

## Eurex Clearing Circular 022/19

# Cash collateral: Introduction of a possibility to repay cash collateral provided in a non-clearing currency – amendment of the Clearing Conditions of Eurex Clearing AG

### Summary

This circular contains information with respect to amendments to the Clearing Conditions of Eurex Clearing AG (Clearing Conditions) regarding the following topic:

- Repayment of cash collateral provided in a non-clearing currency

The amended sections of the Clearing Conditions, as decided by the Executive Board of Eurex Clearing AG, are attached to this circular.

The amendments will come into effect on **1 April 2019**.

### Attachments:

- 1.-2. Amended sections of the Clearing Conditions

**Date:** 5 March 2019

### Recipients:

All Clearing Members, Basic Clearing Members, Disclosed Clients of Eurex Clearing AG and vendors

### Authorised by:

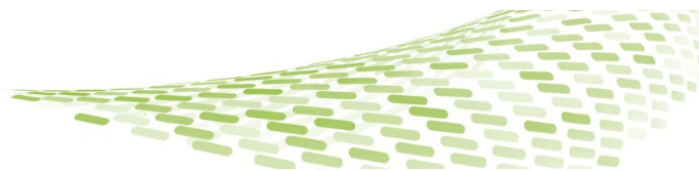
Thomas Laux

### Target group:

- All departments

### Contact:

Your Key Account Manager Clearing,  
clearing.services-  
[admission@eurexclearing.com](mailto:admission@eurexclearing.com)



## Cash collateral: Introduction of a possibility to repay cash collateral provided in a non-clearing currency – amendment of the Clearing Conditions of Eurex Clearing AG

Art. 395 of Regulation (EU) 575/2013 (the Capital Requirements Regulation) requires that a financial institution shall not incur an unsecured exposure to a client or group of connected clients or another financial institution of which the value exceeds 25 percent of its eligible capital or EUR 150 million (large exposure limit).

As a holder of a banking licence under German law, Eurex Clearing AG (Eurex Clearing) is obliged to comply with this requirement and therefore generally deposits any cash in the clearing currencies Swiss franc (CHF), euro (EUR) or British pound (GBP) with the respective central banks. However, Eurex Clearing does not have central bank access for its non-clearing currencies. Therefore, this amendment introduces a possibility for Eurex Clearing to repay provided cash to the Clearing Members, if the cash amount exceeds or will exceed a large exposure limit to which Eurex Clearing needs to adhere to. The cash amount is

- the sum of Eligible Margin Assets in the form of cash delivered to Eurex Clearing as Margin in a non-clearing currency and/or
- any Prefunding Amounts in the respective currency

Eurex Clearing will use this measure only as a matter of last resort and implemented a three-step approach for the repayment:

- First, it will repay cash in the respective currency which it has received in excess of the applicable Margin Requirement of its Clearing Members;
- Second, it will substitute and repay cash in the respective currency which has been provided to Eurex Clearing to cover the applicable margin requirement of its Clearing Members;
- Third, Eurex Clearing will repay any cash delivered to it in the respective currency as a Prefunding Amount to the Prefund Amount Payer and it will then recollect this amount by debiting the relevant Clearing Member Cash Account for the repayment.

For the complete process description and the distribution of a repayment across different Clearing Members, please refer to the provisions of the Clearing Conditions.

The following provisions of the Clearing Conditions will be amended as outlined in the attachment to reflect the changes:

- Chapter I Part 1 Numbers 2.5, 3.2;
- Chapter VIII Part 3 Numbers 3.1, 3.2, 3.3; Part 4 Number 4.1

As of the effective date, the full version of the amended Clearing Conditions will be available for download on the Eurex Clearing AG website [www.eurexclearing.com](http://www.eurexclearing.com) under the following link:

### **Resources > Rules and Regulations > Clearing Conditions**

The amendments to the legal framework of Eurex Clearing AG published by this circular at least fifteen (15) Business Days prior to the effective date indicated herein are deemed accepted by each affected contractual party of Eurex Clearing AG, unless the respective contractual party objects by written notice to Eurex Clearing AG within the first ten (10) Business Days of such period of such period. Any ordinary right of Eurex Clearing AG to terminate the respective contract (including a Clearing Agreement, if applicable) shall remain unaffected.

Unless the context requires otherwise, terms used and not otherwise defined in this circular shall have the meaning ascribed to them in the Clearing Conditions.

If you have any questions or need further information, please contact your Key Account Manager Clearing or send an e-mail to: [clearing.services-admission@eurexclearing.com](mailto:clearing.services-admission@eurexclearing.com).

5 March 2019

Chapter I of the Clearing Conditions of Eurex Clearing AG

# General Provisions

As of 01.04.2019

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AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

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[...]

**Part 1 General Clearing Provisions**

[...]

**2.5 Specific provisions and additional continuing obligations for U.S. Clearing Members**

[...]

**2.5.2 Additional continuing obligations for U.S. Clearing Members**

(1) With respect to Direct Clients, a U.S. Clearing Member shall, prior to entering into a client clearing documentation or, in the case of the ~~ICM~~Individual Clearing Model Provisions, prior to entering into an ICM Clearing Agreement, inform the relevant Direct Client that the level of protection under the Elementary Clearing Model Provisions, the Individual Clearing Model Provisions and the ISA Provisions with regards to porting mechanics and a direct payment of a Difference Claim (if any) to the relevant Direct Client cannot be offered when the relevant Direct Client clears its Transactions through a U.S. Clearing Member.

[...]

[...]

**3.2 Eligible Margin Assets and Valuation; Large Exposures**

3.2.1 Eligible assets to be provided as cover (i) in respect of Margin are such currency amounts and such Securities, as are accepted to Eurex Clearing AG from time to time in its reasonable discretion and (ii) in respect of Variation Margin and STM Variation Margin such currency amounts specified in the Special Clearing Provisions (the "**Eligible Margin Assets**"). Eurex Clearing AG will publish the relevant applicable list of Eligible Margin Assets in accordance with Number 16.1 (ii).

[...]

3.2.5 If, in the opinion of Eurex Clearing AG, the sum of

- (i) Eligible Margin Assets in the form of cash actually delivered to Eurex Clearing AG as Margin in a particular currency other than a Clearing Currency (the "**Relevant Currency**"); and
- (ii) any Prefunding Amounts paid to Eurex Clearing AG in the Relevant Currency in accordance with Chapter VIII

that is held by Eurex Clearing AG exceeds or will exceed any large exposure limit with respect to the Relevant Currency to which Eurex Clearing AG is subject pursuant to Art. 395 CRR or any other comparable regulatory requirement (the amount of such excess or prospective excess, as determined by Eurex Clearing AG, the "**Relevant Currency Surplus**"), then Eurex Clearing AG shall be entitled to take the following measures with a view to complying with such large exposure limit:

- (a) Eurex Clearing AG may, with respect to Clearing Members and Basic Clearing Members in respect of which an amount of Eligible Margin Assets in the Relevant Currency in excess of the applicable Margin Requirement, Default Margin Requirement or Default Basic Clearing Member Margin Requirement (as relevant) has been actually delivered to Eurex Clearing AG and has not been returned, repaid or applied (such excess in the Relevant Currency, with respect to each such Margin Requirement, Default Margin Requirement or Default Basic Clearing Member Margin Requirement, a "**Currency Margin Excess**"), pay to each such Clearing Member and Basic Clearing Member (without prior notice) an amount in the Relevant Currency up to the relevant Currency Margin Excess (with the aggregate of such payments to all relevant Clearing Members and Basic Clearing Members not exceeding the Relevant Currency Surplus). If one or more Currency Margin Excesses exist with respect to more than one Clearing Member or Basic Clearing Member, Eurex Clearing AG may distribute such payments (up to an aggregate of the Relevant Currency Surplus) across such Clearing Members and Basic Clearing Members in its reasonable discretion (*billiges Ermessen*). When exercising such discretion, Eurex Clearing AG may take into account, *inter alia*, the amount of the relevant Currency Margin Excess of the relevant Clearing Members and Basic Clearing Members and the absolute amount of Eligible Margin Assets in the form of cash in the Relevant Currency provided by each such Clearing Member and Basic Clearing Member. Any such payment shall discharge the corresponding Redelivery Claim of the receiving Clearing Member or Basic Clearing Member.
- (b) If Eurex Clearing AG concludes that the aggregate payments (if any) by Eurex Clearing AG pursuant to lit. (a) fall or will fall short of the Relevant Currency Surplus (the amount of such shortfall, the "**Residual Currency Surplus**"), Eurex Clearing AG may issue Margin Calls in accordance with Number 3.3 and the specific provisions of the Elementary Clearing Model Provisions, the Individual Clearing Model Provisions, the ISA Provisions or the Basic Clearing Member

Provisions, as applicable (in an aggregate equivalent value up to the Residual Currency Surplus), provided that (i) for the purposes of the determination whether the aggregate value of the Eligible Margin Assets actually delivered to Eurex Clearing AG in respect of the relevant Margin is insufficient to provide the cover required to comply with the applicable margin requirement, the Requested Substitution Amount shall be deemed to have a value of zero and (ii) only Eligible Margin Assets either in the form of cash in a Clearing Currency or in the form of Securities may be delivered in respect of such Margin Call. Following the actual delivery of the Eligible Margin Assets delivered in respect of such Margin Call(s), Eurex Clearing AG shall redeliver Eligible Margin Assets in the Relevant Currency in an amount not exceeding the Requested Substitution Amount to the Clearing Member or Basic Clearing Member pursuant to the provisions on redelivery of Margin in the form of cash set out in the Elementary Clearing Model Provisions, the Individual Clearing Model Provisions, the ISA Provisions or the Basic Clearing Member Provisions, as applicable (the “Redelivery Provisions”), provided that notwithstanding Number -1.2.1 Paragraph (2) and any contrary provisions in the Elementary Clearing Model Provisions, the Individual Clearing Model Provisions, the ISA Provisions or the Basic Clearing Member Provisions, as applicable, no such redelivery shall be contingent on the request by or the raising of a Redelivery Claim by a Clearing Member or Basic Clearing Member. For the avoidance of doubt, for the purposes of the determinations made pursuant to the Redelivery Provisions, the Requested Substitution Amount shall no longer be deemed to have a value of zero.

“Requested Substitution Amount” means the relevant amount(s) of Eligible Margin Assets in the Relevant Currency provided by the relevant Clearing Member or Basic Clearing Member with respect to the relevant margin requirement, requested to be substituted by Eurex Clearing AG pursuant to this lit. (b). Eurex Clearing AG may distribute the requests for such substitutions across such Clearing Members and Basic Clearing Members in its reasonable discretion (*billiges Ermessen*). When exercising such discretion, Eurex Clearing AG may take into account, *inter alia*, the absolute amount of Eligible Margin Assets in the form of cash in the Relevant Currency provided by each such Clearing Member and Basic Clearing Member.

- (c) If Eurex Clearing AG concludes that a Residual Currency Surplus cannot be or has not been eliminated in full by taking measures pursuant to lit. (b), Eurex Clearing AG may proceed in accordance with Chapter VIII Part 3 Number 3.2.1 Paragraph (2)(c) (in conjunction with Chapter VIII Part 4 Number 4.2.1 Paragraph (2), as applicable) with respect to Prefunding Amounts (as defined in Chapter- VIII Part- 3 Number- 3.2.1 Paragraph- (1)(d)) in the Relevant Currency.

Eurex Clearing AG's rights to conduct any further Margin Calls shall remain unaffected.

[...]

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Chapter VIII of the Clearing Conditions of Eurex Clearing AG

# Clearing of OTC Interest Rate Derivative Transactions, OTC FX Transactions and OTC XCCY Transactions

As of 01.04.2019

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[...]

**Part 3 Clearing of OTC FX Transactions**

[...]

**3.1.5.1 Transaction Type Specific Novation Criteria**

The following Transaction Type specific novation criteria must be fulfilled for OTC FX Transactions (based on the trade record transmitted to Eurex Clearing AG via the relevant ATS):

[...]

(7) Business Days

Subject to Paragraph (4) and (5) above, For purposes of defining the applicable Business Day, details of the relevant financial/business centre(s) or terms, which must be TARGET (EUTA), New York (USNY) and London (GBLO), must be provided those permitted by the relevant ATS.

[...]

**3.2.1 Payment obligations**

(1) The relevant Clearing Member and Eurex Clearing AG shall pay the amounts payable under and in accordance with the terms of the relevant CCP Transaction as specified in the relevant OTC Trade Novation Report on the basis of the trade record submitted via the relevant ATS and which are as follows:

[...]

(d) if



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(x) the Clearing Member USD OTC Currency Transactions Payment Obligations are in excess of the applicable USD Maximum Amount with respect to the Clearing Member and a Settlement Date (such excess amount, which is denominated in USD, the “**USD Prefunding Amount**”), or

(y) the Clearing Member GBP OTC Currency Transactions Payment Obligations are in excess of the applicable GBP Maximum Amount with respect to the Clearing Member and a Settlement Date (such excess amount, which is denominated in GBP, the “**GBP Prefunding Amount**” and each the GBP Prefunding Amount and the USD Prefunding Amount, a “**Prefunding Amount**”),

[...]

“**USD Maximum Amount**” means an amount denominated in USD as determined by Eurex Clearing AG in its discretion with respect to each individual Clearing Member and as notified by Eurex Clearing AG to each of the Clearing Members. Each USD Maximum Amount can be amended by Eurex Clearing AG in its discretion at any time by either increasing or reducing it. If an amendment results in a reduction of the relevant USD Maximum Amount, then Eurex Clearing AG is required to give at least 3 (three) months' prior notice to the relevant Clearing Member unless there are exceptional circumstances which require a shorter notice period in order to effectively manage the risks of Eurex Clearing AG in its capacity as central counterparty, in particular taking into account the notional exposures of the Clearing Member's relevant OTC Currency Transactions and the resulting amount of Variation Margin to be settled through the CLS CCP Service, in which case the notice period can be less than three months. When determining and amending the ~~GBP-USD~~ Maximum Amount, Eurex Clearing AG also takes into account its exposures vis-à-vis the CLS Nostro Banks in order to effectively manage the risks of Eurex Clearing AG in its capacity as central counterparty.

[...]

(2) The following applies with respect to Prefunding Amounts:

[...]

(c) If a Relevant Currency Surplus has occurred and Eurex Clearing AG concludes that a Residual Currency Surplus cannot be or has not been eliminated in full by taking measures pursuant to Chapter I Part 1 Number 3.2.5 (a) and/or (b), Eurex Clearing AG may, by notice (which may also be provided via email or telephone) to any Prefunding Amount Payer in respect of which any Prefunding Amount in the Relevant Currency has been paid to Eurex Clearing AG and has not been applied or repaid, inform such Prefunding Amount Payer that Eurex Clearing AG intends pay to such Prefunding Amount Payer an aggregate

amount in the Relevant Currency up to the remaining Residual Currency Surplus and require such Prefunding Amount Payer to repay the identical amount in the Relevant Currency to Eurex Clearing AG. Such notice may be revoked by Eurex Clearing AG at any time.

In such notice Eurex Clearing AG will inform the relevant Prefunding Amount Payer of the amount and time of the payment in the Relevant Currency that shall be made by Eurex Clearing AG and specify a reasonable time for such corresponding repayment of the identical amount in the Relevant Currency by the Prefunding Amount Payer to become due. The payment by Eurex Clearing AG will reduce the Prefunding Amount paid by the Prefunding Amount Payer accordingly. Eurex Clearing AG may directly debit the relevant Clearing Member Cash Account for the repayment. The amount so repaid to Eurex Clearing shall constitute (or, as applicable, increase) a Prefunding Amount in the Relevant Currency.

Eurex Clearing AG may distribute the payments and the demands for repayments across the relevant Prefunding Amount Payers in its reasonable discretion (*billiges Ermessen*), provided that the amount of the Relevant Currency to be so paid to and repaid by a Prefunding Amount Payer may not exceed the Prefunding Amount that has been paid to Eurex Clearing AG by such Prefunding Amount Payer in the Relevant Currency and has not been returned, repaid or applied. When exercising its discretion, Eurex Clearing AG may take into account, *inter alia*, the absolute amount of Prefunding Amounts in the Relevant Currency paid by each such Clearing Member and Basic Clearing Member.

For the avoidance of doubt, a payment by Eurex Clearing AG to a Prefunding Amount Payer pursuant to this Paragraph (2)(c) as such does not constitute a failure to pay the relevant Prefunding Amount pursuant to Number 3.3.1; however, a failure by the Clearing Member to make the repayment of the Prefunding Amount in accordance with this Paragraph (2)(c) constitutes a failure to pay pursuant to Chapter I Part 1 Number 7.2.1 Paragraph (1).

[...]

### **3.3 Failure to Pay with respect to an OTC Currency Transaction**

#### **3.3.1 Failure to Pay Relevant Prefunding Amount**

- (1) If a Clearing Member fails to pay the relevant Prefunding Amount to Eurex Clearing AG in full in accordance with Number 3.2.1 by the Prefunding Cut-Off Time, the provisions of Chapter I Part 1 Number 7 shall apply.

**“Prefunding Cut-Off Time”** means 1:00 p.m. (Frankfurt am Main time).

- (2) In addition thereto, the Clearing Member is obliged to pay ~~the~~ a contractual penalty to Eurex Clearing AG (the “Prefunding Amount Contractual Penalty”). The

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amount of the Prefunding Amount Contractual Penalty – as determined by Eurex Clearing AG – is the equivalent in the relevant Clearing Currency of 40 basis points of the relevant Prefunding Amount, with a minimum of EUR 2,500.00, CHF 3,000.00 or GBP 2,000.00, as applicable, and a maximum of EUR 10,000,000.00, CHF 12,000,000.00 or GBP 8,000,000.00, as applicable. The Prefunding Amount Contractual Penalty applies regardless of any actual damages incurred by Eurex Clearing AG and is immediately due and payable by the Prefunding Cut-Off Time on the relevant Payment Date. The Prefunding Amount Contractual Penalty shall be a “Secured Claim” for the purpose of Chapter I Part 2 Subpart A Number 4.4.3. The right of Eurex Clearing AG to claim further damages shall remain unaffected.

[...]

[...]

## **Part 4 Clearing of OTC XCCY Transactions**

[...]

### **4.1.5.1 Transaction Type Specific Novation Criteria**

The following Transaction Type specific novation criteria must be fulfilled for OTC XCCY Transactions (based on the trade record transmitted to Eurex Clearing AG via the ATS):

[...]

(12) Business Days

For purposes of defining the applicable Business Day, details of the relevant financial/business centre(s) or terms must be provided, which (i) for the Currency Pair EUR/USD, must be TARGET (EUTA) ~~and~~, New York (USNY) ~~or London (GBLO)~~ and, (ii) for the Currency Pair GBP/USD, must be London (GBLO) and New York (USNY) ~~must be provided~~.

[...]

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