clear to trade

e u r e x c l e a r i n g *circular 089/12*

Date: 12 October 2012
Recipients: All Clearing Members of Eurex Clearing AG and Vendors
Authorized by: Thomas Book

Implementation of the upcoming Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps: Change of Clearing Conditions

Related Eurex Clearing Circular: 073/12

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Content may be most important for:	**Attachment:**
Ü All departments	Updated sections of the Clearing Conditions for Eurex Clearing AG

The announced introduction of the EU Short Selling Regulation requires amendments to the Clearing Conditions for Eurex Clearing AG (Clearing Conditions).

We are sending you attached the amendments to the Clearing Conditions which were decided by the Executive Board of Eurex Clearing and will become effective on **1 November 2012**.

For further information please refer to Eurex Clearing circular 073/12.

Pursuant to Chapter I, Part 1, Number 16.2.2 of the Clearing Conditions, each Clearing Member or Non-Clearing Member or Registered Customer accepts each amendment and addition to the Clearing Conditions, unless it objects by written notice to Eurex Clearing AG before the end of the Business Day prior to the actual effective date of such amendment or addition to the Clearing Conditions. The right to terminate the Clearing Agreement and the Clearing License according to Chapter I, Part 1, Number 2.1.4 Paragraph 1 of the Clearing Conditions shall remain unaffected.

If you have any questions or require further information, please contact the Clearing Helpdesk at tel. +49-69-211-1 12 50 or fax +49-69-211-1 43 34.

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Aktiengesellschaft mit
Sitz in Frankfurt/Main
HRB Nr. 44828
Amtsgericht
Frankfurt/Main

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AMENDMENTS ARE MARKED AS FOLLOWS:

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In the event that a Clearing Member fails to deliver the underlying security on the delivery day (as per Number 3.6.1) according to the instructions of Eurex Clearing AG, Eurex Clearing AG shall take measures in accordance with Chapter V Number 2.2; the contractual penalty regulations shall also apply accordingly. For a non-delivery of shares not covered by Article 15 of Regulation (EU) No. 236/2012 as well as for subscription rights from Transactions with options contracts with the assigned group IDs GB11 and IE11, Number 3.6.7 shall apply.

3.6.7 Failure to Deliver Options Contracts of Group ID GB11 and IE11

(1) In the event a Clearing Member fails to transfer shares not covered by Article 15 of Regulation (EU) No. 236/2012 or subscription rights from options contracts with the assigned group IDs GB11 and IE11 (hereinafter referred to as "shares" in Number 3.6.7 and Number 3.6.9), Eurex Clearing AG is entitled to repurchase shares of the same kind and number by means of an auction upon expiration of the 5th Business Day. If Eurex Clearing AG has opened an auction according to Clause 1 by notification of the defaulting Clearing Member, the defaulting Clearing Member is not authorised to transfer the owed shares to Eurex Clearing AG on the day of auction as well as until a written notification of Eurex Clearing AG. Eurex Clearing AG is obliged to publish a maximum price for the auction up to which it is willing to accept bids. The maximum price for the auction results from the settlement price determined by Eurex Clearing AG for the share plus a surcharge of 100%. The obligation of the seller to assign the shares shall be accepted by Eurex Clearing AG instead of fulfilment for the obligation of the defaulting Clearing Member. Upon expiration of the tenth Business Day and the 20th Business Day, Clause 1 and 2 shall apply accordingly, unless a surcharge has been given and the defaulting Clearing

Member has assigned the owed shares until opening of a new auction. In case of a corporate action concerning the shares ("**corporate action**"), Eurex Clearing AG reserves the right to postpone the auction by one Business Day or – due to a justified reason – to determine another Business Day for implementation of the auction.

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Chapter V
Transactions Concluded at the Frankfurter Wertpapierbörse[1]

[...]

Part 2 Clearing of Transactions concluded at the Frankfurter Wertpapierbörse (FWB)

[...]

2.2 Failure to Deliver

In case of a failure to deliver securities owed under a FWB Transaction on the delivery date, the provisions set forth under Number 2.2.1 as well as Number 2.2.2 Paragraph (10) shall apply to shares covered by Article 15 of Regulation (EU) No. 236/2012; for other securities, the provisions set forth under Number 2.2.2 shall apply.

2.2.1 Failure to Deliver Shares pursuant to Article 15 of Regulation (EU) No. 236/2012

(1) If the Clearing Member under delivery obligation fails to deliver to the settling agent shares with their principal market in Germany on delivery date in the course of the Second Same-Day-Settlement (2nd SDS), at the latest, or shares with their principal market in another Member State of the European Union on the first business day following delivery date in the course of the Second Same-Day-Settlement (2nd SDS), at the latest, the Clearing Member in default is obligated to pay a contractual penalty to Eurex Clearing AG, regardless of the fact whether or not Eurex Clearing AG

[1] With regard to the clearing of transactions concluded at the Rhenish-Westfalian Exchange in Düsseldorf (Rheinisch-Westfälische Börse zu Düsseldorf) which share the securities and rights named in Chapter, Chapter V and all remaining provisions of the Clearing Conditions for Eurex Clearing AG shall apply.

actually suffered any damage. The contractual penalty has to be paid by the Clearing Member in default for every day of the non-delivery, even if the right to deliver has been excluded pursuant to Paragraphs (3) or (4), up to and including the day the replacement pursuant to Paragraphs (2) or (3) or the cash settlement determined in Paragraph (4) are performed. The amount of the contractual penalty to be paid per day equals 0.2 basic points of the undelivered shares' equivalent. Eurex Clearing AG retains the right to claim the contractual penalty even if Eurex Clearing AG does not specifically declare this retention in case of late delivery of the securities owed.

(2) If the shares to be delivered by the Clearing Member under delivery obligation have not been delivered to the settlement agent in the course of the Second Same-Day-Settlement (2nd SDS) on the 4th business day following delivery date, at the latest (the **"unperformed FWB Transaction"),** Eurex Clearing AG will replace the undelivered shares pursuant to Paragraphs (3) or (8) unless the Clearing Member under delivery obligation holds an identical claim against Eurex Clearing AG which may be settled against the claim Eurex Clearing AG holds against such Clearing Member. Eurex Clearing AG retains the right to postpone the replacement by one or more business day(s) in case of a share-related corporate action or to determine, for good cause, another business day for the replacement performance.

(3) The replacement will be performed by means of an auction. For the respective auction Eurex Clearing AG will publish for each class of shares a maximum price up to which Eurex Clearing AG is ready to accept bids. The maximum price for this auction results from the settlement price determined by Eurex Clearing AG for the class of shares in question plus a 100% premium. Any company **("Seller")** which previously concluded a corresponding contract with Eurex Clearing AG may participate in such auctions. Once the auction has been initiated, the Clearing Member under obligation to deliver is no longer entitled to deliver Eurex Clearing AG on the day of such auction with the securities owed.

(4) If the replacement of the undelivered shares pursuant to Paragraphs (3) or (8) was not successful in whole or in parts, Eurex Clearing AG, on the 8th business day following delivery date, will determine a cash settlement regarding the shares not replaced. If proceedings pursuant to Chapter 11 of the US-American Bankruptcy Code are initiated against the issuer of the shares to be delivered, Eurex Clearing AG may, deviating from the provision in Clause 1 above, determine such cash settlement on the 6th business day following delivery date already. Upon determination of the cash settlement, the defaulting Clearing Member's obligations to perform its duties from the unperformed FWB Transaction expire with debt-discharging effect; instead, the Clearing Member in default is under the obligation to pay to Eurex Clearing AG the cash settlement determined.

In the case of shares of the same class owed by Eurex Clearing AG to one or more other Clearing Member(s), which have not been delivered 8 business days or, in case of Clause 2 above, 6 business days after delivery date at minimum, the provisions above shall apply accordingly to the extent equalling the number of

shares owed and not delivered in time by the defaulting Clearing Member to Eurex Clearing AG.

The cash settlement's amount is determined as follows:

a) The amount of the cash settlement is established by comparing the settlement price determined by Eurex Clearing AG for the respective class of shares, plus a 100% premium, with the highest selling price and highest purchase price of the FWB Transaction in question.

b) The highest price determined in such manner will be multiplied with the number of shares owed and not delivered in time from the unperformed FWB Transaction. The resulting sum will be settled against the respective totals from the FWB Transactions affected and results in the amount payable by the Clearing Member in default to Eurex Clearing AG in the scope of the cash settlement.

After receipt Eurex Clearing AG will provide such amount to the Clearing Member not delivered in due time.

(5) The Clearing Member not delivered in due time is obligated to accept the measures pursuant to Paragraphs (2) through (4).

(6) The costs resulting from the measures pursuant to Paragraphs (1) through (4) shall be borne by the Clearing Member in default. Eurex Clearing AG charges the Clearing Member in default, among other things, for each auction carried out for replacement purposes in a class of shares with a fee amounting to 10% of the value of the shares owed from the FWB Transaction concerned, however, at minimum EUR 250.00 or US-$ 350.00 or CHF 375.00 or AUD 500.00 or CAD 400.00 or DKK 1,900.00 or GBP 225.00 or JPY 30,000 or NOK 2,000.00 or SEK 2,750.00, respectively, and at maximum EUR 5,000.00 or US-$ 7,000.00 or CHF 7,500.00 or AUD 10,000.00 or CAD 8,000.00 or DKK 37,300.00 or GBP 4,500.00 or JPY 600,000 or NOK 41,000.00 or SEK 55,000.00, respectively. For converting the fees into the calculation currency, the provisions in Number 12 Paragraph (4) of the price list shall apply accordingly.

(7) If a Clearing Member did not agree with Eurex Clearing AG on a gross delivery management service (Chapter I, Part I, Number 1.4.2, Paragraph (2) and Number 1.3.1, Paragraph (1) (b) through (e)), and fails to deliver shares, Eurex Clearing AG will charge, in addition to the obligations set forth in this Number 2.2.1, an additional fee on grounds of delay. For each day of non-delivery ("non-delivery day"), this fee equals 0.01% of the original equivalent value of the shares to be delivered. A non-delivery day means any business day following the delivery's due date, unless the shares are delivered on this day, at the latest, in the course of the second Same Day Settlement run of Clearstream Banking Frankfurt AG. This provision shall apply exclusively to claims resulting from transactions conducted through the electronic trading system at FWB or off exchange via this electronic trading system.

(8) At the earliest from the 1st business day after delivery date on Eurex Clearing AG, in its own dutiful discretion or pursuant to Paragraphs (2) through (4) as well as Paragraph (10), may perform a replacement, a cash settlement or a disclosure for undelivered shares, if due to extraordinary risks Eurex Clearing AG believes that the collateral the Clearing Member under delivery obligation deposited with Eurex Clearing AG for its transactions is no longer sufficient to secure such transactions or if Eurex Clearing AG, due to other serious reasons, deems the performance of the aforementioned measures necessary.

(9) Eurex Clearing AG may deviate from the deadlines set forth in Paragraphs (2) through (4), if compliance with these deadlines would lead to the result that the measures to be carried out pursuant to Paragraphs (2) through (4) could not be performed at all or if their performance would cause disproportional effort or costs; Eurex Clearing AG may also deviate from these deadlines if such deviation is required by other deadlines or by obligations resulting from the shares which have to be complied with.

(10) If for shares included into Clearing pursuant to Chapter V Part 1 or for shares resulting from such included shares in the course of a corporate action performed, there is only a limited period of time, in which rights relating to or resulting from such shares may be claimed and if these shares have not been delivered to Eurex Clearing AG until the end of said period, Eurex Clearing AG will disclose its claim to delivery of these securities to the Clearing Member who was not provided in due time on the part of Eurex Clearing AG; in such a case the provisions set forth in Number 2.2.2 Paragraph (2) shall apply accordingly.

2.2.2 Failure to Deliver other Securities except Shares pursuant to Article 15 of Regulation (EU) No. 236/2012

(1) In the event that a Clearing Member fails to deliver the securities[2] owed under a FWB Transaction on the delivery day and pursuant to the instructions of Eurex Clearing AG, Eurex Clearing AG shall be entitled to take the measures set out below, unless there is an identical claim of the Clearing Member vis-à-vis Eurex Clearing AG which can be settled against the claim against such Clearing Member:

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Part 3 Transactions regarding foreign Securities and Rights with Settlement on the Home Market ("XIM Transactions")

[…]

3.2 Settlement of XIM Transactions

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3.2.2 Failure to Deliver

(1) In case of a failure to deliver on delivery date shares owed from XIM transactions covered by Article 15 of Regulation (EU) No. 236/2012 which are settled in Belgium, France, The Netherlands, Portugal, Denmark, Finland, Sweden, Italy, Spain, Great Britain or Austria, the provisions set forth in Number 2.2.1, Number 2.2.2

[2] For subscription rights securitised and held in collective safe custody, the procedure pursuant Paragraph 2 applies.

Paragraph (10) and, additionally, in Number 3.2.2.1 shall apply. Deviating from Number 2.2.1 Paragraph (1) Clause 1 and Paragraph (2) Clause

a) the obligation to pay a contractual penalty pursuant to Number 2.2.1 Paragraph (1) arises, if shares to be delivered by the Clearing Member under delivery obligation are not delivered, at the latest, on the delivery date in the course of the last settlement run of the central custodian determined by the Management Board of FWB pursuant to the Exchange Rules of the Frankfurter Wertpapierbörse;

b) a cash settlement pursuant to Number 2.2.1 Paragraph (4) is effected on the 5th business day following the delivery date, if a replacement of the undelivered shares was not successful in whole or in parts.

(2~~1~~) In deviation to Number 2.2 the following provisions of Numbers 3.2.2.2 through 3.2.2.8 shall apply to XIM Trancactions regarding securities not covered by Article 15 of Regulation (EU) No. 236/2012 - except for XIM Transactions with settlement in Switzerland - if:

- the Clearing Member fails to deliver any securities owed from a XIM Transaction or fails to assign any rights; or
- the Clearing Member obliged to accept securities owed from a XIM Transaction or the assignment of rights is in default regarding such acceptance,

provided that in which case Eurex Clearing AG remains entitled to claim damages suffered by it or any other Clearing Member due to such default.

(3~~2~~) The assertion of further damages is not excluded hereby.

3.2.2.1 Additional Provisions for the Failure to Deliver Shares pursuant to Article 15 of Regulation (EU) No. 236/2012 from XIM Transactions

(1) In addition to Number 3.2.2 Paragraph (1), the following provisions shall apply to XIM Transactions in shares covered by Article 15 of Regulation (EU) No. 236/2012.

(2) For XIM Transactions with settlement in Belgium, France, The Netherlands or Portugal

a) Eurex Clearing AG will cause, prior to replacement of the shares, the cancellation of the corresponding delivery instructions on the respective home market and the Clearing Member under delivery obligation also has to cause the cancellation of the corresponding delivery instructions on the respective home market;

b) the maximum price for an auction results from the settlement price determined for the respective class of shares by Eurex Clearing AG plus a 20% premium;

c) the amount of the cash settlement payable to Eurex Clearing AG by the defaulting Clearing Member is established by means of comparison between the settlement price determined by Eurex Clearing AG for the respective class

of shares plus a 20% premium and the highest sales price and highest purchase price of the XIM Transactions in question plus a 20% premium;

d) Number 3.2.2.2. Paragraph (11) shall apply instead of Number 3.2.2 Paragraph (1) in conjunction with Number 2.2.1 Paragraph (6);

e) Number 3.2.2.2 Paragraph (12) shall apply.

(3) For XIM Transactions with settlement in Denmark, Finland or Sweden

a) the maximum price for an auction results from the settlement price determined for the respective class of shares by Eurex Clearing AG plus a 50% premium;

b) the amount of the cash settlement payable to Eurex Clearing AG by the defaulting Clearing Member is established by means of comparison between the settlement price determined by Eurex Clearing AG for the respective class of shares and the highest sales price and highest purchase price of the XIM Transactions in question plus a 50% premium;

(4) For XIM Transactions with settlement in Italy Number 3.2.2.4 Paragraph (4) shall apply instead of Number 3.2.2 Paragraph (1) in conjunction with Number 2.2.2 Paragraph (10).

(5) For XIM Transactions with settlement in Spain

a) Eurex Clearing AG will cause, prior to replacement of the shares, the cancellation of the corresponding delivery instructions or, in case of already linked delivery instructions ("**matched** instructions"), give counter instructions and the Clearing Member under delivery obligation also has to cause the cancellation of the delivery instructions given or, in case of an already matched instruction, has to cause an counter instruction to be given;

b) Eurex Clearing AG will deliver the shares replaced in the course of an auction to the Clearing Member holding the oldest callable delivery claim with regard to the replaced class of shares against Eurex Clearing AG. Prior to delivering the replaced securities to this Clearing Member, Eurex Clearing AG will cause the cancellation of the original delivery instructions or will give counter instructions in case the original delivery instructions have already been matched. The Clearing Member to be delivered on grounds of the auction is also under the obligation to cause the cancellation of the original delivery instructions or, in case of already matched delivery instructions, to cause corresponding counter instructions. In order to safeguard the delivery of the securities replaced by means of the auction, the Clearing Member to be delivered with such securities is obligated to issue the required delivery instructions as ordered by Eurex Clearing AG. Moreover, the Clearing Member to be delivered is obligated to cause a modification of the securities' registration in favour of the final beneficial owner to be provided with the securities ("**final beneficial owner**").

(6) For XIM Transactions with settlement via Euroclear UK & Ireland in Great Britain

a) Eurex Clearing AG charges the defaulting Clearing Member for each auction carried out in a class of shares traded in British Pounds with a fee in the amount

of 10% of the owed shares' value, at minimum, however, GBP 225.00 and at maximum GBP ~~4~~4,500.00;

b) the Clearing Member has to pay to Eurex Clearing AG a compensation of expenses for retransfer performance in the amount of GBP 450.00 for shares traded in British Pounds and in the amount of EUR 500.00 for shares traded in Euros, if the Clearing Member transfers shares to Eurex Clearing AG after exclusion of the delivery obligation pursuant to Number 2.2.1 Paragraph (8).

~~3.2.2.1~~3.2.2.2XIM Transactions with Settlement in Belgium, France, Netherlands or Portugal

[…]

(8) If the rights from a XIM Transaction with settlement in Belgium, France, Netherlands or Portugal (e.g. subscription rights) or the rights resulting from securities to be delivered (e.g. partial rights and subscription rights) to be transferred by the Clearing Member obliged to deliver are not transferred in due time on the delivery day on instruction by Eurex Clearing AG, the latter shall execute measures pursuant to Number 2.2.2 Paragraph (2) or Paragraph (3) after the last settlement run of the central custodian determined by the Management Board of FWB according to the Exchange Rules of the Frankfurter Wertpapierbörse) on the last day before expiry of the deadline existing for the rights.

[…]

(11) The costs occurred with Eurex Clearing AG by its measures according to Number 3.2.2.2~~1~~ shall be borne by the defaulting Clearing Member. For each auction carried out in a security class according to Paragraph (3), Eurex Clearing AG shall charge from the defaulting Clearing Member a fee of 10% of the value of the owed securities, at least, however, EUR 250.00 and at maximum EUR 5,000.00.

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~~3.2.2.2~~3.2.2.3 XIM Transactions with Settlement in Denmark, Finland or Sweden

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~~3.2.2.3~~3.2.2.4 XIM Transactions with Settlement in Italy

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~~3.2.2.4~~3.2.2.5 XIM Transactions with Settlement in Spain

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~~3.2.2.5~~3.2.2.6 XIM Transactions with Settlement in Great Britain via Euroclear UK & Ireland

(1) If the Clearing Member fails to deliver securities or transfer rights traded in British Pounds, Chapter V Number 2.2.2 shall apply. In deviation to Chapter V

Number 2.2.2 Paragraph (1) b, Eurex Clearing AG shall again attempt to replace the undelivered securities via an auction according to Chapter V Number 2.2.2 Paragraph (1) c) if the securities to be delivered are not delivered on the 20th Business Day after the specified delivery date at the latest.

(2) If the Clearing Member fails to deliver securities or transfer rights traded in Euro, Chapter VI Part 2 Number 2.1.5.2 shall apply.

[…]

(4) If, upon exclusion of the delivery obligation according to Chapter V Number 2.2.2 Paragraph 4, a Clearing Member transfers shares or rights to Eurex Clearing AG, such Clearing Member shall be obliged to pay to Eurex Clearing AG a compensation of expenses for the performance of re-transfer in the amount of GBP 450.00 with regard to securities or rights traded in British Pounds and in the amount of EUR 500.00 with regard to securities or rights traded in Euro.

~~3.2.2.6~~3.2.2.7 XIM Transactions with Settlement in Austria

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Chapter VI
Transactions Concluded at the Irish Stock Exchange (ISE Dublin)

[…]

Part 2
Clearing of Transactions concluded at the Irish Stock Exchange (ISE)

2.1 Subpart
Settlement of ISE Transactions

[…]

2.1.5 Failure to Deliver

In case of a failure to deliver at delivery date securities owed from an ISE Transaction, the provisions set forth in Number 2.1.5.1 shall apply to shares covered by Article 15 of Regulation (EU) No. 236/2012 as well as to Exchange Traded Funds (ETFs); for other securities, the provisions set forth in Number 2.1.5.2 shall apply.

2.1.5.1 Failure to Deliver Shares pursuant to Article 15 of Regulation (EU) No. 236/2012 and ETFs

(1) In case of failure to deliver shares owed from ISE Transactions covered by Article 15 of Regulation (EU) No. 236/2012 as well as ETFs, the provisions set forth in Number 2.2.1 shall apply; however, Number 2.2.1 Paragraph (1) shall not apply to ETFs.

(2) Deviating from Number 2.2.1 Paragraph (1) Clause 1, the obligation to pay a contractual penalty pursuant to Number 2.2.1 Paragraph (1) arises if shares to be provided by the Clearing Member under delivery obligation are not provided at delivery date at the latest.

(3) All Clearing Members affected by a cash settlement pursuant to Number 2.2.1 Paragraph (4) are obligated to cancel in the electronic system CREST the instructions corresponding to their respective transfer and acceptance obligations.

(4) If the shares to be delivered are replaced or a cash settlement is determined, the defaulting Clearing Member has to cancel in the electronic system CREST the delivery instruction which the original ISE Transaction was based upon.

2.1.5.2 Failure to Deliver other Securities except Shares pursuant to Article 15 of Regulation (EU) No 236/2012 and ETFs

(1) If the Clearing Member fails to deliver the owed securities or part thereof to Eurex Clearing AG, Eurex Clearing AG shall have the rights pursuant to Paragraph (1) to (7):

[…]