest Rate Derivatives Multilateral Compression. For such purpose, the intraday margin call process as described in Part 1 Number 1.2.3 Paragraph (1) Clause 9 applies mutatis mutandis, provided that instead of ~~Original OTC Transactions and~~ CCP Transactions the

proposed set of terminating CCP Transactions and the proposed set of resulting CCP Transactions pursuant to Number 2.5 shall be relevant, and instead of the times indicated in Part 1 Number 1.2.3 Paragraph (1) Clause 9 the times specified by Eurex Clearing AG shall be relevant. Eurex Clearing AG will require such Margin in addition to Margin required pursuant to Chapter I Part 1 Number 3.3, Part 2 Subpart A Number 4.2, Part 3 Subpart A Number 5.3, Part 4 Number 6.2 and this Chapter VIII Part 1 Number 1.2.3 Paragraph (1) Clause 9.

[...]

2.6 Trade Netting and Accumulation

- (1) Eurex Clearing AG may agree with a Clearing Member or a Basic Clearing Member (or Clearing Agent acting on behalf of the Basic Clearing Member) upon the mutual cancellation (“**netting**”) and the accumulation of CCP Transactions that are OTC Interest Rate Derivative Transactions provided that such CCP Transactions are part of the same Standard Agreement. In this case, the netting and accumulation shall be carried out on the basis of the following provisions agreed upon by Eurex Clearing AG and the Clearing Member or Basic Clearing Member (or Clearing Agent acting on behalf of the Basic Clearing Member). Such agreement may be terminated by the Clearing Member or Basic Clearing Member (or Clearing Agent acting on behalf of the Basic Clearing Member) with the effect on the Business Day following the receipt of the termination notice by Eurex Clearing AG.

If (i) Eurex Clearing AG and a Clearing Member have agreed upon the netting and accumulation of CCP Transactions pursuant to this Number 2.6 and (ii) the relevant Clearing Member holds an OTC Currency Products Clearing License and fulfils the additional requirements set out in Part 4 Number 4.1.3, the netting and accumulation shall also be carried out with respect to OTC XCCY Transactions pursuant to Part 4 Number 4.8.

- (2) To the extent that the CCP Transactions that are subject to netting or accumulation pursuant to Number 2.6.1 and 2.6.2 are RC-Related Transactions relating to the same Registered Customer and (i) the corresponding transactions between the Clearing Member and the Registered Customer are CM-RC Transactions, such netting or accumulation shall simultaneously take place with respect to the corresponding CM-RC Transactions between the Clearing Member and such Registered Customer or (ii) the corresponding transactions between the Clearing Member and the Registered Customer are Client Clearing CM-RC Transactions, the Clearing Member and the Registered Customer are required to agree on a bilateral basis that, as a result of such netting or accumulation, the corresponding Client Clearing CM-RC Transactions shall be subject to netting or accumulation. The relevant Clearing Member is obliged to obtain the required instruction from the relevant Registered Customer before initiating any such netting or accumulation.

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- (3) To the extent the CCP Transactions that are subject to netting or accumulation pursuant to Number 2.6.1 and 2.6.2 are UDC-Related Transactions or SC-Related Transactions, it is a matter of the relevant parties to agree, whether as a result of such netting or accumulation, any corresponding CM-Customer Transactions shall be subject to netting or accumulation.

[...]

[...]
