X-pand into the Future

e u r e x *circular 048/04*

Date: Frankfurt, April 19, 2004
Recipients: All Eurex members and vendors
Authorized by: Daniel Gisler

Acceptance of Revocable Clearing Guarantees by Eurex Clearing AG according to Subsection 1.6.1 of the Clearing Conditions for Eurex Clearing AG

Contact: Stefan Misterek, Clearing and OTC Business Development, tel. +49-69-211-1 58 59
E-mail: stefan.misterek@eurexchange.com

Content may be most important for:

- Middle + Back Office
- Auditing / Security Coordination

Attachments:

1. Subsection 1.6.1 of the Clearing Conditions for Eurex Clearing AG
2. Clearing Guarantee

Summary:

In its meeting of April 7, 2004, the Executive Board of Eurex Clearing AG approved a change to the termination of clearing guarantees. According to Subsection 1.6.1 of the Clearing Conditions for Eurex Clearing AG ("Clearing Conditions"), clearing guarantees can be given to Eurex Clearing AG as a contribution to the Clearing Fund, in addition to cash and/or securities collateral.

In view of this, Chapter I Subsection 1.6.1 of the Clearing Conditions has been altered with effect from **May 3, 2004**. From this date onwards a Clearing Member's contribution to the Clearing Fund may be provided by the Clearing Member concerned in the form of a revocable guarantee.

Acceptance of Revocable Clearing Guarantees by Eurex Clearing AG according to Subsection 1.6.1 of the Clearing Conditions for Eurex Clearing AG

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By introducing clearing guarantee cancellation Eurex Clearing AG has reacted to the many requests received from Clearing Members. This change enables guarantors to cancel their guarantee to Eurex Clearing AG by giving one month's notice, to the end of a month.

When Eurex Clearing AG receives notice of cancellation the Clearing Member concerned must either replace the old clearing guarantee with a new one or, alternatively, substitute cash or securities collateral for the old clearing guarantee. Should the Clearing Member fail to make the replacement or substitution within five trading days before the validity of the old clearing guarantee has expired, Eurex Clearing AG will debit the Clearing Member concerned with an individually-calculated contribution to the Clearing Fund as part of each morning's cash calls.

According to Subsection 1.6.2 of the Clearing Conditions only the required contribution to the Clearing Fund will be debited from the Clearing Member concerned in the event of realizing the Clearing Fund. Therefore guarantees and securities that exceed the contribution to the Clearing Fund are not taken into account during fund realization.

Furthermore, the Clearing Member concerned is still able to exchange an existing guarantee for a new one at any time, or to substitute cash and/or securities collateral for an existing clearing guarantee.

Should you wish to make use of this new facility, please complete and return to us the new clearing guarantee attached to this circular. Please ensure that the guarantee has been signed by an authorized company signatory. After receipt and successful acceptance of the new clearing guarantee by Eurex Clearing AG, Eurex Clearing AG will return the old clearing guarantee after consultation with the Clearing Member.

In future please send all cancellations of the new revocable clearing guarantees to the following address:

Eurex Clearing AG
Legal Affairs, Compliance, Membership
Section Membership
60485 Frankfurt am Main

Frankfurt, April 19, 2004

(…)

1.6 Subpart: Clearing Fund

1.6.1 Contribution to the Clearing Fund

(1) Irrespective of the provision of other margin, each Clearing Member shall be obligated to pay a contribution to the Clearing Fund. The amount of the contribution to be provided shall be determined by Eurex Clearing AG for each Clearing Member. Such contribution to the Clearing Fund is not required in the event that the applicant has already paid a respective contribution to the Clearing Fund when applying for a Clearing License for clearing transactions within the meaning of Chapter II (Eurex Bonds GmbH) subsection 1.1.5 and / or Chapter III (Eurex Repo GmbH) subsection 1.1.6.

This contribution shall be provided by bank guarantees and / or cash or securities collateral. Subsections 1.1.2 paragraph 2, sentence 2 to 4 and sentence 6 to 8~~7~~ shall apply accordingly. In addition, the bank guarantee must include the absolute obligation of the bank to provide the guaranteed amount upon Eurex Clearing AG's first request on an account named by such company.

(2) In the case that the relevant Clearing Member should not have replaced a bank guarantee five trading days before the expiration of its effectiveness by another bank guarantee and / or cash or securities collateral pursuant to paragraph 1, Eurex Clearing AG shall collect the contribution to the Clearing Fund determined according to para. 1 from the relevant Clearing Member within the scope of the matutinal cash clearing procedure. If it is not possible for Eurex Clearing AG to collect from the relevant Clearing Member the contribution determined pursuant to sentence 1 or if such collection fails, the relevant Clearing Member automatically defaults according to number 1.7 para. 1 of the Clearing Conditions.

(~~2~~3) Eurex Clearing AG may use funds from its annual surplus to set aside reserves for the Clearing Fund pursuant to paragraph 1 in order to contribute to the fulfilment of the obligations of any Clearing Member that may default on its obligations.

(…)

Clearing Guarantee

Eurex Clearing AG

60485 Frankfurt am Main

We have been informed that

_____

(hereinafter referred to as "Customer")

intends to apply or has applied for the granting of a Clearing License at Eurex Clearing AG or is already in possession of a valid Clearing License. In the aforementioned first case, ~~T~~the Customer thus intends to enter into an agreement on the participation in the Clearing at Eurex Clearing AG (Clearing Agreement) , in the aforementioned second case, respectively, the Customer intends to abide its already accorded participation in the Clearing at Eurex Clearing AG. We are also aware that the grant of a Clearing License, the maintenance of an already granted Clearing License, respectively, requires a contribution to the Clearing Fund ~~requires~~ by the provision of a Bank Guarantee and/or collaterals in cash or securities. In case a Bank Guarantee is provided we are aware that this Guarantee may be used to cover the financial consequences of a default of the performance of the duties resulting from the Clearing at Eurex Clearing AG (the "Beneficiary") by our Customer or by any other Clearing Member.

In consideration of the foregoing, we hereby issue with immediate effect, in the case that the Customer has not yet been granted a Clearing License by Eurex Clearing AG and, respectively, effective from _____ *(please delete as applicable)*, in the case that the Customer already is in possession of a Clearing License the ~~irrevocably~~ guarantee for the fulfilment of the above-mentioned claims of Eurex Clearing AG and exclude any objections and undertake to pay to Eurex Clearing AG upon its first written demand an amount not exceeding

Euro[1] (EUR) _____ (in words: _____)

This Guarantee is conditional upon our Customer being granted a Clearing License. The assignment of any claims on the part of Eurex Clearing AG resulting from this Guarantee is excluded.

This Guarantee is conditional upon our Customer being granted or already having been granted, respectively, a Clearing License. The assignment of any claims on the part of Eurex Clearing AG resulting from this Guarantee is excluded.

[1] or the equivalent amount in the currency of the home country of the applicant

Clearing Guarantee

This guarantee may be terminated in writing by the guarantor with a period of one month by the end of month without giving reasons vis-à-vis Eurex Clearing AG. Such notice in writing shall be sent by the guarantor to the following address:

Eurex Clearing AG
Legal Affairs, Compliance and Membership
Section Membership

60485 Frankfurt

Even without the return of this document, this Clearing Guarantee also shall expire ~~on the latest (i)~~ after one month from the date on which notice is given of the revocation, withdrawal or return of the Customer's Clearing License ("Termination of the Clearing License". ~~or (ii)~~ In the case of the Customer's Termination of the Clearing License this guarantee expires regardless of a notice of termination of the guarantee by the guarantor given before, after or at the time of the Termination of the Clearing License at the earliest after one month from the day on which all contracts on the accounts for which our Customer handles the Clearing pursuant to the Clearing Agreement concluded with Eurex Clearing AG have been cleared ~~(chapter I, subsection 1.6.4 paragraph (1), if applicable, in liaison with the respective subsection of the chapter II, III and IV of the Clearing Conditions for Eurex Clearing AG)~~.

If another Clearing Member, which participates in the Clearing of Eurex Clearing AG, is in default at the time of the revocation or return of such Clearing License, or if another Clearing Member falls into default prior to the date on which the Customer wishes to return its Clearing Guarantee, this Clearing Guarantee shall not expire until all obligations of such defaulting Clearing Member to Eurex Clearing AG have been satisfied (chapter I, subsection 1.6.4 paragraph (2), if applicable, in liaison with the respective subsection of the chapter II, III and IV of the Clearing Conditions for Trading at Eurex).

In all other respects, the Guarantee shall at the latest expire upon the return of this Guarantee or if and insofar as we have paid the amount of the Guarantee to Eurex Clearing AG in accordance with the foregoing provisions.

In the event of a partial payment the Guarantee shall remain in effect for the remaining amount.

With respect to the compliance with any time limit, the time when we have received the written demand from Eurex Clearing AG (by mail or by fax) shall be determinative.

Upon the expiration of this Guarantee, the Guarantee shall be returned to us without delay.

The language of the Guarantee shall be German and the German version of this Guarantee shall be legally binding.

This guarantee shall be governed by, and construed in accordance with, German law.

The place of performance and the jurisdiction for any legal proceedings shall be Frankfurt am Main.

Place and Date

Guarantor