

Eurex Clearing Circular 044/19

Amendments to the Clearing Conditions of Eurex Clearing AG

Summary

This circular contains information with respect to Eurex Clearing's service offering and corresponding amendments to the Clearing Conditions of Eurex Clearing AG (Clearing Conditions) regarding the following topic:

- OTC Currency Clearing services: Amendment of the provisions in relation to "Relevant Bank Information".

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

The amendments to the Clearing Conditions will come into effect on **3 June 2019**.

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.

Attachments:

- Updated sections of the Clearing Conditions of Eurex Clearing AG

Date: 3 May 2019

Recipients:

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

Authorized by:

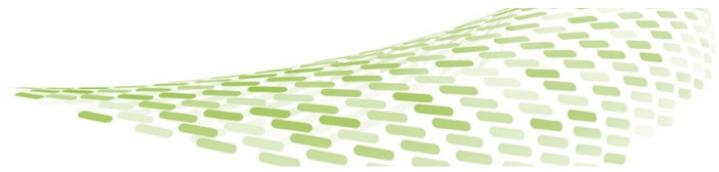
Heike Eckert

Target group:

- All departments

Contact:

Your Key Account Manager Clearing,
clearing.services-
admission@eurexclearing.com



Amendments to the Clearing Conditions of Eurex Clearing AG

In the course of the introduction of OTC Currency Clearing services, provisions in relation to “*Relevant Bank Information*” were introduced providing for Eurex Clearing’s right to obtain information from a Clearing Member’s CLS Nostro Bank deemed relevant in the context of operating the OTC Currency Clearing.

The monitoring of service providers such as CLS Nostro Banks, however, is already ensured through an existing framework in place at Eurex Clearing which regularly assesses the operational and legal soundness of third-parties. In light of that, such relevant information rights are deemed redundant and the following provisions will be removed from the Clearing Conditions:

- Chapter VIII Part 3, No. 3.1.3 (5), 3.8, 3.12 and 3.13
- Chapter VIII Part 4, No. 4.12, 4.16 and 4.17

The amendments above will become effective on 3 June 2019. As of the effective date, the full version of the amended Clearing Conditions will be available for download on the Eurex Clearing website www.eurexclearing.com under the following link:

Resources > Rules and Regulations > Clearing Conditions

The changes and amendments to the legal framework of Eurex Clearing AG published by this circular 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 after publication. Any ordinary right of Eurex Clearing AG to terminate the respective contract (including a Clearing Agreement, if applicable) shall remain unaffected.

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.

3 May 2019

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 03.06.2019

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED

DELETIONS ARE CROSSED OUT

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Clearing Conditions of Eurex Clearing AG	As of 03.06.2019
Chapter VIII Part 3 and 4	

Part 3 Clearing of OTC FX Transactions

3.1 General Provisions

[...]

3.1.3 OTC Currency Products Clearing License

[...]

- (5) The applicant provides evidence that each Currency Products Cash Account is established with a CLS Nostro Bank which has been recognised and approved by Eurex Clearing AG (such recognition and approval is subject to, *inter alia*, the successful participation in the Testing and Trialling by all the applicant's CLS Nostro Banks). ~~At the time the applicant enters into a Clearing Agreement, it represents and warrants by way of an independent guarantee and irrespective of fault (*selbständiges, verschuldensunabhängiges Garantieverprechen*) to Eurex Clearing AG that it has entered into the necessary contractual arrangements in order to ensure that its CLS Nostro Banks will provide any Relevant Bank Information to Eurex Clearing AG upon reasonable request and in a timely manner.~~

~~“**Relevant Bank Information**” means any relevant information in relation to the CLS Nostro Bank which Eurex Clearing may reasonably request from such CLS Nostro Bank in order to carry out its ongoing assessment of such CLS Nostro Bank in connection with the Clearing of OTC Currency Transactions, in particular, information in relation to the creditworthiness of the CLS Nostro Bank, the ability of the CLS Nostro Bank to participate in the SWIFT network and to operate SWIFT messages to pay and receive funds in the CLS CCP Service, the CLS Nostro Bank's participation in the regular CLS Bank settlement cycles and its reliability to fulfil payments through the CLS CCP Service by 8:00 a.m. (Frankfurt am Main time) as well as the operational reliability and holiday coverage.~~

[...]

3.8 Indemnity by Clearing Members

- (1) Each Clearing Member shall indemnify Eurex Clearing AG against any damages (*Schäden*) and losses (including, without limitation, any indemnity obligation towards CLS Bank and any properly incurred legal fees (as well as any applicable VAT)), which Eurex Clearing AG incurs as a result of the Clearing Member making or receiving any payments in connection with this Part 3 through any CLS Nostro Bank ~~(including, but not limited, in case a CLS Nostro Bank fails to provide the Relevant Bank Information)~~, provided that such indemnity obligation shall not apply to the extent such damages or losses result from Eurex Clearing AG's negligence (*Fahrlässigkeit*) or wilful misconduct (*Vorsatz*).

[...]

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3.12 Suspension of Clearing

If one or more of a Clearing Member's CLS Nostro Banks (i) fail to (A) participate in the Testing and Trialling as set out in Number 3.11, ~~or~~ (B) apply the standard customary for nostro banks in carrying out payment instructions received by the Clearing Member ~~or (C) provide the Relevant Bank Information~~ or (ii) become subject to any of the events set out in Chapter I Part 1 Number 7.2.1 Paragraphs (5), (7) or (8), then Eurex Clearing AG may one or more times suspend or limit the Clearing of new OTC FX Transactions of such Clearing Member in accordance with Chapter I Part 2 Subpart A Number 6.2 which shall apply *mutatis mutandis*.

3.13 CLS Nostro Bank

~~(1) Each Clearing Member undertakes to ensure that its CLS Nostro Banks will provide any Relevant Bank Information.~~

(21) A Clearing Member is allowed to substitute one or more of its CLS Nostro Banks, if (i) Eurex Clearing AG has received at least 90 calendar days' prior written notice of such substitution and (ii) the substitute CLS Nostro Bank has been recognised and approved by Eurex Clearing AG (such recognition and approval is, *inter alia*, subject to the CLS Nostro Bank's successful participation in the Testing and Trialling). For the avoidance of doubt, if the recognition and approval process of the substitute CLS Nostro Bank takes longer than 90 calendar days, the substitution shall only become effective after such recognition and approval. Subject to the previous sentences, if the substitution of the CLS Nostro Bank(s) does not result in the reduction of the respective GBP Maximum Amount and USD Maximum Amount of any of the other Clearing Members applicable at the time of the proposed substitution, Eurex Clearing may agree to a shorter notice period.

(32) If a Clearing Member's CLS Nostro Bank becomes subject to (i) any of the events set out in Chapter I Part 1 Number 7.2.1 Paragraphs (5), (7) or (8) or (ii) any recovery and resolution measures pursuant to the Act on the Recovery and Resolution of Institutions and Financial Groups (*Gesetz zur Sanierung und Abwicklung von Instituten und Finanzgruppen*), or any similar measure under foreign law, or Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund, or any similar measure under foreign law, then Eurex Clearing AG has the right to request the substitution of the Clearing Member's CLS Nostro Bank with a substitute CLS Nostro Bank recognised and approved by Eurex Clearing AG without undue delay.

[...]

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Part 4 Clearing of OTC XCCY Transactions

4.1 General Provisions

[...]

4.12 Indemnity by Clearing Members

- (1) Each Clearing Member shall indemnify Eurex Clearing AG against any damages (*Schäden*) and losses (including, without limitation, any indemnity obligation towards CLS Bank and any properly incurred legal fees (as well as any applicable VAT)), which Eurex Clearing AG incurs as a result of the Clearing Member making or receiving any payments in connection with this Part 4 through any CLS Nostro Bank ~~(including, but not limited, in case a CLS Nostro Bank fails to provide the Relevant Bank Information)~~, provided that such indemnity obligation shall not apply to the extent such damages or losses result from Eurex Clearing AG's negligence (*Fahrlässigkeit*) or wilful misconduct (*Vorsatz*).

[...]

4.16 Suspension of Clearing

If one or more of a Clearing Member's CLS Nostro Banks (i) fail to (A) participate in the Testing and Trialling as set out in Number 4.15 in connection with Part 3 Number 3.11; or (B) apply the standard customary for nostro banks in carrying out payment instructions received by the Clearing Member ~~or (C) provide the Relevant Bank Information~~ or (ii) become subject to any of the events set out in Chapter I Part 1 Number 7.2.1 Paragraphs (5), (7) or (8), then Eurex Clearing AG may one or more times suspend or limit the Clearing of new OTC XCCY Transactions of such Clearing Member in accordance with Chapter I Part 2 Subpart A Number 6 which shall apply *mutatis mutandis*.

4.17 CLS Nostro Bank

~~(1) Each Clearing Member undertakes to ensure that its CLS Nostro Banks will provide any Relevant Bank Information.~~

- (21) A Clearing Member is allowed to substitute one or more of its CLS Nostro Banks, if (i) Eurex Clearing AG has received at least 90 calendar days' prior written notice of such substitution and (ii) the substitute CLS Nostro Bank has been recognised and approved by Eurex Clearing AG (such recognition and approval is subject to the CLS Nostro Bank's successful participation in the Testing and Trialling). For the avoidance of doubt, if the recognition and approval process of the substitute CLS Nostro Bank takes longer than 90 calendar days, the substitution shall only become effective after such recognition and approval. Subject to the previous sentences, if the substitution of the CLS Nostro Bank(s) does not result in the reduction of the respective GBP Maximum Amount and USD Maximum Amount of any of the other Clearing Members applicable at the time of the proposed substitution, Eurex Clearing may agree to a shorter notice period.

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(32) If a Clearing Member's CLS Nostro Bank becomes subject to (i) any of the events set out in Chapter I Part 1 Number 7.2.1 Paragraphs (5), (7) or (8) or (ii) any recovery and resolution measures pursuant to the Act on the Recovery and Resolution of Institutions and Financial Groups (*Gesetz zur Sanierung und Abwicklung von Instituten und Finanzgruppen*), or any similar measure under foreign law, or Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund, or any similar measure under foreign law, then Eurex Clearing AG has the right to request the substitution of the Clearing Member's CLS Nostro Bank with a substitute CLS Nostro Bank recognised and approved by Eurex Clearing AG without undue delay.

[...]
