clear to trade

eurex clearing *circular 073/12*

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Recipients: All Clearing Members of Eurex Clearing AG and Vendors
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High Priority

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

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Content may be most important for:	**Attachments:**
➲ All departments	1. Presentation: Overview and Implementation Concept 2. Frequently Asked Questions (FAQs)

Summary:

The Short Selling Regulation of the European Union (EU Short Selling Regulation) which will come into force on 1 November 2012, requires any Central Counterparty (CCP) in the European Union (EU) to impose fines on late deliveries and a strict buy-in regime to ensure the delivery of securities. All shares with main trading place in the EU will be affected by the new regulation. Therefore, Eurex Clearing is obliged to introduce effective fines on late settlements and to amend the existing buy-in regime.

Application of the EU Short Selling Regulation to Eurex Clearing's procedures will become effective on **1 November 2012**.

Attached are an overview and implementation concept of the EU Short Selling Regulation as well as a list of Frequently Asked Questions (FAQs) which will be useful to better understand the changed processes and procedures at Eurex Clearing.

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HRB Nr. 44828
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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

Eurex Clearing's application of the regulation

Eurex Clearing will apply the regulation to the Frankfurter Wertpapierbörse (FWB®, the Frankfurt Stock Exchange), Xetra International Market (XIM), Irish Stock Exchange (Xetra Dublin) and Eurex exercises and assignments. Eurex Clearing will consider all ordinary and preferred shares of which the principal trading place is in the EU. ETFs and bonds as well as all other CCP-eligible instruments are not affected.

Daily fines for late deliveries (German ISINs) will be calculated from the first day of non-delivery (S after SDS2) onwards, until the trade has been fully settled or a buy-in or cash settlement has been performed. Calculation for unsettled foreign deliveries (non-German ISINs) will be done on S+1 after SDS2 onwards in order to be consistent with the home-market settlement.

Basis for the fine calculation will be all late sell trades (proprietary, clients, Non-Clearing Members (NCMs)) of the Clearing Member (CM), independent from the account type and its netting level. The fine will only apply to the late net sell obligation of the CM which is determined by summing up all late buy and sell trades.

The fine will be a variable percentage rate of 0.2 basis points based on the late net sell obligation.

On the fourth business day after settlement was due (S+4), Eurex Clearing will perform a buy-in attempt to achieve delivery of shares for settlement. In case the buy-in attempt is not successful, cash settlement will be performed on S+8. According to the existing procedures, cash settlement for the affected XIM markets will be performed on the following business day on S+5.

The existing buy-in rules and cash settlement processes and procedures for securities are not affected by the EU Short Selling Regulation and will remain unchanged.

Information provided to CMs

Daily fines calculated will be displayed in the existing "Daily Eurex Fines Report" CB225. The report will be enhanced by additional fields "Account Type" and "Total Number of Days Late". The net sell obligation of the CM per ISIN and currency will be shown in the existing field "Settlement Amount Late". Calculation of the fine is shown per late net sell obligation (settlement amount of the CM). All trades considered in the calculation are displayed on a gross (single trade) basis.

The amendments of the report CB 225 will become applicable with the introduction of CCP Release 8.0 on 19 November 2012.

For the transitional period as of 1 November 2012, the report will only show the CM's net sell obligation. The two additional fields "Account Type" and "Total Number of Days Late" will be enhanced with CCP Release 8.0.

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

10 September 2012

EU Short Selling Regulation

Overview and Implementation Concept

1 September, 2012

eurex clearing

EU Short Selling Regulation - Article 15

Extract of the Regulation

Buy-in procedures

1. A central counterparty in a Member State that provides clearing services for shares shall ensure that procedures are in place which comply with all of the following requirements:

(a) where a natural or legal person who sells shares is not able to deliver the shares for settlement within four business days after the day on which settlement is due, procedures are automatically triggered for the buy-in of the shares to ensure delivery for settlement;
(b) where the buy-in of the shares for delivery is not possible, an amount is paid to the buyer based on the value of the shares to be delivered at the delivery date plus an amount for losses incurred by the buyer as a result of the settlement failure; and
(c) the natural or legal person who fails to settle reimburses all amounts paid pursuant to points (a) and (b).

2. A central counterparty in a Member State that provides clearing services for shares shall ensure that procedures are in place, which ensure that where a natural or legal person who sells shares fails to deliver the shares for settlement by the date on which settlement is due, such person must make daily payments for each day that the failure continues.
The daily payments shall be sufficiently high to act as a deterrent to natural or legal persons failing to settle.

Implementation of the EU Short Selling Regulation

Eurex Clearing's Application of the Rules

- Effective date:
  - The EU Short Selling Regulation enters into force on 01 November 2012
- Instrument scope:
  - All shares (ordinary and preferred) of which the principal trading venue is in the EU; excluding ETFs and Bonds
- Affected Markets:
  - FWB (Frankfurter Wertpapierbörse), Xetra International Markets, Irish Stock Exchange (Xetra Dublin) and Eurex exercises and assignments
- Daily fine
  - Daily late delivery fines will be calculated from the first day of non-delivery onwards, until the trade has been settled or a buy-in or cash settlement has been performed
- Buy-In procedure:
  - On the fourth business day after settlement was due (S+4), Eurex Clearing will perform a buy-in attempt to achieve delivery of shares for settlement
- Cash settlement:
  - In case the buy-in attempt is not successful a cash settlement will be performed on S+8*

* According to existing procedures the cash settlement for the affected XIM markets will be performed on the following business day (S+5)

Buy-In and Fail Charges

Overview

Daily Fine	$\frac{\text{Failed Settlement Amount* x 0.002}}{100}$ * Per Clearing Member, ISIN and currency
Buy-In (S+4)	No procedural change: * * For FWB / Eurex fails • Additional charge of maximum 100% on settlement price • Buy-In Fee**: 10%, minimum € 250, maximum € 5000
Cash-Settlement (S+8)	No procedural change: • Additional charge of 100% on the highest price; settlement price compared to the highest selling price and highest purchase price

		S*	S+1**	S+2	S+3	S+4	S+5	S+6	S+7	S+8	S+10	…	S+27	S+30	S+37	S+40
New Process for affected ISINs	Daily Fine	F	F	F	F	F	F	F	F							
	Buy-In					B										
	Cash-Settlement									C						
Existing Process	Buy-In						B				B		B		B	
	Cash-Settlement													C		C

* Calcualation for unsettled deliveries (German ISINs) on S after the second same-day settlement run (SDS2)

** Calculation for unsettled deliveries (Non-German ISINs) on S+1after the second same-day settlement (SDS2) in order to be consistent to the home market settlement

Fines Concept of Eurex Clearing

Eurex Clearing calculates fines based on Clearing Member level

- Basis for the fine calculation will be all late sell trades (proprietary, clients, Non-Clearing Members) of the Clearing Member independent of the account type and its netting level
- Fines will only apply to the late net sell obligation of the Clearing Member
- The net sell obligation per Clearing Member will be determined by summing up all late buy and sell trades. The net sell result will be subject to the fine
- The fine will be a variable percentage rate of 0.2 basis points based on the late net sell obligation
  - Daily fine amount = Payable (settlement) amount of the net obligation per Clearing Member, ISIN, currency * 0,002 %
- Daily fines will be charged per Clearing Member and business day from the first day of non-delivery onwards until the trade has been fully settled or a buy-in or cash settlement has been performed

Reporting of the Fine Charges (I / II)

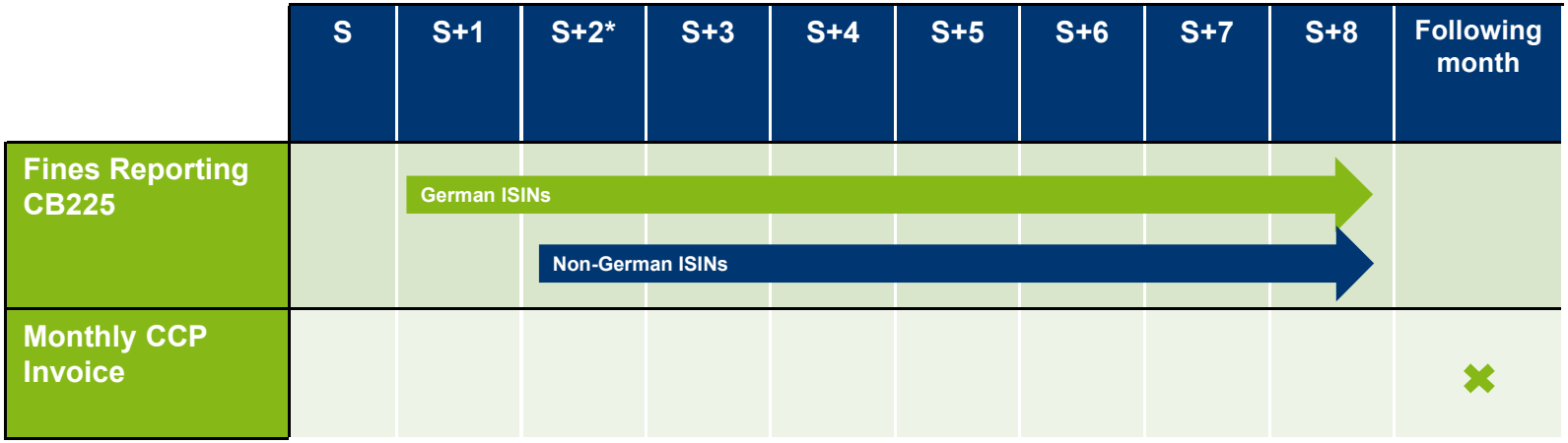
Eurex Clearing will enhance the existing Fines Report CB225

- Daily fines calculated will be displayed in the existing “Daily Eurex Fines Report” CB225
- The report will be enhanced by additional fields “Account Type” and “Total Number of Days Late”. The net sell obligation of the Clearing Member per ISIN and currency will be shown in the existing field “Settlement Amount Late”
- All trades considered in the calculation are displayed on a gross (single trade) basis
- The calculation of the penalty is shown per late net sell obligation (settlement amount of the Clearing Member), irrespective of its netting level and number of settlement accounts used

Reporting of the Fine Charges (II / II)

Eurex Clearing provides daily fines reporting to Clearing Members

- Daily fines will be reported in the “Daily Eurex Fines Report” CB225
- The monthly invoice for the Clearing Member will contain the accumulated daily fines of the previous month



* Fines for unsettled (Non-German ISINs) deliveries will be calculated on S+1after the second same-day settlement (SDS2), hence reported from S+2 onwards

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Frequently Asked Questions

Please find below the most frequently asked questions and answers that might be useful for Clearing Members and market participants to better understand processes and procedures within Eurex Clearing as an outcome of the new EU Short Selling Regulation (**Regulation**). Relevant articles for the implementation of the Regulation are Article 15 - "Buy-In procedures" and Article 16 – "Exemption where the principal trading venue is in a third country". The FAQ catalogue is related to a changing buy-in regime and fines for late deliveries as stipulated in Article 15 of the Regulation. For securities not falling under the Regulation (Article 16), the existing rules concerning the buy-in and cash settlement will remain unchanged.

1. **When does the Regulation become effective?**

   The Regulation enters into force on 01 November 2012.

2. **Which instruments will be affected by the Regulation?**

   Eurex Clearing will consider all shares (ordinary and preferred) of which the principal trading venue is in the EU; excluding ETFs and Bonds. All other CCP eligible ISINs are not affected.

3. **Does Eurex Clearing plan to include ETF's or Bonds in the near future?**

   ETFs and Bonds are not affected by the Regulation. At this point in time Eurex Clearing will not apply the Rules for these instruments.

4. **Which markets will be affected by the Regulation?**

   Eurex Clearing will apply the Regulation to FWB (Frankfurter Wertpapierbörse), Xetra International Markets, Irish Stock Exchange (Xetra Dublin) and Eurex exercises and assignments where the underlying falls under the Regulation.

5. **When will the fine for late deliveries be calculated?**

   Daily late delivery fines for German ISINs[1] will be calculated from the first day of non-delivery (S after SDS2) onwards, until the trade has been fully settled or a buy-in or cash settlement has been performed. As long as the securities are delivered on the respective business day before SDS2 the delivery will not be subject to fines anymore. This means, the fines will be applied for all deliveries not settled in the SDS2 run at the latest.

[1] Daily late delivery fines for Non-German ISINs (except for XIM) will be calculated from S+1 (after SDS2) onwards in order to be consistent to the home market settlement

6. **What type of fine will Eurex Clearing charge for late deliveries?**

   The fine is variable ad valorem charge and will be applied to the late net sell obligation of a Clearing Member. A fixed fine component is currently not envisaged.

7. **How will the fine be calculated by Eurex Clearing?**

   The fine amount is the result of 0.2 bps on the late net sell obligation per ISIN, currency and business day of a Clearing Member. The determination of the late net sell obligation of the Clearing Member is calculated independent of its netting level (e.g. netting per Non Clearing Member (NCM)) and settlement account, which means only the legal net sell obligation of the Clearing Member is subject to the daily fine.

8. **Can Eurex Clearing provide an example of a failing trade charge?**

	Late Buy:	Late Sell:
CM:		1,500,000.00 EUR
NCM1:	1,000,000.00 EUR	
NCM2:		2,500,000.00 EUR

Net Sell obligation CM :	3,000,000.00 EUR * 0.002 / 100
Fine amount:	60.00 EUR

9. **How will Eurex Clearing apply the Regulation on the buy-in procedure?**

   On the fourth business day after settlement was due (S+4), Eurex Clearing will perform a buy-in attempt to achieve delivery of shares for settlement. There will be no changes in the existing buy-in fees and fines model.

10. **Will Eurex Clearing apply more than one buy-in attempt?**

    There is only one buy-in attempt on S+4 at 4:00 p.m. CET according to the buy-in auction schedule. In the event of a (partially) unsuccessful buy-in attempt, the remaining quantity will be considered in the upcoming netting / settlement process until S+8.
    There is a different buy-in auction schedule for XIM.

11. **What costs will be related to a buy-in?**

    No change to the existing buy-in fee model. Details of the buy-in fees can be found in the Eurex Clearing Conditions.

12. **If a late net sell delivery obligation contains trades which are (partially) unsettled, will Eurex Clearing collect the daily fine until the Cash Settlement takes place?**
    As long as the trade is unsettled and results in a late net sell obligation, the daily fine will continue to be applied. According to existing procedures the cash settlement for XIM will be performed on the following business day (S+5) if the buy-in was not successful.

13. **How will the Cash Settlement be affected by the Regulation?**
    If a delivery is still unsettled on S+8, Eurex Clearing will perform a Cash Settlement, independent of a congruent buy-trade.
    According to existing procedures, the cash settlement for late deliveries from the XIM markets will be performed on S+5.

14. **Does Eurex Clearing plan to forward collected fines to the affected buyer?**
    Eurex Clearing does not intend to reimburse charges.

15. **Will a partial delivery reduce the cost of the variable ad valorem charge?**
    A partial delivery does reduce the net obligation of a Clearing Member.

16. **How will Eurex Clearing inform Clearing Members about the calculated fine?**
    The existing “Daily Eurex Fines Report CB225” will be enhanced by a field which displays the net obligation of the Clearing Member.

17. **Will there be any changes of the existing “Daily Eurex Fines Report” CB 225?**
    The report will be enhanced by additional fields “Account Type” and “Total Number of Days Late”. The net sell obligation of the Clearing Member per ISIN and currency will be shown in the existing field “Settlement Amount Late”. All trades considered in the calculation are displayed on a gross basis however, the calculation of the fine is shown per net sell obligation (settlement amount), irrespective of the netting level and number of settlement accounts used.

18. **What will happen to already existing late trades on 01 November 2012?**
    The Regulation refers to “late deliveries” and not to “late trades”, which means the Regulation becomes effective for all late deliveries, irrespective of the trade date.