

Chapter I of the Clearing Conditions of Eurex Clearing AG

## General Provisions

As of 09.01.2017

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## Clearing Conditions of Eurex Clearing AG

### Part 1 General Clearing Provisions

#### 1 General Rules

[...]

#### 2 Clearing Members

##### 2.1 Clearing License

##### 2.1.1 Granting of Clearing License

[...]

- (4) As specified in the relevant Clearing Agreement, a Clearing License is issued either as a general clearing license (a “**General Clearing License**”) or a direct clearing license (a “**Direct Clearing License**”). Unless otherwise provided in the relevant Special Clearing Provisions, a General Clearing License entitles the holder thereof (a “**General Clearing Member**”) (i) to clear Own Transactions, Customer-Related Transactions as well as NCM-Related Transactions and RC-Related Transactions or, in respect of U.S. Clearing Members, Own Transactions and, if the U.S. Clearing Member is a FCM Clearing Member, also FCM Client Transactions, and (ii) to participate in the Clearing of Basic Clearing Member Transactions as a Clearing Agent subject to further requirements as set out in the Basic Clearing Member Provisions. A Direct Clearing License entitles the holder thereof (a “**Direct Clearing Member**”) to clear Own Transactions, Customer-Related Transactions, RC-Related Transactions and only those NCM-Related Transactions referring to Transactions by Non-Clearing Members, affiliated with it.
- (5) A Clearing Agreement may only be entered into by a Non-Clearing Member and a Direct Clearing Member if the Non-Clearing Member is an affiliated company (as determined by Eurex Clearing AG and notified to the Clearing Members) of the Direct Clearing Member. The Non-Clearing Member and the Direct Clearing Member shall be obliged to inform Eurex Clearing AG promptly in the event that they cease to meet such prerequisites.
- (6) Clearing Licenses as well as any rights and obligations resulting from a Clearing License may not be assigned or transferred by way of contractual agreement.

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## 2.1.2 General Prerequisites for Clearing Licenses

(1) A Clearing License for a Transaction Type may only be granted to an applicant if such applicant meets the general prerequisites pursuant to Paragraphs (2) to (6) below and the special prerequisites set forth in Chapters II-IX for the relevant Transaction Type. This Number 2.1.2 shall, unless otherwise provided in Part 6 Number 2, not apply to applicants for a Basic Clearing Member Clearing License. ~~This Number 2.1.2 shall also not directly apply to applicants for a Direct Clearing License; Number 2.1.2 Paragraphs (1) to (5) of the Basic Clearing Member Provisions shall apply *mutatis mutandis* in respect of the granting of a Direct Clearing License.~~

(2) Personal prerequisites

[...]

(ff) a branch of an institution not falling within one of the categories pursuant to Paragraph (2) (a) (bb) to (dd) above, provided that (i) if either the branch or the main office of the institution is domiciled outside the EU or Switzerland, such branch or main office complies with the conditions set forth in Paragraph (2) (a) (ee) above, (ii) if either the branch or the main office of the institution is domiciled in a member state of the EU or Switzerland, such branch or main office complies with the conditions set forth in Paragraph (2) (a) (aa) above, and that (iii) the branch and the institution comply with the conditions set forth in Paragraph (2) (c) below; or

(gg) with respect to a Direct Clearing License for the clearing of Own Transactions only, an applicant that is an insurance undertaking, reinsurance undertaking, collective investment undertaking (in the case of an Unincorporated Fund, Sub-Fund or Fund Segment, acting through an Authorised Manager) as defined in Article 4 Paragraph (1) of the CRR or an institution for occupational retirement provision as defined in Article 6(a) of Directive 2003/41/EC; in each case domiciled in a member state of the EU or in Switzerland, or in a country outside of the EU and Switzerland and supervised in its country of domicile according to standards equivalent to the applicable regulatory standards of the EU as determined by Eurex Clearing AG.

(b) The license of an applicant which intends to conclude Own Transactions only does not need to cover the provision of credit to customers in relation to products cleared and/or the receipt of collateral in the form of cash or securities.

[...]

(3) The applicant for a Clearing License must

(i) if the applicant is subject to the own fund requirements under the CRD IV and CRR: have available own funds (*Eigenmittel*) pursuant to the European Capital Requirements Directive 2013/36/EU (“**CRD IV**”) and the European Capital

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Requirements Regulation (EU) No. 575/2013 (“**CRR**”) in an amount determined by Eurex Clearing AG from time to time. ~~Applicants not subject to the own fund requirements under the CRD IV and CRR must~~

- (ii) ~~if the applicant is not subject to the own fund requirements under the CRD IV and CRR:~~ have available equivalent regulatory capital or
- (iii) ~~in case of an applicant pursuant to Paragraph 2(a)(gg), where Eurex Clearing AG determines that the financial resources of the applicant shall be assessed on the basis of the assets under management of the applicant (including in the case of collective investment undertakings and in the case of applicants with assets being subject to certain forms of segregation): provide evidence of a value in respect of their assets under management in an amount and frequency as determined by Eurex Clearing AG in its sole discretion from time to time.~~

Regulatory capital is considered equivalent when it is (i) used as a measure of adequate solvency for the applicant by its competent supervisory authority, (ii) reported to the applicant's competent supervisory authority on a regular basis and (iii) audited at least yearly.

- (a) In case an applicant applies for multiple Clearing Licenses covering multiple Transaction Types, the required own funds are calculated as follows:

[...]

[...]

- (d) Should an applicant have insufficient own funds, ~~or~~ equivalent regulatory capital or assets under management for a Clearing License, Eurex Clearing AG may allow that the shortfall may be made up by collateral in cash or securities accepted by Eurex Clearing AG. The cash and securities collateral shall safeguard compliance with the contractual obligations of the respective Clearing Member and with all other claims of Eurex Clearing AG vis-à-vis the respective Clearing Member in connection with the Clearing of its contracts (provision of collateral).

Securities collateral shall be posted by transfer of ownership for security purposes (*Eigentumsübertragung zu Sicherungszwecken*) into a custody account with Clearstream Banking AG (in Xemac the relevant transfer is being effected by labelling the relevant Securities with “pledge” by way of Earmarking), Clearstream Banking S.A. (also using the Triparty Collateral Management Service CmaX of Clearstream Banking S.A. (“**CmaX**”)) or SIX SIS AG.

- (4) The applicant (other than an applicant that intends to become a U.S. Clearing Member) shall have available the following accounts:

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## Part 6 Basic Clearing Member Provisions

### 1 Application of the Basic Clearing Member Provisions

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### 2 Admission Criteria; Continuing Obligations

An entity may enter into a Basic Clearing Member Clearing Agreement as a Basic Clearing Member or as a Clearing Agent in accordance with the following conditions.

#### 2.1 Basic Clearing Member

##### 2.1.1 Granting of Clearing Licence

[...]

##### 2.1.2 General Prerequisites for Basic Clearing Member Clearing Licenses

- (1) The Basic Clearing Member must be a credit institution, financial institution, investment firm, insurance undertaking, reinsurance undertaking, collective investment undertaking (in the case of an Unincorporated Fund, Sub-Fund or Fund Segment, acting through an Authorised Manager) as defined in Article 4(1) of the CRR or an institution for occupational retirement provision as defined in Article 6(a) of Directive 2003/41/EC, in each case domiciled in a member state of the EU or in Switzerland.
- (2) The Basic Clearing Member must have a technical connection to the systems of Eurex Clearing AG on the basis of the Basic Clearing Member Clearing Agreement, which shall incorporate the General Terms and Conditions to the Agreement on Technical Connection to the Clearing EDP of Eurex Clearing AG.
- (3) The requirements and procedures pursuant to Part 1 Number 2.1.2 Paragraph (3) as regards The Basic Clearing Member must have available own funds, equivalent regulatory capital and assets under management shall likewise apply to a Basic Clearing Member, -and provide evidence thereof in accordance with the requirements and procedures for Clearing Members set out in Part 4 Number 2.1.2 Paragraph (3), except that Part 1 Number 2.1.2 Paragraph (3) (d) shall not apply. If the own funds of the Basic Clearing Member fall below the minimum amount so required by Eurex Clearing AG from time to time, Eurex Clearing AG shall be entitled to require the Basic Clearing Member to provide Supplementary Margin; for the avoidance of doubt, non-compliance by the Basic Clearing Member with such requirement to provide Supplementary Margin shall constitute a Basic Clearing Member Termination Event. It is in Eurex Clearing AG's discretion to permit (or not permit) shortfalls in own funds, equivalent regulatory capital or the value of the

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assets under management, as applicable, to be made up, or continue to be made up, by Supplementary Margin.

~~(4) Applicants not subject to own fund requirements under the CRD IV and the CRR must (i) have available equivalent regulatory capital and provide evidence thereof in accordance with the requirements and procedures for Clearing Members set out in Part 1 Number 2.1.2 Paragraph (3) (except that Part 1 Number 2.1.2 Paragraph (3) lit. (d) shall not apply) or (ii) where Eurex Clearing AG determines that the financial resources of the applicant shall be assessed on the basis of the assets under management of the applicant (including in the case of collective investment undertakings and in the case of applicants with assets being subject to certain forms of segregation), provide evidence of a value in respect of their assets under management in an amount and frequency as determined by Eurex Clearing AG in its sole discretion from time to time. If the equivalent regulatory capital or the value of the assets under management, as applicable, falls below the minimum value so required by Eurex Clearing AG from time to time, Eurex Clearing AG shall be entitled to require the Basic Clearing Member to provide Supplementary Margin; for the avoidance of doubt, non-compliance by the Basic Clearing Member with such requirement to provide Supplementary Margin shall constitute a Basic Clearing Member Termination Event. It is in Eurex Clearing AG's discretion to permit (or not permit) shortfalls below the minimum value to be made up, or continue to be made up, by Supplementary Margin.~~

(54) Eurex Clearing AG must have conducted a positive internal assessment of the creditworthiness of the Basic Clearing Member prior to its admission and at least annually thereafter in accordance with the procedures and criteria defined for Clearing Members in Part 1 Number 1.6. The Basic Clearing Member is obliged to provide the data relevant to perform the respective assessments upon request of Eurex Clearing AG. Eurex Clearing AG determines dedicated thresholds or limits for each of the monitored risks. The Basic Clearing Member is required to comply with these thresholds and limits at all times.

(65) The Basic Clearing Member must, upon admission and at all times thereafter, have a General Clearing Member appointed to act as its Clearing Agent in accordance with a Basic Clearing Member Clearing Agreement and such Clearing Agent must satisfy all requirements with respect to a Clearing Agent stipulated in these Clearing Conditions.

### 2.1.3 Rejection and Termination of Basic Clearing Member Clearing Licenses

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