

04 Jun 2024  
Eurex Clearing

# Amendments to the Clearing Conditions of Eurex Clearing AG

## Eurex Clearing Circular 039/24 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) regarding the following topics:

- A. Introduction of Automatic Intra-Day Margin Processing
- B. Intra-Day Margin Call Communication Enhancement

The amendments will become effective as of **1 July 2024**.

### 2. Required action

There is no required action.

### 3. Details of the initiative

#### A. Introduction of Automatic Intra-Day Margin Processing

balance the selected collateral pool or to provide excess margin by a fixed amount or percentage.

Additional information can be found in the **C7 CMS Functional Reference Guide**, which is also available on the Eurex Clearing website [www.eurex.com/ec-en/](http://www.eurex.com/ec-en/) under the following path: Support > Initiatives & Releases > C7 Releases > **C7 Release 10.0** > System Documentation.

The reason for the amendments is to offer Clearing Members more flexibility and an automatic solution for intraday risk management. With an appropriate excess margin setup, the probability for intra-day margin calls can be reduced significantly, which caters to the demand for a schedule-based margin call approach while keeping the advantages of Eurex Clearing's event-driven risk management approach.

Upon provision of a written confirmation, the feature can also be used to avoid late USD intra-day margin calls. Clearing Members need to set up an appropriate level of excess margin and confirm that no new transactions are entered after 17:30 CE(S)T.

To reflect the change, the following provisions of the Clearing Conditions will be amended as outlined in Attachment 1:

- ◆ Chapter I Part 1 Number 3.7 of the Clearing Conditions

## **B. Intra-Day Margin Call Communication Enhancement**

Eurex Clearing will introduce a new intra-day report to share the documentation of an intra-day margin call provided via Common Report Engine (CRE). This change will leverage our existing reporting landscape and increase the transparency towards our clients.

Additional information can be found in Eurex Clearing Newsflash from **28 March 2024**: Intraday margin calls: Client communication enhancement.

To reflect the change, the following provisions of the Clearing Conditions will be amended as outlined in Attachment 2:

- ◆ Chapter I Part 1 Number 16.3 of the Clearing Conditions

As of the effective date, the full version of the amended Clearing Conditions will be available for download on the Eurex Clearing website under the following link:

Clearing AG, unless the respective contractual party objects by written notice to Eurex Clearing AG prior to the relevant effective date(s) as stipulated in this circular. In case of an objection by the respective contractual party pursuant the preceding sentence, Eurex Clearing AG is entitled to terminate the respective contract (including a Clearing Agreement, if applicable). Instead of submitting an objection, the respective contractual party may submit in writing to Eurex Clearing AG comments to any amendments of the legal framework of Eurex Clearing AG within the first 10 Business Days after the publication of the amendments. Eurex Clearing AG shall assess whether these comments prevent the published amendments from becoming effective taking into account the interests of Eurex Clearing AG and all contractual parties.

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 – Amendments to Chapter I Part 1 Number 3.7 of the Clearing Conditions
- ◆ 2 – Amendments to Chapter I Part 1 Number 16.3 of the Clearing Conditions

### Further information

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

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

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Related Newsflash: Eurex Clearing Newsflash from **28 March 2024**

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Contact: [risk@eurex.com](mailto:risk@eurex.com)

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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 039/24](#)

[↓ Attachment 2 to Eurex Clearing Circular 039/24](#)

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Chapter I of the Clearing Conditions of Eurex Clearing AG

## General Provisions

As of 01.07.2024

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AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED;

DELETIONS ARE CROSED OUT

\*\*\*\*\*

[...]

## Part 1 General Clearing Provisions

[...]

### 3 General Provisions regarding Margin and Variation Margin

[...]

#### 3.7 Automatic Intra-Day Margin Processing

- (1) To avoid intra-day Margin Calls, the Clearing Member or the ISA Direct Clearing Member may elect in the systems of Eurex Clearing AG for each internal margin account established in accordance with the Elementary Clearing Model Provisions, the ISA Provisions and the ISA Direct Provisions (each an “AMP Account”) the application of the automatic margin processing functionality (“Automatic Margin Processing”), which ensures that an additional buffer amount of Eligible Margin Assets in form of cash are held on the relevant internal margin account at specific predefined points in time.
- (2) With respect to the relevant AMP Account, the Clearing Member or the ISA Direct Clearing Member shall specify in the systems of Eurex Clearing AG:
- (i) the additional buffer amount of Eligible Margin Assets in form of cash, which shall be made available to Eurex Clearing AG with respect to the relevant AMP Account at the applicable AMP Run Times in accordance with the following provisions and which can either be a percentage (“AMP Factor”) or a fixed amount (“AMP Add-On Amount”),
  - (ii) the specific times, which are predefined by Eurex Clearing AG, when the Automatic Margin Processing shall be applied (“AMP Run Times”), and
  - (iii) the currency in which the Automatic Margin Processing shall be settled (“AMP Currency”), provided that the elected AMP Currency can actually be settled at the selected AMP Run Times.

- (3) If Eurex Clearing AG determines an AMP Deficit at any applicable AMP Run Time, Eurex Clearing AG will initiate a direct debit instruction in the AMP Currency in an amount equal to the AMP Deficit Amount with respect to the applicable AMP Cash Account without any prior notification to the Clearing Member or ISA Direct Clearing Member.

A "**AMP Deficit**" occurs, when at the applicable AMP Run Time,

- (i) in case of an AMP Factor, the product of (I) the margin requirement determined with respect to the relevant AMP Account and (II) the applicable AMP Factor ("**AMP Product**") exceeds the aggregate value of the Eligible Margin Assets actually delivered to Eurex Clearing AG with respect to the relevant AMP Account, or
- (ii) in case of an AMP Add-On Amount, the sum of (I) the margin requirement determined with respect to the relevant AMP Account and (II) the applicable AMP Add-On Factor ("**AMP Sum**") exceeds the aggregate value of the Eligible Margin Assets actually delivered to Eurex Clearing AG with respect to the relevant AMP Account.

"**AMP Deficit Amount**" means the difference between (i) the AMP Product or AMP Sum and (ii) the aggregate value of the Eligible Margin Assets actually delivered to Eurex Clearing AG in respect of the relevant AMP Account.

- (4) If Automatic Margin Processing shall be used to avoid intra-day Margin Calls in USD after 17:00 hours (Frankfurt am Main time), the following additional requirements need to be met:
- (i) the Clearing Member or ISA Direct Clearing Member has specified an AMP Factor with respect to the relevant AMP Account (and not an AMP Add-On Amount),
- (ii) the Clearing Member or ISA Direct Clearing Member has specified 17:00 hours (Frankfurt am Main time) as AMP Run Time with respect to the relevant AMP Account,
- (iii) the applicable AMP Factor for relevant AMP Account is equal to or above 20%, and
- (iv) the Clearing Member or ISA Direct Clearing Member has submitted a written confirmation to Eurex Clearing AG that it will not enter into any new Transaction after 17:30 hours (Frankfurt am Main time) in a form as provided by Eurex Clearing AG ("**AMP Confirmation**").
- (5) In case of the occurrence of an AMP Failure, Eurex Clearing AG shall remain entitled to issue an intra-day Margin Call.

"**AMP Failure**" means the occurrence of one of the following events:

- (i) the direct debit instruction entered by Eurex Clearing AG in accordance with Number 3.7 (3) is not or not fully settled, because the selected AMP Currency could not be settled at the relevant AMP Run Time;
  - (ii) in case of Automatic Margin Processing in accordance with Number 3.7 (4), if the Clearing Member or ISA Direct Member Clearing Member violates the AMP Confirmation; or
  - (iii) the occurrence of any other event due to which the AMP Deficit Amount was not or not fully obtained by Eurex Clearing AG in accordance with Number 3.7 (3).
- (6) The Clearing Member or ISA Direct Clearing Member acknowledges that Eurex Clearing AG does not provide any additional reporting with respect to the Automatic Margin Processing.
- (7) Any AMP Amount collected by Eurex Clearing AG in accordance with this Number 3.7 shall constitute either Proprietary Margin, Omnibus Margin, or ISA Direct Margin and shall be treated in accordance with the applicable provisions under the Elementary Clearing Model Provisions, the ISA Provisions or the ISA Direct Provisions.

[...]

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Chapter I of the Clearing Conditions of Eurex Clearing AG

# General Provisions

As of 01.07.2024

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\*\*\*\*\*

[...]

## **Part 1 General Clearing Provisions**

[...]

### **8 Change of Clearing Member and Clearing Model Change**

[...]

#### **8.2 Clearing Model Change (while retaining the current Clearing Member)**

[...]

If the DC-Related Transactions relate to a Disclosed Direct Client, the Clearing Model Change Agreement shall be concluded between the Clearing Member and Eurex Clearing AG. Whenever such Clearing Model Change Agreement is entered into, the following provisions of this Number 8.2 shall apply.

[...]

(3) Amendments pursuant to Paragraph (1) and the Clearing Model Change Agreement shall, however, not take place if Eurex Clearing AG notifies the relevant parties no later than on the Change Date in writing, ~~by e-mail or fax~~ thereof.

[...]

### **9 Termination Rules with respect to Eurex Clearing AG**

[...]

9.3 The following events shall constitute a Failure to Pay Event or an Insolvency Event with respect to Eurex Clearing AG:

[...]

9.3.1 A **"Payment Default"** occurs if:

[...]

(2) Eurex Clearing AG has received written notice (~~Textform~~) of such failure by the relevant Clearing Member or, if the relevant Standard Agreement is an ISA Direct

Standard Agreement, the relevant Clearing Agent (acting on behalf of such ISA Direct Clearing Member) ("**First Notification**");

- (3) Eurex Clearing AG has received a further written notice (*Textform*) of such failure after the expiry of a period of not less than three (3) calendar days after receipt of the First Notification ("**Second Notification**"); and
- (4) [...]

For the purposes of this Number 9.3.1, a payment will be considered not to have been made by Eurex Clearing AG if no corresponding amount has been credited to the relevant account of the relevant Clearing Member, the ISA Direct Clearing Member or the Clearing Agent (acting on behalf of the relevant ISA Direct Clearing Member) or to an account of a correspondent bank designated by the Clearing Member, the ISA Direct Clearing Member or the relevant Clearing Agent (acting on behalf of the ISA Direct Clearing Member). Delays in effecting such credit for technical reasons (i) which are outside the control of Eurex Clearing AG, as explained in writing (*Textform*) to such Clearing Member, such ISA Direct Clearing Member or such Clearing Agent, respectively, without undue delay, shall only lead to a Payment Default if Eurex Clearing AG's failure to make such payment continues for a period of one (1) calendar month after receipt of the Second Notification and (ii) which are within the control of Eurex Clearing AG shall, only lead to a Payment Default if Eurex Clearing AG's failure to make such payment continues for a period of ten (10) Business Days after receipt of the Second Notification. In the event of (i) Eurex Clearing AG shall use reasonable endeavours to effect such credit as soon as practicable. Eurex Clearing AG will notify the relevant Clearing Member, the relevant ISA Direct Clearing Member or the relevant Clearing Agent (acting on behalf of the relevant ISA Direct Clearing Member) without undue delay whether there is a case of (i) or (ii).

[...]

9.3.3 A "**Delivery Default**" occurs if:

[...]

- (2) Eurex Clearing AG has received, after the expiry of a period of not less than five (5) calendar days following the due date, written (*Textform*) notice from such Clearing Member or the Clearing Agent of such ISA Direct Clearing Member (acting on behalf of the relevant ISA Direct Clearing Member) making reference to this Number 9.3.3 and requesting Eurex Clearing AG to fulfil such delivery obligation ("**First Delivery Request**");
- (3) Eurex Clearing AG has received from such Clearing Member or the Clearing Agent of such ISA Direct Clearing Member (acting on behalf of the relevant ISA Direct Clearing Member) a further written (*Textform*) notice requesting Eurex Clearing AG to fulfil such delivery obligation after the expiry of a further period of not less than ten

(10) calendar days after receipt of the First Delivery Request (“**Second Delivery Request**”); and

- (4) Eurex Clearing AG has, after the expiry of a further period of not less than ten (10) calendar days after receipt of the Second Delivery Request, received a written (*Textform*)-request of such Clearing Member or the Clearing Agent of such ISA Direct Clearing Member (acting on behalf of the relevant ISA Direct Clearing Member) for cash settlement of the relevant delivery obligation from Eurex Clearing AG (“**Cash Settlement Request**”).

[...]

9.3.4 A “**Cash Settlement Payment Default**” occurs if:

- (1) Eurex Clearing AG has, after the expiry of a period of not less than three (3) calendar days following the Cash Settlement Request Date, received the written (*Textform*)-request of the Clearing Member or the Clearing Agent (acting on behalf of the relevant ISA Direct Clearing Member) to pay to it the Cash Settlement Amount (“**Cash Settlement Payment Request**”); and

- (2) [...]

For the purposes of this Number 9.3.4, a payment will be considered not to have been made by Eurex Clearing AG if no corresponding amount has been credited to the relevant account of the relevant Clearing Member or the ISA Direct Clearing Member (or of the relevant Clearing Agent acting for the account of the relevant ISA Direct Clearing Member) or to an account of a correspondent bank designated by the Clearing Member or the ISA Direct Clearing Member (or by the Clearing Agent acting on behalf of the relevant ISA Direct Clearing Member). Delays in effecting such credit for technical reasons for which Eurex Clearing AG (i) is not responsible, as explained in writing (*Textform*)-to the Clearing Member or the Clearing Agent (acting on behalf of the relevant ISA Direct Clearing Member) without undue delay, shall not lead to a Cash Settlement Payment Default, (ii) is responsible shall only lead to a Cash Settlement Payment Default if Eurex Clearing AG’s failure to make such payment to such Clearing Member or such ISA Direct Clearing Member (or such Clearing Agent acting for the account of the relevant ISA Direct Clearing Member) continues for a period of ten (10) Business Days after receipt of the Cash Settlement Request.

[...]

9.3.6 A “**Redelivery Default**” occurs if:

[...]

- (3) Eurex Clearing AG has received a written (*Textform*)-notice from such Clearing Member or the Clearing Agent (acting on behalf of such ISA Direct Clearing Member) with respect to such non-performance (“**First Re-Delivery Request**”);

(4) Eurex Clearing AG has received from such Clearing Member or such Clearing Agent (acting on behalf of the relevant ISA Direct Clearing Member) a further written (~~Textform~~)-notice requesting Eurex Clearing AG to fulfil such delivery obligation after the expiry of a further period of not less than three (3) calendar days after receipt of the First Re-Delivery Request ("**Second Re-Delivery Request**"); and

[...]

Delays in effecting such credit for technical reasons (i) which are outside the control of Eurex Clearing AG, as explained in writing (~~Textform~~)-to such Clearing Member or such Clearing Agent, respectively, without undue delay, shall only lead to a Re-Delivery Default if Eurex Clearing AG's failure to make such performance continues for a period of one (1) calendar month after receipt of the **Second Re-Delivery Request** and (ii) which are within the control of Eurex Clearing AG shall only lead to a Re-Delivery Default if Eurex Clearing AG's failure to make such performance continues for a period of ten (10) Business Days after receipt of the **Second Re-Delivery Request**. In the event of (i) Eurex Clearing AG shall use reasonable endeavours to effect such credit as soon as practicable. Eurex Clearing AG will notify the relevant Clearing Member or the relevant Clearing Agent (acting on behalf of such ISA Direct Clearing Member) without undue delay whether there is a case of (i) or (ii).

[...]

## **15 Transmission of information by Eurex Clearing AG; Outsourcing of Clearing Functions**

### **15.1 Transmission of information relating to Clearing Members, Clearing Agents, Disclosed Direct Clients and ISA Direct Clearing Members by Eurex Clearing AG**

[...]

15.1.5 The Clearing Member agrees to obtain written (~~Textform~~)-consent of each of its Disclosed Direct Clients to the transmission of information related to such Disclosed Direct Client by Eurex Clearing AG pursuant to this Number 15.

[...]

## **16 Publications and Notices**

[...]

16.2 All declarations of intent (*Willenserklärungen*) and/or notices to be given between Eurex Clearing AG and a Clearing Member or an ISA Direct Clearing Member under and/or in relation to these Clearing Conditions may be given in the German or in the English language. Unless otherwise specified in these Clearing Conditions, declarations of intent and notices under and/or in relation to these Clearing Conditions may be submitted by means of electronic communication (as, in particular, email and submission via the Member Section). For the avoidance of doubt, if under and/or in relation to these Clearing Conditions a declaration of intent and/or notice is to be submitted 'in writing' or 'written',

this shall include the submission ~~in written, electronic or text form (§§ 126, 126a or 125b of the German Civil Code), unless otherwise specified in these Clearing Conditions~~ by means of electronic communication. If Eurex Clearing AG has published forms, such forms must be used. Forms published by Eurex Clearing AG in the English language only must be used in such language.

- 16.3 Eurex Clearing AG provides online member accesses for the Clearing Members and ISA Direct Clearing Members. Each Clearing Member and ISA Direct Clearing Member acknowledges that Eurex Clearing AG will send to Clearing Members and ISA Direct Clearing Members notices, files, and reports in the systems of Eurex Clearing AG in an specified areas, which is are only individually accessible to them, such as without limitation the Common Report Engine (“CRE”) (the each an “Access Area”). Each notice, file or report is deemed to have been received by the Clearing Member and ISA Direct Clearing Member when it is uploaded to the Access Area during the mandatory business hours in accordance with Number 1.2.6 (1).

Each Clearing Member acknowledges that Eurex Clearing AG is entitled to provide each Disclosed Direct Client and each Indirect Client Market Participant with reports in the Access Area of such Disclosed Direct Client or Indirect Client Market Participant with respect to the DC-Related Transactions relating to such Disclosed Direct Client or Indirect Client Market Participant.

Eurex Clearing AG is not entitled to access or change the Access Area of a Clearing Member or ISA Direct Clearing Member without its consent. Reports and notifications stored in an Access Area will regularly be exchanged against new notices or reports within ten (10) Business Days of their storage in the Access Area.

[...]

## 17 **Miscellaneous**

[...]

### 17.5 **Ancillary Services**

[...]

#### 17.5.1 **Historical Enquiry**

Clearing Members receive cash, transaction, and position and Margin-Call reports through the Common Report Engine. Eurex Clearing AG may provide extracts from such reports on request of the respective Clearing Member. These requests may include data inquiries regarding cash, transactions and positions of the respective Clearing Member and its Disclosed Direct Clients.

[...]

**Part 2 Elementary Clearing Model Provisions**

[...]

**Part 2 Subpart C: Clearing of Omnibus Transactions**

[...]

**8 Porting of assets and positions in relation to an Omnibus Standard Agreement**

[...]

8.4 [...]

“**Porting Requirements**” means, with respect to an Omnibus Standard Agreement, all of the following requirements:

[...]

- (iii) the Replacement Clearing Member has (a) confirmed to Eurex Clearing AG that all Undisclosed Direct Clients to which Omnibus Transactions under the relevant Omnibus Standard Agreement relate, have designated, and have taken all necessary steps to allow, the Replacement Clearing Member to act as their future Clearing Member in respect of their transactions that correspond to any Omnibus Transactions under the relevant Omnibus Standard Agreement and (b) provided Eurex Clearing AG in writing (*Textform*) with a list of all Transactions comprised in the relevant NOSA UDC Transaction Accounts Group, unless (in the case of (b)) the Replacement Clearing Member has already been designated as such for the relevant Omnibus Standard Agreement by the Transferor Clearing Member prior to the Clearing Member Termination Date pursuant to Number 8.5;

[...]

[...]

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