

clear to trade



eurex clearing *circular 213/08*

Date: Frankfurt, September 5, 2008
Recipients: All Clearing Members of Eurex Clearing AG and Vendors
Authorized by: Thomas Book

 **High priority**

Close-out Netting: Introduction of a general Regulation for all Markets

Contact: Andreas Bail, Legal Affairs, Section Markets & Regulatory, tel. +49-69-211-1 31 36

Content may be most important for:

Ü All departments

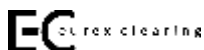
Attachment:

Updated sections of Clearing Conditions for Eurex Clearing AG

Summary:

On September 3, 2008, the Executive Board of Eurex Clearing AG decided to introduce a general close-out netting regulation which covers all markets cleared by Eurex Clearing AG. The regulation will become effective on **September 22, 2008**.

The regulation applies to all markets cleared by Eurex Clearing AG. In this respect, it will also replace the existing regulation for transactions concluded at Eurex Repo GmbH specified in Chapter IV of the Clearing Conditions for Eurex Clearing AG by including this market in the general regulation.



Eurex Clearing AG
Neue Börsenstraße 1
60487 Frankfurt/Main
Mailing address:
60485 Frankfurt/Main
Germany

T +49-69-211-1 17 00
F +49-69-211-1 17 01
customer.support@
eurexchange.com
Internet:
www.eurexclearing.com

Chairman of the
Supervisory Board:
Prof. Dr. Peter Gomez

Executive Board:
Andreas Preuß (CEO),
Jürg Spillmann, Thomas Book,
Gary Katz, Thomas Lenz,
Michael Peters, Peter Reitz

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

Close-out Netting: Introduction of a general Regulation for all Markets

On September 3, 2008, the Executive Board of Eurex Clearing AG decided to introduce a general close-out netting regulation which covers all markets cleared by Eurex Clearing AG. The regulation will become effective on **September 22, 2008**.

The regulation refers to all markets cleared by Eurex Clearing AG. In this respect, it will also replace the existing regulation for transactions concluded at Eurex Repo GmbH specified in Chapter IV of the Clearing Conditions for Eurex Clearing AG by including this market in the general regulation.

By extending the close-out netting regulation, Eurex Clearing AG provides the basis in its contractual relations with its Clearing Members for considerable supervisory and balance sheet-related benefits and relief. International Clearing Members, above all, will be enabled to reduce significantly their commitment of liable equity as well as transaction amounts considered for large exposure limits.

For German institutes and institutes domiciled in countries which already recognize Eurex Clearing AG as risk-reducing Central Counterparty (CCP) (such as UK/Switzerland), the extension of the close-out netting regulation will have no effect, since in these countries the position of Eurex Clearing AG as CCP already constitutes the basis for the positive regulatory effects within the meaning of the Solvency Ordinance ("SolvV") and the Ordinance Governing Large Exposures and Million Loans Reporting ("GroMiKV") or comparable foreign regulations. Therefore, corresponding risk positions vis-à-vis the CCP in general may be disregarded as far as above regulations are concerned.

In addition to direct regulatory effects, the agreement of a close-out regulation may also generate balance sheet-related effects on the basis of the netting agreement. The present regulation serves in this respect especially Clearing Members under Anglo-American jurisdiction.

At present, a well-known law firm is preparing a legal opinion on the enforceability of the close-out regulation under insolvency law. Upon request, this legal opinion will be made available to interested Clearing Members once the regulation has become effective so that it can be submitted, if necessary, to the respective national supervisory authority and to internal or external auditors as evidence for an effective netting agreement. The legal opinion will only be provided in English.

Frankfurt, September 5, 2008

Clearing Conditions for Eurex Clearing AG

September 22 , 200

Page

Clearing Conditions for Eurex Clearing AG

[...]

Preamble

Eurex Clearing AG with registered office in Frankfurt am Main shall operate a system to ensure the performance of transactions in securities, rights and derivatives and transactions with regard to emission rights on the markets Eurex Deutschland, Eurex Zürich, Eurex Bonds, Eurex Repo, Frankfurt Stock Exchange, Irish Stock Exchange and European Energy Exchange (hereinafter referred to as "Markets" or "Trading Platforms").

In relation to the transactions concluded on certain markets, Eurex Clearing AG performs clearing services for its Clearing Members in cooperation with another clearing house (Link Clearing House) on the basis of a separate agreement (the "Clearing Link Agreement").

The performance and the maintenance of margin in respect of all transactions (clearing) shall be carried out subject to the following General Terms and Conditions (Clearing Conditions). For the case that insolvency proceedings have been filed against a Clearing Member pursuant to Sections 45 et seqq German Banking Act or if such insolvency proceedings have been applied for, the relevant Clearing Agreement with such Clearing Member in conjunction with these Clearing Conditions shall be viewed as ~~are~~ a framework agreement in terms of Section 104 Paragraph 2 Clause 3 of the German Insolvency Regulations (Insolvenzenordnung). Actions pursuant to Sections 45 et seqq German Banking Act and the application of insolvency proceedings shall be identical to respective actions and proceedings pursuant to the law of the Clearing Member's country of its offices.

Chapter I General Provisions
Part 9

[...]

9.5 Close-Out Netting

(1) The following provisions apply to (i) all transactions in securities, rights (including with regard to emissions rights) and derivatives (including Futures and Options Contracts) on the Markets Eurex Deutschland, Eurex Zürich (together "Eurex"), Eurex Bonds, Eurex Repo, Frankfurt Stock Exchange, Irish Stock Exchange and European Energy Exchange (the "Markets") and (ii) Eurex and Frankfurt Stock Exchange OTC Transactions within the meaning of Chapter II Part 4 respectively Chapter V Part 1 Number 1.3 of these Clearing Conditions. All those transactions between a Clearing Member and Eurex Clearing AG and cleared under these Clearing Conditions are referred to in this Chapter I Number 9.5 and 9.6 as "Transactions". In the event of any conflict or inconsistency between provisions contained in this Chapter I Number 9.5 or 9.6 and other parts of these Clearing Conditions, the provisions contained in this Chapter I Number 9.5 will govern.

Clearing Conditions for Eurex Clearing AG

September 22 , 200

Page

(2) For the avoidance of doubt, the provisions contained in this Chapter I Number 9.5 shall not apply to any Link Clearing House.

9.5.1 Event of Default

The occurrence of any of the following events in respect of Eurex Clearing AG shall constitute an event of default ("Event of Default"):

- (a) an Insolvency Event within the meaning of Number 9.5.1.1, or
- (b) a Failure to Pay within the meaning of Number 9.5.1.2.

9.5.1.1 Insolvency Event

An "Insolvency Event" occurs if,

- (a) a governmental or judicial authority or self-regulatory organisation having jurisdiction over Eurex Clearing AG in the Federal Republic of Germany (a "Competent Authority") commences an Insolvency Proceeding with respect to Eurex Clearing AG;
- (b) a Competent Authority takes any action under any bankruptcy, insolvency or similar law or any banking or similar law governing the operation of Eurex Clearing AG which is likely to prevent Eurex Clearing AG from performing when due its payment or delivery obligations under these Clearing Conditions;
- (c) Eurex Clearing AG takes any action to authorise an Insolvency Proceeding; or
- (d) a person other than a Competent Authority commences in a jurisdiction other than the Federal Republic of Germany an Insolvency Proceeding against Eurex Clearing AG and (a) Eurex Clearing AG is at that point in time bankrupt or insolvent as defined under any bankruptcy or insolvency law applicable to it and (b) the commencement of such Insolvency Proceeding against Eurex Clearing AG by such person (i) under the given circumstances is not obviously inadmissible or frivolous or (ii) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for Eurex Clearing AG's winding-up or liquidation.

"Insolvency Proceeding" means a mandatory or voluntary proceeding seeking a judgment, order or arrangement of insolvency, bankruptcy, composition, amicable settlement, rehabilitation, reorganisation, administration, dissolution or liquidation or similar arrangement with respect to Eurex Clearing AG or its assets or seeking the appointment of a receiver, liquidator, administrator or similar official for Eurex Clearing AG or for all or any substantial part of its assets under any bankruptcy, insolvency or similar law or any banking or similar law governing the operation of Eurex Clearing AG; the expression does not include a solvent corporate reorganisation. An Insolvency Proceeding is "commenced" if a petition to conduct such proceeding is presented to or filed with, or (where no such petition is required) a decision to conduct such proceeding is taken by, a competent court, authority, corporate body or person.

Clearing Conditions for Eurex Clearing AG

9.5.1.2 Failure to Pay

A "Failure to Pay" means:

- (a) a Payment Default within the meaning of Number 9.5.1.2.1, or
- (b) a Non-payment of the Cash Settlement Amount following a Delivery Default within the meaning of Number 9.5.1.2.2.

9.5.1.2.1 Payment Default

(1) A "Payment Default" occurs if:

- (a) Eurex Clearing AG fails to make, when due, any payment (other than a payment of the Cash Settlement Amount following a Delivery Default) in respect of a payment claim of a Clearing Member against Eurex Clearing AG arising from a Transaction;
- (b) such Clearing Member has notified Eurex Clearing AG of such failure ("First Notification");
- (c) such Clearing Member notifies Eurex Clearing AG again of such failure after the expiry of a period of not less than three (3) calendar days after the First Notification ("Second Notification"); and
- (d) Eurex Clearing AG's failure to make such payment to such Clearing Member continues for a period of more than two (2) calendar days after the Second Notification, provided that the last day of such period shall be a business day of Eurex Clearing AG within the meaning of Chapter I Number 1.1(8).

(2) For the purposes of this Number 9.5.1.2.1, a payment will be considered not to have been made by Eurex Clearing AG if no corresponding amount has been credited to the relevant account of the relevant Clearing Member. Delays in effecting such credit for technical reasons shall not lead to a Payment Default.

9.5.1.2.2 Non-payment of the Cash Settlement Amount following a Delivery Default

(1) A "Non-payment of the Cash Settlement Amount following a Delivery Default" occurs if (a) a Delivery Default within the meaning of paragraph (2) below and (b) a Cash Settlement Payment Default within the meaning of paragraph (3) below occurs.

(2) A "Delivery Default" occurs if:

- (a) Eurex Clearing AG fails to satisfy, when due, any delivery obligation of a Clearing Member arising from a Transaction;
- (b) after the expiry of a period of not less than five (5) calendar days following the due date, such Clearing Member has requested Eurex Clearing AG to fulfil such delivery obligation by making reference to this Number 9.5.1.2.2 ("First Delivery Request");

Clearing Conditions for Eurex Clearing AG

September 22 , 200

Page

- (c) such Clearing Member requests Eurex Clearing AG again to fulfil such delivery obligation after the expiry of a further period of not less than ten (10) calendar days after the First Delivery Request ("Second Delivery Request"); and,
- (d) after the expiry of a further period of not less than ten (10) calendar days after the Second Delivery Request such Clearing Member requests cash settlement of the relevant delivery obligation from Eurex Clearing AG ("Cash Settlement Request").

Delays in effecting a delivery for technical reasons shall not lead to a Delivery Default. Upon a Cash Settlement Request being made by a Clearing Member (the date of such request, the "Cash Settlement Request Date") Eurex Clearing AG shall no longer be obliged to make any delivery under the relevant Transaction. This obligation shall be replaced by an obligation of Eurex Clearing AG to pay to the Clearing Member the Cash Settlement Amount.

For the avoidance of doubt, a default under an Eurex Repo Transaction as described in Chapter IV Number 2.6(1)(a) (Default on the delivery date of the Front Leg) shall not give rise to a Payment Default as described in this Number 9.5.1.2.2.

(3) A "Cash Settlement Payment Default" occurs if:

- (a) after the expiry of a period of not less than three (3) calendar days following the Cash Settlement Request Date, the Clearing Member which has made such request has requested Eurex Clearing AG to pay to it the Cash Settlement Amount ("Cash Settlement Payment Request"); and
- (b) after the expiry of a further period of not less than two (2) calendar days after the Cash Settlement Payment Request (with the proviso that the last day of such period shall be a business day of Eurex Clearing AG within the meaning of Chapter I Number 1.1(8)), Eurex Clearing AG fails to pay to such Clearing Member the Cash Settlement Amount.

For the purposes of this paragraph (3), a payment will be considered not to have been made by Eurex Clearing AG if no corresponding amount has been credited to the relevant account of the relevant Clearing Member. Delays in effecting such credit for technical reasons shall not lead to a Cash Settlement Payment Default.

(4) For the purposes of this Number 9.5.1.2.2 "Cash Settlement Amount" means an amount determined by the Calculating Party as follows:

- (a) The Default Value of the assets which are the subject of the Delivery Default (the "Non-delivered Assets") and the amount of the corresponding payment obligation of the Clearing Member shall be established by the Calculating Party.
- (b) On the basis of the sums so established, an account shall be taken of what is due from each party to the other under the relevant Transaction and the sums due from one party shall be set off against the sums due from the other and only the balance of the account shall be payable (by the party having the claim valued at the lower amount pursuant to the foregoing) and such balance shall be due and payable on the next following day which is a business day of Eurex Clearing AG within the meaning of Chapter I

Clearing Conditions for Eurex Clearing AG

Number 1.1(8). For the purposes of this calculation, all sums not denominated in Euro shall be converted into Euro at the then current rate of exchange, as determined by the Calculating Party.

- (c) Default Value" means, with respect to any Non-delivered Assets, the value of such assets determined by the Calculating Party by applying the following method:

The basis for this calculation shall be the settlement price determined by Eurex Clearing AG for Transactions to which the Non-delivered Assets relate on the business day immediately prior to the Cash Settlement Request Date.

In the event that (i) Eurex Clearing AG has not determined a settlement price for Transactions to which the Non-delivered Assets relate on the business day immediately prior to the Cash Settlement Request Date or (ii) Eurex Clearing AG has determined such settlement price, but such settlement price does not reasonably accurately reflect the value of such transactions that would have been obtained from the relevant market if it were operating normally, the Calculating Party shall choose from among the Clearing Members being admitted at the Relevant Market three Clearing Members who shall determine a market price of the Non-delivered Assets. The average of the quoted prices (mid market offer) shall be the Default Value of the Non-delivered Assets. If less than three quotations are provided as requested, the Calculating Party shall determine a settlement price for Transactions to which the Non-delivered Assets relate acting in good faith and by using commercially reasonable procedures expected to produce a commercially reasonable result.

- (d) "Calculating Party" means, for the purposes of this Number 9.5.1.2.2, Eurex Clearing AG unless Eurex Clearing AG is, for operational reasons, unable to make one or more calculations or determinations required to be made under this Number 9.5.1.2.2. In such event, "Calculating Party" means the relevant Clearing Member.

9.5.2 Termination

9.5.2.1 Termination by Giving Notice

If an Event of Default which is a Failure to Pay occurs with respect to Eurex Clearing AG and is continuing, the Affected Clearing Member may, by giving not more than twenty days' notice specifying the relevant Failure to Pay, terminate all outstanding CM Transactions, but not part thereof only, with effect as from a date (the "Termination Date") to be designated by it in such notice. "Affected Clearing Member" means each Clearing Member to whom the payment obligation is owed which is the subject of the Payment Default or the Non-payment of the Cash Settlement Amount following a Delivery Default, as applicable. "CM Transactions" means, with respect to a Clearing Member, all outstanding Transactions between such Clearing Member and Eurex Clearing AG.

Clearing Conditions for Eurex Clearing AG

September 22, 200

Page

9.5.2.2 Automatic Termination

If an Event of Default which is an Insolvency Event occurs with respect to Eurex Clearing AG, all CM Transactions shall terminate, and the Termination Date shall occur, automatically as of the time immediately preceding the relevant event or action giving rise to such Insolvency Event.

9.5.3 Effect of Termination

In the event of a termination pursuant to Number 9.5.2, neither Eurex Clearing AG nor the relevant Clearing Member shall be obliged to make any further payment or delivery under the terminated CM Transaction(s) which would have become due on or after the Termination Date. These obligations shall be replaced by an obligation of either Eurex Clearing AG or the relevant Clearing Member, as applicable, to pay the Final Settlement Amount in accordance with Number 9.5.4.

9.5.4 Final Settlement Amount

9.5.4.1 Calculating Party

"Calculating Party" means, for the purposes of this Number 9.5.4, Eurex Clearing AG, provided that the relevant Clearing Member shall be the Calculating Party in the following circumstances: (i) the Termination Date has occurred as a result of an automatic termination as provided in Number 9.5.2.2 or (ii) Eurex Clearing AG is, for operational reasons, unable to make one or more calculations or determinations required to be made under this Number 9.5.4.

9.5.4.2 Calculation

9.5.4.2.1 Procedure and Basis of Calculation

Upon termination pursuant to Number 9.5.2, the Calculating Party shall as soon as reasonably possible calculate the Final Settlement Amount. For the purposes hereof:

"Final Settlement Amount" means the amount determined by the Calculating Party to be equal to, as of the Termination Date, (A) the sum of all Transaction Values which are positive for it and the Amounts Due owed to it less (B) the sum of the absolute amounts of all Transaction Values which are negative for it and the Amounts Due owed by it. When determining the Final Settlement Amount, the Calculating Party shall act in good faith and by using commercially reasonable procedures expected to produce a commercially reasonable result; "Transaction Value" means, with respect to any CM Transaction or group of CM Transactions, an amount equal to (i) the loss incurred (expressed as a positive number) or gain realized (expressed as a negative number) by the Calculating Party as a result of the termination of such CM Transaction(s), determined with due regard to (ii) the arithmetic mean of the quotations for replacement or hedge transactions on the Quotation Date obtained by the Calculating Party from not less than two leading market participants, including other Clearing Members. In the case of (ii), each such quotation shall be expressed as the amount which the market participant would pay or receive on the Quotation Date if such market participant were to assume, as from the Quotation Date, the rights and obligations of the other party (or their economic equivalent) under the relevant CM Transaction(s); the resulting amount shall be expressed as a positive number if it would be payable to the market participant, and shall otherwise be expressed as a negative number;

Clearing Conditions for Eurex Clearing AG

"Quotation Date" means the Termination Date, except that in the event of an automatic termination as provided in Number 9.5.2.2, the Quotation Date shall be the date designated as such by the Clearing Member, which shall be not later than the fifth business day of Eurex Clearing AG within the meaning of Chapter I Number 1.1(8) after the day on which the Clearing Member became aware of the event which caused such automatic termination; and

"Amounts Due" owed by a party means the sum of (i) any amounts that were required to be paid by such party under any CM Transaction, but not paid, (ii) the Termination Value, as of the agreed delivery date, of each asset that was required to be delivered by such party under any Transaction, but not delivered (in either case regardless of whether or not the party was entitled to withhold such payment or delivery) and (ii) interest on the amounts specified in (i) and (ii) from (and including) the due date of the relevant payment or delivery to (but excluding) the Termination Date. "Termination Value" means, in respect of any assets on any given date, an amount equal to (A) if the assets are or were to be delivered by the Calculating Party, the net proceeds (after deducting fees and expenses) which the Calculating Party has or could have reasonably received when selling assets of the same kind and quantity in the market on such date, (B) if the assets are or were to be delivered to the Calculating Party, the cost (including fees and expenses) which the Calculating Party has or would have reasonably incurred in purchasing assets of the same kind and quantity in the market on such date, and (C) if a market price for such assets cannot be determined, an amount which the Calculating Party determines in good faith to be its total losses and costs (or gains, in which case expressed as a negative number) in connection with such assets.

9.5.4.2.2 Conversion

Any Transaction Value and Amounts Due not denominated in Euro shall be converted into Euro at the arithmetic mean of the respective rates at which the Calculating Party is reasonably able to (i) purchase the relevant other currency with, and (ii) sell such currency for, Euro on the date as of which such amount is calculated or converted.

9.5.4.3 Payment Obligation

The Final Settlement Amount, as calculated by the Calculating Party, shall be paid (i) to that party by the other party if it is a positive number and (ii) by that party to the other party if it is a negative number; in the latter case the amount payable shall be the absolute value of the Final Settlement Amount.

9.5.4.4 Notification and Due Date

(1) The Calculating Party shall notify as soon as reasonably possible the other party of the Final Settlement Amount calculated by it and provide to such other party a statement setting forth in reasonable detail the basis upon which the Final Settlement Amount was determined.

(2) The Final Settlement Amount shall be payable immediately upon receipt of the notification mentioned in paragraph (1), but not before the Termination Date.

Clearing Conditions for Eurex Clearing AG

September 22 , 200

Page

9.5.5 Set-Off

The Clearing Member may set off its obligation (if any) to pay the Final Settlement Amount against any actual or contingent claims ("Counterclaims") which it has against Eurex Clearing AG on any legal grounds whatsoever. For the purpose of calculating the value of the Counterclaims, the Clearing Member shall, (i) to the extent that they are not payable in Euro, convert them into Euro at rates determined in accordance with Number 9.5.4.2.2, (ii) to the extent that they are contingent V or unascertained, take into account for such calculation their potential amount, if ascertainable, or otherwise a reasonable estimate thereof, (iii) to the extent that they are claims other than for the payment of money, determine their value in money and convert them into a money claim expressed in Euro and (iv) to the extent that they are not yet due and payable, determine their present value (also having regard to interest claims).

9.5.6 Notices

Any notices, requests or other communications made in accordance with the provisions set out in this Part must be made in writing, by telex or fax or in a similar way. Notices or request shall be delivered to the relevant recipient by 8:00 a.m. Central European Time on a date which is a business day of Eurex Clearing AG within the meaning of Chapter I Number 1.1(8). If not received by that time or on such date, the relevant notice or request shall become effective on the immediately subsequent business date which is such business day.

9.6 Rights of Eurex Clearing AG in respect of Corresponding Transactions Upon an Event of Default

9.6.1 Termination of transactions in case of a Cash Settlement Payment

(1) At any time when Eurex Clearing AG has determined a Cash Settlement Amount for Non-delivered Assets according to Number 9.5.1.2.2 (4), Eurex Clearing AG shall be entitled to terminate transactions with Clearing Members, wherefrom Eurex Clearing AG has a due claim to receive securities of the same kind.

(2) Eurex Clearing AG will terminate transactions in the sense of Paragraph 1 in the following order:

- (a) the transaction which is due for the longest period of time and as far as transactions are due since the same period of time,
- (b) the transaction with the highest nominal of securities to be delivered under this transaction
- (c) the transaction with the second highest nominal of securities to be delivered under this transaction and so on, in accordance with the above rule (a) to (c), until Eurex Clearing AG has terminated transactions up to an amount of securities which covers the original transaction were Eurex Clearing AG is performing the Cash Settlement Payment.

As far as necessary Eurex Clearing AG is also entitled to terminate transactions partially to meet the amount of securities which covers the original size of the transaction were Eurex Clearing AG has determined the Cash Settlement Amount.

(3) After the termination of a transaction according to Paragraph 1, the Clearing Member is no longer entitled to fulfill its original obligation by delivering the Non-delivered Assets to Eurex

Clearing Conditions for Eurex Clearing AG

September 22 , 200

Page

Clearing AG. Eurex Clearing is entitled to a Cash Settlement of this transaction. The Cash Settlement Amount shall be determined in accordance with the provisions of Number 9.5.1.2.2. Eurex Clearing AG will notify the respective Clearing Members of the termination and the determined Cash Settlement Amount.

9.6.2 Termination of transactions in case of a General Close-Out

If incompletely settled or unfulfilled transactions of the relevant markets are terminated by a Clearing Member in accordance with Number 9.5.2.1, Eurex Clearing AG, for its part, shall be entitled to terminate transactions with Clearing Members of any of the relevant markets, wherefrom Eurex Clearing AG has a corresponding claim to receive securities or payment ("Corresponding Transaction"). For the determination of such transactions to become terminated Number 9.6.1 Paragraph 2 and 3 will apply accordingly.

[...]

Chapter IV Clearing of Transactions at Eurex Repo GmbH

[...]

Part 3 ~~Close-Out Netting Regulation~~

~~3.1 Termination of incompletely settled transactions due to legitimate reasons and insolvency~~

~~(1) In as far as the transactions at Eurex Repo GmbH between Eurex Clearing AG and a Clearing Member have not been completely settled, they may only be terminated by the Clearing Member for legitimate reasons. This Part sets out the legitimate reasons which the Clearing Member has in connection with a delivery or payment default resulting from a Repo transaction.~~

~~(2) Any transaction which has not been completely settled shall end without notice of termination being required if Eurex Clearing AG should become insolvent. This is the case if the Federal Financial Supervisory Authority has filed for insolvency proceedings pursuant to Section 46 b Paragraph 1 of the German Banking Act (KWG) or if a third person has filed for insolvency proceedings outside the scope of the KWG and if Eurex Clearing AG is insolvent at this point in time or in a situation justifying the opening of such proceedings.~~

~~(3) The other provisions of the Clearing Conditions and, in particular, those of Chapter IV Part 2 shall remain unaffected by this Part, unless otherwise provided here.~~

~~3.2 Legitimate reason~~

~~The Clearing Member shall have a particularly legitimate reason in connection with an outstanding delivery or payment resulting from a Repo transaction in the following cases:~~

Clearing Conditions for Eurex Clearing AG

- a) ~~In the case of an outstanding payment resulting from a Repo transaction, the Clearing Member shall only have a legitimate reason if Eurex Clearing AG is in default of payment within the meaning of this Part (Number 3.2.1).~~
- b) ~~In the case of an outstanding due delivery resulting from a Repo transaction ("Delivery Default"), the Clearing Member shall only have a legitimate reason if Eurex Clearing AG has been put in default of service according to the provisions of this Part (Number 3.2.2) and, in addition, if Eurex Clearing AG is in default of payment (Number 3.2.1).~~

~~3.2.1 Default of payment~~

~~(1) Eurex Clearing AG shall only be in default of payment in relation to a Repo transaction if~~

- a) ~~the pecuniary claim of the Clearing Member is due;~~
- b) ~~the entitled Clearing Member has notified Eurex Clearing AG of the outstanding payment;~~
- c) ~~the entitled Clearing Member has once again notified Eurex Clearing AG of the outstanding payment after expiration of at least three business days since the notification pursuant to Item b;~~
- d) ~~Eurex Clearing AG has still not effected payment to the entitled Clearing Member after two further business days have expired.~~

~~(2) A payment shall be deemed outstanding within the meaning of this Part as long as no respective credit in favour of the entitled person is effected. Delays in effecting such credits for technical reasons or for reasons which are beyond the control of Eurex Clearing AG shall not be for the account of Eurex Clearing AG.~~

~~3.2.2 Default of delivery~~

~~(1) If no delivery is effected on the day of the front leg, only the provision set out in Chapter IV Number 2.6 Item a shall apply. For the payment obligation resulting therefrom, the provisions of this Part regarding default of payment shall apply.~~

~~(2) If no delivery is effected on the day of the term leg, Eurex Clearing AG shall be in default of delivery vis-à-vis the entitled Clearing Member, if the following conditions are fulfilled:~~

- a) ~~The Clearing Member must request the buy-in of the securities which have not been delivered pursuant to Chapter IV, Number 2.6 Item b. The buy-in procedure shall be carried out in accordance with the aforementioned provision unless otherwise provided in this Part.~~

Clearing Conditions for Eurex Clearing AG

September 22 , 200

Page 1

- b) ~~The Clearing Member must have made a request for the claim to delivery to be converted into a claim to payment. This right exists at the earliest from the 15th business day after receipt of the buy-in request pursuant to Item a.~~
- (3) ~~A delivery shall be deemed outstanding within the meaning of this Part as long as no credit has been effected in favour of the entitled Clearing Member. Delays in effecting such credit for technical reasons or for reasons beyond the control of Eurex Clearing AG shall not be for the account of Eurex Clearing AG.~~
- (4) ~~Eurex Clearing AG shall notify the Clearing Member, who has an identical obligation towards Eurex Clearing AG to deliver under the opposite Repo transaction ("Covering Transaction"), of the buy-in request. In this case, Eurex Clearing AG shall also be entitled to request a buy-in from the Clearing Member. The buy-in procedure shall be carried out pursuant to Chapter IV Number 2.6 Item b. Upon notification of the buy-in request by Eurex Clearing AG pursuant to Clause 1, the Clearing Member who is obliged to deliver to Eurex Clearing AG shall only be entitled to discharge this obligation, if it has notified Eurex Clearing AG of its intention to deliver at least one business day prior to delivery; otherwise it has to accept and compensate all effects and expenses of a buy-in.~~
- (5) ~~On receipt of the transformation request according to Number 3.2.2 (2) Item b by Eurex Clearing AG the claim to delivery shall be converted into a claim to the payment of compensation ("Cash Compensation Claim") pursuant to Number 3.2.3. The Clearing Member's shall then have no further claim to delivery. At the same time that the Cash Compensation Claim is created, the mutual obligations under the respective Repo transaction shall be netted against each other, producing a unified claim to payment ("Unified Claim to Payment").~~
- (6) ~~If a Clearing Member requests the transformation of a claim in accordance with Number 3.2.2 (2) Item b, Eurex Clearing AG, for its part, shall also be entitled to request from the Clearing Member who is obliged to deliver to Eurex Clearing AG that the relevant Covering Transaction be converted from a claim to delivery into a Cash Compensation Claim and to carry out such a conversion. The Cash Compensation Claim shall be calculated on the basis of the same current value of the outstanding securities as that taken to calculate the compensation owed to the entitled Clearing Member in accordance with Number 3.2.3 (2). The provisions of this Part shall apply mutatis mutandis concerning the effects of accomplishing the conversion and calculating the Cash Compensation Claim. Eurex Clearing AG shall notify the Clearing Member who is obliged to deliver to Eurex Clearing AG when an entitlement to conversion arises and when this has been accomplished.~~
- (7) ~~On the creation of a Unified Claim to Payment in accordance with Number 3.2.2 (5), Eurex Clearing AG shall initially be in default of service. The provisions regarding the occurrence of default of payment (Number 3.2.1) shall then apply to any payment obligation incurred under the aforementioned provisions.~~

Clearing Conditions for Eurex Clearing AG~~3.2.3 Calculation of the Cash Compensation Claim~~

- ~~(1) If transactions are terminated in accordance with Number 3.1 (1), the Clearing Member ("Clearing Member Entitled to Compensation") shall be entitled to a Unified Cash Compensation Claim instead of a claim to delivery according to the aforementioned provisions. This claim shall be determined as set out under (2) and (3) below.~~
- ~~(2) In order to determine the value of the Cash Compensation Claim, Eurex Clearing AG shall be entitled to determine the current value of the securities to be re-delivered by obtaining quotations from at least three leading market participants of Eurex Bonds GmbH; the market value shall be the average value of the quotations given upon request ("mid market offer").~~
- ~~(3) When determining the value of the Cash Compensation Claim for the relevant Repo transaction, the market value determined according to Paragraph 2 shall be multiplied by the Number of securities owed, and not re-delivered, under the relevant transaction.~~
- ~~(4) Eurex Clearing AG shall notify the Clearing Member who is entitled to compensation and who is obliged to deliver to Eurex Clearing AG under the Covering Transaction of the value of the cash compensation so determined.~~
- ~~(5) To the extent that Eurex Clearing AG, for operational reasons, is not able to calculate the Cash Compensation Claim as set out herein, the Clearing Member who is entitled to compensation may itself make such a calculation as prescribed in this Clause. This entitlement shall generally exist if Eurex Clearing AG should become insolvent.~~

~~3.3 Execution of a General Close Out~~

- ~~(1) In as far as a Clearing Member, for legitimate reasons, is entitled to terminate Repo transactions which have not been completely settled, it may terminate all current or incompletely settled Repo transactions vis-à-vis Eurex Clearing AG ("Close-Out Request"). It shall not be possible to terminate part of a transaction or a part of all transactions.~~
- ~~(2) If incompletely settled Repo transactions are terminated pursuant to Paragraph 1 or Number 3.1 Paragraph 2 or if they end automatically, all claims to delivery which have not been fulfilled shall be converted into Cash Compensation Claims in accordance with Number 3.2.3 Paragraph 1 or 3. In this case, the second day after termination has been triggered shall be the date when the value of the securities to be delivered shall be determined ("Agreed Settlement Date"). In the case of termination, neither of the parties shall be obliged or entitled to any deliveries, payments or any other performance which would have become due on the same day or later. These obligations shall be replaced by a claim of the type set out under Paragraph 3.~~
- ~~(3) All Cash Compensation Claims which have become due for payment in accordance with Paragraph 2 and any other claims to payment under the Repo transactions which have been terminated shall be netted to form a unified claim in accordance with Number 3.2.2 Paragraph 5.~~

Clearing Conditions for Eurex Clearing AG

~~3.4 Right of termination of Eurex Clearing AG in the case of Close Out~~

~~(1) If incompletely settled Repo transactions are terminated by a Clearing Member for legitimate reasons in accordance with Number 3.3 Paragraph 1, Eurex Clearing AG, for its part, shall be entitled to bring forward the buyback date of the term leg of these Repo transactions to the date of the Close-Out Request as far as the relevant Covering Transactions are concerned.~~

~~(2) Claims to delivery which become due as a result of an action pursuant to Paragraph 1, no matter on which side, shall automatically be converted into a Cash Compensation Claim pursuant to Number 3.2.2 Paragraph 5; the Cash Compensation Claims shall be calculated on the basis of the same current value of the outstanding securities as that taken to calculate the value of the compensation owed to the entitled Clearing Member. The Cash Compensation Claims determined in this way shall be netted against all other claims to payment that the parties have under Repo transactions to form a Unified Claim between the parties, according to the foregoing provision.~~

~~3.5 Formalities~~

~~Notifications, information and notices of termination within the meaning of this Part must be made in writing, by telex or fax or in a similar way. Notifications and declarations shall be delivered to the recipient by 8:00 a.m.; otherwise they shall not be deemed delivered until the next business day.~~

[...]