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12 Dec 2024

Eurex Clearing

EMIR: Implementation of requirements according to Regulation (EU) 2024/2987 (EMIR 3.0) into the legal framework of Eurex Clearing AG

Eurex Clearing Circular 093/24 EMIR: Implementation of requirements according to Regulation (EU) 2024/2987 (EMIR 3.0) into the legal framework 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 to the Statutes for the EMIR Risk Committee regarding the following topic:

- ◆ Implementation of additional requirements stipulated by Regulation (EU) 2024/2987 (EMIR 3.0)

The planned effective date for these amendments is **13 January 2025**.

Clearing Members, vendors and other affected contractual parties should take the amendments to the Clearing Conditions and FCM Regulations into consideration.

3. Details of the initiative

The contemplated amendments to the Clearing Conditions and the Statutes for the EMIR Risk Committee implement additional requirements introduced by Regulation (EU) 2024/2987 (EMIR 3.0) amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets (EMIR 3.0), which foresee the following amendments:

- ◆ Amendments to Article 28 EMIR foresee that Eurex Clearing needs to inform not only the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht - BaFin), but also the European Securities and Markets Authority (ESMA), if Eurex Clearing deviates from a recommendation by the EMIR Risk Committee.
- ◆ Further, also ESMA has to be able to attend EMIR Risk Committee meetings in a nonvoting capacity.
- ◆ Due to changes to Article 37 (1) EMIR, the CCP's admission criteria shall foresee that no CCPs shall become a Clearing Member or Disclosed Direct Client.
- ◆ Pursuant to the newly introduced Art 37 (1a) EMIR, Non-Financial Counterparties shall only become Clearing Members, if they are able to demonstrate how they intend to fulfil margin requirements and Default Fund Requirement.

To reflect the proposed changes, the following provisions in the Clearing Conditions and the Status for the EMIR Risk Committee will be amended as outlined in Attachments 1 and 2:

- ◆ Attachment 1: Chapter I Part 1 Number 1.5.3 and Number 2.1.2 (2) (e) and Part 6 Subpart B No 1.1 (6) of the Clearing Conditions, and
- ◆ Attachment 2: § 8 of the Statutes for the EMIR Risk Committee

Publication of amendments to the Clearing Conditions

As of the effective date, the full versions of the amended Clearing Conditions will be available for download on the Eurex Clearing website www.eurex.com/ec-en/ under the following link:



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The 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 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 – Amended sections of Chapter I of the Clearing Conditions of Eurex Clearing AG
- ◆ 2 – Amended sections of the Statutes for the EMIR Risk Committee

Further information

Recipients: All Clearing Members, ISA Direct Clearing Members, Disclosed Direct Clients and FCM Clearing Members of Eurex Clearing AG, vendors and other affected contractual parties

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

Contact: client.services@eurex.com

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[↓ Attachment 1 to Eurex Clearing Circular 093/24](#)

[↓ Attachment 2 to Eurex Clearing Circular 093/24](#)

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Chapter I of the Clearing Conditions of Eurex Clearing AG

General Provisions

As of 13.01.2025

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED;

DELETIONS ARE CROSSED OUT

[...]

Part 1 General Clearing Provisions

1 General Rules

[...]

1.5 EMIR Risk Committee

[...]

1.5.3 The Executive Board will promptly inform ~~the BaFin~~ and the European Securities and Markets Authority (ESMA) (as defined in Number 2.1.2) of any decision of the Supervisory Board or the Executive Board in which the Supervisory Board or the Executive Board decided not to follow advice given by the EMIR Risk Committee with respect to any Relevant Matter.

[...]

2 Clearing Members

2.1 Clearing License

[...]

2.1.2 General Prerequisites for Clearing Licenses

[...]

(2) Personal prerequisites

[...]

(e) Eurex Clearing AG will not accept CCPs or clearing houses as Clearing Members or as Disclosed Direct Clients.

[...]

Part 6 Subpart B: ISA Direct Indemnified Provisions

1 ISA Direct Indemnified Clearing License for ISA Direct Indemnified Clearing Members

1.1 Specific prerequisites for ISA Direct Indemnified Clearing Licenses

[...]

(6) If the applicant qualifies as non-financial counterparty within the meaning of Article 2 (9) of EMIR, the applicant has to demonstrate to Eurex Clearing AG, in form and substance satisfactory to Eurex Clearing AG, how it intend to fulfil the Default ISA Direct Margin Requirement and the ISA Direct Clearing Member Contribution Requirement, including in stressed market conditions.

[...]

[...]

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED;

DELETIONS ARE CROSSED OUT

[...]

§ 1 Scope of Application and Definitions

[...]

- (2) The EMIR Risk Committee shall be established and maintained pursuant to Article 28 of Regulation (EU) 648/2012 (EMIR) and Chapter I Part 1 Number 1.5 of the clearing conditions of Eurex Clearing AG (the “**Clearing Conditions**”) as a comprehensive committee (*Gesamtausschuss*) in order to advise

[...]

- (5) Neither the Executive Board nor the Supervisory Board shall be obliged to accept any proposal made by, or take any action proposed by, the EMIR Risk Committee. Any ~~deliberation and/or~~ decision of the Executive Board or the Supervisory Board with respect to any such proposal shall be made at the sole discretion of the Executive Board or the Supervisory Board, respectively, without owing any obligation whatsoever to the EMIR Risk Committee in respect of such ~~deliberation or~~ decision or the reasoning thereof. For the avoidance of doubt, this does not affect any legal obligation of the Supervisory Board to discuss matters with respect to which it has been advised by the EMIR Risk Committee.

[...]

[...]

§ 7 EMIR Risk Committee Procedure; Voting

[...]

- (34) The Chairman will not allow an EMIR Risk Committee Member to cast a ~~its~~ vote on a particular matter, if he determines or has reasons to believe that the EMIR Risk Committee Member has an actual or potential conflict of interest on that particular matter.

§ 8 External independent experts; Supervisory Authorities

[...]

- (3) The Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* – “**BaFin**”), in its capacity as ~~t~~^{the} competent supervisory authority ~~iesy~~ of Eurex Clearing AG, and the European Securities and Markets Authority (“**ESMA**”) shall be entitled to attend Meetings of the EMIR Risk Committee without voting rights and to be informed about the activities and decisions of the EMIR Risk Committee.
- (4) The Executive Board will promptly inform BaFin ~~the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* – “**BaFin**”)~~ and ESMA of any decision of the Supervisory Board or the Executive Board in which the Supervisory Board or the Executive Board decided not to follow the advice given by the EMIR Risk Committee with respect to any Relevant Matter. For this purpose, the Supervisory Board will immediately inform the Executive Board of any such decision.

[...]
