

**EUREX CLEARING AG
DISCIPLINARY PROCEDURES RULES**

Chapter I – Disciplinary Process

1 Scope

- (1) These are the Disciplinary Procedures Rules pursuant to Chapter I Part 1 Number 14.2 of the Clearing Conditions of Eurex Clearing AG. These Disciplinary Procedures Rules form an integral part of the Clearing Conditions.
- (2) These Disciplinary Procedures Rules apply in each case where, in the opinion of Eurex Clearing AG, a breach (an "**Alleged Breach**") by a Clearing Member of its obligations under, or representations made in, a Clearing Agreement (including the Clearing Conditions) has occurred. Contractual penalties (*Vertragsstrafen*) that are explicitly regulated in the Clearing Conditions (other than the Disciplinary Procedures Rules), including contractual penalties relating to:
 - (a) the occurrence of a Termination Event pursuant to Number 7.2.1 Paragraph (1) of the General Clearing Provisions or the occurrence of an ISA Direct Clearing Member Termination Event pursuant to Subpart A Number 10.3 of the ISA Direct Provisions;
 - (b) a failure to deliver Securities or other assets or a failure to provide any cash amount where a Physical Settlement shall occur in accordance with the Special Clearing Provisions, in each case pursuant to Number 14.2.2 of the General Clearing Provisions; and
 - (c) Non-Bidding Participants pursuant to Number 7.5.3 Paragraph (5) of the General Clearing Provisions,

shall not constitute Alleged Breaches for the purposes of, and are therefore not subject to, these Disciplinary Procedures Rules, unless Eurex Clearing AG determines otherwise. After the commencement of Disciplinary Procedures, Eurex Clearing AG may not, on the basis of the same underlying facts pursue any contractual penalties for as long as the related Disciplinary Procedures are continuing.

- (3) Terms used and not otherwise defined in these Disciplinary Procedures Rules shall have the meanings ascribed to them in the Clearing Conditions. For the purpose of these Disciplinary Procedures Rules, any reference to

- (a) "**Business Days**" shall be a reference to the business days of Eurex Clearing AG as determined by Eurex Clearing AG in accordance with Chapter 1 Part 1 Number 1.2.4 (1) (h) of the Clearing Conditions; and
- (b) a "**Clearing Member**" shall be a reference to a General Clearing Member (including where acting in its capacity as Clearing Agent), Direct Clearing Member, ISA Direct Clearing Member and FCM Clearing Member.

2 Commencement of Disciplinary Procedures

- (1) Eurex Clearing AG shall in case of an Alleged Breach which it intends to sanction in accordance with Number 1 Paragraph (2) above commence disciplinary procedures ("**Disciplinary Procedures**") in accordance with these Disciplinary Procedures Rules.
- (1) Eurex Clearing AG shall give written (text form) notice (the "**Disciplinary Procedures Notice**") to the affected Clearing Member of the commencement of the Disciplinary Procedures without undue delay.

The Disciplinary Procedures Notice shall (a) provide a summary of the facts underlying Eurex Clearing AG's decision which shall enable the Clearing Member to understand and to respond to the allegations made against it, and (b) name the representative of Eurex Clearing AG that leads the investigation procedures.

- (1) The right of Eurex Clearing AG to claim performance of a claim or a right of Eurex Clearing AG with respect to which Disciplinary Procedures have been commenced shall remain unaffected.
- (1) Notwithstanding the commencement of Disciplinary Procedures, Eurex Clearing AG may at any time on the basis of new facts decide to take other or further Sanctions and inform the Clearing Member accordingly.

Eurex Clearing AG may at any time during Disciplinary Procedures (including after a Disciplinary Committee has been convened):

- (a) determine that, in light of the relevant facts and circumstances, no Sanction should be imposed upon the relevant Clearing Member pursuant to Chapter II below;
- (b) refrain from taking action under these Disciplinary Procedures Rules and discontinue the Disciplinary Proceedings;
- (c) impose sanctions and/or assert other rights, claims and remedies in accordance with the provisions of the Clearing Agreement (including the Clearing Conditions); and/or

- (d) amend the scope of matters to be considered by the Disciplinary Committee by amending the Report (as defined in Number 4 below) by adding, deleting or altering any detail of the Alleged Breach or an additional Alleged Breach (in which case the provisions of these Disciplinary Rules will apply, and, unless otherwise agreed between the Clearing Member and the Disciplinary Committee, any timings specified in these Disciplinary Proceedings will restart).

3 Investigation of an Alleged Breach

- (1) After sending the Disciplinary Procedures Notice to the affected Clearing Member, Eurex Clearing AG shall commence an investigation of the Alleged Breach.
- (2) In carrying out an investigation of an Alleged Breach Eurex Clearing AG may send a representative to the Clearing Member's offices during normal business hours, if it has provided reasonable written notice in advance (the notice period being not less than 24 hours and in all cases proportionate to the seriousness of the Alleged Breach).
- (3) The affected Clearing Member shall use all reasonable efforts to assist the investigation provided that the Clearing Member shall not be obliged to disclose any information if such disclosure would be in breach of applicable law, regulations or agreements of the Clearing Member with third parties.

In particular and without limitation, the Clearing Member shall:

- (a) respond to all reasonable requests for information by Eurex Clearing AG; and
- (b) shall use all reasonable efforts to procure the attendance of any of its directors, officers, employees, agents and representatives, as may be reasonably requested, at a specified time on reasonable notice (at either the offices of Eurex Clearing AG or those of the Clearing Member) in order to answer questions or provide explanations with respect to the Alleged Breach.
- (4) The investigation into the Alleged Breach ends on the "**End Date**", which is the date which falls six (6) weeks after the dispatch of the Disciplinary Procedures Notice unless Eurex Clearing AG determines that it does not have sufficient information to prepare a Report in accordance with Clause 4; in this case Eurex Clearing AG will notify the new End Date to the Clearing Member. Eurex Clearing AG shall in any event use reasonable endeavours to ensure that the investigation is carried out with undue delay.

4 Report

No later than 10 (ten) Business Days after the End Date, Eurex Clearing AG shall provide the Clearing Member with a written report (the "**Report**") in relation to the Alleged Breach.

The Report shall contain the findings of the investigation and the description of the Alleged Breach, make reference to the provision of the Clearing Conditions/Clearing Agreement (allegedly) breached by the Clearing Member and indicate Eurex Clearing AG's intended course of action in relation to the Alleged Breach which shall be:

- (1) to propose an action to remedy the Alleged Breach within a certain timeframe; and/or
- (2) to impose a Sanction pursuant to Chapter II of these Disciplinary Procedures Rules; or
- (3) to take no further action.

5 Clearing Member Response to the Report

- (1) If the Report provides that Eurex Clearing AG intends to take action pursuant to these Disciplinary Procedures Rules, the Clearing Member shall respond in writing (text form) (the "**CM Response**") to Eurex Clearing AG within 10 (ten) Business Days of receipt (*Zugang*) of the Report.

Such CM Response shall state (a) whether the Clearing Member concedes the Alleged Breach and approves the Report or not and (b) a response, as relevant, to the allegations and/or the proposed remedying actions (including, when it will provide evidence that the Alleged Breach has been remedied) and the imposed Sanction.

- (2) The Clearing Member shall, in its CM Response, specify its Representative and any of its Guest(s) (each term as defined in the Statutes for the Disciplinary Committee) that shall attend the Disciplinary Committee (if any is convened), including the name(s), profession(s) and address(es) of the Guest(s).
- (3) If the Clearing Member objects to any part of the Report or the required course of action ("**Objection**"), Eurex Clearing AG shall consider whether to amend the Report and thereby resolve the Objection.

6 Involvement of the Disciplinary Committee

Where Eurex Clearing AG does not resolve the Objection pursuant to Number 5 Paragraph 3 or no CM Response has been received from the Clearing Member within 10 (ten) Business Days of its receipt (*Zugang*) of the Report, Eurex Clearing AG shall notify the Committee Secretary of the Disciplinary Committee which shall convene a Meeting of the Disciplinary Committee to hear the case in accordance with the Statutes for the Disciplinary Committee.

7 Final Decision Notice

No later than 10 (ten) Business Days after the receipt by Eurex Clearing AG of (i) a CM Response from the Clearing Member approving the Report pursuant to Number 4 above or (ii) the Minutes of the Disciplinary Committee Meeting pursuant to Number 7 of the Statutes for the Disciplinary Committee, the Executive Board of Eurex Clearing AG will decide whether or not to sanction the Clearing Member in accordance with Chapter II below and notify the Clearing Member of its decision by registered mail to the address most recently notified to Eurex Clearing AG in accordance with Number 16.3 of the General Clearing Provisions (the "**Decision Notice**").

A Decision Notice shall include details of the grounds on which Eurex Clearing AG has come to its decision and the Sanction(s), if any, to be imposed on the Clearing Member by Eurex Clearing AG pursuant to Chapter II below.

Chapter II – Disciplinary Consequences

1 Common Principles

In deciding whether and which Sanctions should be imposed against a Clearing Member Eurex Clearing AG shall in its discretion consider

- (a) that the Sanctions must be proportionate and commensurate with the seriousness of the Alleged Breach;
- (b) whether a private warning to the relevant Clearing Member pursuant to Number 2 Paragraph (b) below suffices;
- (c) whether relevant private warning(s) have been issued to the relevant Clearing Member within the 2 (two) year period preceding the commencement of the Disciplinary Procedures;
- (d) whether rather than a Termination pursuant to Number 7.2.1 of the General Clearing Provisions or Subpart A Number 10.3 of the ISA Direct Provisions (in each case, except for a Termination pursuant to Chapter I Part 1 Number 7.2.1 Paragraph (1), (6), (8), (10) and/or (13) of the Clearing Conditions) a Fine pursuant to Number 2 Paragraph (a) below would be sufficient as a Sanction for the Alleged Breach; and
- (e) the steps set forth in Number 7.2.1 of the General Clearing Provisions and Subpart A Numbers 10.2 – 10.4 of the ISA Direct Provisions that shall be taken prior to a Grace Period Notice, Termination Notice or ISA Direct Clearing Member Termination Notice.

2 Sanctions

- (1) Eurex Clearing AG shall, following the Disciplinary Procedures described in Chapter I and, where applicable, upon receipt by Eurex Clearing AG of the Minutes of the Meeting of the Disciplinary Committee, in its reasonable discretion (*billiges Ermessen*) be entitled to take the following measures (the "**Sanctions**"):
- (a) impose, in particular in case the Alleged Breach constitutes a Termination Event or ISA Direct Clearing Member Termination Event (in each case, except for a Termination Event pursuant to Number 7.2.1 Paragraph (1) of the General Clearing Provisions), a contractual penalty (*Vertragsstrafe*) in a maximum amount of EUR 500,000 (a "**Fine**") against a Clearing Member with respect to the relevant Alleged Breach that has been committed by the Clearing Member in violation of the applicable standard of care; and/or
 - (b) issue a private warning to the relevant Clearing Member.
- (2) A determination either to impose or not to impose a Sanction shall, for the avoidance of doubt, be without prejudice to the right of Eurex Clearing AG to terminate a Clearing Agreement or Clearing Licence pursuant to Number 13.1 of the General Clearing Provisions.

3 Disclosure of Breaches

Eurex Clearing AG shall disclose any breaches if it is required to do so by law, regulation or by any relevant regulatory authority and shall, subject to applicable law, regulations or requirements by a relevant supervisory authority, inform the Clearing Member of such disclosure.

4 Reporting

Eurex Clearing AG shall:

- (a) report on its monitoring procedures in respect of the Clearing Agreements (including the Clearing Conditions), compliance with and breaches of the Clearing Agreements (including the Clearing Conditions) to its competent regulatory authorities pursuant to applicable law and/or on the basis of any arrangements between Eurex Clearing AG and competent regulatory authorities; and
- (b) prepare and publish a general report (which shall not disclose the identity of the relevant Clearing Member(s)) on the application of these Disciplinary Procedures Rules, from time to time, but at least once a year. The Risk Committee shall be informed by Eurex Clearing AG of any matters comprised in the general report that have or may have an impact on the risk management of Eurex Clearing AG.

Chapter III – Miscellaneous

1 Disputing a Decision

Any dispute, controversy or claim, arising out of or in connection with these Disciplinary Procedures Rules, including any question regarding its existence, validity, interpretation, breach or termination, shall be referred to and finally resolved by arbitration, without recourse to the ordinary courts of law, under the Rules of the International Chamber of Commerce (the "ICC Rules"). The ICC Rules shall form an integral part of this Number 1. The Emergency Arbitrator Provisions shall not apply.

The tribunal shall consist of three (3) arbitrators. Eurex AG and the Clearing Member shall nominate an arbitrator respectively. The third arbitrator, who shall be the chairman of the tribunal, shall be nominated by the two party-nominated arbitrators within thirty (30) days of the last of their appointments. For the rest, the ICC rules on the constitution of the tribunal are applicable.

The seat of the arbitration shall be Frankfurt am Main, Germany.

The language of the arbitration shall be English; the parties to the arbitration are, however, free to submit documents in German language as well.

The parties agree to keep confidential all matters relating to the arbitration, including related court proceedings, to the greatest extent practicable.

2 Confidentiality

Except where Chapter II Number 3 applies, the findings and sanctions shall only be communicated to the parties involved in the Disciplinary Procedures.

Eurex Clearing AG and each of its employees, officers, representatives or external advisors shall hold confidential any information obtained in the course of any Disciplinary Procedures in accordance with Number 15.1.1 of the General Clearing Provisions.

3 Costs of the Disciplinary Procedures

If an Alleged Breach has been conceded by the Clearing Member or has been confirmed by the Disciplinary Committee, Eurex Clearing AG's costs of the Disciplinary Procedures, including any travel expenses and/or the costs for any external advisors shall be borne by the Clearing Member. In any other case, Eurex Clearing AG shall bear its own costs. The costs of the Disciplinary Committee shall be subject to § 8 of the Statutes for the Disciplinary Committee.

4 Governing Law

- (1) Unless provided otherwise, the rights and obligations arising out of, and in connection with, these Disciplinary Procedures Rules shall be governed by the substantive laws (*Sachrecht*), excluding German private international law, of the Federal Republic of Germany. Only the English language version of these Disciplinary Procedures Rules is legally binding. A German language version is no longer provided.
- (2) Any non-contractual rights and obligations arising out of, or in connection with, these Disciplinary Procedures Rules shall be governed by the substantive laws (*Sachrecht*), excluding German private international law, of the Federal Republic of Germany.

5 Amendments

Eurex Clearing **AG** reserves the right to amend the Disciplinary Procedures Rules in accordance with Number 17.2 of the General Clearing Provisions; any amendments to these Disciplinary Procedures Rules shall be published in accordance with Number 16.1 of the General Clearing Provisions.

In respect of FCM Clearing Members these Disciplinary Procedures Rules may be amended in accordance with Chapter I Number 16.2 of the FCM Regulations.

The current valid version of the Disciplinary Procedures Rules is available on the Eurex Clearing Website.

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