X-pand into the Future

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Modifications to the Clearing Conditions for Eurex Clearing AG

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Content may be most important for:	**Attachment:**
➲ Middle + Back Office	Revised sections of the Clearing Conditions for Eurex Clearing AG

In its session on September 8, 2004 the Executive Board of Eurex Clearing AG decided to modify the Clearing Conditions for Eurex Clearing AG. The revised version of the Clearing Conditions for Eurex Clearing AG will become effective as of October 4, 2004.

The following modifications to the Clearing Conditions were made:

Subsection 1.7.1 paragraph 4 points out the cases of default, that is default of delivery respectively therefore owed payments or failure to pay margin demanded, failure to pay when due a daily settlement payment or any net premiums and other fees owed, where the defaulting Clearing Member is obliged to pay a contractual penalty.

The modification to subsection 1.7.2 paragraph 4 describes the possible procedure if provision of the daily demanded margin or settlement payment in one of the two clearing currencies (CHF or EUR) is not feasible, that is in the event of a technical default with respect to a payment in one of the clearing currencies (EUR or CHF). With the modification of subsection 1.7.2 paragraph 4 Eurex Clearing AG will be enabled to levy the owed equivalent amount in the respectively other clearing currency of Eurex Clearing AG (EUR or CHF).

The modifications to subsection 1.7.3 are in connection with the closing-out of positions and the realization of margins, in particular the potential utilization of the Clearing Fund. In order to better explain the procedure, the new chapter 8 has been introduced. It clarifies once more that the conditions for default must not be explicitly fulfilled for the realization of margins and that Eurex Clearing AG is entitled to use positions of several members in order to close out positions. In addition, the chapter regulates the new priority schedule for margin realization that will be applied by Eurex Clearing AG.

Already today, the Clearing Conditions define that Clearing Members are entitled to the right of objection to a change of the Clearing Conditions. In future, in case of objection, Eurex Clearing AG reserves the right to terminate or suspend the Clearing License of the Clearing Member who has entered the objection.

The modifications to the Clearing Conditions for Eurex Clearing AG affect the General Conditions of Chapter I (Clearing of Transactions at Eurex Deutschland and Eurex Zürich) and the General Conditions of Chapter V (Final Provisions) and are specified in the attachment.

(...)

1.1.4 Termination and Suspension of Clearing Licenses

(1) Each General or Direct Clearing Member may terminate its Clearing License in writing; no reasons need be given. The termination shall take effect only after all positions for which the respective Clearing Member is responsible have been closed or transferred to another Clearing Member and all outstanding delivery and payment obligations of the respective Clearing Member have been fulfilled.

(2) Eurex Clearing AG may terminate a General or Direct Clearing License

a. in the event that the prerequisites for licensing have not been met, above all if the Clearing License has been granted on the basis of incorrect or incomplete information of the Clearing Member; or

b. in the event the prerequisites for licensing have subsequently ceased to exist; or

c. in the event a General or Direct Clearing Member violates essential clearing conditions or, despite receiving warning notice, has repeatedly violated the clearing conditions; lack of fault of the Clearing Member is of no significance in this respect; or

d. in the event measures are taken against the Clearing Member pursuant to §§ 45 et seq. of the KWG or insolvency proceedings have been filed. Respective measures and proceedings under the law of the country in which the Clearing Member is domiciled shall be considered equivalent to the measures pursuant to §§ 45 et seq. of the KWG and the insolvency proceedings.

e. in the event a Clearing Member objects to an amendment of the clearing conditions pursuant to Chapter V section 1.2.

Eurex Clearing AG shall notify the respective General or Direct Clearing Member in writing of the termination of the Clearing License, indicating the reasons therefore. The clearing conditions also apply after termination of the Clearing License with regard to the procedure, respectively closing of open positions of the relevant General or Direct Clearing Member.

(3) If there is a reasonable suspicion that the requirements for a termination pursuant to paragraph (2) lit. (a) through (d) have been met, Eurex Clearing AG may order the suspension of a General or Direct Clearing License for a period not in excess of six months. Eurex Clearing AG may demand from the respective General or Direct Clearing Member at its own expense such information and evidence as may be necessary for purposes of an appropriate investigation. Subsection 1.1.3 sentences 2 and 3 shall apply mutatis mutandis. The suspension of the General or Direct Clearing License may also be ordered for the duration of any default under subsection 1.7.1 et seq.

(4) In case of termination or suspension of a General or Direct Clearing License, the Clearing Member concerned is not permitted to open new positions. At the same time, Non-Clearing Members are not permitted to open new positions through the General or Direct Clearing Member concerned. All existing positions of such Clearing Member must be closed or transferred by the respective General or Direct Clearing Member to another Clearing Member. A General or Direct Clearing Member shall promptly notify all Non-Clearing Members for whom it is acting to allow them to transfer their positions to another General Clearing Member or another affiliated Direct Clearing Member. Eurex Clearing AG shall supervise the closing or transfer of such open positions.

(5) If such positions has not been closed or transferred by the respective General or Direct Clearing Member within a period set by Eurex Clearing AG on a case-by-case basis for this purpose, Eurex Clearing AG may close the positions pursuant to subsection 1.8.1.

(6) The termination or suspension of a Clearing License does not affect any rights and obligations of the respective General or Direct Clearing Member proceeding from any existing contract for which it has clearing responsibility.

(7) In respect of the termination of Special Clearing Licenses by Eurex Clearing AG or the respective Link Clearing House, the provisions of the Clearing Link Agreements – which are to be concluded between both Clearing Houses – apply.

1.1.5 Non-transferability

Clearing Licenses may not be assigned or transferred by way of contractual agreement.

(…)

1.7 Subpart: Default

1.7.1 Events of Default

(1) A General or Direct Clearing Member will – without notice – be considered to be in default if:

a. the General or Direct Clearing Member fails to provide the margin demanded by Eurex Clearing AG for any Exchange day or fails to pay when due a daily settlement payment, or any net premiums or other fees owed, in a timely manner (pursuant to subsection 1.3.1 paragraph (2), subsection 1.3.3 and with respect to each contract pursuant to the particular default provisions specified in Part 2), or fails to deliver the securities owed by it on the delivery day or fails to provide the payment owed for such securities;

b. such General or Direct Clearing Member has failed to fulfill any other obligation to Eurex Clearing AG arising under these Conditions.

(2) General or Direct Clearing Members must notify Eurex Clearing AG immediately if they are unable to fulfill any obligation arising out of transactions on Eurex Deutschland and

Eurex Zürich, including, in particular, the provision of margin or any daily settlement payment.

(3) The Boards of Management of Eurex Deutschland and Eurex Zürich may exclude any General or Direct Clearing Member of Eurex Clearing AG from trading on Eurex Deutschland and Eurex Zürich pursuant to subsection 3.12.4.1 of the Exchange Rules for Eurex Deutschland and Eurex Zürich in the event that the General or Direct Clearing Member fails or is unable to provide the margin required of it or a daily settlement payment owed by it or any other payment set forth in paragraph 1 in a timely manner. Subsection 1.9.2 paragraph (5) shall remain unaffected.

(4) Eurex Clearing AG may have recourse to a General or Direct Clearing Member for damages suffered by it or other Clearing Members due to a default caused by such Clearing Member. Irrespective of whether Eurex Clearing AG has suffered any damage, the General or Direct Clearing Member that has fallen behind because of a delay as regards delivery of owed securities in due time or a delay in payment for such owed securities shall be obliged to pay a contractual penalty pursuant to the respective provisions of chapter I subpart 2.1 (Settlement of Futures Contracts), of subpart 2.2 (Settlement of Options Contracts), of chapter II 2. part (Settlement of Transactions at Eurex Bonds GmbH), of chapter III 2. part (Settlement of Transactions through the System of Eurex Repo GmbH) as well as chapter IV 2. part (Settlement of Transactions concluded at the Frankfurt Stock Exchange (FSE)).

Irrespective of whether Eurex Clearing AG has suffered any damage, the General or Direct Clearing Member that has fallen behind because of a delay as regards the payment of deposits, which is demanded on each exchange day or daily settlement payments as well as owed net premiums and other remunerations shall be obligated to pay a contractual penalty in the amount of 0.025 percent of the outstanding amount, but no less than EUR 2,500 - or the corresponding equivalent in CHF - per calendar day, however, no more than EUR 25,000 or the corresponding equivalent in CHF. If the amount calculated from the above percentage exceeds EUR 25,000, the amount of the contractual penalty shall - notwithstanding the provisions in sentence 3 - be calculated according to a percentage of the outstanding amount, such percentage having been defined in advance by Eurex Clearing AG. Such percentage shall be based on the money-market rates prevailing in the market. Eurex Clearing AG has the right to charge a contractual penalty even if it accepts a delayed payment without explicitly reserving such right.

(5) If a General or Direct Clearing Member has fallen behind according to paragraph 1 Eurex Clearing AG shall close positions pursuant to subsection 1.8.1 and realize margin.

(6) The right of Eurex Clearing AG and of the Clearing Member which has suffered a damage as a consequence of such default to claim further damages shall remain unaffected. Eurex Clearing AG shall, upon written application by a Clearing Member which has suffered a damage as a consequence of such default, be entitled to assign to it with discharging effect any claim that it may have against such defaulting General or Direct Clearing Member or Clearing Members.

(7) Paragraph 1-6 shall not apply to a Link Clearing House as Special Clearing Member. In this respect, the provisions of the Clearing Link Agreement to be concluded between both Clearing Houses and the relevant Rules of the Link Clearing House apply.

1.7.2 Technical Default

(1) If a Clearing Member furnishes evidence to Eurex Clearing AG that any of the defaults set forth in subsection 1.7.1 paragraph (1) item a did not occur as a consequence of insolvency and that the Clearing Member will promptly meet its obligations, Eurex Clearing AG may elect that, with respect to such Clearing Member, the provisions pursuant to subsection 1.7.1 paragraphs (3) as well as paragraph (5) through (6) which are applicable in the event of default do not apply. In such a case, Eurex Clearing AG will only cause a technical default of such Clearing Member.

(2) The Clearing Member concerned shall, promptly upon the occurrence of a technical default, deliver to Eurex Clearing AG a written statement as to the reasons for its delinquency.

(3) The Clearing Member concerned must promptly remedy the causes of its technical default.

(4) In the event of a technical default with respect to a payment in EUR, CHF or in foreign currency pursuant to paragraph (1) Eurex Clearing AG may demand from the Clearing Member of which Eurex Clearing AG caused default to provide promptly the equivalent amount in EUR and, respectively, CHF of the amount not having been entered in time on Eurex Clearing AG's account at a branch of the Central Bank of Germany (Deutsche Bundesbank) or SNB. The amount in EUR or CHF will be repaid without interest after receipt of the owed CHF payment or, respectively, of the EUR payment or of the foreign currency payment. Paragraph (5) shall remain unaffected.

(5) Eurex Clearing AG may claim compensation from any Clearing Member for any damage suffered by Eurex Clearing AG or other Clearing Members due to a technical default of such Clearing Member. Irrespective of whether Eurex Clearing AG has suffered any damage, the Clearing Member which technically defaulted shall be obligated to pay a contractual penalty pursuant to subsection 1.7.1 paragraph (4) sentence 3 through 6.

1.8 Suppart: Closing, Drawing upon Margin, Enforcement of the Contributions to the Clearing Fund

1.8.1 Closing; Drawing upon Margin, Enforcement of the Contribution to the Fund

(1) Eurex Clearing AG will close positions, realize margin, and enforce the contributions to the Clearing Fund of a General or Direct Clearing Member in the cases mentioned in the present Clearing Conditions in accordance with the following priority schedule:

1. Netting all open positions of all accounts of the General or Direct Clearing Member and subsequent closing of net positions resulting therefrom. In order to implement the closing of net positions of one or several exchange participants Eurex Clearing AG may use the Eurex exchanges. In such case Eurex Clearing AG will transfer by way of a transfer of positions.the net positions of the relevant General or Direct Clearing Member to the exchange participant that is assigned with the closing. Within the frame of the implementation of the closing of net positions Eurex Clearing AG is entitled according to its best judgement to realize all margin of the relevant General or Direct Clearing Member including the contributions of such Clearing Member to the Clearing Fund pursuant to subsection 1.6.1 paragraph (1).

2. Refund of any surplus in the event that the proceeds from the realisation of margin of the relevant General or Direct Clearing Member exceed the amount required to cover all obligations of the relevant General or Direct Clearing Member arising out of its transactions on Eurex Deutschland and Eurex Zürich.

3. Utilisation of the funds maintained by Eurex Clearing AG pursuant to subsection 1.6.1 paragraph (2) in the event that the proceeds from the realisation of margin and the enforcement of the contributions to the Clearing Fund as well as the collateral pursuant to subsection 1.1.2 paragraph (2) of the relevant General or Direct Clearing Member are insufficient to satisfy its obligations arising out of its transactions on Eurex Deutschland and Eurex Zürich.

4. Pro rata enforcement of the contributions of other General or Direct Clearing Members to the Clearing Fund pursuant to subsection 1.6.2 paragraph (2) no. 4.

(2) If a Link Clearing House as a Special Clearing Member is in default, the provisions of the Link Clearing Agreement which is to be concluded between the Link Clearing House and Eurex Clearing AG apply.

1.9 Subpart: Legal Relationships between Eurex Clearing AG, General Clearing Members (GCM), Direct Clearing Members (DCM) and Non-Clearing Members (NCM) as well as with Link Clearing Houses and their Clearing Members

1.9.1 Rights and Obligations of Non-Clearing Members of General or Direct Clearing Members of Eurex Clearing AG

(1) A Non-Clearing Member may enter into and submit to Eurex Clearing AG a NCM-GCM Clearing Agreement with a Clearing Member holding a General Clearing License or enter into and submit to Eurex Clearing AG a NCM-DCM Clearing Agreement with an affiliated Clearing Member holding a Direct Clearing License. A Non-Clearing Member must clear all its transactions only through this General Clearing Member or affiliated Direct Clearing Member. Any change of the General or Direct Clearing Member handling the transactions of a Non-Clearing Member requires the prior consent of Eurex Clearing AG.

(2) A Non-Clearing Member may apply to Eurex Clearing AG for a change of the General Clearing Member or affiliated Direct Clearing Member handling its transactions. Eurex Clearing AG shall thereupon transfer open positions to the new General Clearing Member after the Post-Trading Full Period if the General Clearing Members or Direct Clearing Members involved confirm the request for the transfer of the positions and if a valid NCM-GCM Clearing Agreement or NCM-DCM Clearing Agreement exists between Eurex Clearing AG, the Non-Clearing Member and the General Clearing Member or the Direct Clearing Member to which the positions are to be transferred. Any such transfer of positions will not affect any rights or obligations arising out of exercised, allocated or assigned positions.

(3) Transfers of positions shall have no effect on the contracts concerned.

1.9.2 Rights and Obligations of General Clearing Members of Eurex Clearing AG

(1) General Clearing Members are required to enter into a NCM-GCM Clearing Agreement with Non-Clearing Members who meet the other prerequisites for admission to trading on Eurex Deutschland and Eurex Zürich.

(2) Each General Clearing Member is required to effect any payment or delivery arising out of any transaction entered into by any of the Non-Clearing Members whose transactions the General Clearing Member handles.

(3) If a Non-Clearing Member fails to provide the margin fixed by its General Clearing Member or to effect any daily settlement payment in a timely manner, the Non-Clearing Member may be excluded from trading at Eurex Deutschland and Eurex Zürich for the duration of such failure by a decision of the Boards of Management of Eurex Deutschland and Eurex Zürich.

If a Non-Clearing Member fails to pay to its General Clearing Member any premiums and fees owed to it under these Conditions or the Conditions for Trading at Eurex Deutschland and Eurex Zürich in a timely manner, Eurex Deutschland and Eurex Zürich

may, at the request of the General Clearing Member, exclude such Non-Clearing Member from trading at Eurex Deutschland and Eurex Zürich for the duration of the non-payment. Any such request made by telephone must promptly be confirmed in writing.

(4) General Clearing Members themselves may not exercise or close positions opened by their Non-Clearing Members.

If a Non-Clearing Member has been excluded from options and futures trading, at Eurex Deutschland and Eurex Zürich the General Clearing Member may request that Eurex Clearing AG close all positions of such Non-Clearing Member.

(5) If a General Clearing Member fails to make any payments or deliveries due to Eurex Clearing AG, Eurex Deutschland and Eurex Zürich may exclude such General Clearing Member, as well as the Non-Clearing Members represented by it, upon request of Eurex Clearing AG from trading for the duration of such failure; Clearing AG reserves the right to also close positions in all accounts for the Clearing of which the General Clearing Member is responsible, according to subsection 1.8.1. Eurex Clearing AG shall not be liable for any losses suffered by a Non-Clearing Member due to the exclusion of its General Clearing Member from trading.

(6) Eurex Clearing AG shall inform a General Clearing Member of any measures taken with respect to one of its Non-Clearing Members to the extent that such measures may affect the risk assessment of such Non-Clearing Member.

1.9.3 Termination of NCM-GCM Clearing Agreements

(1) Eurex Clearing AG may terminate any NCM-GCM Clearing Agreement with immediate effect in the event that the Non-Clearing Member or General Clearing Member concerned has violated the Clearing Conditions despite receiving notice concerning the violation. If a NCM-GCM Clearing Agreement is terminated by Eurex Clearing AG, the Non-Clearing Member concerned may not enter new orders or quotes, must cancel all outstanding orders and quotes, and must close all existing positions or transfer such positions to another General Clearing Member. If the closing and transfer of positions, respectively, has not been concluded within a period fixed in particular cases by Eurex Clearing AG, Eurex Clearing AG may exercise the closing pursuant to subsection 1.8.1. The General Clearing Member concerned is required to fulfill all obligations under any remaining contracts of such Non-Clearing Member.

(2) A General Clearing Member may terminate a NCM-GCM Clearing Agreement at any time upon one month's notice. Upon the expiration of such notice period, the Non-Clearing Member must cancel all outstanding orders and quotes and must close or transfer to another General Clearing Member all existing positions; such Non-Clearing Member may thereafter enter no new orders or quotes that would be cleared through the terminating General Clearing Member. Paragraph (1) sentence 3 and 4 shall apply mutatis mutandis.

(3) A Non-Clearing Member may terminate a NCM-GCM Clearing Agreement at any time, provided that such Non-Clearing Member has closed or transferred all open positions, canceled all orders and quotes and fulfilled all obligations to the General Clearing Member concerned and Eurex Clearing AG.

(4) The termination of a NCM-GCM Clearing Agreement shall become effective only upon the receipt of a notice of termination in writing by the other two parties.

1.9.4 Clearing Services by Direct Clearing Members of Eurex AG for Affiliated Companies

Subsections 1.9.2 and 1.9.3 shall apply to the legal relationship between affiliated Non-Clearing Members and Direct Clearing Members of Eurex AG mutatis mutandis.

1.9.5 Rights and obligations of Link Clearing Houses as Special Clearing Members of Eurex Clearing AG

(1) The legal relationship between Eurex Clearing AG and the Link Clearing House as its Special Clearing Member is determined by the provisions of the Clearing Link Agreement which is to be concluded. The Special Clearing Member simultaneously enters into transactions with its Clearing Member and Eurex Clearing AG. There is no legal relationship between Eurex Clearing AG and the Clearing Members of the Link Clearing House.

(2) The legal relationship between the respective Link Clearing House and its Clearing Members as well as Non-Clearing Members is determined by the rules and regulations of the respective Link Clearing House as Special Clearing Member.

(3) If a Clearing Member of the Link Clearing House fails to maintain the daily adjustment payment in accordance with the deadlines determined by the Link Clearing House as Special Clearing Member, the Clearing Member can be excluded from trading on Eurex Deutschland and Eurex Zürich for the duration of its non-performance subsequent to a request by the Link Clearing House and on the basis of a decision by the Boards of Management of Eurex Deutschland and Eurex Zürich. Eurex Clearing AG will forward the request by the Link Clearing House without delay to Eurex Deutschland and Zürich. If the request was made by telephone, it has to be confirmed in writing by the Link Clearing House. The same conditions apply for cases where a Clearing Member fails to pay timely the required premiums and fees due to the Link Clearing House on the basis of these Conditions or the Conditions for trading on Eurex Deutschland and Eurex Zürich.

(4) If a Non-Clearing Member fails to maintain the daily adjustment payment to its Clearing Member of the Link Clearing House on time, the Non-Clearing Member can be excluded from trading on Eurex Deutschland and Eurex Zürich for the duration of its non-performance subsequent to a request by the Clearing Member and on the basis of a decision by the Boards of Management of Eurex Deutschland and Eurex Zürich. The Clearing Member shall request the exclusion from the Link Clearing House, which will at its own discretion forward the request in its own name to Eurex Clearing AG,

confirming it in writing if required. Eurex Clearing will forward the request to Eurex Deutschland and Eurex Zürich without delay.

The same conditions apply for cases where a Non-Clearing Member fails to pay timely the required premiums and fees due to the Clearing Member of the Link Clearing House on the basis of these Conditions or the Conditions for trading on Eurex Deutschland and Eurex Zürich.

1.10 Subpart: Clearing of Off-Exchange Options and Futures Transactions

1.10.1 General Provisions

Eurex Clearing AG shall handle the performance and maintenance of margin (Clearing) in respect of all transactions carried out at Eurex Deutschland and Eurex Zürich. Furthermore, Eurex Clearing AG shall handle the clearing of options and futures transactions entered into off the Exchange, to the extent that the contract specifications of such transactions correspond to those contracts admitted for trading at Eurex Deutschland and Eurex Zürich. In this respect, the provisions set forth in Chapter I sections 1 and 2 shall apply mutatis mutandis.

1.11 Subpart: Transmission of information by Eurex Clearing AG

1.11.1 Transmission of information to Clearing Members or Non-Clearing-Members of Eurex Clearing AG

(1) Eurex Clearing AG shall be entitled to pass on the following information to the trading platforms for which the Clearing Member has applied for, and, as far as legally required, to the surveillance authorities or other third parties entitled at home and abroad:

1. Granting of a Clearing License (Chapter I subsection 1.1.1)
2. Termination and Suspension of a Clearing License (Chapter I subsection 1.1.4)
3. Delay of the Clearing Member (Chapter. I subsection 1.7.1)
4. Termination of the NCM-GCM Clearing Agreement (Chapter I subsection 1.9.3)

(2) Paragraph 1 shall apply accordingly to any Link Clearing House as a Special Clearing Member affected by any of the transaction events stipulated therein. Also, Eurex Clearing AG may transfer to a Special Clearing Member by means of a clearing link and to the extent as set forth in paragraph 1 its other Clearing Members' data necessary for the clearing.

(…)

V Chapter: Final Provisions

1 Part: General Provisions

1.1 Applicable Law and Place of Jurisdiction

(1) These Clearing Conditions shall exclusively be governed, and construed in accordance with, the laws of the Federal Republic of Germany.

(2) Exclusive place of jurisdiction for all disputes in connection with these Clearing Conditions shall be Frankfurt am Main.

1.2 Amendments and Supplements

Eurex Clearing AG reserves the right to amend the Clearing Conditions at any time. Amendments and supplements to these Clearing Conditions shall – no later than 10 business days prior to their taking effect – be announced by Eurex Clearing AG to the Clearing Members electronically by means of circular letters. The Clearing Member acknowledges the amendments of the Clearing Conditions if it does not enter an objection in writing to Eurex Clearing AG within 10 business days after the announcement.In the case of an objection against an amendment of the Clearing Conditions Eurex Clearing AG reserves the right to terminate the Clearing License according to chapter I subsection 1.1.4 paragraph 2 or to order the suspension of the Clearing License of the relevant Clearing Member applying chapter I subsection 1.1.4 paragraph 3.

1.3 Effective Version of the Clearing Conditions

The effective version of the Clearing Conditions is available via the internet (www.eurexchange.com).