

Chapter I of the Clearing Conditions of Eurex Clearing AG

General Provisions

As of 31.01.2022

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

[...]

Part 1 General Clearing Provisions

1 General Rules

[...]

1.4 Settlement of Transactions

[...]

1.4.4 Buy-In Right, ~~and Buy-In Auction~~ and Penalties

- (1) Buy-In Right and Buy-In Auction; Penalties in respect of Securities outside the scope of the Penalty Regime of the CSD Regulation

(a) The Special Clearing Provisions may provide that in the event of a failure by a Clearing Member or Basic Clearing Member under a Transaction to deliver Securities to Eurex Clearing AG on the applicable delivery date, Eurex Clearing AG shall be entitled at the cost of the defaulting Clearing Member or the defaulting Basic Clearing Member to initiate a buy-in process whereby Eurex Clearing AG attempts to acquire the relevant Securities from a third party. For this purpose, Eurex Clearing AG may, subject to and in accordance with the Special Clearing Provisions (i) directly purchase the Securities from a third party, (ii) appoint a third party buy-in agent to acquire the Securities for Eurex Clearing AG and/or (iii) conduct an auction in accordance with the auction terms (“**Auction Terms**”) published by Eurex Clearing AG on the Eurex Clearing Website. The Auction Terms shall form part of these Clearing Conditions. Eurex Clearing AG shall inform the Clearing Member when it attempts to execute a buy-in and the Clearing Member shall not be entitled to deliver the relevant Securities to Eurex Clearing AG during such time. The same applies to the extent the buy-in has been successfully executed by Eurex Clearing AG.

Where Eurex Clearing AG appoints a third party buy-in agent to acquire the Securities for Eurex Clearing AG, the rules of the buy-in agent may foresee maximum buy-in prices and these may be different from the maximum prices

Eurex Clearing AG would accept when it conducts an auction pursuant to the buy-in auction rules. The Clearing Member or Basic Clearing Member having failed to deliver the relevant Securities to Eurex Clearing AG on the applicable delivery date, shall reimburse Eurex Clearing AG for the costs charged by the buy-in agent in relation to the buy-in process. Such obligation is in addition to any charges that may apply in relation to a buy-in in accordance with the Clearing Conditions, provided that any such additional charges shall be subject to a maximum amount of EUR 3,000, (or in case charges are calculated in CHF, USD or GBP, an amount of CHF 4,200, USD 4,200 or GBP 2,700, respectively).

- (b) In addition, contractual penalties may apply with respect to the failure by a Clearing Member or Basic Clearing Member under a Transaction to deliver Securities (other than CSDR Penalty In-Scope Securities) to Eurex Clearing AG on the applicable delivery date.

"CSDR Penalty In-Scope Securities" means Securities (other than Securities to be delivered as Margin or as Contributions to the Default Fund) to which delivery obligations under Transactions with an Intended Settlement Date on or after the CSDR Penalty Effective Date relate and in respect of which (i) Article 7(2) of the CSD Regulation applies and has become effective and (ii) the exemption set out in Article 7(13) of the CSD Regulation does not apply, provided that if and as long as a letter (or similar statement) of the European Securities and Markets Authority or another competent regulatory authority is effective stating that such authority will not take any action if the penalty regime of the CSDR is not applied or not complied with, the relevant Securities will not qualify as CSDR Penalty In-Scope Securities.

"CSD Regulation" means Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (as amended from time to time).

"CSDR Penalty Effective Date" means 1 February 2022 (or such later date upon which the CSDR provisions on penalties become effective as may be set out in any amendment to CSDR Delegated Regulation II).

"CSDR Delegated Regulation II" means Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 with regard to regulatory technical standards on settlement discipline (as amended from time to time).

"Intended Settlement Date" has the meaning ascribed to the term "intended settlement date" in the CSD Regulation.

- (c2) Without prejudice to the provisions of the Special Clearing Provisions, Eurex Clearing AG shall be entitled to enter into a replacement purchase pursuant to Paragraph (1) above in case a Clearing Member or a Basic Clearing Member

fails under a Transaction to deliver Securities to Eurex Clearing AG on the applicable delivery date, causing the inability of Eurex Clearing AG to fulfill its due delivery obligation towards another Clearing Member or Basic Clearing Member and Eurex Clearing AG has received a Second Notification pursuant to Number 9.3.3 (3) of these General Clearing Provisions from the respective Clearing Member or Clearing Agent (acting on behalf of the Basic Clearing Member). The respective rules of the Special Clearing Provisions regarding costs and a potential cash settlement shall apply accordingly.

(2) Penalties in respect of Securities within the scope of the Penalty Regime of the CSD Regulation

Unless specified otherwise in the Special Clearing Provisions, the following provisions apply to the penalty process with respect to CSDR Penalty In-Scope Securities (in respect of which a settlement fail within the meaning of the CSD Regulation occurs):

If

- (A) a Clearing Member, a Basic Clearing Member or a holder of a Specific Repo License fails to deliver, in whole or in part, CSDR Penalty In-Scope Securities to Eurex Clearing AG in respect of a Transaction on the day that is the Intended Settlement Date for such delivery due to a settlement fail at the relevant CSD attributable to the delivery obligation of such Clearing Member, Basic Clearing Member or holder of a Specific Repo License (other than as a result of circumstances referred to in (B)); or
- (B) a delivery of CSDR Penalty In-Scope Securities by Eurex Clearing AG to a Clearing Member, a Basic Clearing Member or a holder of a Specific Repo License cannot be settled on the Intended Settlement Date in whole or in part for other reasons attributable to such Clearing Member, Basic Clearing Member or holder of a Specific Repo License or the relevant CSD participant to whose account the delivery is to be made (e.g., because a delivery instruction providing for delivery versus payment cannot be matched due to a lack of corresponding cash).

Eurex Clearing AG will charge penalties from such Clearing Member, Basic Clearing Member or holder of a Specific Repo License in accordance with Article 7(2) of the CSD Regulation in conjunction with Article 19 of CSDR Delegated Regulation II, subject to the following specifications:

- (a) Eurex Clearing AG will charge penalties from the relevant Clearing Members, Basic Clearing Members or holders of a Specific Repo License on the basis of the information and data on settlement fails provided, as well as the penalties calculated, by the relevant CSD in respect of the relevant failing participants at the level of the CSD. Eurex Clearing AG may rely on, and will not verify, any such information from, and penalty calculations by, the CSD.

(b) The relevant CSD will report to Eurex Clearing AG on a daily basis and on a monthly basis (in the latter case on the 14th CSD Business Day of the calendar month following the calendar month in which the settlement fails occurred and for which the related penalties have been calculated by the CSD (such monthly report, the "**CSD Monthly Report**") the relevant data referred to in lit. (a) in respect of settlement fails that have occurred in, and the related penalties calculated by the CSD for, each such month. In such reports from the CSD, such data will be broken down to single delivery instructions to which the settlement fails related.

"**CSD Business Day**" means, with respect to a CSD, a day (other than a Saturday or Sunday) on which such CSD operates.

(c) On the basis of the data received from the relevant CSD (and on a per-CSD basis) as part of the monthly reporting Eurex Clearing AG will, in its reasonable discretion (*billiges Ermessen*),

(A) attribute the delivery instructions, to which the settlement fails in the relevant calendar month related, to Clearing Members, Basic Clearing Members and holders of a Specific Repo License;

(B) calculate the penalty amounts that are payable to Eurex Clearing AG by such Clearing Members, Basic Clearing Members or holders of a Specific Repo License in respect of the relevant calendar month (such calculation will, if relevant, take into account that penalties cannot be charged to a Clearing Member, Basic Clearing Member or holder of a Specific Repo License against whom insolvency proceedings have been opened (as referred to in Article 7(12) of the CSDR); and

(C) determine the amounts payable to Clearing Members, Basic Clearing Members or holders of a Specific Repo License that are affected by the relevant settlement fails as distributions of penalties in accordance with Article 19(c) of CSDR Delegated Regulation II.

(d) On the basis of the amounts calculated in accordance with lit. (c) (B) and (C) Eurex Clearing AG will determine, for each Clearing Member, Basic Clearing Member and holder of a Specific Repo License to which a settlement fail is attributed or that is affected by a settlement fail, a monthly net amount (per currency) that – subject to the following provisions – is payable to, or receivable by, such Clearing Member, Basic Clearing Member or holder of a Specific Repo License.

(e) If the aggregate amount that would be payable by Eurex Clearing AG to Clearing Members, Basic Clearing Members and holders of a Specific Repo License pursuant to lit. (d) (in the relevant currency)

(A) is higher than the aggregate amount that is payable to Eurex Clearing AG by Clearing Members, Basic Clearing Members and holders of a Specific

Repo License with respect to a given calendar month (in the same currency) pursuant to lit. (d) (the fraction of the aggregate amount that is so payable to Eurex Clearing AG and the aggregate amount that would be so payable by Eurex Clearing AG, the "**Distribution Reduction Factor**"), Eurex Clearing AG will apply a reduction to the amounts payable by Eurex Clearing AG to Clearing Members, Basic Clearing Members and holders of a Specific Repo License pursuant to lit. (d) by multiplying each such amount with the Distribution Reduction Factor;

- (B) is lower than the aggregate amount that is payable to Eurex Clearing AG by Clearing Members, Basic Clearing Members and holders of a Specific Repo License with respect to a given calendar month (in the same currency) pursuant to lit. (d) (the fraction of the aggregate amount that is so payable to Eurex Clearing AG and the aggregate amount that would be so payable by Eurex Clearing AG, the "**Distribution Increase Factor**"), Eurex Clearing AG will apply an increase to the amounts payable by Eurex Clearing AG to Clearing Members, Basic Clearing Members and holders of a Specific Repo License pursuant to lit. (d) by multiplying each such amount with the Distribution Increase Factor.
- (f) Eurex Clearing AG will charge and pay any such amounts per currency monthly on the third Business Day after receipt from all relevant CSDs of the related CSD Monthly Reports. Upon the request of a Clearing Member, Basic Clearing Member or holder of a Specific Repo License, Eurex Clearing AG will convert the relevant amount payable or receivable by such Clearing Member, Basic Clearing Member or holder of a Specific Repo License in a given currency into the specified billing currency of such Clearing Member, Basic Clearing Member or holder of a Specific Repo License using a conversion rate determined by Eurex Clearing AG in its reasonable discretion (*billiges Ermessen*).
- (g) Eurex Clearing AG will submit reports to the Clearing Members, Basic Clearing Members and holders of a Specific Lender License (i) on each Business Day setting out the penalties calculated at the CSD level and (ii) monthly on the first Business Day after receipt from all relevant CSDs of the related CSD Monthly Reports setting out the net amounts payable or receivable in accordance with lit. (d) to (f).
- (h) If, following a distribution to Clearing Members, Basic Clearing Members or holders of a Specific Repo License in accordance with lit. (c)(C) and (d) or following the submission of a report by Eurex Clearing AG on a distribution, Eurex Clearing AG becomes aware of circumstances affecting the calculation of such distributions, Eurex Clearing AG may correct such calculations.
- (i) If and to the extent that a Clearing Member, Basic Clearing Member or holder of a Specific Repo License fails to pay any amount in a given currency to Eurex Clearing in accordance with lit. (d) to (f), the aggregate amount payable by Eurex Clearing AG to Clearing Members, Basic Clearing Members and holders

of a Specific Repo License in with lit. (d) to (f) will be reduced on a pro rata basis (by applying lit. (e)(A) *mutatis mutandis*) and the relevant Clearing Member, Basic Clearing Member or holder of a Specific Repo License that has already received amounts not reflecting such reduction shall repay such reduction to Eurex Clearing AG.

(j) In respect of a failure to deliver Securities or a failure to provide a cash amount for the purposes of a settlement of the delivery of Securities that results in a settlement fail and falls within the scope of this Paragraph (2) any other provisions on contractual penalties for such failure to deliver or such failure to provide cash set out in the Clearing Conditions shall not apply; Chapter II Part 2 Number 2.3.5 (4) and Chapter V Part 2 Number 2.2.1 (6) (b) shall remain unaffected.

[...]

12 Other Agreements and terms in respect of DC Market Participants and Indirect Client Market Participants with regard to the Clearing of Eurex Transactions and FWB Transactions; Determination of limits for Clearing Members by Eurex Clearing AG with respect to Market Transactions

[...]

12.6 Non-Compliance with Other Conditions

[...]

12.6.4 Eurex Clearing AG may request the Clearing Member to submit written documentation in relation to a Stop Button entry pursuant to Number 12.6.1. The documentation shall contain details on the facts, in particular the amount of the agreed limit(s) and, as relevant, positions, the orders/quotes, type of agreed other duties (e.g. compliance with economic stability criteria) and conditions, the time of submission of a declaration pursuant to Number 12.6.1 and the time of revocation of a declaration pursuant to Number 12.6.1.

12.6.5 Eurex Clearing AG may suspend from the Clearing, in consultation with BaFin, any Clearing Member, Basic Clearing Member or holder of a Specific Repo License that fails consistently and systematically to deliver securities referred to in Article 5(1) of the CSD Regulation on the relevant Intended Settlement Date.

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