clear to trade

eurex clearing *circular 062/15*

Date: 12 June 2015

Recipients: All Clearing Members, Non-Clearing Members and Registered Customers of Eurex Clearing AG and Vendors

Authorized by: Heike Eckert

Amendments to the Clearing Conditions with regard to selection of Clearing Currency and set-off of cash payment claims

Related Eurex Clearing circular: 056/15

Contact: Trading & Clearing Services, T +49-69-211-1 17 00, memberservices@eurexclearing.com

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

Summary:

The circular contains information with respect to Eurex Clearing's service offering and corresponding amendments to the Clearing Conditions for Eurex Clearing AG (Clearing Conditions) regarding the following topics:

1. Selection of Clearing Currency per segregated collateral pool
2. Set-off of cash payment claims across segregated collateral pools

The amended sections of the Clearing Conditions as decided by the Executive Board of Eurex Clearing AG are attached to this circular.

All amendments will come into effect on **6 July 2015**.

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Aktiengesellschaft mit Sitz in Frankfurt/Main
HRB Nr. 44828
USt-IdNr. DE194821553
Amtsgericht

Amendments to the Clearing Conditions with regard to selection of Clearing Currency and set-off of cash payment claims

The circular contains information with respect to amendments to the Clearing Conditions for Eurex Clearing AG (Clearing Conditions) regarding the following topics:

1. Selection of Clearing Currency per segregated collateral pool
2. Set-off of cash payment claims across segregated collateral pools

The amended sections of the Clearing Conditions as decided by the Executive Board of Eurex Clearing AG are attached to this circular.

All amendments will come into effect on 6 July 2015.

1. Selection of clearing currency per segregated collateral pool

Eurex Clearing extends its general service offering and allows the selection of multiple Clearing Currencies, i.e. the selection per omnibus segregated collateral pool and/or Individual Clearing Model (ICM) client. The Clearing Currency can be either euro or Swiss franc.

The selection for segregated collateral pools and ICM clients will not be made in the Clearing Agreement, in order to avoid frequent re-executions, but by means of the relevant admission form ("Segregation Setup Sheet").

The following provisions in the Clearing Conditions will be amended:

- Chapter I Part 1 Number 1.2.4 Paragraph (2)
- Chapter I Part 1 Number 2.1.2 Paragraph (4) (b) (bb)
- Appendix 1 Part 1 Number 4.3, 4.4
- Appendix 7 Number 3

2. Set-off of cash payment claims across segregated collateral pools

Eurex Clearing extends its general service offering and allows the set-off of cash payment claims (claims arising from transactions other than settlement claims) in the same currency across omnibus segregated collateral pools and/or ICM clients. The set-off within one clearing model as well as across clearing models will be possible.

The exclusion of set-off with regard to the standard pool as well as the selection of the set-off option will be conducted by means of the relevant admission form ("Segregation Setup Sheet") in order to avoid frequent re-executions of the Annex of the respective Clearing Agreement.

The following provisions in the Clearing Conditions will be amended:

- Chapter I Part 1 Number 1.3.1 Paragraph (2) (a) (aa)
- Chapter I Part 4 Number 2.2.3 Paragraph (iv)
- Appendix 1 Part 3 Number 2.2, 3.2
- Appendix 3 Annex A Number 4
- Appendix 4 Annex A Number 5

As of the effective date 6 July 2015, the updated Clearing Conditions will be published on the Eurex Clearing website www.eurexclearing.com under the following link:

Resources > Rules and regulations > Clearing Conditions

Pursuant to Chapter I Part 1 Number 17.2.3 of the Clearing Conditions, the changes and amendments to the Clearing Conditions communicated with this circular are deemed to have been accepted by each Clearing Member, Non-Clearing Member and each Registered Customer unless it objects in writing to Eurex Clearing before the end of the Business Day prior to the actual effective date of such change and amendment of the

Clearing Conditions. The right to terminate the Clearing Agreement or the Clearing License according to Chapter I Part 1 Number 2.1.4 Paragraph 2 Number 7.2.1 Paragraph 4 and Number 13 of the Clearing Conditions remains unaffected.

If you have any questions or require further information, please contact Trading & Clearing Services at tel. +49-69-211-1 17 00 or send an e-mail to: memberservices@eurexclearing.com.

12 June 2015

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CHAPTER I AND APPENDIXE 1, 3, 4 AND 7 ARE BEING ADJUSTED.

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED.

DELETIONS ARE CROSSED OUT.

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Chapter I General Provisions

[…]

Part 1 General Clearing Provisions

[…]

1.2.4 Certain Definitions and Interpretation

[…]

(2) "**Clearing Currency**" means either Euro ("**EUR**") or Swiss Francs ("**CHF**") as agreed in writing between Eurex Clearing AG and the Clearing Member in respect of each Standard Agreement~~determined in the Clearing Agreement~~. In these Clearing Conditions "**Euro**" means the lawful currency of the member states of the European Union that continue to have adopted the single currency in accordance with the Treaty establishing the European Community (signed in Rome on March 25, 1957), as amended by the Treaty on the European Union (signed in Maastricht on February 7, 1992), the Treaty of Amsterdam (signed in Amsterdam on October 2, 1997), the Treaty of Nice (signed in Nice on February 26, 2001) and the Treaty of Lisbon (signed in Lisbon on December 13, 2007).

[…]

1.3.1 Set-off of claims between the Clearing Member and Eurex Clearing AG

[…]

(2) **Set-off procedure across Standard Agreements**

(a) **General Rules**

(aa) Eurex Clearing AG shall be entitled to set off cash payment claims arising from Transactions other than Settlement Claims (the "**Payment Claims**")

under a specific Standard Agreement with other Payment Claims of the Clearing Member in the same currency which, in each case, are due and payable under any other Standard Agreement.

The ~~relevant~~ Clearing Member and Eurex Clearing AGmay ~~elect in a Clearing Agreement pursuant to the Elementary Clearing Model Provisions, pursuant to the Individual Clearing Model Provisions or pursuant to the Net Omnibus Clearing Model Provisions~~ agree in writing to exclude ~~such~~ the set-off of Payment Claims across Standard Agreements or to limit such set-off to specific groups of Standard Agreements~~; such election shall apply with respect to the Standard Agreements underlying the relevant Clearing Agreements~~.

[…]

2.1.2 General Prerequisites for Clearing Licenses

[…]

(4) The applicant shall have available the following accounts:

[…]

(b) Cash Accounts:

[…]

(bb) for cash payments in CHF: an account with the Swiss National Bank (the "**SNB Account**") and an account with SIX Interbank Clearing AG (both accounts in the following jointly "**SIC Account**"). Clearing Members located outside of Switzerland and without a branch in Switzerland which have not chosen CHF as a ~~c~~Clearing ~~c~~Currency ~~according to the Clearing Conditions~~ are allowed to substitute the SIC Account with an account with a correspondent bank recognized by Eurex Clearing AG; and

(cc) if the Clearing Member wishes to pay Eurex-Fees (as defined in Number 5.1) according to Number 1.4.1 Paragraph (6), an account with a bank for the respective currency.

(together with any other cash accounts provided for in the Special Clearing Provisions, the "**Clearing Member Cash Accounts**").

Eurex Clearing AG may, upon written request, allow the use of ~~the~~ cash accounts required pursuant to this Paragraph (4) (b) ~~of~~ with a correspondent bank recognised by Eurex Clearing AG.

[…]

Part 4 Net Omnibus Clearing Model Provisions

[…]

2.2.3 […]

(iv) in the event of a set-off pursuant to Number 1.43 of the General Clearing Provisions, such set-off becomes legally effective.

[…]

Appendix 1 to the Clearing Conditions:

Clearing Agreement

between Eurex Clearing AG and a Clearing Member

[…]

Part 1 General Provisions

[…]

4 Cash Clearing~~, Clearing Currency~~

4.1 […]

4.2 […]

~~4.3 The Clearing Currency pursuant to the Clearing Conditions shall be:~~

~~□ Euro (EUR);~~

~~□ Swiss Francs (CHF).~~

~~4.4 The Termination Currency shall be the Clearing Currency last agreed between Eurex Clearing AG and the Clearing Member.~~

[…]

Part 3 Transaction Types included in the Clearing, Elementary Standard Agreements, Net Omnibus Clearing Agreement

[…]

2 Elementary Standard Agreements

~~2.1~~ For the purposes of the Elementary Clearing Model Provisions the Applicable Allocation Method shall be the Value Based Allocation, unless the Clearing Member maintains multiple Elementary Omnibus Standard Agreements or elects the Asset Based Allocation:

□ The Asset Based Allocation shall apply.

~~2.2 The Clearing Member elects:~~

~~□ In case the Asset Based Allocation is the Applicable Allocation Method, a set-off by Eurex Clearing AG pursuant to Number 1.3.1 Paragraph (2)(a)(aa) of the General Clearing Provisions shall be excluded with respect to all Elementary Omnibus Standard Agreements.~~

3 Net Omnibus Clearing Agreement

~~3.1~~ This Agreement also qualifies as a Net Omnibus Clearing Agreement for Customer-Related Transactions:

□ yes

□ no

~~3.2 The Clearing Member elects:~~

~~□ A set-off by Eurex Clearing AG pursuant to Number 1.3.1 Paragraph (2) (a) (aa) of the General Clearing Provisions shall be excluded with respect to all Net Omnibus Standard Agreements.~~

[…]

Appendix 3 to the Clearing Conditions:

Clearing Agreement

with a Non-Clearing Member and/or Registered Customer
for the Individual Clearing Model
under Eurex Clearing AG Documentation

[…]

Annex A to the Clearing Agreement: Transaction Types included in the Clearing, Direct Segregated Margin Transfer and Retransfer~~, Set-Off~~

[…]

~~**4 Set-Off (optional)**~~

~~The Clearing Member elects:~~

~~☐ A set-off by Eurex Clearing AG pursuant to Number 1.3.1 Paragraph (2) (a) (aa) of the General Clearing Provisions shall be excluded with respect to any of the Standard Agreements pursuant to the Individual Clearing Model Provisions.~~

[…]

Appendix 4 to the Clearing Conditions:

Clearing Agreement

with a Non-Clearing Member and/or Registered Customer
for the Individual Clearing Model
under Client Clearing Documentation

[…]

Annex A to the Clearing Agreement: Details of Client Clearing Agreement, Transaction Types included in the Clearing, Direct Segregated Margin Transfer and Retransfer~~, Set-Off~~

[…]

~~**5 Set-Off (optional)**~~

~~The Clearing Member elects:~~

~~☐ A set-off by Eurex Clearing AG pursuant to Number 1.3.1 Paragraph (2) (a) (aa) of the General Clearing Provisions shall be excluded with respect to any of the Standard Agreements pursuant to the Individual Clearing Model Provisions.~~

[…]

Appendix 7 to the Clearing Conditions:

Clearing Agreement

for the Clearing of Securities Lending Transactions with the Holder of a Specific Lender License

[…]

~~3. The Clearing and Termination Currency pursuant to the Clearing Conditions shall be:~~

~~□ Euro (EUR) □ Swiss Francs (CHF).~~

4~~3~~. Eurex Clearing AG charges fees to the Holder of a Specific Lender License for its Clearing services in accordance with the Clearing Conditions and the Price List for Eurex Clearing AG, in each case as amended.

5~~4~~. The Holder of a Specific Lender License hereby (i) makes to Eurex Clearing AG the representations and warranties pursuant to Chapter I Part 1 Number 1.7 of the Clearing Conditions, (ii) undertakes to satisfy the prerequisites of the Specific Lender Licence at any time during the term of this Agreement and (iii) agrees to the conclusion of Transactions pursuant to Chapter IX Part 1 Number 1.2.1 and 1.2.2 of the Clearing Conditions.

Eurex Clearing AG makes the representations and warranties set out in Chapter I Part 1 Number 1.7.6 of the Clearing Conditions.

6~~5~~. This Agreement shall be entered into for an indefinite period of time and shall remain in effect until it is terminated by one of the Parties pursuant the Clearing Conditions.

This Agreement supersedes any previous written or oral agreement between all or some of the Parties in relation to the matters dealt with herein.

7~~6~~. This Agreement shall be amended pursuant to Number 17.2 of the General Clearing Provisions in the case of amendments to the form of this Agreement set out in Appendix 7 of the Clearing Conditions.

In addition, the Agreement may be amended at any time by written agreement between Eurex Clearing AG and the Holder of a Specific Lender License by executing an amended and restated version of this Agreement.

~~8~~7. Unless otherwise provided for in the Clearing Conditions, the Holder of a Specific Lender License shall not assign any of its rights or claims under this Agreement except with the prior written consent of Eurex Clearing AG.

~~9~~8. This Agreement does not and is not intended to confer any rights to third parties.

~~10~~9. This Agreement is governed by the substantive laws (*Sachrecht*), excluding German private international law, of Germany.

Any non-contractual rights and obligations arising out of or in connection with this Agreement shall also be governed by the substantive laws (*Sachrecht*), excluding German private international law, of Germany.

~~11~~10. The courts in Frankfurt am Main, Germany, shall have exclusive jurisdiction (*ausschließlicher Gerichtsstand*) over any action or other legal proceedings arising out of or in connection with this Agreement.

~~12~~11. The place of performance shall be Frankfurt am Main, Germany.

~~13~~12. If any provision contained in this Agreement is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected. Such invalid, illegal or unenforceable provision shall be replaced by means of supplementary interpretation (*ergänzende Vertragsauslegung*) by a valid, legal and enforceable provision, which most closely approximates the parties' commercial intention. This shall also apply *mutatis mutandis* to any gaps (*Vertragslücken*) in this Agreement.

[…]

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