

Chapter I of the Clearing Conditions of Eurex Clearing AG

## General Provisions

As of 01.06.2018

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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

### 1 General Rules

[...]

#### 1.7 Representations and Undertakings with respect to Clearing Agreements

1.7.1 At the time it enters into a Clearing Agreement, each Clearing Member, Clearing Agent, Non-Clearing Member, Registered Customer, OTC IRS FCM Client and Basic Clearing Member, each holder of a Specific Repo License and each holder of a Specific Lender License, severally but not jointly, represents and warrants with respect to itself by way of an independent guarantee and irrespective of fault (*selbständiges, verschuldensunabhängiges Garantieverprechen*) to Eurex Clearing AG that:

[...]

- (c) it has all governmental and other consents that are required by it with respect to its entry into and performance of the Clearing Agreement, including, where the Clearing Agreement covers the Clearing of Transactions for the account of clients, all governmental or other consents (if any) that are required by it for the clearing of client business, and all such consents are in full force and effect and all conditions of any such consents have been complied with;

[...]

- (j) it meets the general prerequisites pursuant to Numbers 2.1.2, 2.1.3 or 2.3, as applicable, and the special prerequisites for the relevant Transaction Type set forth in the Special Clearing Provisions.

[...]

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## 2 Clearing Members

### 2.1 Clearing License

[...]

#### 2.1.2 General Prerequisites for Clearing Licenses

- (1) A Clearing License for a Transaction Type may only be granted to an applicant if such applicant meets the general prerequisites pursuant to Paragraphs (2) to (6) below and the special prerequisites set forth in Chapters II-IX for the relevant Transaction Type. This Number 2.1.2 shall, unless otherwise provided in Part 5 Number 2, not apply to applicants for a Basic Clearing Member Clearing License.
- (2) Personal prerequisites
  - (a) Subject to ~~Paragraph (2) (b) and~~ Number 2.1.3 below, a Clearing License may only be granted to:
    - (aa) an EU or Swiss institution: an institution domiciled in a member state of the European Union (“EU”) or in Switzerland which is (i) if domiciled in the EU, a credit institution or an investment firm pursuant to Art. 2 (b) of Directive 98/26/EC or to a subsequent legal act or, if domiciled in Switzerland, an institution whose functions correspond to those of a credit institution or an investment firm in the aforementioned sense, permitted in its country of domicile to provide credit to customers in relation to Transactions and receive collateral in the form of cash or securities and (ii) supervised by the competent authorities according to the applicable regulatory standards of the EU or, if domiciled in Switzerland, by the Swiss Financial Market Supervisory Authority (*Eidgenössische Finanzmarktaufsicht – “FINMA”*);
    - (bb) a German branch office or branch of an institution: a branch office or branch ~~office~~ of an institution within the meaning of Sections 53, 53b or 53c of the German Banking Act (*Gesetz über das Kreditwesen*, the “KWG”) provided that such branch or branch office and the institution comply with the conditions set forth in Paragraph (2) (a) (aa) above and Paragraph (2) (be) below;
    - (cc) a Swiss branch of an institution: a branch within the meaning of Art. 2 Paragraph 1 of the Swiss Federal Banking and Savings-Bank Act (*Schweizer Bundesgesetz über die Banken und Sparkassen*) in connection with Section 1 et seq. of the Regulation of the Swiss Financial Market Supervisory Authority (~~*Eidgenössische Finanzmarktaufsicht – FINMA*~~) concerning Foreign Banks in Switzerland (*Verordnung der Eidgenössischen Finanzmarktaufsicht über die ausländischen Banken in der Schweiz*), provided that such branch complies with the conditions set forth in Paragraph (2) (be) below;

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- (dd) a EU branch of an institution: a branch of a credit institution or investment firm ~~financial institution or securities trading enterprise~~ domiciled in a member state of the EU (“**host member state**”) provided that (i) the main office of such credit institution or investment firm ~~financial institution or securities trading enterprise~~ is domiciled in another member state of the EU (“**home member state**”), (ii) a notification procedure has been completed in the host member state, and that (iii) the branch and the institution comply with the conditions set forth in Paragraph (2) (a) (aa) above and Paragraph (2) (~~b~~e) below;
- (ee) a third country institution: an institution domiciled outside the EU or Switzerland (i) whose functions correspond to those of a credit institution or an investment firm pursuant to Art. 2 (b) of Directive 98/26/EC or to a subsequent legal act and (ii) which is ~~(i) permitted in its country of domicile to provide credit to customers in relation to Transactions and receive collateral in the form of cash or securities and (ii)~~ supervised in its country of domicile according to standards equivalent to the applicable regulatory standards of the EU as determined by Eurex Clearing AG, provided that (iii) the competent supervisory authority is a signatory to Appendix A of the IOSCO Multilateral Memorandum of Understanding or has signed an applicable bilateral memorandum of understanding with the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* – “**BaFin**”);
- (ff) a third country branch of an institution: a branch of an institution not falling within one of the categories pursuant to Paragraph (2) (a) (bb) to (dd) above, provided that (i) if either the branch or the main office of the institution is domiciled outside the EU or Switzerland, such branch or main office complies with the conditions set forth in Paragraph (2) (a) (ee) above, (ii) if either the branch or the main office of the institution is domiciled in a member state of the EU or Switzerland, such branch or main office complies with the conditions set forth in Paragraph (2) (a) (aa) above, and that (iii) the branch and the institution comply with the conditions set forth in Paragraph (2) (~~b~~e) below;
- (gg) certain other regulated entities: with respect to a Direct Clearing License for the Clearing of Own Transactions only, an applicant that is an insurance undertaking, reinsurance undertaking, collective investment undertaking (in the case of an Unincorporated Fund, Sub-Fund or Fund Segment, acting through an Authorised Manager) as defined in Article 4 Paragraph (1) of the CRR or an institution for occupational retirement provision as defined in Article 6(a) of Directive 2003/41/EC; in each case domiciled in a member state of the EU or in Switzerland, or in a country outside of the EU and Switzerland and supervised in its country of domicile according to standards equivalent to the applicable regulatory standards of the EU as determined by Eurex Clearing AG; or

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(hh) US Proprietary Trading Firms: with respect to a Direct Clearing License for the Clearing of only (i) Own Transactions and (ii) Client-Related Transactions, provided that the relevant Direct Client is an affiliated company of the applicant, an applicant that is a Proprietary Trading Firm legally organised and with its principal place of business in the United States of America (or any state thereof), which is sufficiently supervised as determined by Eurex Clearing AG.

~~(b) The license of an applicant which intends to conclude Own Transactions only does not need to cover the provision of credit to customers in relation to products cleared and/or the receipt of collateral in the form of cash or securities.~~

~~(be)~~ Applicants pursuant to Paragraphs (2) (a) (bb), (cc), (dd) and (ff) above must provide a written guarantee on first demand issued vis-à-vis Eurex Clearing AG by the institution to which the applicant belongs, to the effect that such institution will guarantee all obligations of its branch ~~officeses~~, offices or branches ~~es offices~~ arising out of, and in connection with, the Clearing of Transactions by these branches, offices and branch offices. [...]

~~(ec)~~ Eurex Clearing AG may require the applicant to provide, at its own expense, a legal opinion from leading counsel approved by Eurex Clearing AG that verifies the legal validity and enforceability of the Clearing Conditions in the respective jurisdiction according to standards provided by Eurex Clearing AG from time to time.

~~(ed)~~ The granting of a Clearing License requires that Eurex Clearing AG has obtained all licenses and approvals that are required for the provision of Clearing towards the applicant in the relevant jurisdiction.

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