

Chapter I: Clearing Model Related Provisions

FCM Regulations of Eurex Clearing AG

As of 12.11.2018

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THE FCM CLEARING CONDITIONS WILL BE AMENDED.

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

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1 General Provisions

1.1 Scope of Application

[...]

1.2 Definitions and Interpretation

1.2.1 Unless the context requires otherwise, the following terms and expressions in the FCM Regulations shall have the following meanings:

[...]

“**Clearing Conditions**” means the clearing conditions of Eurex Clearing AG ~~(Clearing-Bedingungen der Eurex Clearing AG) in their binding German language version, as amended from time to time, provided that references in these FCM Regulations to terms defined in the Clearing Conditions shall be references to the English language terms used in the non-binding English translation of the Clearing Conditions (with the meaning of the corresponding German language terms).~~

[...]

1.7 Representations and Undertakings with Respect to the FCM Clearing Agreement

1.7.1 Representations by the FCM Clearing Member

At the time it enters an FCM Clearing Agreement, each FCM Clearing Member represents and warrants to Eurex Clearing AG that:

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- (1) it has the power to enter into and perform the FCM Clearing Agreement and any other documentation relating to the FCM Clearing Agreement to which it is a party and has taken all necessary action to authorize such execution and performance;
- (2) its entry into and performance of the FCM Clearing Agreement and any other documentation relating to the FCM Clearing Agreement to which it is a party do not conflict with any law or regulation applicable to it, any provision of its constitutional documents, any order or judgment of any court or agency of government applicable to it or any of its assets or any agreement or instrument by which it is bound or which affects any of its assets;
- (3) it is registered with the CFTC as a futures commission merchant and is a member of the NFA;
- (4) it has all other governmental consents or other consents that it is required to obtain with respect to its entry into and performance of the FCM Clearing Agreement and such consents are in full force and effect and all conditions of any such consents have been complied with;
- (5) no order has been made or applied for or resolution passed for the suspension of payments or dissolution, termination of existence, liquidation, winding-up, reorganization, bankruptcy, insolvency, judicial management or curatorship, in each case, with respect to it;
- (6) no moratorium in respect of all or any debts or a composition or an arrangement with creditors or any similar proceeding or arrangement by which its assets are submitted to the control of its creditors is ordered, declared or applied for, in each case, with respect to it;
- (7) no liquidator, trustee, administrator, receiver or similar officer has been appointed in respect of it or in respect of all or a substantial part of its assets;
- (8) it is able to pay its debts as and when they fall due, will not become unable to pay its debts as a consequence of entering into the FCM Clearing Agreement;
- (9) in case of Clearing of Own Transactions, it is acting as principal with respect to all of its Own Transactions;~~it is acting as principal in respect of the FCM Clearing Agreement and with respect to all of its Swap Transactions that are Own Transactions;~~
- (10) it is duly authorized under its agreement (or agreements) with each of its FCM Clients to Clear FCM Client Transactions on their behalf subject to and in accordance with the terms of the FCM Clearing Conditions; and
- (11) no event has occurred or circumstance arisen with respect to it which would (whether or not with the giving of notice and/or the passage of time and/or the fulfilment of any other requirement) constitute a Termination Event or Insolvency Termination Event under the FCM Clearing Conditions.

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1.7.2 Additional representations and undertakings by FCM Clearing Members

- (1) At the time it enters into the FCM Clearing Agreement, each FCM Clearing Member further represents and warrants to Eurex Clearing AG that:
- (a) it is entitled to pledge, or, as relevant, transfer full legal and beneficial ownership of, all assets (including, without limitation, all Eligible Margin Assets (including securities)) to be so pledged or so transferred by it pursuant to the FCM Clearing Agreement, free from any liens, encumbrances, charges or other rights or claims, and, without limiting the foregoing, it is either the legal and beneficial owner of such Eligible Margin Assets or, with respect to Eligible Margin Assets provided to Eurex Clearing AG in respect of FCM Client Transactions, it has the unconditional consent of the legal and beneficial owner to pledge or transfer the Eligible Margin Assets;
 - (b) it is not subject to a disqualification pursuant to Section 8a of the CEA;
 - (c) it has implemented risk management processes that sufficiently address operational capacity, including the ability to process expected volumes and/or values of transactions within required time frames, including at peak times, the ability to fulfil collateral, payment, and delivery obligations, and the ability to participate in default management;
 - (d) it maintains written risk management policies and procedures which address the risks that such FCM Clearing Member may pose to Eurex Clearing AG.
- (2) The FCM Clearing Member further undertakes:
- (a) to make the risk management policies and procedures described in Number 1.7.2 (1) (c) and (d) available to Eurex Clearing AG for inspection;
 - (b) to disclose to Eurex Clearing AG whether it has been audited by another derivatives clearing organization as well as the pertinent results of any such risk management audit; and
 - (c) to make information and documents regarding its risk management policies, procedures and practices available to the CFTC upon the CFTC's request.

[...]

1 Margin

[...]

3.2 Margin Calls and Delivery of Eligible Margin Assets

[...]

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3.2.2 Delivery of Eligible Margin Assets in the form of cash

- (1) The FCM Clearing Member shall be obliged to deliver Eligible Margin Assets in the form of cash by transferring **the relevant cash** to Eurex Clearing AG ~~all rights, title and interest in and to the relevant cash, as the case may be,~~ free and clear from any and all rights and claims of the FCM Clearing Member and of any third person, including, without limitation, pursuant to applicable regulation or under any statutory or other trust, but subject to the obligations of Eurex Clearing AG with respect to Cleared Swaps Customer Collateral (as defined in CFTC Regulation 22.1).
- (2) Eligible Margin Assets in the form of cash shall be provided in accordance with the cash clearing procedure pursuant to Number 1.4.1.
- (3) In order to ensure insolvency protection in relation to Eligible Margin Assets in the form of cash delivered to Eurex Clearing AG by the FCM Clearing Member in respect of the FCM Client Margin Account, Eurex Clearing AG and the FCM Clearing Member are subject to specific German law governed provisions on the establishment of trust accounts as set out in Clause 7 of the FCM Clearing Agreement in the form attached to these FCM Regulations as Appendix 1 (each such account, a "**Trust Account**"). The FCM Clearing Member agrees to hold its rights in respect of any such Trust Account on trust for its FCM Clients from time to time.

[...]

9 Termination Rules with respect to the FCM Clearing Member

[...]

9.5 Consequences of a Termination

[...]

9.5.5 Realization of Margin, ~~release or return of Eligible Margin Assets~~

- (1) In case Eurex Clearing AG is, with respect to an FCM Clearing Member Netting Set or an FCM Client Netting Set, the creditor of the Difference Claim against the Affected FCM Clearing Member, Eurex Clearing AG shall, in the case of Eligible Margin Assets in the form of cash, use such cash (where applicable, in accordance with the provisions relating to Trust Accounts set out in the FCM Clearing Agreement) and, in the case of Eligible Margin Assets in the form of securities, be entitled to realize its security interest granted by the Affected FCM Clearing Member in accordance with the Pledge Agreement.
- (2) Eurex Clearing AG:
 - (a) shall apply Eligible Margin Assets in the form of cash, and shall enforce and realize its security interests over all Eligible Margin Assets in the form of securities booked into the FCM Clearing Member Proprietary Margin Account and apply the proceeds thereof, in the following order of priority:

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- (aa) first, to the Difference Claim relating to the FCM Clearing Member Netting Set of the Affected FCM Clearing Member; and
- (bb) second, (only to the extent that the FCM Client Margin is, for whatever reason, not sufficient for such purpose), in Eurex Clearing AG's discretion, to the Difference Claim relating to an FCM Client Netting Set of any FCM Client of the Affected FCM Clearing Member; and
- (b) shall enforce and realize its security interests over all Eligible Margin Assets booked into the relevant FCM Client Margin Account and shall apply the proceeds to the Difference Claim relating to an FCM Client Netting Set of any FCM Client of the Affected FCM Clearing Member whose FCM Client Transaction Account has been allocated to such FCM Client Margin Account within the systems of Eurex Clearing AG.

9.5.6 **Return of any balance owed by Eurex Clearing AG and return or release of Eligible Margin Assets in respect of the FCM Clearing Member Netting Set or any FCM Client Netting Set after the completion of the default management process**

If an FCM Clearing Member Termination Time has occurred with respect to all FCM Clearing Member Own Transaction Accounts and an FCM Client Termination Time has occurred with respect to any FCM Client Transaction Accounts, Eurex Clearing AG shall return any balance owed by it in respect of any FCM Clearing Member Netting Set or relevant FCM Client Netting Set following the completion of the default management process with respect to the FCM Clearing Member as follows:

- (1) The Difference Claim in relation to the FCM Clearing Member Netting Set owed by Eurex Clearing AG shall be discharged by payment of the relevant amount to the Affected FCM Clearing Member.
- (2) The Difference Claim in relation to the relevant FCM Client Netting Set owed by Eurex Clearing AG shall be discharged by payment of the relevant amount to the Affected FCM Clearing Member and such payment shall constitute a return to the Affected FCM Clearing Member for the account of such FCM Client.
- (3) Any remaining pledges in respect of Eligible Margin Assets in the form of securities booked into the FCM Clearing Member Margin Account or the relevant FCM Client Margin Account shall expire or shall be released by Eurex Clearing AG.
- (4) Any remaining Eligible Margin Assets in the form of cash booked into the FCM Clearing Member Margin Account or the relevant FCM Client Margin Account shall be returned to the Affected FCM Clearing Member, in the latter case collectively for the benefit of its FCM Clients.

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11 Termination Rules with respect to Eurex Clearing AG

[...]

11.1.2 A separate Claim for Non-Performance shall be determined by Eurex Clearing AG for all FCM Clearing Member Own Transaction Accounts and each FCM Client Transaction Account by way of combining (*saldieren*) the CCP Single Transaction Amounts of all terminated Swap Transactions in such account or sub-account.

(1) The Claim for Non-Performance for all FCM Clearing Member Own Transaction Accounts or the relevant FCM Client Transaction Account resulting from such combination shall, following its determination in accordance with Number 11.2.1 or Number 11.2.2 below, be automatically (i) set off with relevant Termination Unpaid Amounts and/or (ii) added to relevant Termination Unpaid Amounts in case they are payable by the debtor of the Claim for Non-Performance, as the case may be, in order to result in one single difference claim.

“Termination Unpaid Amounts” means (i) any amount due to be paid as a primary obligation under the relevant Swap Transaction, but unpaid on the date of expiry of primary obligations under Number 11.1.1 above, and (ii) the value of any assets due to be delivered as a primary obligation under the relevant Transaction, but not delivered, on the date of expiry of primary obligations under Number 11.1 above. All such amounts or values shall be denominated in the Termination Currency.

(2) The Claim for Non-Performance and the difference claim shall be denominated in the Termination Currency.

(3) —If the Claim for Non-Performance is a positive figure for all FCM Clearing Member Own Transaction Accounts or the relevant FCM Client Transaction Account, that amount shall be owed by Eurex Clearing AG to the FCM Clearing Member in respect of such account or sub-account (with the FCM Clearing Member acting as agent on behalf of its FCM Client in the case of an FCM Client Transaction Account).

;- If it is a negative figure for a particular Account, the provisions under 9.5.5 and 9.5.6 regarding the realization of Margin and the return of any balances owed by Eurex Clearing AG shall apply accordingly. In case a negative figure remains with respect to the relevant Account, such that amount shall be owed by the FCM Clearing Member to Eurex Clearing AG in respect of such account.

~~The Claim for Non-Performance and the difference claim shall be denominated in the Termination Currency.~~

(4)—Eurex Clearing AG shall notify the determined value of the difference claim with respect to all FCM Clearing Member Own Transaction Accounts or the relevant FCM Client Transaction Account to the relevant FCM Clearing Member as soon as reasonably practicable after its determination, together with reasonable detail

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regarding the data and information forming the basis of the determination. The party with the payment obligation in respect of all FCM Clearing Member Own Transaction Accounts or the relevant FCM Client Transaction Account shall pay the determined value of the difference claim to the other party as soon as reasonable practicable following the notification of the payable amount by Eurex Clearing AG. Such party shall not be obliged to pay any interest on the amount of the difference claim unless it is in default following the receipt of a payment reminder by the other party. Default interest shall be paid on the basis of the effective overnight interest rate applicable to the currency of the difference claim.

~~“Termination Unpaid Amounts” means (i) any amount due to be paid as a primary obligation under the relevant Swap Transaction, but unpaid on the date of expiry of primary obligations under Number 11.1.1 above, and (ii) the value of any assets due to be delivered as a primary obligation under the relevant Transaction, but not delivered, on the date of expiry of primary obligations under Number 11.1 above. All such amounts or values shall be denominated in the Termination Currency.~~

[...]
