

Chapter II: Special Provisions for Clearing of Interest Rate Derivative Transactions

FCM Regulations of Eurex Clearing AG

As of 01.10.2019

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THE FCM REGULATIONS WILL BE AMENDED.

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

[...]

Part 1 General Provisions

[...]

1.3 **[Intentionally left blank]**

1.34. **Tax Gross-up Obligations of FCM Clearing Members**

[...]

1.45. **Emergency Resolutions**

[...]

1.6 **[Intentionally left blank]**

4.51.7 **Certain Definitions**

In this Chapter II:

[...]

(10) "€STR" is a reference rate equal to the euro short-term rate provided by the European Central Bank as Index Administrator (or a successor administrator) in respect of the relevant day.

1.8 **Index-related Provisions**

If in this Chapter II a rate is determined by reference to an index, the following provisions shall apply.

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1.8.1 Index Correction

- (1) For the purpose of determining the index level for a specific point in time (the **“Relevant Index Level”**), the Relevant Index Level will be subject to corrections (an **“Index Correction”**), if any, to that information that are subsequently (i) published by the natural or legal person that has control over the provision of an index (the **“Index Administrator”**) or (ii) provided by the Index Administrator to, and published by, authorised distributors of the Relevant Index Level, as applicable, in each case,
- (a) within the time period specified for corrections by the Index Administrator;
 - (b) if no time period has been specified in accordance with lit. (a), the time period specified for corrections for the respective index in the 2006 ISDA Definitions, or
 - (c) if no time period in accordance with lit. (a) or (b) has been specified, within the same calendar day of the publication, provided that the applicable calendar day shall be the calendar day on the location where the Index Administrator has its registered office (if the Index Administrator has more than one registered office, the applicable calendar day shall be the latest ending calendar day on one of the registered office locations).
- (2) For the avoidance of doubt, if an Index Correction has taken place, Eurex Clearing AG shall automatically reperform any calculations which have been originally based on an index level before the Index Correction. If any payments took place on the basis of a Relevant Index Level before an Index Correction, the FCM Clearing Member which has received an excess payment is obliged to repay any excess to Eurex Clearing AG, and Eurex Clearing AG will then make a payment to compensate for an underpayment to the respective FCM Clearing Member or Non-FCM Clearing Member.

1.8.2 Permanent Index Cessation

- (1) A **“Permanent Index Cessation Event”** means, with respect to the relevant index, the occurrence of one or more of the following events:
- (a) a public statement or publication of information by or on behalf of the Index Administrator that it has ceased or will cease to provide values for the index permanently or indefinitely, provided that at the time of the publication, there is no announcement of a successor administrator that will continue to provide values for the index,
 - (b) a public statement or publication of information by the regulatory supervisor for the Index Administrator, an insolvency official or a resolution authority with jurisdiction over the Index Administrator or a court or an entity with similar insolvency or resolution authority over the Index Administrator or the competent central bank for the currency of the relevant index, which states

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that the Index Administrator has ceased or will cease to provide values for the index permanently or indefinitely, provided that at the time of the publication, there is no announcement of a successor administrator that will continue to provide values for the index,

- (c) a statement by Eurex Clearing AG published in accordance with Chapter I Number 15.1 that it considers that the Index Administrator which, at that time, actually has not provided values for at least one week has ceased to provide values for the index permanently or indefinitely, provided that, at that time, there is no successor administrator that will continue to provide values for the index,
- (d) a public statement or a decision by a regulator, a competent public entity or a court prohibiting Eurex Clearing AG the use of the index, or
- (e) a statement by Eurex Clearing AG published in accordance with Chapter I Number 15.1 that it determines that its further use of the index will be a violation of laws applicable to it (including, but not limited to, Regulation (EU) 2016/1011 on indices used as benchmarks), provided that such announcement is based on reasonable grounds.

The Permanent Index Cessation Event shall occur at the earliest point in time which has been specified in a public statement, publication of information, decision or public announcement referred to in lit. (a) – (f) or, if no point in time has been specified in this way, immediately after the earliest of the events listed in lit. (a) – (f) has occurred (the “**Index Cessation Date**”).

- (2) For the avoidance of doubt, the change of the definition, methodology or formula of an index per se does not constitute a Permanent Index Cessation Event, but only if Paragraph (1) lit. (a) – (f) is triggered. In particular, the changes to the methodology for the calculation of EONIA taking effect on 2 October 2019 for the purpose of aligning it to €STR developed by the European Central Bank do not constitute a Permanent Index Cessation Event.
- (3) If a Permanent Index Cessation Event occurs, Eurex Clearing AG will determine each index level for a date from (and including) the Index Cessation Date based on the following fallbacks (any such fallback index a “**Successor Index**”), whereby lit. (a) – (d) mark the order of application of the relevant fallback. For the avoidance of doubt, a Successor Index may also consist of a fallback index plus or minus a certain fixed spread.

(a) If an index is listed below, the following Successor Index shall be applied:

- (i) EONIA: Upon the occurrence of a Permanent Index Cessation Event with respect to EONIA, the rate for any day from (and including) the Index Cessation Date will be determined as if references to EONIA were references to €STR plus a fixed spread of 8.5 basis points.

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- (b) Only in case the Permanent Index Cessation Event according to Paragraph (1) (a) – (c) has occurred: If the definition of the relevant index in the 2006 ISDA Definitions includes a reference to a concept defined or otherwise described as an index cessation event (regardless of the contents of that definition or description) then, as of the Index Cessation Date, any fallback specified in that definition or description to apply following such an event shall apply, provided that Eurex Clearing states in accordance with Chapter I Number 15.1 that it is operationally and legally capable to use this fallback. In this or a further statement, Eurex Clearing may also issue accompanying provisions to clarify the fallback regime and its relation to the provisions of the FCM Clearing Conditions.
- (c) If an index is formally designated, nominated or recommended by the Index Administrator of the relevant index as a fallback, then, as of the Index Cessation Date, this index shall be applied as the Successor Index, provided that Eurex Clearing states in accordance with Chapter I Number 15.1 that it is operationally and legally capable to use this fallback.
- (d) If Eurex Clearing AG states (in accordance with Chapter I Number 15.1) the application of an index as a fallback, then, as of the Index Cessation Date, this index shall be applied as the Successor Index. Before announcing an index as a fallback index, Eurex Clearing AG shall take into account inter alia market practice, recommendations and documents by ISDA, IOSCO and competent authorities. If reasonably possible, Eurex Clearing AG shall consult affected FCM Clearing Members prior to announcing any Successor Index in accordance with lit. (d).
- (4) If no Successor Index can be determined in accordance with Paragraph (3), Eurex Clearing AG shall perform a cash settlement of any affected OTC Interest Rate Derivative Transaction based on the last available level of the ceased index on or before the Index Cessation Date.
- (5) If under an OTC Interest Rate Derivative Transaction that qualifies as a FRA a payment is required just after the fixing of an index in advance of the fixing period as specified in the trade confirmation, but the final relevant rate of the Successor Index is only available at or after the end of the fixing period, the relevant transaction will be amended so that the respective payments in respect of both legs of the transaction are to be made two Business Days after the final relevant rates of the Successor Index are available to Eurex Clearing AG.
- If a payment under an OTC Interest Rate Derivative Transaction is deferred in accordance with this Paragraph (5), the payment shall be calculated as if a payment at the end of the respective fixing period has been specified (i.e. without applying the original discount factor which has been introduced to account for a payment just after the fixing of an index).
- (6) Without prejudice to the early termination provisions set out in Number 2.8 and any termination rights a FCM Clearing Member may have pursuant to Chapter I,

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FCM Clearing Members have no right to terminate a transactions due to the occurrence of a Permanent Index Cessation Event.

(7) If with respect to an index a Permanent Index Cessation Event has occurred and a Successor Index may be determined in accordance with Paragraph (3) which will replace the index as of the Index Cessation Date, and the Successor Index consists of a fallback index plus or minus a certain fixed spread, Eurex Clearing AG may amend the affected OTC Interest Rate Derivative Transaction so that either

(i) if the transaction consists of a fixed leg and a floating leg: the amount payable of the floating leg is determined only by reference to the floating part of the fallback index (i.e. without consideration of the fixed spread) and that the fixed spread becomes part of the fixed leg of the transaction by adding or subtracting it to or from the original component of the fixed leg (as applicable), or

(ii) if the transaction consists of at least one floating leg and the floating leg affected by the Permanent Index Cessation Event includes a self-compounding part: the fixed spread is not removed from the self-compounding part of the floating leg but stays included in the floating leg by adding or subtracting it from the self-compounding part of the floating leg (as applicable).

Upon request by Eurex Clearing AG, the FCM Clearing Member achieving a profit due to the amendment pursuant to sentence 1 is obliged to make a payment to compensate for its profit to Eurex Clearing AG; and Eurex Clearing AG will then pay an equivalent amount to the FCM Clearing Member or Non-FCM Clearing Member suffering a loss due to the amendment. Eurex Clearing AG may issue this request in its reasonable discretion (*billiges Ermessen*) and it normally should issue such request if the profit or loss due of one FCM Clearing Member or Non-FCM Clearing Member affected by the amendment pursuant to sentence 1 amounts to more than EUR 10,000. For the avoidance of doubt, any economic value and any profit or loss referred to in this Paragraph (7) shall be discounted to present value.

1.8.3 Temporary Index Cessation

(1) A “Temporary Index Cessation Event” means that a Relevant Index Level has not been published by the Index Administrator at the specified or usual point in time, but a Permanent Index Cessation Event has not occurred. This includes, for the avoidance of doubt, a situation where a Relevant Index Level does not appear on the relevant screen page, if under these FCM Clearing Conditions a screen page is specified as the relevant authoritative source for a Relevant Index Level.

(2) If a Temporary Index Cessation Event occurs, Eurex Clearing AG will determine each missing index level based on the following fallbacks:

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- (a) If a Relevant Index Level does not appear on the relevant screen page, and the FCM Clearing Conditions contain a special regime on the further procedure with respect to a specific index or screen, then this special regime shall apply.
- (b) If a Relevant Index Level does not appear on the relevant screen page and lit. (a) does not apply, Eurex will retrieve the Relevant Index Level by other means, including screens of other distributors or direct disclosure from the Index Administrator or any other competent entity. When determining the applicable fallback, Eurex Clearing shall take into account the fallback sequence laid out in the 2006 ISDA Definitions and whether it is operationally and legally capable to use a fallback.
- (c) If lit. (a) –(b) do not apply or the fallback mechanism contemplated therein is not feasible, Eurex Clearing will surrogate each missing Relevant Index Level by the latest available Relevant Index Level until the occurrence of a Permanent Index Cessation Event.
- (3) If a Relevant Index Level is retrospectively published by the Index Administrator, Eurex Clearing AG will replace the Relevant Index Level surrogated in accordance with Paragraph (2) by the retrospectively published Relevant Index Level, provided that the retrospective publication did take place within (i) the time period specified for retrospect publications of index values by the Index Administrator or (ii), if no time period has been specified in accordance with lit. (i), one week after the specified or usual point in time at which the publication of the Relevant Index Level should have happened. Eurex Clearing AG shall reperform any calculations which have been originally based on an index level surrogated in accordance with Paragraph (2) based on the retrospectively published Relevant Index Level.

1.9 ISDA Copyright Notice

Certain provisions of this Chapter II are based on copyrighted publications issued by the ISDA (including the 2006 ISDA Definitions), and adaption took place with the permission of ISDA.

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Part 2 Clearing of Interest Rate Derivative Transactions

2.1 General Provisions

[...]

2.1.5.2 Documentation of Original Swap Transactions

[...]

- (3) By entering into the relevant FCM Clearing Agreement, the FCM Clearing Member declares vis-à-vis Eurex Clearing AG that it has received a copy of the 2006 ISDA Definitions, as published by ISDA, and any amendments and/or supplements issued thereto as of the date of such FCM Clearing Agreement. The FCM Clearing Member declares that it will take charge of itself to receive any amendments and/or supplements to the 2006 ISDA Definitions which are published after their entering into the FCM Clearing Agreement. The FCM Clearing Member further agrees to the passing on to ISDA of their company name and their company address in the context of the delivery to it of the documents referred to in the foregoing paragraph.

[...]

2.1.6 Daily Evaluation Price

Eurex Clearing AG determines the daily evaluation price on the basis of (i) the fixings published on the Reuters Screen page as defined for the relevant floating rate in Number 2.2.5 Paragraph (1) below and (ii) the raw market quotes underlying the discount and forecast curve provided by a recognized third party provider, in each case as of the day of the determination of the daily evaluation price (each such day a “Reset Date” for the purposes of Number 2.2.5 Paragraph (1)). Where no information on the relevant rates is available on the relevant screen page, Eurex Clearing AG will determine the daily evaluation price ~~based on quotes obtained from major banks~~ in accordance with Number 1.8 and 2.2.5 Paragraph (5) ~~below~~.

[...]

2.2 General product-related terms for Interest Rate Derivative Transactions

[...]

2.2.1 Payment Obligations

[...]

- (4) If after adjustment in accordance with the applicable business day conventions, payments of Fixed Amounts or Floating Amounts become due on a payment date which is not a TARGET Settlement Day, such payments shall become payable on

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the next TARGET Settlement Day. For the period from (and including) the scheduled payment date until (and excluding) the next following TARGET Settlement Day, interest will be payable by the relevant fixed rate payer or floating rate payer on the relevant Fixed Amount or Floating Amount payable at a rate equal to EONIA (in case of Euro payments), SONIA (in case of GBP payments), FED FUNDS (in case of USD payments), ~~TOIS-SARON~~ (in case of CHF payments), NOWA (in case of NOK payments), POLONIA (in case of PLN payments), the T/N -Rate (published by the Danish National Bank) (in case of DKK payments), STIBOR T/N (in case of SEK payments) or TONAR (in case of JPY payments).

- (5) The following additional primary payment obligations apply:

[...]

- (b) [...]

PAA shall be calculated and payable for each currency on each Business Day with respect to each Interest Rate Derivative Transaction in accordance with the following formulas.

For ~~EUR, GBP~~, PLN and CHF, PAA is defined as:

$$PAA(T) = - MtM_exCF(T-1) * ONR(T, T+1) * YF(T, T+1),$$

[...]

For ~~EUR, USD, and GBP~~ the OIS rate valid from T to T+1 is published not before T+1. Therefore, a modified definition of PAA is required:

$$PAA(T) = - MtM_exCF(T-1) * ONR(T-1, T) * YF(T, T+1)$$

[...]

[...]

2.2.2 References to Market Standard Interest Rate Derivatives Documentation

[...]

- (5) “2006 ISDA Definitions” shall mean the 2006 Definitions published by ISDA, as amended and supplemented from time to time. “2000 ISDA Definitions” shall mean the 2006 Definitions published by ISDA, as amended and supplemented from time to time.

[...]

2.2.5 Rates for calculating the Floating Amount

- (1) [...]

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- (a) **“EUR-EURIBOR-Reuters”** means that the rate for a Reset Date will be the rate for Euro deposits for a period of the Designated Maturity which appears on the Reuters Screen EURIBOR01 Page as of 11:00 a.m., Brussels time. ~~If a corrected rate is delivered till 3:00 p.m. Brussels time, then this rate will be used.~~

[...]

- (g) [...]

~~— If such rate does not appear on the Reuters Screen NIBR Page, the rate for that Reset Date will be determined as if the parties had specified “NOK-NIBOR Reference Banks” as the applicable Floating Rate Option.~~

“NOK-NIBOR-OIBOR” means that the rate for a Reset Date will be the rate for deposits in Norwegian Krone for a period of the Designated Maturity which appears on the Reuters Screen OIBOR= Page as of 12:00 noon, Oslo time. ~~If such rate does not appear on the Reuters Screen OIBOR= Page, the rate for that Reset Date will be determined as if the parties had specified “NOK-NIBOR-Reference Banks” as the applicable Floating Rate Option.~~

Note that IRS transactions on “NOK-NIBOR-NIBR” are automatically converted to “NOK-NIBOR-OIBOR” when novated for clearing.

- (h) **“PLN-WIBOR-WIBO”** means that the rate for a Reset Date will be the offered rate for deposits in Polish Zloty for a period of the Designated Maturity which appears on the Reuters Screen WIBOR Page as of 11:00 a.m., Warsaw time.

~~— If such rate does not appear on the Reuters Screen WIBOR Page, the rate for that Reset Date will be determined as if the parties had specified “PLNWIBOR-Reference Banks” as the applicable Floating Rate Option.~~

[...]

~~(n) Fallback index level: In case one of the rates under items (a) to (i) above is not published by the relevant body at the respective usual time, Eurex Clearing AG sets the rate used for the calculation of floating amounts in its reasonable discretion.~~

~~(o) Successor index: In case a floating rate index is discontinued to be published by the relevant body, Eurex Clearing AG sets a successor index in its reasonable discretion taking into account relevant guidance notes of ISDA.~~

[...]

~~(5) Where the Relevant Rate (in case of ISDA Interest Rate Derivative Transactions) or Base Rate (in case of DRV Interest Rate Derivative Transactions) is not available on the relevant screen page, Eurex Clearing AG determines the applicable rate in its reasonable discretion on the basis of the arithmetic mean of the rates at which deposits (in the relevant contractual currency, with an equivalent maturity and in the~~

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~~same, or approximately the same, notional amount) are offered by at least four major banks to prime banks in the relevant interbank market at approximately the time at which the relevant rate should have been available on the applicable screen.~~

[...]

2.2.7 OIS Rate Calculation

The applicable Floating Rate for overnight ~~interest rate index~~ swaps (OIS) pursuant to Number 2.3.4 or 2.4.2 below will be calculated in accordance with the following paragraphs ~~of Section 7.1 of the 2006 ISDA Definitions:~~

[...]

“**CHF-SARON-OIS-COMPOUND**” will be calculated as follows, and the resulting percentage will be rounded, if necessary, in accordance with the method set forth in Section 8.1 (a) of the ~~S~~ supplement number 51 —to the 2006 ISDA Definitions or, in the case of DRV Interest Rate Derivative Transactions, Number 2.4 Paragraph (3) below, but to the nearest on ten-thousandth of a percentage point (0.0001 per cent):

$$\left[\prod_{i=1}^{d_0} \left(1 + \frac{SARON_i \times n_i}{360} \right) - 1 \right] \times \frac{360}{d}$$

$$\left[\prod_{i=1}^{d_0} \left(1 + \frac{SARON_i \times n_i}{360} \right) - 1 \right] \frac{360}{d}$$

where:

“**d₀**”, for any Calculation Period, is the number of Zurich Banking Days in the relevant Calculation Period;

“**i**” is a series of whole numbers from one to d₀, each representing the relevant Zurich Banking Days in chronological order from, and including, the first Zurich Banking Day in the relevant Calculation Period;

“**SARON_i**” for any day “**i**” in the relevant Calculation Period, is a reference rate equal to the rate for overnight repo transactions in Swiss Francs which appears on the Thomson Reuters Screen SARON.S under the heading ‘CLSFIX’ at or after 6:00 p.m., Zurich time, in respect of that day ~~or, if such rate does not appear on the Thomson Reuters Screen SARON.S by 8 p.m. on such day, the rate for that day will be determined by Eurex Clearing AG.~~

“**n_i**”, is the number of calendar days in the relevant Calculation Period on which the rate is SARON_i; and

“**d**” is the number of calendar days in the relevant Calculation Period.

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[...]

[...]
