

Chapter I of the Clearing Conditions of Eurex Clearing AG

# General Provisions

As of 02.09.2024

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AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED;

DELETIONS ARE CROSED OUT

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[...]

## **Part 1 General Clearing Provisions**

### **1 General Rules**

[...]

#### **1.4 Settlement of Transactions**

[...]

##### **1.4.4 Failure to Deliver Securities**

[...]

###### **1.4.4.2 Penalties**

[...]

(2) [...]

**"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(438) 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, including Regulation (EU) No 2023/2845 of the European Parliament and of the Council of 13 December 2023 amending Regulation (EU) No 909/2014 as regards settlement discipline, cross-border provision of services, supervisory cooperation, provision of banking-

type ancillary services and requirements for third-country central securities depositories (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"** **"CSDR Delegated Regulation"** 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, including Commission Delegated Regulation (EU) 2023/1626 of 19 April 2023 on amending the regulatory technical standards laid down in Delegated Regulation (EU) 2018/1229 as regards the penalty mechanism for settlement fails relating to cleared transactions submitted by CCPs for settlement (as amended from time to time).

— **"CSD Settlement Account"** means a securities settlement account of Eurex Clearing AG with an assigned cash account at CSDs relating to cleared transactions submitted by Eurex Clearing AG for settlement.

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If

- (A) a Clearing Member, an ISA Direct Clearing Member or an ISA Direct Light License Holder fails to deliver, in whole or in part, CSDR Penalty In-Scope Securities to Eurex Clearing AG in respect of a ~~Transaction~~ 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, ISA Direct Clearing Member or ISA Direct Light License Holder ~~(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, an ISA Direct Clearing Member or an ISA Direct Light License Holder cannot be settled on the Intended Settlement Date in whole or in part for other reasons attributable to such Clearing Member, ISA Direct Clearing Member or ISA Direct Light License Holder 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 or settled due to a lack of corresponding cash),

Eurex Clearing AG ~~will charge~~ may be subject to net penalties ~~from~~ by the relevant CSDs per CSDR penalty currency and CSD Settlement Account of Eurex Clearing AG for cleared business with such Clearing MemberMembers, ISA Direct Clearing MemberMembers or ISA Direct Light License HolderHolders 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:~~

Pursuant to Article 7(4) of the CSDR Regulation, Eurex Clearing is entitled to have a mechanism in place to cover losses that it would incur resulting from the application of Article 7(2) third subparagraph of the CSD Regulation, as further specified below. If Eurex Clearing AG determines that a potential negative overall net imbalance for Eurex Clearing AG in a monthly CSDR penalty booking process by the CSDs based on the overall offset of the single net penalty payments (per penalty currency) related to the CSD Settlement Accounts occurred,

(a) ~~Eurex Clearing AG will charge penalties~~penalty imbalance compensations (the "**Single Member Compensation Amount**", as defined below under (b)(C)) from the relevant Clearing Members, ISA Direct Clearing Members or ISA Direct Light License Holders on the basis of the net penalties booked by the relevant CSDs per CSD Settlement Accounts of Eurex Clearing AG and 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 14<sup>th</sup> 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, ISA Direct Clearing Members and ISA Direct Light License Holders;~~

~~(B) calculate the penalty amounts that are payable to Eurex Clearing AG by such Clearing Members, ISA Direct Clearing Members or ISA Direct Light License Holders in respect of the relevant calendar month (such calculation will, if relevant, take into account that penalties cannot be charged to a Clearing Member, ISA Direct Clearing Member or ISA Direct Light License Holder 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, ISA Direct Clearing Members or ISA Direct Light License Holders 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 (b) \_\_\_\_\_ Eurex Clearing AG will determine, for each relevant Clearing Member, ISA Direct Clearing Member and ISA Direct Light License Holder to which a settlement fail is attributed or that is affected by a settlement fail, a monthly net penalty compensation amount (per currency) that – subject to the following provisions – is payable to, or receivable by, such Clearing Member, ISA Direct Clearing Member or ISA Direct Light License Holder. – to Eurex Clearing AG~~

~~(e) If the aggregate amount that would be payable by (A) Eurex Clearing AG Overall Net Imbalance and Adjusted Net Gap Contribution~~

~~Eurex Clearing AG will determine if a potential monthly overall CSDR penalties net imbalance across all Eurex Clearing AG's CSDR Penalty Settlement Accounts occurred (the "**Overall Net Imbalance**"). The determination of such an Overall Net Imbalance is based on the CSD reporting and the effective CSD net penalty cash bookings and can be positive or negative in its amount. In case of a negative Overall Net Imbalance for Eurex Clearing AG (the "**Overall Net Gap**"), a compensation process is triggered for the actual month.~~

~~Only Eurex Clearing AG's CSD Settlement Accounts which have a negative imbalance contribution to Clearing Members the Overall Net Imbalance are considered in such further compensation process. The Overall Net Gap will be assigned pro-rata to all negatively contributing Eurex Clearing AG CSD Settlement Accounts (the "**Adjusted Net Gap Contribution**").~~

~~(B) Single Member Contribution Factor~~

~~As no direct relation of the Overall Net Gap of Eurex Clearing AG to a specific single Clearing Member, ISA Direct Clearing Members and Member or ISA Direct Light License Holders pursuant to lit. (d) (in the relevant Holder can be drawn, the determination of the single member contribution is based on the evaluation of the single Clearing Member's, ISA Direct Clearing Member's or ISA Direct Light License Holder's contribution in relation to the total CSD calculated net penalty collections to Eurex Clearing AG, related to a specific Eurex Clearing AG CSD Settlement Account which defines a Clearing Member's, ISA Direct Clearing Member's or ISA Direct Light License Holder's individual pro-rata contribution factor per CSD Settlement Account and penalty currency) (the "**Single Member Contribution Factor**").~~

~~(A) is higher than the aggregate amount that is payable to Eurex Clearing AG by \_\_\_\_\_ Only Clearing Members, ISA Direct Clearing Members or ISA Direct Light License Holders with CSDR penalty payments to Eurex Clearing AG with regard to one of the negatively contributing Eurex Clearing AG CSD Settlement Accounts are therefore included in the gap compensation process. Clearing Members, ISA Direct Clearing Members and/or ISA Direct Light License Holders 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 no actual penalty payments 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, as well as Clearing Members, ISA Direct Clearing Members and/or ISA Direct Light License Holders pursuant to lit. (d) by multiplying each such amount with the Distribution Reduction Factor; involved in the penalty processes with no negative imbalance in an Eurex Clearing AG CSD Settlement Account will not be considered for the compensation payments.~~

~~(B) is lower than the aggregate amount that is payable to Eurex Clearing AG by Clearing Members (C) \_\_\_\_\_ Single Member Compensation Amount~~

~~The pro-rata "**Single Member Contribution Factor**" (determined in (B)) is applied to the "**Adjusted Net Gap Contribution**" (determined in (A)). The result is the Clearing Member's, ISA Direct Clearing Members and Member's or ISA Direct Light License Holders with respect to a given calendar month (in the same currency) Holder's single member compensation amount ("**Single Member Compensation Amount**") which will be payable as a single net payment (per penalty currency) pursuant to lit. (d) (Eurex Clearing AG.~~

~~(c) If the fraction of the aggregate Overall Net Imbalance based on CSD bookings is a positive net amount that is so payable to, such positive amounts will be applied to offset an Overall Net Gap of 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 in following month(s), before calculating again each relevant Clearing Member's, ISA Direct Clearing Members and Member's or ISA Direct Light License Holders pursuant to lit. (d) by multiplying each such amount with the Distribution Increase Factor Holder's Single Member Compensation Amount.~~

~~(fd) Eurex Clearing AG will report and charge and pay any such amounts Single Member Compensation Amounts per CSDR penalty currency monthly on at the third Business Day beginning of the month after receipt from all relevant the CSDs of the related CSD Monthly Reports have booked the cash penalties, as part of the standard monthly Eurex Clearing AG payment notification process. Upon the request of a Clearing Member, ISA Direct Clearing Member or ISA~~

Direct Light License Holder, Eurex Clearing AG will convert the relevant amount payable ~~or receivable~~ by such Clearing Member, ISA Direct Clearing Member or ISA Direct Light License Holder in a given currency into the specified billing currency of such Clearing Member, ISA Direct Clearing Member or ISA Direct Light License Holder 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 and ISA Direct Clearing Members (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, ISA Direct Clearing Members or ISA Direct Light License Holders in accordance with lit. (e)(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, ISA Direct Clearing Member or ISA Direct Light License Holder 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, ISA Direct Clearing Members and ISA Direct Light License Holders 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, ISA Direct Clearing Member or ISA Direct Light License Holder that has already received amounts not reflecting such reduction shall repay such reduction to Eurex Clearing AG.~~
- ~~(j)(e) 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.~~

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