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Changes to the Clearing Conditions for Trading at Eurex Deutschland and Eurex Zürich with the Introduction of Remote Clearing – English Language Version

Related Eurex Circulars: 057/00

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Content may be most important for:	**Attachments:**
➲ All departments	1. Changes to the Clearing Conditions for Trading at Eurex Deutschland and Eurex Zürich (English Version)

Please find attached the English language version of the changes to the Eurex Clearing Conditions associated with the introduction of Remote Clearing. The regulations take effect from 01 August, 2000.

For completeness, this attachment will also be added to the web-site copy of Circular 057/00 published on 06 July, 2000 with the German language version of the changes and other details on Remote Clearing.

Clearing Conditions for Trading at Eurex Deutschland and Eurex Zürich

Table of Contents

Preamble

1 Part
General Provisions

1.1 Subpart
Clearing Licenses

1.1.1 Clearing Licenses

1.1.2 Prerequisites for Clearing Licenses

1.1.3 Notification Obligations; Right to Investigate Compliance

1.1. 4 Termination and Suspension of Clearing Licenses

1.1. 5 Non-transferability

1.3 Subpart
Margin

...

1.6 Subpart
Clearing Fund

1.6.1 Contribution to the Clearing Fund

1.6.2 Realisation of the Clearing Fund

1.6.3 Replenishment of the Contributions to the Clearing Fund

1.6.4 Release of the Contributions to the Clearing Fund

1.7 Subpart
Default

...

1 Part

General Provisions

1.1 Subpart

Clearing Licenses

1.1.1 Clearing Licenses

(1) …

(2) A Clearing License is issued either as a General Clearing License or a Direct Clearing License. Such licenses shall be granted with the conclusion of the appropriate Clearing Agreement, in the form appended to these Conditions. A General Clearing License entitles the holder thereof to clear its own transactions, customers' transactions as well as transactions of Exchange Participants without Clearing Licenses (subsection 1.2.5 paragraph 1). A Direct Clearing License entitles the holder thereof to clear its own transactions, customers' transactions as well as transactions of affiliated Exchange Participants without Clearing Licenses (subsection 1.2.5 paragraph (2)).

(3) A Clearing License may be applied for by:

a) Any institution domiciled in a country of the European Union or in Switzerland provided that this institution has been licensed by the responsible authorities of its country of origin, the license covers deposit business, lending operations and principal broking services, and said institution is under surveillance of the responsible authorities according to the regulatory standards of the European Union;

b) Any branch office or subsidiary of institutions within the meaning of § 53, 53 b or 53 c KWG provided that the respective branch or institution shows compliance with the conditions set forth in subsection 1.1.1 paragraph 3 (a) and subsection 1.1.2;

c) Any subsidiary within the meaning of Art. 1 paragraph 1 of the Swiss Federal Banking and Savings-Bank Act in connection with Section 1 et seq. of the Regulation of the Swiss Banking Commission (Eidgenössische Bankenkommission) concerning Foreign Banks in Switzerland, if said subsidiary evidences satisfaction of the conditions set forth in subsection 1.1.1 paragraph 3 (a) and 1.1.2.

Institutions within the meaning of paragraph (b) and (c) must guarantee in writing that, upon the first request of Eurex Clearing AG, they will meet all obligations of its branch offices or subsidiaries out of the clearing activities without limitation. In order to verify the legal validity of this guarantee, Eurex Clearing AG may demand from said institution at their expense all necessary information and evidence , including the opinion of a legal expert designated by Eurex Clearing AG.

1.1.2 Prerequisites for Clearing Licenses

(1) Prerequisite for a General Clearing License is liable equity capital (haftendes Eigenkapital) of the applying institution of at least EUR 125 million, or the corresponding equivalent in the currency of

the country in which the applying institution is domiciled. For institutions beyond the scope of the KWG own funds must be equivalent to the liable equity capital.

Prerequisite for a Direct Clearing License is liable equity capital of the applying institution of at least EUR 12.5 million or the respective equivalent in the currency of the country in which the applying institution is domiciled. For institutions beyond the scope of the KWG own funds must be equivalent to the liable equity capital.

The liable equity capital or equivalent own funds shall be calculated in accordance with the legal provisions in force in the country in which the institution is domiciled. Evidence of the amount of the liable equity capital or the equivalent own funds shall be provided to Eurex Clearing AG together with the application as well as upon request at any time during the Clearing Membership. Eurex Clearing AG may assign an auditor for verification at the expense of the applying institution.

(2) Should the applying institution have insufficient liable equity capital or equivalent own funds for a Clearing License, Eurex Clearing AG may determine that the shortfall may be made up by a bank guarantee and/or collateral in cash or securities.

The bank guarantee shall be furnished by a bank domiciled in the European Union or Switzerland recognised by Eurex Clearing AG. The applying institution and the bank which furnishes the guarantee must be different legal entities. The form and extent of an admissible group relation between the applying institution and the bank which furnishes the guarantee shall be determined by Eurex Clearing AG. The bank guarantee shall contain the bank's unconditional and irrevocable obligation to provide for payment of the guaranteed amount into an account indicated by Eurex Clearing AG upon its first demand. The type, contents and form of the bank guarantee shall be determined by Eurex Clearing AG.

Cash margin shall be provided according to subsection 1.3.4. Securities collateral shall be provided via transfer of ownership by way of security or assignment for security purposes onto a safe custody with Clearstream Banking AG or SegaIntersettle AG to be determined by Eurex Clearing AG.

The bank guarantees as well as 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 margin).

(3) Evidence will have to be provided for:

(a) A securities account and a pledged securities account with Clearstream Banking AG or with SegaIntersettle AG;

(b) An account at the State Central Bank of Hessen - Main Office in Frankfurt of the German Federal Bank (Landeszentralbank in Hessen - Hauptstelle Frankfurt der Deutschen Bundesbank) ("LZB"), and an account at the Schweizerische Nationalbank ("SNB"), including a SIC account, as well as the foreign currency accounts with a bank recognised by Eurex Clearing AG required for the settlement of the foreign currency products tradable at the Eurex Exchanges through which the Clearing Member will settle its transactions on the Eurex Exchanges; Eurex Clearing AG may allow the use of accounts of a correspondent bank recognised by Eurex Clearing AG for purposes of cash clearing with Eurex Clearing AG;

(c) The use of appropriate technical equipment (back-office facilities) to ensure the orderly recording, booking and supervision of all transactions, as well as the provision of margin and the calculation of margin requirements with respect to the customers pursuant to the minimum requirements of Eurex Clearing AG (clearing obligations); the Implementation Regulations of the Eurex Exchanges Concerning Technical Equipment shall apply mutatis mutandis in all other respects.

(d) The use of at least one sufficiently qualified member of staff in the back-office for the orderly fulfilment of the clearing obligations; a sufficient qualification shall be presumed if the aptitude test for members of staff of the back-office offered by Eurex Clearing AG ("Clearer Test") has been successfully passed; it is required that at least one sufficiently qualified member of staff is present at any time during the Exchange day and that he or she is available by telephone or fax.

(e) Payment of the contribution to the Clearing Fund according to subsection 1.6.1.

(4) Evidence of compliance with the prerequisites set forth in subsection 1.1.2 paragraphs (1) to (3) must be provided upon submission of the application. Clearing Members are obligated, upon request by Eurex Clearing AG, to provide Eurex Clearing AG with evidence of compliance with the prerequisites for a Clearing License as set forth in subsection 1.1.2 paragraph (1) by no later than six months after the end of each fiscal year of the Clearing Member.

1.1.3 Notification Obligations; Right to Investigate Compliance

Each Clearing Member shall promptly inform Eurex Clearing AG if it is no longer in compliance with any of the prerequisites set forth in subsections 1.1.1 paragraph (3) and 1.1.2 or if any other circumstances prevail, which might make void these prerequisites. Evidence of continued compliance with these prerequisites must be provided to Eurex Clearing AG upon demand. Eurex Clearing AG may, at the expense of the Clearing Member, commission an auditor within the meaning of § 27 paragraph (1) of the KWG or of equivalent regulations for purposes of further investigation of compliance.

1.1.4 Termination and Suspension of Clearing Licenses

(1) Each 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 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 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.

Eurex Clearing AG shall notify the respective Clearing Member in writing of the termination of the Clearing License, indicating the reasons therefore.

(3) If there is a reasonable suspicion that the requirements for a termination pursuant to paragraph (2) have been met, Eurex Clearing AG may order the suspension of a Clearing License for a period not in excess of six months. Eurex Clearing AG may demand from the respective 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 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 Clearing License, Exchange Participants are not permitted to open new positions through the respective Clearing Member; all existing positions of such Clearing Member must be closed or transferred to another Clearing Member. A General Clearing Member 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 are not closed or transferred within a period set by Eurex Clearing AG on a case-by-case basis for this purpose, Eurex Clearing AG may close the positions.

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

1.1.5 Non-transferability

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

1.3 Subpart

Margin

1.3.1 Obligation to Provide Margin

(1) ...

(2) ...

(3) A Clearing Member may determine that shares deposited in its internal securities clearing account with Eurex Clearing AG and its pledged securities account (Pfanddepot) at Clearstream Banking AG or SegaIntersettle AG or assigned book-entry securities shall serve as matching cover for call options sold ("Short Calls") on identical underlying securities. A short position that is covered in this manner shall not be taken into account for purposes of determining the required margin. Ancillary rights resulting from capital changes are not considered matching cover.

(4) ...

(5) ...

1.3.2 Determination of Margin to be Maintained

(1) ...

1.3.3 Supplementary Margin Requirements

...

1.3.4 Margin in the form of Cash

(1) ...

(2) ...

(3) If the required margin is not credited to the Eurex Clearing AG account in a timely manner (subsection 1.3.1 paragraph (2), subsection 1.3.3), Eurex Clearing AG shall be entitled to take measures in accordance with subsection 1.7.1 et seq.

(4) Margin in other currencies admitted by Eurex Clearing AG pursuant to paragraph (1) shall be provided by the Clearing Member by paying the amount onto the account of Eurex Clearing AG having been opened therefor with a bank approved by Eurex Clearing AG. When the respective bank has confirmed payment vis-à-vis Eurex Clearing AG, the amount shall be promptly credited to the internal margin clearing account (subsection 1.4.2) of the Clearing Member and the deposit shall be considered for the following Exchange day with respect to the margin requirements, provided that

the confirmation pursuant to sentence 2 has been delivered 30 minutes prior to the end of the last Post-Trading Period at the latest.

(5) The release of the margin provided pursuant to paragraph (2) and (4) shall be effected upon request of Eurex Clearing AG.

1.3.5 Margin in the form of Securities and Book-Entry Securities (Wertrechte)

(1) Collateral in securities and in book-entry securities shall be deposited by the Clearing Member in its pledged securities account at Clearstream Banking AG or SegaIntersettle AG.

(2) Eurex Clearing AG shall determine which securities and book-entry securities it will accept in satisfaction of the collateral requirements as well as the pledge value of such securities.

(3) The Clearing Member shall provide the collateral required pursuant to paragraph (1) by granting a lien in favor of Eurex Clearing AG on all securities deposited in its pledged securities account through an appropriate pledge agreement. The Clearing Member shall notify Clearstream Banking AG or SegaIntersettle AG of the execution of such a pledge agreement. To the extent that the Clearing Member provides the collateral in book-entry securities, such book-entry securities shall be assigned to Eurex Clearing AG; the foregoing provisions shall apply mutatis mutandis.

(4) Securities or book-entry securities shall be deposited as follows: The Clearing Member shall instruct Clearstream Banking AG or SegaIntersettle AG in good time to transfer the securities to its pledge account at Clearstream Banking AG or SegaIntersettle AG. Clearstream Banking AG or SegaIntersettle AG shall then inform Eurex Clearing AG of such transfer. Eurex Clearing AG will thereupon credit the value or the number of securities to the collateral clearing account (subsection 1.4.2) of the Clearing Member and take such deposit into consideration when assessing the margin required to be maintained for the following Exchange day, provided that the relevant notification is issued through Clearstream Banking AG or SegaIntersettle AG no later than 30 minutes prior to the end of the final Post-Trading Period.

(5) Clearing Members may, until 30 minutes prior to the end of the last Post-Trading Period of any Exchange day, request that Eurex Clearing AG release pledged securities or assigned book-entry securities. Such request shall be processed by Eurex Clearing AG during that same Exchange day, and Eurex Clearing AG shall comply with such request by an appropriate entry in such Clearing Member's internal collateral clearing account (subsection 1.4.2). If compliance with such a request would render the remaining collateral inadequate for the next Exchange day, Eurex Clearing AG will only notify Clearstream Banking AG or SegaIntersettle AG that it approves such release if the required collateral has been provided in cash by the time specified by Eurex Clearing AG, but generally prior to the commencement of trading on the next Exchange day.

(6) ...

(7) ...

1.6 Subpart

Clearing Fund

1.6.1 Contribution to 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.

This contribution shall be provided by bank guarantees and/or cash or securities collateral. Subsection 1.1.2 paragraph 2, sentences 2 to 7 shall apply accordingly.

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

1.6.2 Realisation of the Clearing Fund

(1) The contribution to the Clearing Fund provided by a Clearing Member may be used to cover the financial consequences of a default (subsection 1.7.1) by itself or by any other Clearing Member.

(2) In case any compensation must be provided for any damage due to a default (subsection 1.7.1), Eurex Clearing AG shall realise securities in accordance with the following order of priority:

1. Collateral of the Clearing Member obliged to perform other than that indicated in subsection 1.6.1,

2. the contribution to the Clearing Fund of the Clearing Member obliged to perform pursuant to subsection 1.6.1,

3. the reserves of Eurex Clearing AG pursuant to subsection 1.6.1 paragraph (2),

4. the contributions of all other Clearing Members to the Clearing Fund.

The contributions of the other Clearing Members to the Clearing Fund shall be realised on a pro rata basis.

(3) If a defaulting Clearing Member (subsection 1.7.1) provides the owed payment after Eurex Clearing AG has realised the contributions of other Clearing Members to the Clearing Fund (subsection 2, no. 4), Eurex Clearing AG shall replenish the contributions of the other Clearing Members with this payment on a pro rata basis, up to the amount of effected realisation at the most.

1.6.3 Replenishment of Contributions to the Clearing Fund

Any realised contribution to the Clearing Fund shall be raised by the Clearing Members to its original amount within ten Exchange days. This requirement shall not apply to any Clearing Member that has terminated its Clearing License by means of a written statement to Eurex Clearing AG no later than on the fifth Exchange day following such realisation.

1.6.4 Release of the Contributions to the Clearing Fund

(1) If Eurex Clearing AG or a Clearing Member terminates the Clearing Membership, Eurex Clearing AG shall release the contribution of the respective Clearing Member to the Clearing Fund one month after notice is given of such termination, but in any event not earlier than one month after the day upon which all contracts in the accounts for which the respective Clearing Member handles the Clearing have been cleared. The same shall apply mutatis mutandis to collateral pursuant to subsection 1.1.2 paragraph (2).

(2) If another Clearing Member is in default at the time of the termination of such Clearing Membership, or if another Clearing Member falls into default prior to the date on which a contribution to the Clearing Fund is to be released the release, contrary to paragraph (1), shall only be effected after all obligations of such defaulting Clearing Member to Eurex Clearing AG have been satisfied.

1.7 Subpart

Default

1.7.1 Events of Default

…

1.7.2 Technical Default

…

1.7.3 Closing; Drawing on Margin

If a Clearing Member is in default within the meaning of subsection 1.7.1, Eurex Clearing AG will close positions and realize margin in accordance with the following priority schedule:

1. Creation of a single net position by netting all open positions of all accounts of the Clearing Members. Closing of such net position by Eurex Clearing AG or an Exchange Participant designated by it.

2. Realisation of all margin of the defaulting Clearing Member including its contribution to the Clearing Fund pursuant to subsection 1.6.1 paragraph 1.

3. Refund of any surplus in the event that the proceeds from the realisation of margin of the defaulting Clearing Member exceed the amount required to cover all obligations of such Clearing Member arising out of its transactions on the Eurex Exchanges.

4. 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 defaulting Clearing Member are insufficient to satisfy its obligations arising out of its transactions on the Eurex Exchanges.

5. Pro rata enforcement of the contributions of non-defaulting Clearing Members to the Clearing Fund pursuant to subsection 1.6.2 paragraph (2) no. 4.