

07 Dec 2020  
Eurex Clearing

# Amendments to the Clearing Conditions of Eurex Clearing AG

## Eurex Clearing Circular 107/20 Amendments to the Clearing Conditions 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 of Eurex Clearing AG (Clearing Conditions) and the Price List of Eurex Clearing AG (Price List) regarding the following topics:

- ◆ A. Clarification of the exemption to maintain securities/cash settlement accounts for the clearing of Eurex Transactions
- ◆ B. ISA Direct – Extension of Replacement Period

The amendments under A. will become effective as of **4 January 2021**, the amendments under B. will become effective as of **1 January 2021**.

### 2. Required action

There is no required action for the Participants.

### 3. Details

#### **A. Clarification of the exemption to maintain securities/cash settlement accounts for the clearing of Eurex Transactions**

With regard to the clearing of Eurex Transactions, Eurex Clearing may now exempt a Clearing Member from the requirement to maintain a cash account corresponding to a securities account that is used in the context of physical

delivery of Eurex Transactions, if it would be impossible or impracticable for the Clearing Member to maintain such a cash account. In particular, UK-based Clearing Members could benefit from this exemption as, after Brexit took place, they generally are not able to continue maintaining a Target2 account.

If an exemption is granted under this condition, the Clearing Member will be restricted in respect of Eurex Transactions with physical delivery to Eurex Transactions with quarterly expiry only, a monitoring of the Clearing Member's positions will be applied and any physical delivery of Eurex Transactions of the respective Clearing Member will be processed via free-of-payment settlement instructions and under application of an additional manual settlement fee.

Exemptions under this provision can be requested via your Key Account Manager and will be granted by Executive Board of Eurex Clearing.

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

- ◆ Chapter II Part 1 Numbers 1.1.2, 1.10 of the Clearing Conditions
- ◆ Number 3.11 of the Price List

## **B. ISA Direct – Extension of Replacement Period**

If a (insolvency) termination event occurs with respect to a Clearing Agent, the Replacement Period in which a related Basic Clearing Member may choose to continue clearing with a Replacement Clearing Agent, as a Direct Clearing Member or to terminate and close out the relevant transactions currently ends at 1 p.m. (Frankfurt am Main time) on the business day following the (insolvency) termination event (T+1).

To grant affected Basic Clearing Members sufficient time in particular to establish a relationship with a Replacement Clearing Agent and thus increase the likelihood of position porting, the Replacement Period for BCMs will be extended until 1 p.m. (Frankfurt am Main time) on the fifth business day following the (insolvency) termination event (T+5) for those Basic Clearing Members which have established their own account infrastructure (i.e. securities collateral account, cash collateral account and, if applicable, settlement account).

During the extended Replacement Period, the Basic Clearing Members will generally be allowed to trade and clear risk-minimising, i.e. they are allowed to enter trades that do not increase their margin requirements towards Eurex Clearing.

To reflect the change, the following provisions will be amended as outlined in Attachments 3 and 4:

- ◆ Chapter I Part 6 Number 11.2 of the Clearing Conditions

- ◆ Segments C and D of the General Terms and Conditions to the Connection Agreement

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:

- ◆ 1 – Chapter II Part 1 Numbers 1.1.2, 1.10 of the Clearing Conditions
- ◆ 2 – Number 3.11 of the Price List of Eurex Clearing AG
- ◆ 3 – Chapter I Part 6 Number 11.2 of the Clearing Conditions
- ◆ 4 – Segments C and D of the General Terms and Conditions to the Agreement on Technical Connection to the Clearing EDP of Eurex Clearing AG

### Further information

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

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

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## Further information

- [Attachment 1 to Eurex Clearing Circular 107/20](#)
- [Attachment 2 to Eurex Clearing Circular 107/20](#)
- [Attachment 3 to Eurex Clearing Circular 107/20](#)
- [Attachment 4 to Eurex Clearing Circular 107/20](#)

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Chapter II of the Clearing Conditions of Eurex Clearing AG

# Transactions Concluded at Eurex Deutschland

(Eurex Exchange)

As of 04.01.2021

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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 cash account corresponding cash to a securities account)~~ pursuant to Chapter I Part 1 Number 2.1.2 (4) (a) ~~(egff)~~ 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)~~ to a securities account. Together with the application, the applicant shall nominate the cash account(s) (which need to fulfil the requirements set out in Chapter I Part 1 Number 2.1.2 (4) (b)) that will be used for physical deliveries as laid out under lit. (c) below. If Eurex Clearing AG grants ~~such an exemption pursuant to this Number 1.1.2 (5),~~ the following conditions shall apply: (unless waived by Eurex Clearing AG):

~~(a) The Clearing Member shall avoid maintaining open positions as and when these positions require a physical delivery of securities. This applies for own positions as well as client positions of the Clearing Member, including where the Clearing Member clears Eurex Transactions for any Disclosed Direct Clients and Indirect Client Market Participants. It is the responsibility of the Clearing Member to take appropriate measures to ensure that its clients, including any Disclosed Direct Clients and Indirect Client Market Participants, do not have open positions as and when these positions require a physical delivery of securities. The Clearing Member acknowledges that in case it holds a position in an Options Contract, such Options Contract may be exercisable by or against it, and such an exercise will require an immediate physical settlement.~~

- ~~(b) If the Clearing Member for whatever reason holds any own or client positions that require a physical settlement and the physical settlement is not possible due to the lack of a securities account (including a corresponding cash account), the Clearing Member shall be required to pay a contractual penalty in accordance with Chapter I Part 1 Number 14.2.2 and the consequences with respect to a failure to deliver set out in Part 2 and 3 of this Chapter II shall not apply. In addition, Eurex Clearing AG shall be entitled, but not obliged, to~~
- ~~(i) if the Clearing Member is required to deliver Securities to Eurex Clearing AG, trigger its procedures for the purchase of the relevant Securities to acquire the Securities on or around the original due date for delivery. The Clearing Member shall compensate Eurex Clearing AG, if the price paid by Eurex Clearing AG exceeds the price Eurex Clearing AG would have owed the Clearing Member for the delivery of the Securities. If Eurex Clearing AG determines that it will not acquire the Securities, the Clearing Member shall compensate Eurex Clearing AG for any positive difference (if any) between the market price of the Securities prevailing at the time of the determination by Eurex Clearing AG and the price Eurex Clearing AG would have owed to the Clearing Member. In addition the Clearing Member shall reimburse Eurex Clearing AG for any costs and expenses incurred by Eurex Clearing AG in relation to the purchase as well as any amounts that would occur in accordance with Regulation (EU) 236/2012 on short selling and/or Regulation (EU) 909/2014 on central securities depositories and respective delegated acts, or~~
- ~~(ii) if the Clearing Member is required to take delivery of Securities, determine that a cash settlement shall take place instead of a Physical Delivery. The cash settlement shall be based on the price of a sell transaction (if any) in the respective Securities entered into by Eurex Clearing AG on or around the original due date for delivery as well as relevant costs and expenses incurred by Eurex Clearing AG in connection with the failure by the Clearing Member to take delivery of Securities. If Eurex Clearing AG determines that it, for whatever reason, is unable to enter into a sell transaction in the respective Securities, Eurex Clearing AG may apply a market price of zero for the Securities.~~
- ~~— The right of Eurex Clearing AG to claim further damages shall remain unaffected, provided that any amount received as a contractual penalty shall be deducted from any potential claim for damages based on the same facts.~~
- ~~(ea) In respect of Eurex Transactions with physical delivery, the respective Clearing Member to which an exemption was granted (for the purposes of this Paragraph (5) the “**Exempted Clearing Member**”) may only enter into Eurex Transactions which expire on a certain day per quarter.~~
- ~~(b) In particular in the 3 Business Days before the respective last trading day(s) of any Eurex Transactions with physical delivery, Eurex Clearing will monitor~~

whether the Exempted Clearing Member is party to any such open Eurex Transactions (which may be Own Transactions, DC-Related Transactions or UDC-Related Transactions).

- (c) If an Exempted Clearing Member is on the respective last trading day party to (an) Eurex Transaction(s) that require(s) a physical delivery, the physical delivery will be processed via free-of-payment settlement instructions, and the relevant cash payment will be settled via the cash account(s) nominated by the Exempted Clearing Member. Instead of a concurrent performance (*Leistung Zug um Zug*), the Exempted Clearing Member has to perform its obligations under the relevant Eurex Transaction vis-à-vis Eurex Clearing AG first before Eurex Clearing AG will perform its obligations vis-à-vis the Exempted Clearing Member.
- (d) Eurex Clearing AG may at any time revoke the exemption granted pursuant to this Number 1.1.2 (5), including (without limitation) if the Exempted Clearing Member does not comply with conditions set out herein. Eurex Clearing AG shall notify the Exempted Clearing Member in advance observing an appropriate notice period, unless Eurex Clearing AG determines that a prior notice would not be appropriate in a particular case.

[...]

#### **1.10 ~~Early Cash Settlement~~**

~~Where one or more Clearing Members have been granted an exemption by Eurex Clearing AG from the requirement to maintain a securities account (including a corresponding cash account) required for the Physical Settlement of Futures Contracts and/or Options Contracts, and Eurex Clearing AG is unable to acquire Securities in accordance with Number 1.1.2 (5) (b) (i) needed to settle a Futures Contract or Options Contract corresponding to the Eurex Transaction with the exempted Clearing Member, then the consequences with respect to a failure to deliver set out in Part 2 and 3 of this Chapter II shall not apply with respect to the Clearing Member entitled to receive delivery. Instead, Eurex Clearing AG will inform the Clearing Member entitled to receive delivery of the Securities and inform him that a cash settlement of the transaction based on the last available market price of the Securities specified in Number 1.1.2 (5) (b) (i) shall occur.~~

[...]

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INSERTIONS ARE UNDERLINED

DELETIONS ARE CROSSED OUT

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[...]

**3 Transaction Fees for Derivatives Transactions (Order Book Transactions and Off-Book Transactions on the Eurex Exchange)**

[...]

**3.11 Physical Delivery resulting from Derivatives Positions and Combination Transactions Option-Share**

[...]

**3.11.3 Settlement Fees**

For the settlement of a futures transactions by delivery/payment with Euroclear UK & Ireland, Eurex Clearing AG charges the following fee:

<b>Settlement of Futures Transactions with Euroclear UK &amp; Ireland</b>	<b>Fees per Delivery/Payment</b>
CCP Settlement Fee	GBP 0.425
Settlement Service Fee	GBP 0.22

**3.11.4 Additional handling fee for physical delivery via a securities account without corresponding cash account**

If physical delivery is carried out via free-of-payment settlement instructions as laid out in Chapter II Part 1 Number 1.1.2 (5) of the Clearing Conditions, Eurex Clearing shall charge an additional handling fee of EUR 100 per contract, but no less than EUR 2,000 and no more than EUR 25,000 per physical delivery.

[...]

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Chapter I of the Clearing Conditions of Eurex Clearing AG

## General Provisions

As of 01.01.2021

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DELETIONS ARE CROSSED OUT

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[...]

## **Part 6 Basic Clearing Member Provisions**

[...]

### **11 Consequences of a Termination Event with respect to a Clearing Agent**

[...]

#### **11.2 Replacement of Affected Clearing Agent**

11.2.1 [...]

“**Replacement Period**” means:

- (i) if an Insolvency Termination Event has occurred with respect to the Clearing Agent, the period commencing upon ~~from~~ the occurrence of the Insolvency Termination Event and ending on the Replacement Period End Date at until ~~(and including)~~ 13:00 hours Frankfurt am Main time ~~on the immediately following Business Day~~; and
- (ii) if any other Termination Event has occurred with respect to the Clearing Agent, the period commencing upon ~~from~~ the publication of the Replacement Notice and ending on the Replacement Period End Date at until ~~(and including)~~ 13:00 hours Frankfurt am Main time ~~on the immediately following Business Day~~.

provided that, Eurex Clearing AG may extend the Replacement Period in order to facilitate a Replacement by giving notice to all Clearing Members and the Basic Clearing Members of the Affected Clearing Agent.

“**Replacement Period End Date**” means the Business Day immediately following the day on which the Replacement Period commenced, provided that the Replacement Period End Date shall be the fifth Business Day immediately following the day on which the Replacement Period commenced, if at the time the Replacement Period commenced any Basic Clearing Member Pledged Securities Accounts, any accounts with Accepted Collateral Management Systems and all Basic Clearing Member Cash Accounts maintained pursuant to Number 2.4.1 (2) of Part 1 of the Clearing Conditions as well as

any securities settlement accounts for the settlement of Repo Transactions are (unless waived by Eurex Clearing AG) maintained in the name of the Basic Clearing Member.

For the avoidance of doubt, the commencement of a Replacement Period shall not prevent the occurrence of a Basic Clearing Member Termination in accordance with Number 10.5 (b) and/or (c) at any time during the Replacement Period, including (without limitation) in the event that Basic Clearing Member Pledged Securities Accounts, any accounts with Accepted Collateral Management Systems and all Basic Clearing Member Cash Accounts maintained pursuant to Number 2.4.1 (2) of Part 1 of the Clearing Conditions as well as any securities settlement accounts for the settlement of Repo Transactions are or become unavailable.

[...]

11.2.8 During the Replacement Period:

[...]

(iii) Eurex Clearing AG shall not be obliged to provide any Basic Clearing Member Variation Margin to the Affected Clearing Agent's Basic Clearing Members,

provided that, if the scheduled Replacement Period End Date is the fifth Business Day immediately following the day on which the Replacement Period commenced, Eurex Clearing AG shall as soon as reasonably practicable following the commencement of the Replacement Period trigger procedures to revoke the suspension of Clearing, the deferral of Redelivery Claims relating to Basic Clearing Member Margin and Basic Clearing Member Variation Margin and reinstate the Basic Clearing Member Variation Margin obligation. Despite a revocation of the suspension of the Basic Clearing Member, the Basic Clearing Member must neither (i) include new Transactions into the Clearing that would result in an increase of its Margin Requirement nor (ii) participate in any DM Auctions during the Replacement Period.

[...]

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**General Terms and Conditions to the  
Agreement on Technical Connection to  
the Clearing EDP of Eurex Clearing AG  
(GTC to the Connection Agreement)**

As of 01.01.2021

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INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

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[...]

## **A General Provisions**

### **§ 1 Scope of Application and Structure**

[...]

(4) The following terms and conditions are structured this way: a general segment (segment A) is valid for all groups of customers and the following segments contain provisions only valid for specific groups of customers:

- (i) Segment B - Special provisions for Clearing Members of Eurex Deutschland
- (ii) Segment C - Special provisions for Clearing Members of Frankfurt Stock Exchange, Eurex Repo GmbH and other repo MTFs and Basic Clearing Members for Repo Transactions during a five Business Day Replacement Period
- (iii) Segment D - Special provisions for OTC Clearing Members and FCM Clearing Members and Basic Clearing Members for OTC during a five Business Day Replacement Period

[...]

[...]

**C**      **Special provisions for Clearing Members of Frankfurt Stock Exchange (Frankfurter Wertpapierbörse), Eurex Repo GmbH and other repo MTFs and Basic Clearing Members for Repo Transactions during a five Business Day Replacement Period**

**§ 21**      **Applicability in terms of Contractual Parties**

The special provisions within Segment C are valid for Clearing Members which possess a clearing license for

- (i) Frankfurt Stock Exchange (Frankfurter Wertpapierbörse) and/or
- (ii) Eurex Repo GmbH and other multilateral trading facilities pursuant to Chapter IV of the Clearing Conditions and -

for Basic Clearing Members with a Basic Clearing Member Clearing License for the Clearing of Repo Transactions the special provisions within Segment C shall be valid during a Replacement Period, if the scheduled Replacement Period End Date is the fifth Business Day immediately following the day on which the Replacement Period commenced.

[...]

**D**      **Special provisions for Clearing Members with respect to OTC Transactions, and FCM Clearing Members and Basic Clearing Members for OTC during a five Business Day Replacement Period**

**§ 25**      **Applicability in terms of Contractual Parties**

The special provisions within Segment D are valid for

[...]

- (ii) FCM Clearing Members which possess a FCM Clearing License for Interest Rate Derivative Transactions according to Chapter II of the FCM Regulations of Eurex Clearing and
- (iii) Basic Clearing Members (with a Basic Clearing Member Clearing License for OTC Transactions) during a Replacement Period, if the scheduled Replacement Period End Date is the fifth Business Day immediately following the day on which the Replacement Period commenced.

[...]

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