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Chapter I: Clearing Model Related Provisions

# FCM Regulations of Eurex Clearing AG

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THE FCM CLEARING CONDITIONS WILL BE AMENDED.

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

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## Clearing Model Related Provisions

[...]

### 12 Termination of Clearing Agreements and Clearing Licenses; Market Disorders Event, Impossibility Event, Force Majeure Event

[...]

#### 12.4 Market Disorders Event, Impossibility Event, Force Majeure Event

12.4.1 If Eurex Clearing AG determines that a Market Disorder Event, an Impossibility Event or a Force Majeure Event (each an "Special Event") has occurred, the following shall occur:

- (1) Before taking any action pursuant to Paragraph (2) or Paragraph (3) below, Eurex Clearing AG shall
  - (i) if reaonable in the circumstances considering the nature of the relevant Special Event, consult with the relevant FCM Clearing Member to find a mutual solution with respect to the relevant Special Event, and
  - (ii) use best efforts to exercise its rights under Paragraph (2) and Paragraph (3) in a way which is proportionate (verhältnismäßig) taking into account the interests of the relevant FCM Clearing Member.

(2) Actions with respect to the FCM Clearing Member

Eurex Clearing may with respect to the existing Swap Transactions entered into between Eurex Clearing AG and the FCM Clearing Member (including Swap Transactions entered into as FCM Client Transactions) and which are affected by the Special Event:

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- (i) establish corresponding Opposite Transactions and book such Opposite Transactions into the same FCM Clearing Member Own Transaction Account or FCM Client Transaction Account by giving written notice specifying the date and time at which the Opposite Transaction shall be established and booked (“Special Event Off-Setting Time”) and settle the relevant existing Swap Transaction against the Opposite Transaction, or
- (ii) take, by giving written notice, any other action Eurex Clearing AG deems necessary to limit any adverse impacts arising from the Special Event for itself and the FCM Clearing Member and require the FCM Clearing Member to comply with such action, provided that such action does not provide for a settlement of any existing Swap Transaction entered into between Eurex Clearing AG and the FCM Clearing Member.

Any decision to take actions pursuant to paragraph (i) and (ii) above shall be taken by the Executive Board of Eurex Clearing AG.

(3) Suspension of Clearing.

In case of the occurrence of a Special Event Off-Setting Time, Eurex Clearing AG may with respect to those Swap Transaction Types which are affected by the relevant Special Event suspend or limit the clearing of new Own Transactions and new FCM Client Transactions of the relevant FCM Clearing Member.

(4) Information of third parties

In case of the occurrence of a Special Event Off-Setting Time, Eurex Clearing AG

- (i) shall without undue delay notify the CFTC, and
- (ii) may inform the Management Board of Clearstream Banking AG, all affected FCM Clients of the relevant FCM Clearing Member; and other market participants and the public,

of any actions taken by Eurex Clearing AG pursuant to this Number 13.4.

(5) Priority of Special Events over Termination Events or Insolvency Termination Event

In case of the occurrence of any event which qualifies as a Special Event, such Special Event can never qualify as a Termination Event or Insolvency Termination Event with respect to the FCM Clearing Member at the same time. For the avoidance of doubt, if after the occurrence of a Special Event other additional events occur, which qualify as Termination Event or Insolvency Termination Event with respect to the relevant FCM Clearing Member, Eurex Clearing AG remains entitled to perform its termination rights pursuant to Number 9.

12.4.2 Definitions:

- (1) "Market Disorder Event" means one of the following events:

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(a) the government of any nation, state or territory or any governmental entity, agency or authority thereof has taken or given notice of its intention to take actions or measures which may have, not only temporarily, an material adverse impact on the Clearing of Swap Transactions, including, but not limited to, the fulfilment of any obligations under any Swap Transaction or the FCM Clearing Agreement; or

(b) the EU or any international organisations, or any institution or agency thereof, has introduced, varied, terminated or allowed to lapse any provision, rule or order which may have, not only temporarily, a material adverse impact on the Clearing of Swap Transactions, including, but not limited to, the fulfilment of any obligations under any Swap Transaction or the FCM Clearing Agreement.

(2) If, Eurex Clearing AG determines that the fulfillment of any obligation under any Swap Transaction or the FCM Clearing Agreement becomes impossible for any reason whatsoever (excluding the occurrence of any Market Disorder Event) ("Impossibility Event").

(3) "Force Majeure Event" means any failure or delay, which is not only temporary, in discharging in whole or in part any obligations under any Swap Transaction or the FCM Clearing Agreement by Eurex Clearing AG or the FCM Clearing Member provided that such failure or delay arises from events which are beyond Eurex Clearing AG's or the FCM Clearing Member's reasonable control. Such events may include, without limitation, action of the elements, riot, insurrection, embargos, fire, flood, explosion, war, terrorism, power, communication or mechanical failure, unavailability or restriction of computer or data processing facilities, energy supplies, settlement systems or of bank transfer systems or wires, or any similar event, provided it is beyond Eurex Clearing AG's or the FCM Clearing Member's reasonable control.

#### 12.4.3 Consequences of the occurrence of a Special Event Off-Setting Time

(1) If a Special Event Off-Setting Time has occurred, Eurex Clearing AG shall establish Opposite Transactions and book such Opposite Transactions into the same FCM Clearing Member Own Transaction Account or FCM Client Transaction Account of the FCM Clearing Member on which the relevant Off-Setting Transactions are booked at the Off-Setting Price and settle the open Off-Setting Transactions against the Opposite Transactions.

(2) Definitions

"Opposite Transaction" shall mean a Swap Transaction with terms identical to an Off-Setting Transaction entered into between Eurex Clearing AG and the relevant FCM Clearing Member except that the FCM Clearing Member has the opposite position than it has under such Off-Setting Transaction.

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"Off-Setting Transactions" means any open Swap Transaction entered into between Eurex Clearing AG and the FCM Clearing Member which shall be settled against the Opposite Transaction.

"Off-Setting Price" means the last available price of the following prices: (i) the last available settlement price of the relevant Off-Setting Transaction as determined in accordance with the applicable provisions under the Special Conditions, (ii) the last available market or exchange price of the relevant Off-Setting Transaction, or (iii) the price determined by Eurex Clearing AG on the basis of a model for the valuation of the market or exchange value of the relevant Off-Setting Transaction (which considers market risks and market prospects, *inter alia*, taking into account asset classes, volatility and liquidity).

- (3) In addition to the establishment of Opposite Transactions pursuant to paragraph (1), Eurex Clearing AG shall also be entitled to establish Other Opposite Transactions between Eurex Clearing AG and other FCM Clearing Members (each an "Other FCM Clearing Members") corresponding to the Opposite Transactions established pursuant to paragraph (1) above and book such Other Opposite Transactions into the relevant FCM Clearing Member Own Transaction Account or FCM Client Transaction Account of such Other FCM Clearing Member at the Off-Setting Price and settle the relevant open Swap Transactions against the Other Opposite Transactions.

"Other Opposite Transaction" shall mean a Swap Transaction with terms identical to the relevant Opposite Transaction except that the Other FCM Clearing Member has the opposite position from the position the FCM Clearing Member has under the Opposite Transaction.

Eurex Clearing AG shall use best efforts to find a fair and proportionate distribution of the Other Opposite Transactions between all Other FCM Clearing Members which have open Swap Transactions in the same Swap Transaction Type of the relevant Off-Setting Transactions considering all interests of the relevant Other FCM Clearing Member (including, *inter alia*, (i) the number of Swap Transactions held by such Other FCM Clearing Member with respect to the relevant Swap Transaction Type, (ii) the notional amount of Swap Transactions held by the relevant Other FCM Clearing Member with respect to the relevant Swap Transaction Type and (iii) the risks inherent in the Swap Transactions held by the relevant Other FCM Clearing Member with respect to the relevant Swap Transaction Type.

[...]

**13 Liabilities, Indemnification, Emergency Actions, Contractual Penalties, Delegation**

**13.1 Liability, Indemnification, Emergency Actions**

[...]

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13.1.5 ~~Neither~~ Eurex Clearing AG ~~nor the FCM Clearing Member~~ shall ~~not~~ be liable for damages arising out of a business disruption as a result of Force Majeure Event or Market Disorder Event. ~~force majeure, riots, events of war and natural events or natural phenomena, or as a result of other events outside the control of Eurex Clearing AG (e.g., strikes, lock-outs, traffic blocks, disruptions of supply chains) or events which occur as a result of actions of German or foreign governmental authorities.~~

## 13.2 Disciplinary Procedures; Contractual Penalties

[...]

13.2.2 If a Termination Event pursuant to Number 9.2.1 Paragraph (1) (a) (Failure to Pay) occurs or in the event of a failure to deliver securities or other assets or a failure to provide any cash amount where a Physical Settlement shall occur in accordance with the Special Provisions – irrespective of whether Eurex Clearing AG has suffered any damage – unless such failure to deliver securities or other assets or such failure to provide a cash amount results from a Force Majeure Event ~~force majeure~~ and/or a Market Disorder Event ~~general market or system disruption that is outside the control of the FCM Clearing Member~~, the FCM Clearing Member shall pay, in accordance with the instructions received from Eurex Clearing AG, a contractual penalty in the amount of 0.025 per cent of the relevant unpaid due amount, but no less than EUR 2,500 – or the corresponding equivalent in any other Clearing Currency as determined by Eurex Clearing AG – per calendar day, however, no more than EUR 25,000 or the corresponding equivalent in any other Clearing Currency as determined by Eurex Clearing AG. If the amount calculated from the above percentage exceeds EUR 25,000, the amount of the contractual penalty shall – notwithstanding the provisions in Sentence 1 – be calculated according to a percentage of the relevant unpaid due amount, such percentage having been fixed and notified in advance by Eurex Clearing AG. Such percentage shall be based on the effective overnight interest rate applicable to the relevant Clearing Currency. The right of Eurex Clearing AG to claim further damages and/or default interest shall remain unaffected.

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