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eurex clearing *circular 093/12*

Date: 2 November 2012
Recipients: All Clearing Members of Eurex Clearing AG and Vendors
Authorized by: Michael Peters

CCP Release 8.0: CCP Service for Securities Lending: Amendments to the Clearing Conditions and to the Price List for Eurex Clearing AG

Related Eurex Clearing Circulars: 033/12, 052/12

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Content may be most important for:

➲ All departments

Attachments:

1. Updated sections of the Clearing Conditions for Eurex Clearing AG, effective 19 November 2012
2. Updated sections of the Price List for Eurex Clearing AG, effective 19 November 2012

Summary:

Hereby, Eurex Clearing is publishing the changed and enhanced sections of the Clearing Conditions for Eurex Clearing AG (Clearing Conditions) and of the Price List for Eurex Clearing AG (Price List) in connection with the extended product scope for the CCP Service for Securities Lending.

The changes and enhancements of the Clearing Conditions and of the Price List were approved by the Executive Board of Eurex Clearing AG on 24 October 2012 and will come into effect on **19 November 2012**.

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

CCP Release 8.0: CCP Service for Securities Lending: Amendments to the Clearing Conditions and to the Price List for Eurex Clearing AG

Amendments to the Clearing Conditions for Eurex Clearing AG

Attached to this circular are the updated sections of the Clearing Conditions for Eurex Clearing AG (Clearing Conditions) decided by the Executive Board of Eurex Clearing AG on 24 October 2012. The changes will come into effect on 19 November 2012.

The following amendments have been made to Chapter IX of the Clearing Conditions in connection with the CCP Service for Securities Lending:

- Amendment of loan information is not supported by the Third Party Flow Provider Eurex Repo-SecLend Market and therefore is subject to the rules of the Third Party Flow Provider (Part 1, Number 1.2.2, Paragraph 3);
- For securities lending transactions executed on Eurex Repo-SecLend Market a Recall Request will automatically trigger a Return Request and vice versa (Part 2, Number 2.2.2);
- Clarification of requirements for distributions in the context of corporate actions (Part 2, Number 2.4.1)
- Insertion of contractual penalty in U.S. dollar (Part 2, Number 2.6.4, Paragraph 2);
- Clarification of buy-in procedure in case of failure to deliver by the borrower on the maturity date (Part 2, Number 2.6.4, Paragraphs 4 and 5);
- Suspension of Marking-to-Market in case a borrower Clearing Member defaults (Part 2, Number 2.7.2, Paragraph 1).

According to Chapter I, Part 1, Number 16.2.2 of the Clearing Conditions, the changes and enhancements to the Clearing Conditions communicated in the present circular are deemed to have been approved by each Clearing Member and Non-Clearing Member as well as by each Registered Customer, unless they object in writing to Eurex Clearing AG prior to the end of the business day preceding the actual day the adjustments and enhancements come into effect. The right to terminate the Clearing Agreement and the Clearing License in accordance with Chapter I, Part 1, Number 2.1.3, Paragraph 1 of the Clearing Conditions remains unaffected thereof.

The complete Clearing Conditions with the changes and enhancements communicated in the present circular will be available as of the effective date on the Eurex Clearing website under the link:

Resources > Rules and Regulations > Clearing conditions

Adjustment of the Price List for Eurex Clearing AG

The date as of which fees will be charged for the clearing of securities lending transactions is postponed from 1 October 2012 to 1 April 2013.

According to Number 15, Paragraph 3 of the Price List, the changes and enhancements to the Price List communicated in the present circular are approved by the Clearing Member, unless it files an objection in writing with Eurex Clearing AG, within ten (10) exchange days after the publication.

The complete Price List with the changes and enhancements communicated in the present circular will be available as of the effective date on the Eurex Clearing website under the link:

Resources > Rules and Regulations > Price list

2 November 2012

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AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED

DELETIONS ARE CROSSED OUT

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Chapter IX Clearing of Securities Lending Transactions

[...]

Part 1 General Provisions

[...]

1.2 Conclusion of Transactions

Securities Lending Transactions are concluded by way of novation subject to, and in accordance with, the following provisions:

[...]

1.2.2 Novation Principles and Criteria

[...]

(3) Securities Lending Transactions shall be novated in accordance with the respective loan information received by Eurex Clearing AG from the relevant Clearing Members or the relevant Non-Clearing Member (acting for itself and on behalf of its Clearing Member), as the case may be, via the Third Party Flow Provider (such information, as amended from time to time and accepted by Eurex Clearing AG, the "**Loan Information**"). ~~During the term of Securities Lending Transactions~~ To the extent the rules of the Third Party Flow Provider contain such provisions, the relevant Clearing Members and Non-Clearing Members~~, if any,~~ may, during the term of Securities Lending Transactions, at any time agree on an amendment of the Loan Information (including the reduction but excluding the extension of the term of a Fixed Term Loan). The relevant Securities Lending Transactions shall be amended accordingly, if Eurex Clearing AG validates any such amendment of the Loan Information received via the Third Party Flow Provider. Eurex Clearing AG is entitled to reject such amendment.

[...]

Part 2 Terms and Conditions of Securities Lending Transactions

The terms and conditions of each Securities Lending Transaction are set forth in this Part 2.

[...]

2.2 Delivery and Return of Loaned Securities

[...]

2.2.2 Return of Equivalent Loaned Securities

[...]

(4) The Borrower and the Lender are entitled to give Return or Recall requests, as the case may be, independently from each other. To the extent the rules of the Third Party Flow Provider contain such provisions, the placement of a Return request shall automatically create a Recall request and the placement of a Recall request shall automatically create a Return request.

[...]

[...]

2.4 Corporate Actions

Corporate actions in this Number 2.4 will be processed by Eurex Clearing AG with respect to the relevant Underlying Securities.

2.4.1 Distributions

If a relevant date on which the holders of the Underlying Securities are identified as being holders of an entitlement~~d~~ to any interest, dividends, rights or other distributions of any kind (the "**Record Date**") falls in the period from, and including, the Value Date (taking into account any postponement pursuant to Number 2.6.1 or 2.6.2) to, and excluding the Maturity Date (taking into account any postponement pursuant to Number 2.6.4 or 2.6.5), the Lender shall, in accordance with the following provisions, be entitled to a sum of money, securities or other assets which were agreed between the Lender and the Borrower or, if no such agreement was reached, which are equivalent to the amount of such interest, dividends, rights or other distributions of any kind that would be received by a holder thereof on the Record Date (each a "**Distribution**") ~~and in accordance with the following provisions~~. The Lender has no right to claim a Distribution pursuant to Clause 1, if – on the day of novation or, in the case of novation of Settled Original Securities Lending Transactions with delivery of Non-Cash Principal Collateral pursuant to Number 1.2.1 Paragraph 2, on the day on which the Settled Original Securities Lending Transaction was submitted to Eurex Clearing AG pursuant to Number 1.2.2 Paragraph 1 – the Underlying Securities did not include a claim to interest, dividends, rights or other distributions resulting from the respective corporate action.

[...]

2.6 Failure to Deliver

[...]

2.6.4 Failure to Deliver by the Borrower on the Maturity Date

[...]

(2) If a Record Date for a Cash Distribution or for a Securities Distribution in the form of subscription rights pursuant to Number 2.4.1 or the last trade day for the term of acceptance for a Voluntary Reorganisation pursuant to Number 2.4.2 occurs with respect to a Non-Performed Transaction between Eurex Clearing AG and the Borrower Clearing Member, the Borrower Clearing Member shall be obliged to pay a contractual penalty to Eurex Clearing AG irrespective of whether Eurex Clearing AG has suffered a loss.

Such contractual penalty shall be determined as follows:

(a) with respect to Cash Distributions pursuant to Number 2.4.1 Paragraph (1), the contractual penalty shall be 35.8 % of the net Cash Distribution, multiplied by the number of Equivalent Loaned Securities owed by the Borrower to the Lender on the Maturity Date. The contractual penalty shall be payable in the currency of the Equivalent Loaned Securities and only be charged by Eurex Clearing AG if the calculation in the applicable currency results in a value of at least EUR 5,000, ~~or~~ CHF 7,000 or USD 7,000;

(b) with respect to Securities Distributions in the form of subscription rights pursuant to Number 2.4.1 Paragraph (2) (d), the contractual penalty shall be (i) the Rights Cash Settlement Price or (ii) if no such Rights Cash Settlement Price

is available, such other amount as determined by Eurex Clearing AG in its reasonable discretion; in each case of (i) or (ii) above, multiplied by two;

(c) with respect to Voluntary Reorganisations pursuant to Number 2.4.2 Paragraph (2), the contractual penalty shall be calculated on the basis of the offer as follows:

- Conversion offer in cash

  In a conversion offer in cash, the amount of the contractual penalty shall be calculated on the basis of the offered cash amount for one Underlying Security according to the conversion offer less the settlement price, multiplied by the number of Equivalent Loaned Securities owed on the last trade day for the term of acceptance for the Voluntary Reorganisation and by the Acquisition Ratio determined at the end of the acceptance period. If necessary, the offered cash amount shall be converted into the currency of the Equivalent Loaned Security on the basis of the exchange rates published by Eurex Clearing AG on the last trade day for the term of acceptance for the Voluntary Reorganisation.

- Conversion offer in securities or cash

  For a conversion offer in securities (bidder's securities) or cash, the amount of the contractual penalty is calculated per Equivalent Loaned Security owed on the last trade day for the term of acceptance for the Voluntary Reorganisation in accordance with the following formula; this is then multiplied by the number of Equivalent Loaned Securities owed on the last trade day for the term of acceptance for the Voluntary Reorganisation:

  Contractual penalty per Equivalent Loaned Security =

$$\text{Maximum}\left(0; \left(\left(\left(\sum_{1-n}\left(\text{Number}_{\text{Bidder's Securities}} * \text{Price}_{\text{Bidder's Securities}}\right) + \text{offered cash amount}\right) - \text{Settlement Price}_{\text{Security}}\right) * \text{Acquisition Ratio}\right)\right)$$

- Different conversion offers in securities or cash

  If, in the event of a voluntary corporate action, there is a right to choose between different conversion offers, the contractual penalty is calculated on the basis of the highest value of the conversion offers and the settlement price of the Underlying Security, multiplied by the number of Equivalent Loaned Securities owed on the last trade day for the term of acceptance for the Voluntary Reorganisation and the Acquisition Ratio determined at the end of the acceptance period. To this end, the different conversion offers will be calculated using the formula described above and will be compared with one another. The highest contractual penalty per Equivalent Loaned Security shall then apply; this will be multiplied by the number of Equivalent Loaned Securities owed on the last trade day for the term of acceptance for the Voluntary Reorganisation.

- Different conversion offers in the event of mandatory corporate actions

If, concerning a mandatory corporate action, a selection right exists giving a choice between different conversion offers, the contractual penalty per Equivalent Loaned Security is to be calculated on the basis of the difference between the highest and lowest value of conversion offers, the result being multiplied by the number of Equivalent Loaned Securities owed on the last trade day for the term of acceptance for the Voluntary Reorganisation.

The following formula shall be used to calculate the value of the conversion offer:

Value of conversion offer per Underlying Security =

$$\sum_{1-n}(\text{Number}_{\text{Bidder's Securities}} * \text{Price}_{\text{Bidder's Securities}}) + \text{offered cash amount}$$

Number $_{\text{bidder's securities}}$: Number of bidder's securities offered by the bidder for one Underlying Security of the target company.

Price $_{\text{bidder's security}}$: Price for a bidder's security, which is determined as follows: (i) If new issues or new securities are offered, the issue price of the newly issued security offered for subscription will be used as the basis, (ii) if existing securities are offered and Eurex Clearing AG has a determined Settlement Price for the corresponding security, such fixed Settlement Price shall be used as the basis, (iii) otherwise, the closing price on the stock exchange with the largest turnover in the corresponding security shall be used as the basis. The price of the bidder's securities shall, if necessary, be converted into the currency of the Underlying Security on the basis of the exchange rates published by Eurex Clearing AG on the last trade day for the term of acceptance for the Voluntary Reorganisation.

n: Number of the possibly different securities offered by the bidder.

Acquisition Ratio: Total number of Underlying Securities that the bidder plans to acquire, divided by the total number of Underlying Securities offered to the bidder.

Settlement Price $_{\text{security}}$: The daily settlement price determined by Eurex Clearing AG on the last trade day for the term of acceptance for the Voluntary Reorganisation for the Equivalent Loaned Security owed on the last trade day for the term of acceptance for the Voluntary Reorganisation.

The contractual penalty shall be payable in the currency of the Equivalent Loaned Securities and only be charged by Eurex Clearing AG if the calculation in the applicable currency results in a value of at least EUR 5,000, ~~or~~ CHF 7,000 or USD 7,000.

Should the terms of the conversion offer on which the calculation of the contractual penalty is based, change after the last trade day for the term of acceptance for the Voluntary Reorganisation and the calculation of the contractual penalty have a different result in due consideration of the

changed conditions, Eurex Clearing AG reserves the right to re-calculate the contractual penalty on the basis of the modified conditions.

The right of Eurex Clearing AG to claim damages shall remain unaffected.

[...]

(4) A Buy-In in accordance with Paragraphs (6) through (9) below shall take place upon receipt by Eurex Clearing AG of a Buy-In request of the Lender Clearing Member (a "**Buy-In Request**"). A Buy-In Request may only be given by the Lender Clearing Member if and to the extent a Recall request pursuant to Number 2.2.2 Paragraph (3) has been given by the Lender Clearing Member ~~(either at the same time than~~ before the Buy-In Request ~~or before)~~ and has not been withdrawn.

If provided for by the rules of the relevant Third-Party Flow Provider, the Lender Clearing Member is entitled to withdraw a Buy-In Request provided that a Buy-In Request can not be withdrawn after the end of trading on the Business Day preceding the Buy-In Date (as defined in Paragraph (6) below).

If no Buy-In Request has been received by Eurex Clearing AG within ten Business Days following the date set as Maturity Date in the relevant Recall request or if the Buy-In Request has been withdrawn, Eurex Clearing is entitled to cancel the Recall request.

Eurex Clearing AG shall be entitled to commence a Buy-In in its reasonable discretion with respect to a Non-Performed Transaction with the Borrower Clearing Member if no Buy-In Request has been received or if a Buy-In Request has been withdrawn.

(5) A Buy-In in accordance with Paragraphs (6) through (9) below shall also take place if the Non-Performed Transaction has not been redeemed ~~on~~ by the third Business Day following the Maturity Date pursuant to Paragraph (i)(b) or (ii) of the definition of Maturity Date in Number 2.2.2 Paragraph (8), provided that, on the last Business Day preceding the Buy-In Day as defined in Paragraph (6) (b), no failure to deliver Equivalent Principal Collateral by the Lender pursuant to Number 2.6.5 occurs at the same time.

[...]

2.7 Specific Provisions relating to Termination Events and Default Management Process

[...]

2.7.2 Cash Settlement and Marking to Market upon ~~a~~ Termination

Upon the occurrence of a Termination with respect to a Clearing Member, Eurex Clearing AG is entitled (but not obliged) to request a Return or Recall of the related Securities Lending Transactions with the relevant other Clearing Member which may be Open Term Loans as well as of related Securities Lending Transactions which may be Fixed Term Loans in accordance with Number 2.2.2 (which shall be applied *mutatis mutandis* to Fixed Term Loans as if these would be Open Term Loans).

If any such Return or Recall request has been given in such circumstances, the following specific provisions apply:

(1) Upon the occurrence of a Termination with regard to a Lender Clearing Member, Eurex Clearing AG ~~shall~~ may, upon giving a Recall request pursuant to 2.2.2 Paragraph (3) to the relevant Borrower Clearing Member with respect to related Securities Lending Transactions, which are secured by Principal Collateral in form of Non-Cash Principal Collateral,

(a) until all relevant Equivalent Loaned Securities which are due for return have actually been delivered to Eurex Clearing AG by the Borrower Clearing Member, refrain from a Marking to Market pursuant to Number 2.3.2 and take into account the changes in the Market Value of the Posted Collateral in relation to the Required Collateral Value of a Securities Lending Transaction by way of increasing or reducing the margin obligation of the Borrower Clearing Member accordingly.

(b) be entitled to replace its obligation to return such Equivalent Principal Collateral to the Borrower Clearing Member by a payment of a cash amount determined by Eurex Clearing AG in its reasonable discretion.

[...]

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[…]

12. Clearing Fees and Service Fees for Securities Lending Transactions

For Securities Lending Transactions pursuant to Chapter IX of the Clearing Conditions, ECAG, as of 1 April 2013~~1 October 2012~~, shall charge fees for the clearing and settlement of Securities Lending Transactions and for the maintenance of and additional services with respect to open Securities Lending Transactions – as far as such Securities Lending Transactions have been novated by ECAG pursuant to Chapter IX of the Clearing Conditions ("CCP Transaction") – as follows:

[…]