



eurex clearing circular 136/17

Date: 19 December 2017
Recipients: All Clearing Members, Non-Clearing Members and Registered Customers, OTC-IRS FCM Clients and Basic Clearing Members of Eurex Clearing AG
Authorized by: Thomas Laux

End of Consultation on amendments of Special Provisions regarding certain close-out-netting related provisions in Chapter IX of the Clearing Conditions

Related Eurex Clearing circular: 116/17

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

Content may be most important for:

➡ All departments

Attachment:

Amended sections of the Clearing Conditions of Eurex Clearing AG

Summary:

As announced in Eurex Clearing circular 116/17, Eurex Clearing AG (Eurex Clearing) intends to make certain clarifying amendments in Chapter IX of the Clearing Conditions with regard to recent changes to the close-out-netting arrangements in Chapter I of the Clearing Conditions.

The amendments relate to Special Provisions of the Clearing Conditions of Eurex Clearing AG (Clearing Conditions). Consequently, a consultation process (Consultation) was initiated, which started on 16 November 2017 and ended on 18 December 2017 (at midnight).

Based on a comment received during the Consultation, Eurex Clearing further clarifies at the end of Chapter IX Part 2 Number 2.1.2 (4) that the proposed amendment relating to the expiration of the Principal Collateral Redelivery Claim refers to the relevant point in time when the termination occurs either with respect to the Clearing Member or with respect to Eurex Clearing.

The amended sections of the Clearing Conditions, as decided by the Executive Board of Eurex Clearing, are attached to this circular and will come into effect on **15 January 2018**.

End of Consultation on amendments of Special Provisions regarding certain close-out-netting related provisions in Chapter IX of the Clearing Conditions

As announced in Eurex Clearing circular 116/17, Eurex Clearing AG (Eurex Clearing) intends to make certain clarifying amendments in Chapter IX of the Clearing Conditions with regard to recent changes to the close-out-netting arrangements in Chapter I of the Clearing Conditions.

The amendments relate to Special Provisions of the Clearing Conditions of Eurex Clearing AG (Clearing Conditions). Consequently, a consultation process (Consultation) was initiated, which started on 16 November 2017 and ended on 18 December 2017.

Based on a comment received during the Consultation, Eurex Clearing further clarifies at the end Chapter IX Part 2 Number 2.1.2 (4) that the proposed amendment relating to the expiration of the Principal Collateral Redelivery Claim refers to the relevant point in time when the termination either occurs with respect to the Clearing Member or with respect to Eurex Clearing.

The amended sections of the Clearing Conditions, as decided by the Executive Board of Eurex Clearing, are attached to this circular and will come into effect on 15 January 2018.

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, the amendments to the Clearing Conditions communicated with this circular are deemed to have been accepted by each Clearing Member, Basic Clearing Member, Non-Clearing Member and each Registered Customer and OTC-IRS FCM Client affected by such amendment unless he objects in writing before the end of the Business Day prior to the actual effective date of such amendment of the Clearing Conditions.

19 December 2017

Chapter IX of the Clearing Conditions of Eurex Clearing AG

Clearing of Securities Lending Transactions

As of 15.01.2018

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED

DELETIONS ARE CROSSED OUT

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Part 1 General Provisions

[...]

(5) The Clearing Conditions provide that the borrower (being the Borrower Clearing Member or Eurex Clearing Borrower, as the case may be) to each Securities Lending Transaction is required to provide and maintain principal collateral in form of cash or financial instruments (the "**Principal Collateral**") to the lender (being the Eurex Clearing Lender or the Lender Clearing Member, as the case may be) under the relevant Securities Lending Transaction with, if such Principal Collateral is provided by way of Title Transfer (as defined in Number 2.1.5 Paragraph (1)), a simultaneous agreement by Eurex Clearing Lender or the Lender Clearing Member (as applicable) to transfer to the Borrower Clearing Member or Eurex Clearing Borrower (as applicable) assets equivalent to the Principal Collateral actually delivered (the "**Equivalent Principal Collateral**") upon redemption of the relevant Securities Lending Transaction. Unless otherwise provided for in this Chapter IX, Clearing Members will in addition be subject to margin requirements determined by Eurex Clearing AG for their Securities Lending Transactions.

(6) [...]

(i) Non-Cash Principal Collateral ~~in respect of~~ under such Securities Lending Transaction shall be provided to it by way of a pledge in accordance with Number 2.1.5 Paragraph (2) (such Lender Clearing Member shall, with respect to such Securities Lending Transaction, be referred to as a "**Lender Clearing Member (Pledge)**" and any such reference shall refer to the Lender Clearing Member (Pledge) in such capacity only); or

(ii) only with respect to a Securities Lending Transaction that is an Open Term Loan, Non-Cash Principal Collateral ~~in respect of~~ under such Securities Lending Transaction shall be provided to it by way of Title Transfer in accordance with Number 2.1.5 Paragraph (1).

[...]

1.1.3 Specific Lender License

[...]

(2) [...]

(i) Non-Cash Principal Collateral ~~in respect of~~ under such Securities Lending Transaction shall be provided to it in accordance with Number 2.1.5 Paragraph (2) by way of a pledge (such holder of a Specific Lender License shall, with respect to such Securities Lending Transaction, be referred to as a "**SLLH (Pledge)**" and any such reference shall refer to the SLLH (Pledge) in such capacity only); or

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- (ii) Non-Cash Principal Collateral ~~in respect of~~ under such Securities Lending Transaction shall be provided to it by way of a Title Transfer in accordance with Number 2.1.5 Paragraph (1) with a corresponding obligation of such holder of a Specific Lender License to grant Eurex Clearing Borrower a pledge over Eligible Principal Collateral Assets in the form of financial instruments equivalent to the Non-Cash Principal Collateral actually delivered to it in accordance with Number 2.1.5 Paragraph (5) (such holder of a Specific Lender License shall, with respect to such Securities Lending Transaction, be referred to as a “**SLLH (Title Transfer/Pledge)**” and any such reference shall refer to the SLLH (Title Transfer/Pledge) in such capacity only).

[...]

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Chapter IX Part 2	

Part 2 Terms and Conditions of Securities Lending Transactions

[...]

2.1 General Provisions of Securities Lending Transactions

[...]

2.1.2 Eligible Principal Collateral Assets and Principal Collateral Redelivery Claim

(1) Principal Collateral to be provided by the Borrower Clearing Member or Eurex Clearing Borrower under a Securities Lending Transaction may be in the form of financial instruments (the “**Non-Cash Principal Collateral**” and the respective financial instrument(s) generally, the “**Principal Collateral Underlying Security**” or “**Principal Collateral Underlying Securities**”, respectively) or, only in the case of Securities Loans, in the form of cash in a specific currency (the “**Cash Principal Collateral**”), as accepted by Eurex Clearing AG. The currency of the relevant Principal Collateral is herein referred to as the “**Principal Collateral Currency**”. The Principal Collateral provided by Eurex Clearing Borrower to the Lender Clearing Member under a Securities Lending Transaction shall always be equivalent to the Principal Collateral received by Eurex Clearing Lender from the Borrower Clearing Member under the related Securities Lending Transaction.

[...]

(4) Unless Number 2.1.5 Paragraph (2) applies, the actual delivery of Eligible Principal Collateral Assets in respect of the Principal Collateral by the Borrower Clearing Member to Eurex Clearing Lender or by Eurex Clearing Borrower to the Lender Clearing Member in accordance with Number 2.1.5 Paragraph (1) shall give rise to or shall increase a claim of the Borrower Clearing Member against Eurex Clearing Lender or a claim of Eurex Clearing Borrower against the Lender Clearing Member, as relevant, ~~to which Chapter I Part 2 Number 4.5.1 first sentence shall apply~~ *mutatis mutandis* (each a “**Principal Collateral Redelivery Claim**”). The relevant Principal Collateral Redelivery Claim becomes due in accordance with Number 2.3.3, provided that, if such Principal Collateral Redelivery Claim arises under a Securities Lending Transaction that forms part of a Standard Agreement and a Termination (with respect to the Clearing Member) or a Failure to Pay Event or an Insolvency Event (with respect to Eurex Clearing AG) occurs in relation to such Standard Agreement, such Principal Collateral Redelivery Claim shall expire (auflösende Bedingung) as of the Termination Time or upon the occurrence of the Failure to Pay Event or Insolvency Event, respectively.

[...]

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2.3 Delivery and Return of Principal Collateral and Pledge-Back Principal Collateral

2.3.1 Initial Delivery of Principal Collateral and Pledge-Back Principal Collateral

[...]

On the Value Date, the SLLH (Title Transfer/Pledge) shall, in accordance with Number 2.1.5 Paragraph (5), provide Pledge-Back Principal Collateral to Eurex Clearing Borrower in the form of Eligible Principal Collateral Assets equivalent to the Initial Principal Collateral actually delivered to such SLLH (Title Transfer/Pledge) by Eurex Clearing Borrower ~~under with respect to~~ such Securities Lending Transaction.

2.3.2 Marking to Market of Principal Collateral and Pledge-Back Principal Collateral during the term of a Securities Lending Transaction

(1) The aggregate Market Value (as defined in Paragraph (4) below) of the Eligible Principal Collateral Assets actually delivered in respect of the Principal Collateral to Eurex Clearing Lender by the Borrower Clearing Member and to the Lender Clearing Member by Eurex Clearing Borrower (excluding any Equivalent Principal Collateral repaid or re-delivered under Paragraph (2)) ~~under with respect to~~ a Securities Lending Transaction (the "**Posted Collateral**") shall equal the Market Value of the number or aggregate nominal amount, as applicable, of the Underlying Assets equivalent to the Loaned Assets taking into account the applicable Mark-Up Percentage, if any, (") in respect of such Securities Lending Transaction (the "**Required Collateral Value**").

[...]

(2) If at the time of the beginning of the end-of-day processing at Eurex Clearing AG on any Business Day, Eurex Clearing AG determines that

(a) the Market Value of the Posted Collateral ~~in respect of~~ under a Securities Lending Transaction

exceeds

(b) the Required Collateral Value ~~in respect of~~ under such Securities Lending Transaction,

[...]

(3) If at the time of the beginning of the end-of-day processing at Eurex Clearing AG on any Business Day, Eurex Clearing AG determines that:

(a) the Market Value of the Posted Collateral ~~in respect of~~ under a Securities Lending Transaction

falls below

(b) the Required Collateral Value ~~in respect of~~ under such Securities Lending Transaction,

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[...]

2.3.4 Novation of Settled Original Securities Lending Transactions

[...] References to Principal Collateral actually delivered shall refer to such Eligible Principal Collateral Assets in form of Cash Principal Collateral that the Lender Clearing Member holds pursuant to the Loan Information by the Novation Time of the Securities Lending Transactions pursuant to Number 1.2 and respective Principal Collateral Redelivery Claim(s) shall arise as of such time.

2.4 Corporate Actions

[...]

2.4.2 Mandatory Reorganisations, Voluntary Reorganisations and Mandatory Reorganisations With Options

(2) Voluntary Reorganisations

[...]

(a) [...]

(i) in the case of a Voluntary Reorganisation offering an exchange of the Underlying Securities against other securities, an amendment of the terms of the related Securities Lending Transactions such that

[...]

(B) upon the effects set out in (A) and receipt of the required Principal Collateral from the Borrower Clearing Member by Eurex Clearing AG in accordance with Number 1.2.1 Paragraph (2) and Number 2.3.4 ~~in respect of~~ under the amended Securities Lending Transaction, a Recall by the Lender Clearing Member, and a corresponding Recall by Eurex Clearing Lender in respect of the original Equivalent Loaned Securities to which such Securities Lending Transactions related prior to such amendment shall automatically be issued and Eurex Clearing AG shall process such Recall in accordance with Number 2.2.2 Paragraph (3) et seq. (except Paragraphs (6), (7) and (8) sub-Paragraphs 3 and 4), provided that no redelivery of the original Equivalent Loaned Securities shall take place; or

[...]

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2.7 Specific Provisions relating to Termination Events and Default Management Process

[...]

2.7.2 Termination/Return

(4) [...]

(d) If a Termination Date occurs with respect to the Borrower Clearing Member, ~~in addition to the claims and obligations referred to in Chapter I Part 2 Number 6.3.1, all Redelivery Claims of Eurex Clearing Lender against the Borrower Clearing Member in respect of Equivalent Principal Collateral shall expire (*auflösende Bedingung*) as of the Termination Time.~~ When when determining the Difference Claim in relation to the Borrower Clearing Member, Chapter I Part 1 Number 7.3 shall apply *provided that*, when determining the Liquidation Price with respect to the relevant Securities Lending Transaction, the respective Compensation Amount in the Termination Currency shall form part of the costs and expenses incurred by Eurex Clearing AG during its default management process.

(i) ~~with respect to a Securities Loan, "Liquidation Price" means the sum of (x) the price in the Termination Currency paid by Eurex Clearing Borrower for the replacement purchase of the Equivalent Loaned Securities pursuant to Paragraph (b) above on the applicable Maturity Date or, if applicable, the cash amount pursuant to Paragraph (b) above and (y) the respective Compensation Amount in the Termination Currency, if any,~~

(ii) ~~with respect to a Reverse Securities Loan, "Liquidation Price" means the sum of (x) the amount in the Termination Currency of the Loaned Assets in the form of cash on the applicable Maturity Date and (y) the respective Compensation Amount in the Termination Currency, if any, and~~

(iii) ~~with respect to expired Redelivery Claims in respect of Equivalent Principal Collateral, the references to "equivalent Eligible Margin Assets" in the definitions of "Aggregate Value of the Redelivery Claims", "Exchange Price" and "Liquidation Price" in Chapter I Part 1 Number 7.3.2 shall be read as references to "Equivalent Principal Collateral".~~

[...]

2.7.3 Cash Settlement and Marking to Market upon Termination of Open Term Loans

[...]

If any such Return or Recall request has been given in such circumstances, the following specific provisions apply:

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- (1) Upon the occurrence of a Termination Event or Insolvency Termination Event and a Termination Date with respect to a Lender Clearing Member or a termination or Return pursuant to Number 2.7.2 Paragraph (1) to (3), Eurex Clearing Lender may upon giving a Recall request pursuant to Number 2.2.2 Paragraph (3) to the relevant Borrower Clearing Member with respect to related Securities Lending Transactions, under which ~~are secured by~~ Principal Collateral in form of Non-Cash Principal Collateral has been provided,

[...]