
(...)

IV Chapter:
Clearing of Transactions Concluded at the Frankfurt Stock
Exchange ¹

1 Part:
General Provisions

- (1) Clearing shall, subject to paragraph (2), include all transactions at the Frankfurt Stock Exchange ("FSE") concluded in German shares held in collective custody which may be traded in the electronic trading system of the ~~Frankfurt Stock Exchange ("FSE")~~ (hereafter referred to as "FSE transactions"). Eurex Clearing AG shall, in consultation with the Frankfurt Stock Exchange, determine which kind of securities transactions concluded at FSE, shall be included in the clearing process.
- (2) If and to the extent that the clearing of FSE transactions has been agreed upon between Eurex Clearing AG and FSE, and to the extent that the following rules do not provide otherwise, the provisions set forth in Chapter I shall also apply to the clearing of FSE transactions.
- (3) To the extent that the Board of Management of the ~~Frankfurt Stock Exchange (FSE)~~ provides that, due to the introduction of the clearing of transactions concluded at the Frankfurt Stock Exchange through Eurex Clearing AG, not all of the securities transactions falling within the scope of the definition pursuant to paragraph (1) are included in the security to be provided pursuant to § 13 paragraph (2) of the Exchange Rules for the Frankfurt Stock Exchange, transactions concluded at the Frankfurt Stock Exchange in such securities will not be included in the clearing process pursuant to these Clearing Conditions. The same shall apply in the event that, for technical reasons or for the purpose of avoiding any other threat to the operational reliability of Exchange trading on the Frankfurt Stock Exchange, the Board of Management of the Frankfurt Stock Exchange determines that, with respect to a large

¹ With regard to the clearing of transactions concluded at the Rhenish-Westfalian Exchange in Düsseldorf (Rheinisch-Westfälische Börse zu Düsseldorf) which share the characteristics of transactions concluded on FSE as described in Chapter IV and are included in the clearing process through Eurex Clearing AG, Chapter IV and all remaining provisions of the Clearing Conditions for Eurex Clearing AG shall apply.

Clearing Conditions for Eurex Clearing AG

number or all of the securities, the security will not be provided pursuant to § 13 paragraph (2).

1.1 Subpart: Clearing Licenses

1.1.1 Granting of Clearing Licenses

- (1) A Clearing License is required in order to participate in clearing in respect of FSE transactions within the meaning of Chapter IV section 1 paragraph (1), and such License shall be granted by Eurex Clearing AG upon written application; in all other respects, Chapter I subsection 1.1.1 paragraphs (2) and (3) shall apply *mutatis mutandis*.
- (2) Upon request, central banks indicated by Eurex Clearing AG may be released wholly or partially from the obligation to meet the requirements pursuant to paragraph (1) and Chapter IV subsection 1.1.2.

1.1.2 Prerequisites for Clearing Licenses

- (1) Prerequisite for a General Clearing License is a liable equity capital (*haftendes Eigenkapital*) of the applying institution in an amount determined by Eurex Clearing AG. For institutions beyond the scope of the KWG, own funds must be equivalent to the liable equity capital.

Prerequisite for a Direct Clearing License is a liable equity capital of the applying institution in an amount determined by Eurex Clearing AG. For institutions beyond the scope of the KWG, own funds must be equivalent to the liable equity capital.

The aforementioned prerequisites shall apply irrespective of the existence of a General Clearing License or a Direct Clearing License of the respective applicant for the clearing of transactions effected via another trading platform. The equity capital which the applicant has already provided evidence for when applying for other Clearing Licenses pursuant to Chapter I (Eurex Deutschland and Eurex Zürich), Chapter II (Eurex Bonds GmbH) and / or Chapter III (Eurex Repo GmbH) shall not be considered when applying for a General Clearing License or a Direct Clearing License for the clearing of FSE transactions.

- (2) The liable equity capital or equivalent own funds shall be calculated in accordance with the legal provisions in force in the country in which the institution is domiciled. Evidence of the amount of the liable equity capital or the equivalent own funds as of 31 December of every year (*Stichtag* – “Qualifying Date”) shall, in an appropriate manner, be provided to Eurex Clearing AG not only together with the application but thereafter once every year during the Clearing Membership. Such yearly evidence of the liable equity capital or the equivalent own funds as of the Qualifying Date must be provided to Eurex Clearing AG by no later than 30 June of the year following the respective Qualifying Date. Any change in the liable equity

Clearing Conditions for Eurex Clearing AG

capital or the equivalent own funds must be notified to Eurex Clearing AG immediately. Eurex Clearing AG may request such evidence at any time and may assign an auditor for verification of the liable equity capital or the equivalent own funds at the expense of the applying institution.

- (3) Should the liable equity capital or the equivalent own funds of the applying institution not be sufficient for granting a Clearing License, Chapter I subsection 1.1.2 paragraph (2) shall apply mutatis mutandis.
- (4) The applicant shall meet the following additional requirements and provide respective evidence to Eurex Clearing AG:
- (a) A pledged securities account with Clearstream Banking AG or with SegalIntersettle AG.
 - (b) At least one securities account at a bank for central depository of securities recognised by Eurex Clearing AG or respectively at a Custodian or Central Securities Depository. Upon written request by an enterprise or a Clearing Member, Eurex Clearing AG may permit the applicant to use for the delivery of debt securities a securities account of one or more clearing institutions recognised by Eurex Clearing AG pursuant to paragraph (5) in addition to or instead of an own securities account in accordance with sentence 1. In this respect, paragraph (5) shall apply mutatis mutandis.
 - (c) At least one account at a branch of the Central Bank of Germany (Deutsche Bundesbank) or at a Custodian or a Central Securities Depository, respectively, through which the Clearing Member will settle its transactions in the electronic trading system of the Frankfurt Stock Exchange. Eurex Clearing AG may allow the use of accounts of a correspondent bank recognised by Eurex Clearing AG for purposes of cash clearing with Eurex Clearing AG. Upon written request, Eurex Clearing AG may permit Clearing Members that have a pledged securities account with SegalIntersettle AG to provide the daily margin required by Eurex Clearing AG wholly or partially in the form of cash (CHF) by means of an account at the Schweizerische Nationalbank ("SNB").

(...)

1.1.5 Business Days

The business days within the meaning of Chapter IV shall generally be the Exchange days determined by the Board of Management of the ~~Frankfurt Stock Exchange~~ FSE.

(...)

Clearing Conditions for Eurex Clearing AG

**2 Part:
Settlement of transactions concluded at the Frankfurt Stock
Exchange (FSE)****2.1 Sub-part: Settlement of FSE transactions****(...)****2.1.5 Delay in delivery or payment**

(1) If the Clearing Member obligated to deliver is in default and does not deliver the shares (hereinafter referred to as the "securities" or, respectively, the ancillary rights (subscription rights, etc.) connected with or resulting from such or other securities owed on the delivery day in line with the instructions of Eurex Clearing AG, the latter AG shall have the right, unless there is an identical claim with regard to the same class of securities which can be charged up against such liability, to adopt the following measures:

(a) Eurex Clearing AG may implement, on the first business day at the earliest after the delivery date, a replacement for the ~~shares securities, for the ancillary rights connected with or resulting from such or other securities, respectively,~~ which were not delivered, when it believes on the basis of extraordinary risks that the collateral deposited at Eurex Clearing AG for his ~~equity~~-transactions by the Clearing Member obligated to deliver is no longer adequate to collateralize these transactions, or that there are other material reasons which make it necessary to replace the undelivered ~~shares securities, the ancillary rights connected with or resulting from such or other securities, respectively.~~

(b) If the ~~shares securities to be delivered by the Clearing-Member obligated to deliver~~ are not delivered to Eurex Clearing AG on the fifth business day² at the latest after the delivery date, as part of the second Same Day Settlement (SDS) conducted by a bank for central depository of securities as recognized by Eurex Clearing AG or by the Custodian or Central Securities Depository or by the corresponding procedure of a settlement institution recognized by Eurex Clearing AG, Eurex Clearing AG shall replace the undelivered ~~shares securities.~~ The replacement purchase may occur pursuant to paragraph 1 (a) or by means of ~~two~~-an auctions. If the requisite ~~shares securities~~ cannot be bought in ~~these two~~-such auctions, or only in part, the Clearing Member in default shall receive a further 5 business days in which to deliver. If the

² Up to and including June 2004 on the tenth business day; from July up to and including December 2004 on the seventh business day.

Clearing Conditions for Eurex Clearing AG

~~shares securities~~ to be delivered are not delivered to Eurex Clearing AG on the tenth³ business day at the latest after the delivery date as part of the second Same Day Settlement (SDS) conducted by a bank for central depository of securities recognized by Eurex Clearing AG, or by the Custodian or Central Securities Depository or by the corresponding procedure of a settlement institution recognized by Eurex Clearing AG, Eurex Clearing AG shall again attempt to replace the undelivered ~~shares securities~~. This replacement purchase too shall occur according to paragraph 1 (a) or via two-an auctions. If the securities to be delivered are not delivered to Eurex Clearing AG on the 28th business day at the latest after the delivery date as part of the second Same Day Settlement (SDS) conducted by a bank for central depository of securities recognized by Eurex Clearing AG, or by the Custodian or Central Securities Depository or by the corresponding procedure of a settlement institution recognized by Eurex Clearing AG, Eurex Clearing AG shall again attempt to replace the undelivered securities according to paragraph 1 (a) or via an auction. If the requisite ~~shares securities~~ cannot be purchased in full, or are purchasable only in part at ~~these two such~~ further auctions, the defaulting Clearing Member shall be granted time up to the 30th business days after the delivery date to deliver the said ~~shares securities~~ to Eurex Clearing AG.

- (c) The following shall apply to the replacement purchase by way of auction:

For each auction, Eurex Clearing AG shall publish a maximum price for each class of securities, which shall constitute the ceiling for bids. ~~At the first auction, the settlement price fixed by Eurex Clearing AG for a given class of securities plus an additional charge of 25% of such settlement price shall be disclosed as the maximum price for such class of securities. If Eurex Clearing AG cannot purchase the required number of shares in the first auction, it shall, as described above, conduct a same-day second auction.~~ The maximum price for such auction shall be the settlement price determined by Eurex Clearing AG for the corresponding class of securities plus an additional charge of 100% of such settlement price.

Any company ("Vendor") which has concluded a prior contract with Eurex Clearing AG may take part in the auctions.

- (d) As regards an unperformed transaction, Eurex Clearing AG can determine a cash settlement from the 30th to the 37th business days after the delivery date, so that the performance obligations of the defaulting Clearing Member and of Eurex Clearing AG arising from this transaction expire. Instead, the Clearing Member in default shall be

³ Up to and including June 2004 on the fifteenth business day; from July up to and including December 2004 on the twelfth business day.

Clearing Conditions for Eurex Clearing AG

~~obliged to pay cash settlement to Eurex Clearing AG. The same shall apply to a
Transactions of the same nature existing between Eurex Clearing AG and or several
another Clearing Members shall apply correspondingly.~~

The level of the cash settlement payable by the defaulting Clearing Member to Eurex Clearing AG shall be determined by a comparison between the settlement price as defined by Eurex Clearing AG for the corresponding class of securities plus an additional charge of 100% of such settlement price, the highest selling price of the relevant transactions as well as the highest purchase price of the relevant transactions.

The highest price determined through such comparison shall be multiplied with the respective number of the relevant transactions. The resultant sum shall be settled against the respective final amounts of the relevant transactions and shall result in the amount payable to Eurex Clearing AG by the defaulting Clearing Member through cash settlement.

~~If the resulting figure is lower than the purchase price which another Clearing Member would have been obliged to pay Eurex Clearing AG from an identical transaction with it, the Clearing Member in default to Eurex Clearing AG shall pay cash settlement of this amount to Eurex Clearing AG. Upon receipt of said cash settlement, Eurex Clearing AG shall pay it-out this amount to the other Clearing Members who have made engaged in the identical transactions with Eurex Clearing AG according to sentence 3.~~

- (e) If the cash settlement should not be possible wholly or partially Eurex Clearing AG shall replace on the 38th business day after the delivery day the securities which have not been delivered. The replacement may be implemented according to (a) or by means of an auction according to (c).
- (f) If the requisite securities cannot be bought in such auction, or only in part, Eurex Clearing AG shall fix a cash settlement from the 40th to the 47th business day after the delivery day with regard to the unperformed transaction so that the performance obligations of the defaulting Clearing Member and of Eurex Clearing AG arising from this transaction expire. Instead, the Clearing Member in default shall be obliged to pay cash settlement to Eurex Clearing AG. Transactions of the same nature existing between Eurex Clearing AG and or several other Clearing Members shall apply correspondingly.

The level of the cash settlement payable by the defaulting Clearing Member to Eurex Clearing AG shall be determined by a comparison between the settlement price as defined by Eurex Clearing AG for the corresponding class of securities plus an additional charge of 100%, the highest selling price of the relevant transactions as well as the highest purchase price of the relevant transactions.

The highest price determined through such comparison shall be multiplied with the respective number of the relevant transactions. The resultant sum shall be settled against the respective final amounts of the relevant transactions and shall result in the

Clearing Conditions for Eurex Clearing AG

amount payable to Eurex Clearing AG by the defaulting Clearing Member through cash settlement.

Eurex Clearing AG shall pay out this amount to the other Clearing Members who have made identical transactions with Eurex Clearing AG according to sentence 3.

(g) As far as delivery of the securities continues to be wholly or partially outstanding the buy-in attempt according to paragraph 1 (e) shall be repeated by Eurex Clearing AG at a frequency of 10 days; during the first 7 business days of a buy-in attempt Eurex Clearing AG shall repeat the cash settlement according to paragraph (f) as often as is necessary until the outstanding transaction has wholly been delivered by the defaulting Clearing Member or until such transaction could have been paid out through a cash settlement.

(h) It is required that prior to the implementation of a cash settlement according to (d), (f), and (g) three buy-in attempts via an auction according to (c) in each case and in the respective class of securities have been performed by Eurex Clearing AG.

(i) In the case of a capital action event on the part of the issuer Eurex Clearing AG reserves the right to defer the point of time of a buy-in attempt in a class of securities by one business day.

(j) With regard to rights in connection with securities or ancillary rights resulting from securities (hereinafter referred to as the "ancillary rights") and if such rights have not been delivered in due time by a defaulting Clearing Member, the following applies:

Eurex Clearing AG shall replace the ancillary rights which have not been delivered in due time at the last auction taking place with regard to such ancillary rights of the last trading day of the FSE with regard to such ancillary rights. Eurex Clearing AG shall deliver the replaced ancillary rights to the Clearing Member that has not been supplied in due time.

If such a replacement is wholly or partially not possible or if the ancillary rights are not traded at the FSE Eurex Clearing AG shall acquire the ancillary rights which are still behind schedule via the leading bank conducting the supply of the respective ancillary rights. Eurex Clearing AG shall deliver the supplied ancillary rights to the Clearing Member that has not been supplied in due time.

Should a supply of the ancillary rights via the respective leading bank wholly or partially not be possible Eurex Clearing AG assigns, with the effect of discharging an obligation so that the performance obligation of Eurex Clearing AG ceases to exist with regard to this transaction, its claims for delivery of ancillary rights, which are still behind schedule, vis-à-vis the defaulting Clearing Member as well as all claims existing and in future arising in connection with such claim vis-à-vis such Clearing Member to the Clearing Member that has not been supplied in due time and vis-à-vis whom Eurex Clearing AG has an identical delivery commitment with regard to the ancillary rights. The Clearing Member that has not been supplied in due time has to accept the assignment of the

Clearing Conditions for Eurex Clearing AG

claim of Eurex Clearing AG. At the same time, Eurex Clearing AG shall inform the defaulting Clearing Member about the assignment of the claim and shall instruct such Clearing Member to deliver the defaulting ancillary rights exclusively to the Clearing Member that has not been supplied in due time.

- (2) Measures set forth in paragraph (1) shall be binding on and accepted by the Clearing Member which did not receive delivery in a timely manner. Where Eurex Clearing AG has commenced replacement purchase pursuant to paragraph (1) by means of an auction, the Clearing member obligated to deliver shall not be authorized to deliver the ~~shares~~ securities it owes to Eurex Clearing AG on the day of the auction. If the securities to be delivered have been replaced at an auction, the delivery obligations of the Clearing Member in default deriving from the original FSE transaction shall expire.
- (3) Eurex Clearing AG may deviate from the deadlines defined in paragraph (1) if adherence to those deadlines would lead to the measures described in paragraph (1) not replacing the shares in question, or replacing them only with a disproportionate expense of time or money.
- (4) The defaulting Clearing Member shall bear the costs arising from measures within the meaning of paragraph (1). Eurex Clearing AG shall levy upon each defaulting Clearing Member a fee of EUR 250 for each auction held, for each securities delivery in default.
- (5) Eurex Clearing AG can have recourse against a Clearing Member for damages it or other Clearing Members incur as a result of a default that a Clearing Member has caused. Irrespective of whether Eurex Clearing AG has suffered any damage, the defaulting Clearing Member shall be obligated to pay a contractual penalty. The contractual penalty shall be calculated as follows:

Until the defaulting Clearing Member has rendered delivery or until Eurex Clearing AG has conducted replacement purchase through an auction ~~on the fifth or tenth post-delivery business day~~ or until Eurex Clearing AG has implemented cash settlement, Eurex Clearing AG has a payment claim for a sum of money against the defaulting Clearing Member in the amount of 0.04 percent⁴ of the current value of the shares to be delivered on the basis of an FSE transaction, and at least EUR 100⁵ per business day to a maximum of EUR 10,000⁶. (...)

⁴ Up to 3 months after introduction of the Central Counterparty 0 percent; from 4 to 6 months 0.02 percent; from 7 to 12 months 0.03 percent.

⁵ Up to 3 months after introduction of the Central Counterparty, EUR 0.

Clearing Conditions for Eurex Clearing AG

2.1.6 Corporate actions

(1) Where corporate actions pursuant to paragraph (2) are carried out in respect of securities which relate to unperformed FSE transactions, Eurex Clearing AG shall process these actions as follows on an individual basis when clearing such transactions with its Clearing Members: The value date of the Prerequisite debits and credits on accounts of Clearing Members involved will be ~~posted~~ ascertained on the basis of the due days determined and announced by Clearstream Banking AG, Frankfurt/Main ("CBF"). In the absence of further agreements or rulings in particular in paragraph (2), securities shall be transferred with the rights and duties which existed at the conclusion of the transaction.

(2) Type of corporate action:

(a) Dividend and bonus payments

If dividends, bonus payments or other cash distributions occur, Eurex Clearing AG shall collect them from the shares seller when they fall due and transfer them to the purchaser of the shares. These payments are posted to the accounts of the Clearing Member in question or to the accounts of the settlement institutions mandated by the Clearing Member which these institutions maintain at a Deutsche Bundesbank branch. All payments shall be rendered with due observance of the applicable tax legislation.

(b) Granting of additional rights

If subscription rights to shares or comparable rights are granted, the Clearing Member obligated to deliver on the grounds of as yet unperformed FSE transactions shall be obliged to transfer these rights to Eurex Clearing AG subject to~~on~~ the cut-off date defined by CBF. Eurex Clearing AG shall be entitled to arrange for the transfer of rights in the name of the Clearing Member concerned.

(...)

(continued...)

⁶ Up to 3 months after introduction of the Central Counterparty EUR 0; from 4 to 6 months after introduction of the Central Counterparty EUR 5,000; from 7 to 12 months after introduction, EUR 7,500.

(5) Change of method of holding in custody

If, due to a corporate action on the part of an issuer, securities held in collective custody or ancillary rights need to be held on a trust-custody basis or in a different way (hereinafter referred to as "change of method of holding in custody") Eurex Clearing AG is entitled according to its best judgement and by safeguarding of the interests of the respective Clearing Member to effectuate transactions to be performed by Eurex Clearing AG by using securities or ancillary rights subject to such a change of method of holding in custody.

In such case Eurex Clearing AG is also entitled, if delivery commitments cannot be fulfilled completely, to transfer only the respective part of the delivery commitment, which can be fulfilled. The remaining part of the respective securities or ancillary rights shall then be sold by Eurex Clearing AG and the proceeds of such sale shall be paid out to the respective Clearing Members.

(...)