



## eurex clearing circular 043/14

**Date:** 10 April 2014  
**Recipients:** All Clearing Members, Non-Clearing Members and Registered Customers of Eurex Clearing AG and Vendors  
**Authorized by:** Heike Eckert

### Changes to the Clearing Conditions and extension of service offering of Eurex Clearing AG

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**Content may be most important for:**

☞ All departments

**Attachments:**

Amended sections of the Clearing Conditions for Eurex Clearing AG

**Summary:**

This circular contains information in respect to extensions of Eurex Clearing's service offering and amendments to the Clearing Conditions for Eurex Clearing AG (Clearing Conditions).

The following areas are affected:

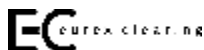
1. Application of the porting mechanism for client positions and collateral under the Elementary Clearing Model (ECM)
2. Implementation of a porting mechanism for the Net Omnibus Clearing Model (NOCM)
3. Introduction of the possibility to extend the Porting Period for the ECM and the NOCM
4. Extension of the Individual Clearing Model (ICM) offering to further jurisdictions
5. Adjustments related to proprietary margin covering client positions
6. Disclosure pursuant to Art. 39(7) EMIR

The extension of the porting mechanism under the ECM and of the ICM offering are effective immediately.

The updated sections of the Clearing Conditions including amendments to the Clearing Agreements as decided by the Executive Board of Eurex Clearing AG are attached to this circular.

The amendments to the Clearing Conditions with respect to

- items 1, 2, 3 and 4 will come into effect on **7 May 2014** and
- item 5 will come into effect on **2 June 2014**.



**Changes to the Clearing Conditions and extension of service offering of Eurex Clearing AG**

This circular contains information in respect to extensions of Eurex Clearing's service offering and amendments to the Clearing Conditions for Eurex Clearing AG (Clearing Conditions).

The following areas are affected:

1. Application of the porting mechanism for client positions and collateral under the Elementary Clearing Model (ECM)
2. Implementation of a porting mechanism for the Net Omnibus Clearing Model (NOCM)
3. Introduction of the possibility to extend the Porting Period for the ECM and the NOCM
4. Extension of the Individual Clearing Model (ICM) offering to further jurisdictions
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The updated sections of the Clearing Conditions including amendments to the Clearing Agreements as decided by the Executive Board of Eurex Clearing AG are attached to this circular.

The amendments to the Clearing Conditions with respect to

- items 1, 2, 3 and 4 will come into effect on 7 May 2014 and
- item 5 will come into effect on 2 June 2014.

**1. Application of the porting mechanism for client positions and collateral under the Elementary Clearing Model (ECM)**

Eurex Clearing AG applies the porting mechanism of the ECM to Clearing Members from all jurisdictions within the European Union in which clearing services are currently offered and their clients with immediate effect. The relevant list of jurisdictions is published on the Eurex Clearing website [www.eurexclearing.com](http://www.eurexclearing.com) under the link:

**Risk management > Client Asset Protection**

The list will be updated from time to time and represents the scope of the applicable porting option.

This offer also includes the introduction of an Automatic Early Termination Event for Clearing Members located in the Netherlands as defined in the Clearing Conditions under Chapter I Part 1 Number 7.2.

The amendments to the Clearing Conditions will come into effect on 7 May 2014.

**2. Implementation of a porting mechanism for the Net Omnibus Clearing Model (NOCM)**

**2.1. Portability of clients' positions and collateral for the NOCM**

The amended NOCM provides a framework for the transfer (porting) of clients' transactions/positions and collateral upon the default of a Clearing Member. The Clearing Conditions have been amended by adding Chapter I Part 4 Number 8.3. The new provisions allow Non-Clearing Members, Registered Customers and other (A-Account) clients upon occurrence of a Clearing Member default to port their segregated positions under the NOCM to a new Clearing Member if certain prerequisites have been fulfilled.

The amendments to the Clearing Conditions will come into effect on 7 May 2014.

## **2.2. Changes to the default management for the NOCM**

If porting is not possible, position liquidation will be handled according to the standard default management process. A separate difference claim will be calculated based on the separate Net Omnibus Standard Agreement covering client positions (A-Accounts, Non-Clearing Members, Registered Customers). Eurex Clearing is entitled to set off any difference claim against the Clearing Member for client business against any difference claim owed to the Clearing Member for proprietary business (but not vice versa). Any remaining difference claim or excess collateral will be returned to the insolvency administrator for the account of the net omnibus segregated clients.

The amendments to the Clearing Conditions will come into effect on 7 May 2014.

## **3. Introduction of the possibility to extend the Porting Period for the ECM and NOCM**

For the ECM as well as for the NOCM, Eurex Clearing may extend the predefined transfer period at its own discretion. The Clearing Conditions have been amended by adding the respective rule in Chapter I Part 2 Number 8.3.3 and Chapter I Part 4 Number 8.3.3.

The amendments to the Clearing Conditions will come into effect on 7 May 2014.

## **4. Extension of the Individual Clearing Model (ICM) offering to further jurisdictions**

To further broaden the reach of its individual segregation solution, Eurex Clearing AG is extending its Individual Clearing Model offering to all jurisdictions within the European Union in which clearing services are currently offered with immediate effect. The relevant list of jurisdictions is published on the Eurex Clearing website under the link:

### **Risk management > Client Asset Protection**

This offer also includes the introduction of an Automatic Early Termination Event for Clearing Members located in the Netherlands as defined in the Clearing Conditions under Chapter I Part 1 Number 7.2.

The amendments to the Clearing Conditions will come into effect on 7 May 2014.

## **5. Adjustments related to proprietary margin covering client positions**

Eurex Clearing is making certain adjustments regarding to proprietary margin covering client positions.

Eurex Clearing will no longer allow excess collateral in the proprietary pool of a Clearing Member to cover a margin shortfall on segregated customer collateral pools, without the excess margin being allocated to the client account in which the shortfall occurs.

In the future Eurex Clearing will issue and process in each case a separate margin call related to the specific collateral pool in which the margin shortfall occurred, when a margin shortfall occurs related to the Clearing Member's proprietary account or related to one of the Clearing Member's client accounts. To the extent that excess cash collateral in the proprietary pool is available, Clearing Members may transfer this excess cash collateral to the relevant client collateral pool to satisfy the margin call.

The new principle applies to both intraday and end-of-day margin requirements.

Functional details with regard to this change will be provided in a separate Eurex Clearing circular in due course.

To reflect the adjustments described above, the Clearing Conditions will be amended as outlined in Annex 5, including the following provisions:

- Separate intraday and end of day margin calls for each Internal Margin Account, including mandatory direct debits (Chapter I Part 2 Number 6.3.1 and 6.3.2, Chapter I Part 3 Subpart A Number 5.3, Chapter I Part 4 Number 6.3.1 and 6.3.2 of the Clearing Conditions).
- Internal transfer of cash collateral from the Internal Proprietary Margin Account to the Internal Margin Accounts for client business (Chapter I Part 1 Number 3.3.2, Chapter I Part 2 Number 6.3.1.3 and 6.3.2.3, Chapter I Part 3 Subpart A Number 5.3.3, Chapter I Part 4 Number 6.3.1 Paragraph (1) and 6.3.2 Paragraph (1) of the Clearing Conditions).
- In case of a Clearing Member default, proprietary margin will continue to cover shortfalls in each of the segregated customer pools of a Clearing Member (Chapter I Part 1 Number 8.7.2 of the Clearing Conditions).

The amendments to the Clearing Conditions will come into effect on 2 June 2014.

## **6. Disclosure pursuant to Art. 39(7) EMIR**

The disclosure document pursuant to Art. 39(7) EMIR has been published on the Eurex Clearing website under the following link:

**Risk management > Client Asset Protection**

As of the actual effective date, the amended Clearing Conditions will be available for download on the Eurex Clearing website under the following link:

**Resources > Rules and Regulations > Clearing Conditions**

Pursuant to Chapter I Part 1 Number 17.2.3 of the Clearing Conditions, the changes and amendments to the Clearing Conditions communicated with this circular shall be deemed to have been accepted by each Clearing Member, Non-Clearing Member and each Registered Customer, unless they object in writing to Eurex Clearing AG prior to the actual effective date of such change and amendment of the Clearing Conditions. The right to terminate the Clearing Agreement or the Clearing License according to Chapter I Part 1 Number 2.1.4 Paragraph 2 Number 7.2.1 Paragraph 4 and Number 13 of the Clearing Conditions shall remain unaffected.

If you have any questions or require further information, please contact Member Services & Admission at tel. +49-69-211-1 17 00 or send an e-mail to [memberservices@eurexclearing.com](mailto:memberservices@eurexclearing.com).

10 April 2014

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**CHAPTER I IS BEING ADJUSTED.**

**AMENDMENTS ARE MARKED AS FOLLOWS:**

**INSERTIONS ARE UNDERLINED.**

**DELETIONS ARE CROSSED OUT.**

\*\*\*\*\*

**Part 2 Elementary Clearing Model Provisions**

[...]

8.3.3 [...]

**"Porting Period"** means

- (i) if an Insolvency Termination Event has occurred, the period from the occurrence of the Insolvency Termination Event until (and including) 13:00 hours Frankfurt am Main time on the immediately following Business Day; and
- (ii) if any other Termination Event has occurred, the period from the publication of the Porting Notice until (and including) 13:00 hours Frankfurt am Main time on the immediately following Business Day.

Eurex Clearing AG may extend the Porting Period in order to facilitate a Transfer by giving notice to all Clearing Members in accordance with Number 16.2 of the General Clearing Provisions.

**"Porting Requirements"** means all of the following requirements:

- (i) [...]
- (ii) with respect to Elementary Omnibus Transactions that are NCM-Related Transactions or RC-Related Transactions, the Transferee Clearing Member and the relevant Non-Clearing Member or Registered Customer have undertaken to Eurex Clearing AG in form and substance satisfactory to Eurex Clearing AG that they will, no later than five (5) ~~days~~ Business Days after the end of the Porting Period, enter into the Clearing Agreement(s) with Eurex Clearing AG in the form appended to the Clearing

Conditions as Appendix 2 unless such Clearing Agreement(s) has or have already been entered into;

[...]

## **Part 4 Net Omnibus Clearing Model Provisions**

[...]

### **8 Consequences of a Termination Event ~~and or Insolvency Termination Event and a~~ Termination Date**

#### **8.1 Termination**

Upon the occurrence of a Termination Event or Insolvency Termination Event and a Termination Date (each as defined in Number 7.2 of the General Clearing Provisions) with respect to the Clearing Member:

(i) ~~the Clearing of new Net Omnibus Transactions may~~ shall be suspended (the “**Suspension**”); and/or

(ii) ~~subject to Number 8.3.1, all the existing Net Omnibus Transactions shall be terminated (the “Termination”) and, in the case of a Termination a termination payment shall fall due (the “Termination Payment”) as further set out in this Number 8 with respect to the Net Omnibus Clearing Agreement,~~

each as further set out in this Number 8.

A Termination pursuant to Number 8.1(ii) shall only occur if the Porting Requirements are not fulfilled within the Porting Period.

#### **8.2 ~~Limitation or Suspension or Restriction of Clearing~~**

If a Termination Event or any of the following events occurs with respect to the Clearing Member:

[...]

then Eurex Clearing AG may (taking into account the interests of such Clearing Member and its clients and provided that such action constitutes a proportionate and reasonable action) one or more times suspend or limit the Clearing of new Net Omnibus Transactions under the Standard Agreement pursuant to the Net Omnibus Clearing Model Provisions.

~~between Eurex Clearing AG and such Clearing Member pursuant to the Net Omnibus Clearing Model Provisions and~~ Eurex Clearing AG shall notify the affected Clearing Member as well as all Net Omnibus Non-Clearing Members and Net Omnibus Registered Customers of such Clearing Member of the decision to suspend or limit such Clearing.

Eurex Clearing AG shall specify, in the notification, a reasonable period of time during which such Suspension or limitation shall apply.

[...]

Upon the occurrence of a Termination Event or any of the events listed above and unless such Termination Events or other events have been remedied, the Clearing Member is – subject to Number 8.3.12 (if applicable) or any other limitations or restrictions of the Clearing pursuant to the Clearing Conditions – only entitled to enter any order or quotes into the systems of the Markets if sufficient Net Omnibus Margin and Net Omnibus Variation Margin has been actually delivered to Eurex Clearing AG in advance.

[...]

### **8.3 Porting of assets and positions in relation to Net Omnibus Transactions**

8.3.1 For the purposes of this Number 8 and solely with respect to the Standard Agreement (including all existing Net Omnibus Transactions) and all Redelivery Claims relating thereto, a Termination and a Termination Date shall only occur if, upon the expiry of the Porting Period in accordance with Number 8.3.3, the Porting Requirements are not fulfilled. Upon the occurrence of such Termination Date, Numbers 8.4 to 8.8 shall apply.

8.3.2 If a Termination Event (other than an Insolvency Termination Event) has occurred with respect to a Clearing Member, Eurex Clearing AG shall (a) if a Grace Period Notice has been given, without undue delay after the end of the relevant Grace Period and (b) if a Termination Notice has been given, without undue delay after the time specified in the Termination Notice, give notice to all other Clearing Members in accordance with Number 16.2 of the General Clearing Provisions of (i) the occurrence of the Termination Event and (ii) that the Porting Period commences (the "**Porting Notice**").

8.3.3 If, at or prior to the end of the Porting Period, Eurex Clearing AG determines that all Porting Requirements are fulfilled, all rights and obligations of the defaulting Clearing Member (the "**Transferor Clearing Member**") in respect of the Standard Agreement (including all existing Net Omnibus Transactions) and all Redelivery Claims relating thereto shall be transferred, by way of assumption of contract (*Vertragsübernahme*) (a "**Transfer**") to the relevant Transferee Clearing Member, and each Clearing Member (that becomes a Transferor Clearing Member) hereby expressly and irrevocably consents to such Transfer.

"Porting Period" means:

- (i) if an Insolvency Termination Event has occurred, the period from the occurrence of the Insolvency Termination Event until (and including) 13:00 hours Frankfurt am Main time on the immediately following Business Day; and
- (ii) if any other Termination Event has occurred, the period from the publication of the Porting Notice until (and including) 13:00 hours Frankfurt am Main time on the immediately following Business Day.

Eurex Clearing AG may extend the Porting Period in order to facilitate a Transfer by giving notice to all Clearing Members in accordance with Number 16.2 of the General Clearing Provisions.

**"Porting Requirements"** means all of the following requirements:

- (i) a transferee Clearing Member (the "**Transferee Clearing Member**") has agreed with Eurex Clearing AG in writing on the assumption of contract (*Vertragsübernahme*) pursuant to this Number 8.3.3 in form and substance satisfactory to Eurex Clearing AG;
- (ii) with respect to Net Omnibus Transactions that are NCM-Related Transactions or RC-Related Transactions, the Transferee Clearing Member and the relevant Net Omnibus Non-Clearing Member or Net Omnibus Registered Customer have undertaken to Eurex Clearing AG in form and substance satisfactory to Eurex Clearing AG that they will, no later than five (5) Business Days after the end of the Porting Period, enter into the Clearing Agreement(s) with Eurex Clearing AG in the form appended to the Clearing Conditions as Appendix 8 unless such Clearing Agreement(s) has or have already been entered into;
- (iii) the Transferee Clearing Member has (a) confirmed to Eurex Clearing AG that all Net Omnibus Non-Clearing Members, all Net Omnibus Registered Customers and all Net Omnibus Customers of the Transferor Clearing Member have designated, and have taken all necessary steps to allow, the Transferee Clearing Member to act as their future Clearing Member in respect of their transactions that correspond to any Net Omnibus Transactions and (b) provided Eurex Clearing AG in writing (*Textform*) with a list of all Transactions between the Transferor Clearing Member and its Net Omnibus Customers (excluding any Net Omnibus Non-Clearing Members and Net Omnibus Registered Customers) that correspond to Net Omnibus Transactions; and
- (iv) the Transferee Clearing Member has (i) provided Eurex Clearing AG with sufficient Eligible Margin Assets to cover any shortfall in Net Omnibus Margin and Net Omnibus Variation Margin in accordance with Numbers 6 and 7 of the Net Omnibus Clearing Model Provisions in respect of all Net Omnibus Transactions that are subject to the Transfer or (ii) committed itself to Eurex Clearing AG to provide the relevant amount of Eligible Margin Assets without undue delay following the Transfer.

**8.3.4** The Transfer shall not affect any Own Transactions of the Transferor Clearing Member, any Difference Claims relating thereto or any Redelivery Claims of the Transferor Clearing Member relating thereto.

Eurex Clearing AG may provide for further or alternative procedures for the transfer of assets and positions that it deems necessary taking into account applicable laws with respect to any such transfer.



- 8.3.5 The Transferor Clearing Member hereby irrevocably offers to transfer to the Transferee Clearing Member all Eligible Margin Assets in the form of Securities that are credited to the Net Omnibus Pledged Securities Account at the time when the Porting Requirements are fulfilled. Such transfer shall be without prejudice to the security interest granted to Eurex Clearing AG in the relevant Securities. The Transferor Clearing Member hereby also irrevocably authorises (*bevollmächtigt*) Eurex Clearing AG to offer to transfer to the Transferee Clearing Member, on behalf of the Transferor Clearing Member, all Eligible Margin Assets in the form of Securities that are credited to the Net Omnibus Pledged Securities Account at the time when the Porting Requirements are fulfilled and to issue all other statements and to take all other acts on behalf of the Transferor Clearing Member that Eurex Clearing AG considers necessary or expedient to effect the transfer of the relevant Securities to the Transferee Clearing Member.
- 8.3.6 Eurex Clearing AG and the Transferor Clearing Member agree that, following the transfer of all Eligible Margin Assets in the form of Securities to the Transferee Clearing Member in accordance with Numbers 8.3.5, the security purpose of the security interests held by Eurex Clearing AG in such Securities shall also extend to all present and future claims under any Net Omnibus Transactions, any Difference Claim and any other present and future claims, in each case, of Eurex Clearing AG against the Transferee Clearing Member under the Standard Agreement relating to Net Omnibus Transactions with such Transferee Clearing Member.
- 8.3.7 As a result of a Transfer, all Net Omnibus Transactions and all Redelivery Claims relating thereto that have been transferred to the Transferee Clearing Member (a) will, as relevant, be subject to the Net Omnibus Clearing Agreement (and such Net Omnibus Transactions will form part of the relevant Standard Agreement thereunder) between Eurex Clearing AG and the Transferee Clearing Member in the form appended to the Clearing Conditions as Appendix 1 or the relevant Clearing Agreement(s) in the form appended to the Clearing Conditions as Appendix 8 that has been, have been or will be entered into pursuant to Number 8.3.3 (ii) of the Porting Requirements above and (b) will no longer be subject to any Clearing Agreement with the Transferor Clearing Member.
- 8.3.8 Eurex Clearing AG and the Transferee Clearing Member further agree that if, following a Transfer, more than one Standard Agreement with respect to Net Omnibus Transactions exists between Eurex Clearing AG and the Transferee Clearing Member, all such Standard Agreements (including all Net Omnibus Transactions) taken together shall, with automatic effect immediately after a Transfer, form a single Standard Agreement.
- 8.3.9 After the Transfer, Eurex Clearing AG shall credit to the Transferee Clearing Member (with respect to the Standard Agreement transferred pursuant to Number 8.3.3 above), by making appropriate changes to its records, all Net Omnibus Margin and all Net Omnibus Variation Margin provided to it by the Transferor Clearing Member and, following such allocation, such amounts or assets shall constitute Net Omnibus Margin and Net Omnibus Variation Margin, respectively, of the Transferee Clearing Member.

8.3.10 It is the responsibility of the Transferor Clearing Member and/or the Transferee Clearing Member to enter into relevant agreements (if any) with their relevant customers for granting any compensation to, or obtaining any compensation from, such customers in connection with any transfers made in accordance with this Number 8.3.

8.3.11 Eurex Clearing AG and the Transferee Clearing Member may, subject to the consent of all Net Omnibus Non-Clearing Members and all Net Omnibus Registered Customers and a respective confirmation of the Transferee Clearing Member of the consent of all Net Omnibus Customers, agree that the Net Omnibus Transactions to be transferred shall, after the Transfer, constitute Elementary Omnibus Transactions and form part of the relevant Elementary Omnibus Standard Agreement with the Transferee Clearing Member. In this case, the requirements for the Transfer of Elementary Omnibus Transactions pursuant to Part 2 Number 8.3 shall apply accordingly.

8.3.12 During the Porting Period:

- (i) the Clearing of Net Omnibus Transactions under the Standard Agreement between Eurex Clearing AG and the Transferor Clearing Member shall always be suspended;
- (ii) neither of the Transferor Clearing Member, its Non-Clearing Members or its Registered Customers shall be entitled to enter any order or quotes into the systems of the Markets;
- (iii) all Redelivery Claims of the Transferor Clearing Member with respect to Net Omnibus Margin in the form of cash and Net Omnibus Variation Margin shall be deferred (*gestundet*);
- (iv) all claims of the Transferor Clearing Member for a release of Net Omnibus Margin in the form of Securities shall be deferred (*gestundet*); and
- (v) Eurex Clearing AG shall not be obliged to provide any Net Omnibus Variation Margin to the Transferor Clearing Member.

#### **8.38.4 Consequences of a Termination**

[...]

#### **8.3.48.4.1 Termination of Transactions and Redelivery Claims**

All current and future primary obligations (including payment and delivery obligations) arising in respect of ~~all~~ Net Omnibus Transactions and all Redelivery Claims under the Standard Agreement between Eurex Clearing AG and the Affected Clearing Member (as defined in Number 6.2. of the General Clearing Provisions) shall expire (*auflösende Bedingung*) as of the Termination Time (as defined in Number 7.2 of the General Clearing Provisions) and shall no longer be required to be performed by the relevant obligor. Furthermore, all due but unsatisfied obligations in respect of the Net Omnibus Margin or Net Omnibus Variation Margin ~~in respect of such Net Omnibus Transactions~~ shall expire (*auflösende Bedingung*) as of the Termination Time. The expiration of ~~all~~

~~obligations referred to above~~ applies to all claims arising under the Net Omnibus Transactions independently of the time they came into existence or would otherwise have come into existence. The expired primary obligations and delivery obligations are reflected by the Difference Claim (as defined in Number 8.34.2 below), subject to and in accordance with Number 7.3 of the General Clearing Provisions.

#### **8.3.28.4.2 Difference Claim**

The difference claim, ~~which was created at the time of entering into the Net Omnibus Clearing Agreement~~, of either Eurex Clearing AG or the Affected Clearing Member, as the case may be, under the Standard Agreement between Eurex Clearing AG and the Affected Clearing Member, which was created at the time of entering into the Net Omnibus Clearing Agreement, shall become unconditional and immediately due in the Termination Currency (as defined in Number 7.3.2 of the General Clearing Provisions) against the respective other party as of the end of the Valuation Date (as defined in Number 7.3.2 of the General Clearing Provisions) and shall be determined in accordance with Number 7.3 of the General Clearing Provisions (and the difference claim so determined in respect of the Net Omnibus Transactions under the Standard Agreement is a "Difference Claim").

#### **8.48.5 Notification**

[...]

#### **8.58.6 Payment of Difference Claim**

8.6.1 [...]

8.6.2 [...]

8.6.3 Eurex Clearing AG is entitled to set-off any Difference Claim it may have against the Clearing Member under the Standard Agreement relating to Net Omnibus Transactions against any Difference Claim it owes to the Clearing Member under the Elementary Proprietary Standard Agreement.

#### **8.68.7 Realisation of Net Omnibus Margin**

[...]

#### **8.8 Return of any balance owed by Eurex Clearing AG in respect of Net Omnibus Transactions after the completion of the default management process**

Unless a transfer of assets and positions in relation to Net Omnibus Transactions in accordance with Number 8.3 has occurred, Eurex Clearing AG shall return any balance owed by it in respect of Net Omnibus Transactions following the completion of the default management process pursuant to Part 1 Numbers 6 and 7 of (and as otherwise set out in) these Clearing Conditions with respect to the Clearing Member as follows:

8.8.1 Any Difference Claim owed by Eurex Clearing AG shall be satisfied by a payment of the relevant due amount to the Affected Clearing Member, and any such payment shall constitute a return to the Affected Clearing Member for the account of all Net Omnibus Non-Clearing Members, Net Omnibus Registered Customers and Net Omnibus Customers of the Affected Clearing Member.

8.8.2 Any release by Eurex Clearing AG, or any expiration, of any of its pledges in respect of Eligible Margin Assets in the form of Securities actually delivered to Eurex Clearing AG in respect of Net Omnibus Margin shall constitute a return to the Affected Clearing Member for the account of all Net Omnibus Non-Clearing Members, Net Omnibus Registered Customers and Net Omnibus Customers of the Affected Clearing Member.

**8.9 Consequences of a Termination Date with respect to a Clearing Member on the Standard Agreement between such Clearing Member and its Non-Clearing Members and/or Registered Customers**

The consequences of the occurrence of a Termination Date with respect to a Clearing Member on the Standard Agreement between such Clearing Member and its Net Omnibus Non-Clearing Members and/or Net Omnibus Registered Customers shall be governed by the Standard Agreement between such Clearing Member and its Net Omnibus Non-Clearing Members and/or Net Omnibus Registered Customers, as applicable.

**9 Replacement of Clearing Member**

Subject to the special provisions of the Net Omnibus Clearing Model Provisions, a Net Omnibus Non-Clearing Member or Net Omnibus Registered Customer may effect a replacement of its Clearing Member in accordance with this Number 9 with respect to all Net Omnibus Transactions related to it only (i) with the prior written consent of Eurex Clearing AG, the Clearing Member and a replacement Clearing Member and (ii) subject to the prior conclusion of a Clearing Agreement between Eurex Clearing AG, the Net Omnibus Non-Clearing Member or Net Omnibus Registered Customer and the replacement Clearing Member. In order to effect such replacement of the Clearing Member on a Business Day, the relevant Net Omnibus Transactions of the Clearing Member with Eurex Clearing AG and the relevant claims and obligations vis-à-vis Eurex Clearing AG with respect to the Redelivery Claims relating to the Net Omnibus Variation Margin with respect to such Net Omnibus Transactions shall be transferred to the replacement Clearing Member only by way of a transfer by novation (Novation) by the Clearing Member to the replacement Clearing Member. The Net Omnibus Non-Clearing Member or Net Omnibus Registered Customer, the transferor Clearing Member and the replacement Clearing Member shall further separately agree on a transfer by way of novation from the transferor Clearing Member to the replacement Clearing Member of the related transactions between the transferor Clearing Member and the Net Omnibus Non-Clearing Member or Net Omnibus Registered Customer as well as the relevant claims and obligations with respect to the redelivery claims in respect of variation margin and any other collateral delivered as cover for such transactions between the transferor

Clearing Member and the Net Omnibus Non-Clearing Member or Net Omnibus Registered Customer.

[...]

~~The provisions of this Number 9 shall apply *mutatis mutandis* to Net Omnibus Transactions with respect to a Net Omnibus Registered Customer and the corresponding transactions between the Clearing Member and such Net Omnibus Registered Customer. For this purpose, any reference to a Net Omnibus Non-Clearing Member shall be construed as to refer to the relevant Net Omnibus Registered Customer.~~

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**AMENDMENTS ARE MARKED AS FOLLOWS:**

**INSERTIONS ARE UNDERLINED**

**DELETIONS ARE CROSSED OUT**

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## **Chapter I**

### **General Provisions**

[...]

#### **Part 1 General Clearing Provisions**

[...]

#### **7 Termination Rules with respect to the Clearing Member**

**7.1** [...]

#### **7.2 Termination Events**

**7.2.1** [...]

##### **(5) Insolvency related Events**

- (a) In relation to a Clearing Member having its registered seat and centre of main interest or, where it is a credit institution, being headquartered (*mit Hauptniederlassung*) in the Federal Republic of Germany:
  - (aa) any event occurs which constitutes a cause for the initiation of insolvency proceedings (*Eröffnungsgrund*) as set out in sections 17 to 19 of the German Insolvency Code (*Insolvenzordnung*);
  - (bb) a petition for insolvency proceedings in respect of its assets (*Antrag auf Eröffnung eines Insolvenzverfahrens*) is filed; or
  - (cc) actions are taken pursuant to section 21 of the German Insolvency Code (*Insolvenzordnung*) by a competent court;
- (b) with respect to any Clearing Member not falling within the scope of Paragraph (5) (a) above, any action, legal proceedings or other procedure or step is taken in relation to any of the following events or any of the following events occurs:
  - (aa) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, termination of existence, liquidation, administration,

reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise), bankruptcy, insolvency, judicial management or curatorship;

- (bb) a settlement, deferred payment, debt restructuring, transfer, restructuring, composition, compromise, assignment or similar arrangement of the Clearing Member with any of its creditors;
- (cc) the appointment of a liquidator, trustee, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of that Clearing Member or any of its assets; or
- (dd) or any analogous procedure or step is taken in any jurisdiction,

provided that this Paragraph (5) (b) shall not apply to any procedure or step taken in relation to a solvent reorganisation of the relevant Clearing Member.

[...]

- 7.2.2** If at any time an Insolvency Termination Event has occurred with respect to the Clearing Member, a Termination shall occur with immediate effect as of such time (the date of such Termination being the “**Termination Date**” and the respective termination time being the “**Termination Time**”). An “**Insolvency Termination Event**” occurs (i) with respect to a Clearing Member having its registered seat and centre of main interest in the Federal Republic of Germany or, if it is a credit institution, being headquartered in the Federal Republic of Germany, when if German-insolvency proceedings in the Federal Republic of Germany (*Insolvenzverfahren*) within the meaning of the German Insolvency Code (*Insolvenzordnung*) are commenced over the estate of the Clearing Member (*Eröffnung des Insolvenzverfahrens*), or the Clearing Member is subject to the commencement of similar proceedings under the laws of any other jurisdictions. (ii) with respect to a Clearing Member having its registered seat and centre of main interest in the Netherlands or, if it is a credit institution, being headquartered in the Netherlands, at the end of the day on which any action or step is taken in relation to such Clearing Member by itself or any other person to institute insolvency proceedings including *faillissement*, *surséance van betaling*, *noodregeling* and any of the measures referred to in Section 3:267d *et seqq.* of the Dutch Act on Financial Supervision (*Wet op het financieel toezicht*) (“**AFS**”), including but not limited to, the preparation of a transfer plan pursuant to Section 3:159c AFS, the order of immediate measures by the Secretary of Finance pursuant to Section 6:1 AFS and the expropriation of property and capital components by the Secretary of Finance pursuant to Section 6:2 AFS and the appointment of a *curator* or *bewindvoerder*, and the action, legal proceedings or other procedure or step is not dismissed on the day such action or step is taken, or (iii) with respect to a Clearing Member not falling under (i) or (ii), when insolvency proceedings or similar proceedings under the law of the jurisdiction where such Clearing Member has its registered seat and centre of main interest or, if it is a credit institution, where it is headquartered, are commenced over the estate of the Clearing Member.

# Amendment of the Clearing Conditions for Eurex Clearing AG

re: Adjustments related to proprietary margin covering client positions



	Eurex04
Clearing Conditions for Eurex Clearing AG	As of 02.06.2014
	Page 1

\*\*\*\*\*

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED.

DELETIONS ARE CROSSED OUT.

\*\*\*\*\*

[...]

**Chapter I General Provisions**

[...]

**Part 1 General Clearing Provisions**

[...]

**3 General Provisions regarding Margin**

[...]

**3.3 Margin Call**

3.3.1 If with respect to the relevant Standard Agreement, the aggregate value of the Eligible Margin Assets actually delivered to Eurex Clearing AG in respect of Elementary Proprietary Margin, Elementary Omnibus Margin, Net Omnibus Margin or the Segregated Margin, as applicable, is insufficient to provide the cover required to comply with the relevant applicable Margin Requirement, Eurex Clearing AG will require the Clearing Member to deliver (additional) Eligible Margin Assets in an amount up to the Margin Requirement and by the time specified by Eurex Clearing AG (a "**Margin Call**") in accordance with the specific provisions of the Elementary Clearing Model Provisions, the Individual Clearing Model Provisions or the Net Omnibus Clearing Model Provisions, as applicable.

3.3.2 For the purpose of delivering (additional) Eligible Margin Assets pursuant to Number 3.3.1, the Clearing Member may, in the case of a Margin Call relating to Elementary Omnibus Margin (in case the Asset Based Valuation Method is the Applicable Allocation Method), Segregated Margin or Net Omnibus Margin, by giving notice to Eurex Clearing AG, elect to specify any amount of Eligible Margin Assets in the form of cash delivered by (and not returned to) the Clearing Member to Eurex Clearing AG with

	Eurex04
Clearing Conditions for Eurex Clearing AG	As of 02.06.2014
	Page 2

< Tabel of Contents

Appendices >

respect to and as part of the Elementary Proprietary Margin in order to wholly or partially satisfy the respective Margin Call if and to the extent that the aggregate value of all Eligible Margin Assets actually delivered in respect of the Elementary Proprietary Margin exceeds the Margin Requirement applicable at such time, unless the relevant Clearing Member and Eurex Clearing AG agree otherwise.

The consequences of an election to deliver (additional) Eligible Margin Assets pursuant to this Number 3.3.2 are set out in the Elementary Clearing Model Provisions, the Individual Clearing Model Provisions or the Net Omnibus Clearing Model Provisions, as applicable.

[...]

## **Part 2 Elementary Clearing Model Provisions**

[...]

### **2 Content of Clearing Agreement and the Standard Agreements**

[...]

#### **2.2 General Principles applicable to the Settlement of Own Transactions and Elementary Omnibus Transactions and any Delivery and Redelivery of Margin in form of Cash or Variation Margin**

[...]

2.2.4 Subject to Number 3.2.2 Paragraph (2) and (3) of the General Clearing Provisions, the term "**actually delivered**" when used in the Elementary Clearing Model Provisions means at any time and with respect to an Eligible Margin Asset and an Elementary Standard Agreement:

- (i) the actual credit of an Eligible Margin Asset in the form of cash to the relevant Eurex Clearing AG cash account or, as the case may be, the actual credit entry on the Internal Elementary Omnibus Margin Account pursuant to Number 6.3.1.3 or Number 6.3.2.3, or

[...]

[...]

### **4 Internal Accounts**

[...]

	Eurex04
Clearing Conditions for Eurex Clearing AG	As of 02.06.2014
	Page 3

## 4.2 Internal Margin Account; Allocation

[...]

### 4.2.1 Subject to Numbers 6.3.1.3 and 6.3.2.3, ~~in~~ in case the Value Based Allocation is the Applicable Allocation Method, the relevant Pro Rata Margin Share of

- (i) all credits and debits of Securities to the Pledged Securities Account and all pledged or released Securities using Xemac or CmaX, and
- (ii) all daily cash credits or debits in respect of Margin to the Clearing Member Cash Account or a foreign currency account of the Clearing Member,

will be allocated to the Elementary Proprietary Standard Agreement and the Elementary Omnibus Standard Agreement, as applicable, and recorded on the Internal Elementary Proprietary Margin Account and the Internal Elementary Omnibus Margin Account, respectively.

Where:

~~"Net Omnibus Margin Shortfall" means, at any time, the amount by which the aggregate Margin Requirements pursuant to the Net Omnibus Clearing Model Provisions exceed the aggregate value of all Eligible Margin Assets actually delivered in respect of Net Omnibus Margin.~~

**"Pro Rata Margin Share"** means, at any time and

- (i) with respect to the Elementary Proprietary Standard Agreement, a share determined by Eurex Clearing AG equal to one (1) less the Pro Rata Margin Share determined with respect to the Elementary Omnibus Standard Agreement and
- (ii) with respect to the Elementary Omnibus Standard Agreement, a share determined by Eurex Clearing AG that corresponds to the ratio of (x) the Assigned Elementary Omnibus Margin Value and (y) the aggregate value of all Eligible Margin Assets actually delivered in respect of the Elementary Clearing Model Provisions.

~~"Segregated Margin Shortfall" means, at any time and with respect to a Standard Agreement between Eurex Clearing AG and a Clearing Member pursuant to the Individual Clearing Model Provisions, the amount by which the aggregate Margin Requirements with respect to the relevant Standard Agreement exceeds the aggregate value of all Eligible Margin Assets actually delivered as Segregated Margin in respect of such Standard Agreement.~~

~~"Unpaid VM/NP Amount" means, at any time and with respect to a Standard Agreement, the aggregate amount of any Variation Margin and Net Premiums that has accumulated for the benefit of Eurex Clearing AG, but not yet been actually delivered, at the relevant time, subject to a minimum of zero.~~

**"Assigned Elementary Omnibus Margin Value"** means at any time the aggregate value of Elementary Omnibus Margin assigned to the Elementary Omnibus Standard

	Eurex04
Clearing Conditions for Eurex Clearing AG	As of 02.06.2014
	Page 4

< Tabel of Contents

Appendices >

Agreement, as determined by Eurex Clearing AG as the aggregate value of all Eligible Margin Assets actually delivered in respect of the Elementary Clearing Model Provisions less (i) the Margin Requirement with respect to the Elementary Proprietary Standard Agreement, (ii) the sum of all Segregated Margin Shortfalls, (iii) the amount of any Net Omnibus Margin Shortfall and (iv) any Unpaid VM/NP Amounts with respect to the Elementary Standard Agreements or any of the Standard Agreements between Eurex Clearing AG and the Clearing Member pursuant to the Individual Clearing Model Provisions and the Net Omnibus Clearing Model Provisions, subject to a minimum of zero and a maximum equal to the Margin Requirement with respect to the Elementary Omnibus Standard Agreement.

4.2.2 Subject to Numbers 6.3.1.3 and 6.3.2.3, in case the Asset Based Allocation is the Applicable Allocation Method,

(i) [...]

(ii) [...]

[...]

## **6 Margin**

[...]

### **6.3 Margin Call**

#### **6.3.1 Margin Calls and direct debit prior to the end of a Business Day**

6.3.1.1 If Eurex Clearing AG at any time prior to the end of a Business Day (as defined in Number 1.2.4 Paragraph (1) of the General Clearing Provisions) determines that the aggregate value of Eligible Margin Assets actually delivered as cover in respect of the Elementary Proprietary Margin or Elementary Omnibus Margin is less than the applicable Margin Requirement for the Elementary Standard Agreement to which the relevant Margin relates, Eurex Clearing AG will require the Clearing Member to provide (additional) Eligible Margin Assets in an amount up to the relevant Margin Requirement by the time specified by Eurex Clearing AG.

6.3.1.2 In case the Asset Based Allocation is the Applicable Allocation Method, To the extent Eligible Margin Assets have not yet been delivered by the Clearing Member with respect to a Margin Call pursuant to Number 6.3.1.1, Eurex Clearing AG shall be entitled to (and without having an obligation towards the Clearing Member to do so, will on or around the time specified) may directly debit the Clearing Member Cash Account in an amount equal to the requested amount of Eligible Margin Assets in accordance with the daily cash clearing procedure pursuant to Number 1.4.1 of the General Clearing Provisions. In case the Asset Based Allocation is the Applicable Allocation Method, Any such direct debit shall not discharge the relevant Margin Call relating to the Elementary Proprietary Standard Agreement or the Elementary Omnibus Standard Agreement, as the case may

	Eurex04
Clearing Conditions for Eurex Clearing AG	As of 02.06.2014
	Page 5

~~be (and consequentially such direct debit will not increase the respective Redelivery Claim) but shall constitute cover in respect of the Elementary Proprietary Margin delivered by the Clearing Member pursuant to these Elementary Clearing Model Provisions. In case the Value Based Allocation is the Applicable Allocation Method, any such direct debit shall discharge the relevant Margin Call relating to the relevant Elementary Standard Agreement to be determined pursuant to Number 4.2.1 (and consequentially such direct debit will increase the respective Redelivery Claim).~~

For the avoidance of doubt, non-compliance with the applicable Margin Requirement (in whole or in part) by the Clearing Member shall constitute a Termination Event pursuant to Number 7.2.1 Paragraph (1) of the General Clearing Conditions.

6.3.1.3 Notwithstanding Numbers 4.2.1 and 4.2.2, if a Clearing Member elects to deliver (additional) Eligible Margin Assets in the form of cash pursuant to Number 3.3.2 of the General Clearing Provisions with respect to a Margin Call relating to Elementary Omnibus Margin, then:

- (i) Eurex Clearing AG shall make the relevant debit entry in the Internal Elementary Proprietary Margin Account and the respective credit entry in the Internal Elementary Omnibus Margin Account with such cash credit being allocated to the Elementary Omnibus Standard Agreement; and
- (ii) the related Redelivery Claim under the Elementary Proprietary Standard Agreement shall be reduced accordingly upon Eurex Clearing AG having made those record entries (which Eurex Clearing AG shall do without undue delay) in the Internal Margin Accounts.

~~6.3.1.3 In case the Asset Based Allocation is the Applicable Allocation Method, the Clearing Member is entitled at any time by giving notice to Eurex Clearing AG specifying the relevant Elementary Standard Agreement to designate any amount of Eligible Margin Assets in the form of cash delivered by (and not returned to) the Clearing Member to Eurex Clearing AG with respect to Elementary Proprietary Margin or Elementary Omnibus Margin as part of the Elementary Omnibus Margin or Elementary Proprietary Margin, as the case may be, in order to (partially) satisfy the applicable Margin Requirement. The aggregate value of the Elementary Omnibus Margin or Elementary Proprietary Margin, as the case may be, and the related Redelivery Claim shall be increased and the aggregate value of Elementary Proprietary Margin and/or Elementary Omnibus Margin, as the case may be, and the related Redelivery Claim shall be reduced accordingly upon Eurex Clearing AG having made the corresponding records (which Eurex Clearing AG shall do without undue delay) in the Internal Elementary Proprietary Margin Account and the Internal Elementary Omnibus Margin Account pursuant to Number 4.2.~~

	Eurex04
Clearing Conditions for Eurex Clearing AG	As of 02.06.2014
	Page 6

< Tabel of Contents

Appendices >

### 6.3.2 Margin Calls and direct debit at the end of a Business Day

6.3.2.1 If Eurex Clearing AG at the end of a Business Day determines that the aggregate value of Eligible Margin Assets actually delivered as cover in respect of the Elementary Proprietary Margin or Elementary Omnibus Margin is less than the applicable Margin Requirement for the Elementary Standard Agreement to which the relevant Margin relates, Eurex Clearing AG will require the Clearing Member to provide (additional) Eligible Margin Assets in the form of cash in the Clearing Currency in an amount sufficient to satisfy the relevant Margin Requirement by the time specified by Eurex Clearing AG.

6.3.2.2 To the extent Eligible Margin Assets have not yet been delivered by the Clearing Member with respect to a Margin Call pursuant to Number 6.3.2.1, Eurex Clearing AG shall be entitled to (and without having an obligation towards the Clearing Member to do so, will on or around the time specified) Eurex Clearing AG will directly debit the Clearing Member Cash Account in an amount determined pursuant to Number 6.3.2.1 in accordance with the daily cash clearing procedure pursuant to Number 1.4.1 of the General Clearing Provisions. In case the Asset Based Allocation is the Applicable Allocation Method, any such direct debit shall discharge the relevant Margin Call relating to the Elementary Proprietary Standard Agreement or the Elementary Omnibus Standard Agreement, as the case may be (and consequentially such direct debit will increase the respective Redelivery Claim). In case the Value Based Allocation is the Applicable Allocation Method, any such direct debit shall discharge the relevant Margin Call relating to the relevant Elementary Standard Agreement to be determined pursuant to Number 4.2.1 (and consequentially such direct debit will increase the respective Redelivery Claim).

For the avoidance of doubt, non-compliance with the applicable Margin Requirement (in whole or in part) by the Clearing Member shall constitute a Termination Event pursuant to Number 7.2.1 Paragraph (1) of the General Clearing Conditions.

6.3.2.3 ~~In case the Asset Based Allocation is the Applicable Allocation Method and provided, the Clearing Member has elected in the Clearing Agreement appended to the Clearing Conditions as Appendix 1 that Eligible Margin Assets actually delivered as cover in respect of Elementary Proprietary Margin shall not cover any Elementary Omnibus Margin shortfall, the determined and paid cash amount pursuant to Number 6.3.2.1 in respect of Elementary Omnibus Margin shall constitute cover in respect of the Elementary Omnibus Margin.~~

Notwithstanding Numbers 4.2.1 and 4.2.2, if a Clearing Member elects to deliver (additional) Eligible Margin Assets in the form of cash pursuant to Number 3.3.2 of the General Clearing Provisions with respect to a Margin Call relating to Elementary Omnibus Margin, then Number 6.3.1.3 shall apply *mutatis mutandis* 6.3.2.4 ~~————— If the Clearing Member has refrained from electing in the Clearing Agreement appended to the Clearing Conditions as Appendix 1 that Eligible Margin Assets actually delivered as cover~~

	Eurex04
Clearing Conditions for Eurex Clearing AG	As of 02.06.2014
	Page 7

< Tabel of Contents

Appendices >

~~in respect of Elementary Proprietary Margin shall not cover any Elementary Omnibus Margin shortfall, Number 6.3.1.2. will apply.~~

[...]

## 6.5 Delivery of Eligible Margin Assets in the form of Cash

Eligible Margin Assets in form of cash shall be provided in accordance with the cash clearing procedure pursuant to Number 1.4.1 of the General Clearing Provisions. The purpose of the Margin actually delivered in the form of cash is to collateralise the following claims of Eurex Clearing AG (the "**Secured Claims**"):

- (1) In case the Value Based Allocation is the Applicable Allocation Method, the Secured Claims with respect to each of Elementary Proprietary Margin and Elementary Omnibus Margin, shall comprise
  - (i) all present and future claims under any Own Transactions , any Difference Claim and any other present and future claims, in each case, of Eurex Clearing AG against the Clearing Member under the Elementary Proprietary Standard Agreement (the "**Secured Elementary Proprietary Claims**"), and
  - (ii) all present and future claims under any Elementary Omnibus Transactions, any Difference Claim (the "**Secured Elementary Omnibus Difference Claim**") and any other present and future claims, in each case, of Eurex Clearing AG against the Clearing Member under the Elementary Omnibus Standard Agreement, including for the avoidance of doubt all present and future claims of Eurex Clearing AG against the Transferee Clearing Member relating to any Elementary Omnibus Transactions that have been transferred to such Transferee Clearing Member in accordance with Number 8.3 (the "**Secured Elementary Omnibus Claims**"), and
  - (iii) (A) all present and future claims of Eurex Clearing AG against the Clearing Member under any of the Standard Agreements pursuant to the Individual Clearing Model Provisions that result from a Segregated Margin Shortfall in respect of such Standard Agreements and (B) any present and future Difference Claims then unconditional and due and payable, but unpaid, of Eurex Clearing AG against the Clearing Member pursuant to the Individual Clearing Model Provisions (the "**Secured ICM Difference Claims**") (and together with the claims under (A), the "**Secured ICM Claims**"), and
  - (iv) (A) all present and future claims of Eurex Clearing AG against the Clearing Member under the Standard Agreement pursuant to the Net Omnibus Clearing Model Provisions that result from a Net Omnibus Margin Shortfall and (B) any present and future Difference Claims then unconditional and due and payable, but unpaid, of Eurex Clearing AG against the Clearing Member pursuant to the Net Omnibus Clearing Model Provisions (the "**Secured Net Omnibus**)

	Eurex04
Clearing Conditions for Eurex Clearing AG	As of 02.06.2014
	Page 8

**Difference Claim**") (and together with the claims under (A), the "**Secured Net Omnibus Claims**"), and

- (v) all other present and future claims of Eurex Clearing AG against the Clearing Member under any of their Clearing Agreements between Eurex Clearing AG und such Clearing Member.

(2) [...]

## 6.6 Delivery of Eligible Margin Assets in the form of Securities

6.6.1 In case the Value Based Allocation is the Applicable Method, in order to provide Eligible Margin Assets in the form of Securities as cover in respect of Elementary Proprietary Margin and/or Elementary Omnibus Margin, the Clearing Member shall transfer Eligible Margin Assets in the form of Securities to the relevant Pledged Securities Account unless otherwise provided in this Number 6.6.

~~or (In case the Asset Based Allocation is the Applicable Allocation Method, in order to provide Eligible Margin Assets in the form of Securities as cover in respect of Elementary Proprietary Margin, the Clearing Member shall transfer Eligible Margin Assets in the form of Securities to its Pledged Securities Account and in respect of Elementary Omnibus Margin and provided the Asset Based Allocation is the Applicable Allocation Method) to its relevant Elementary Omnibus Pledged Securities Account, as applicable, unless otherwise provided in this Number 6.6.~~

(1) [...]

(2) [...]

(3) [...]

[...]

## 8 Consequences of a Termination Event or Insolvency Termination Event and a Termination Date

[...]

### 8.7 Realisation of Margin

8.7.1 In case Eurex Clearing AG is, with respect to an Elementary Standard Agreement, the creditor of the Difference Claim against the Affected Clearing Member, Eurex Clearing AG shall be entitled to realise the pledges created with respect to by the Affected Clearing Member pursuant to Number 6.6 as further set out in this Number 8.7.

8.7.2 In case the Asset Based Allocation is the Applicable Allocation Method, Eurex Clearing AG:



	Eurex04
Clearing Conditions for Eurex Clearing AG	As of 02.06.2014
	Page 9

< Tabel of Contents

Appendices >

(A) shall enforce and realise the Eligible Margin Assets in the form of Securities which are credited to the Pledged Securities Account and shall apply the proceeds in the following order of priority:

- (i) first, with respect to the Difference Claim relating to the Elementary Proprietary Standard Agreement; and
- (ii) second, (only to the extent Segregated Margin, Net Omnibus Margin and/or Elementary Omnibus Margin (as applicable) is, for whatever reason, not sufficient for such purpose) with respect to the Secured ICM Difference Claims, the Secured Net Omnibus Difference Claim and/or the Secured Elementary Omnibus Difference Claim (if any), and

(B) shall realise the Eligible Margin Assets in the form of Securities which are credited to the Elementary Omnibus Pledged Securities Account and apply the proceeds with respect to its Secured Elementary Omnibus Claims.

8.7.3 In case the Value Based Allocation is the Applicable Allocation Method, Eurex Clearing AG shall identify certain Eligible Margin Assets in the form of Securities actually delivered to Eurex Clearing AG in respect of Margin in such number and amount reflecting the allocation of Eligible Margin Assets in the form of Securities in accordance with the Value Based Allocation to the Elementary Omnibus Standard Agreement. Eurex Clearing AG shall be entitled to realise the pledges ~~created~~ in respect of the so identified Securities only in satisfaction of the Difference Claim relating to the Elementary Omnibus Standard Agreement, but not in satisfaction of the Difference Claim relating to the Elementary Proprietary Standard Agreement.

[...]

	Eurex04
Clearing Conditions for Eurex Clearing AG	As of 02.06.2014
	Page 10

< Tabel of Contents

Appendices >

### **Part 3 The Individual Clearing Model Provisions**

[...]

### **Part 3 Subpart A: Provisions on Transactions between Eurex Clearing AG and the Clearing Member for ICM-ECD and ICM-CCD**

[...]

#### **2 Content of ICM Clearing Agreement, the Standard Agreements**

[...]

#### **2.2 General principles applicable to the settlement of Covered Transactions and any Delivery and Redelivery of Segregated Margin or Segregated Variation Margin**

[...]

2.2.4 Subject to the Number 3.2.2 Paragraph (2) and (3) of the General Clearing Provisions, the term "**actually delivered**" when used in the Individual Clearing Model Provisions means (i) the actual credit of an Eligible Margin Asset to a cash account designated by the Clearing Member or a securities account designated by the Clearing Member, which in the case of Eurex Clearing AG shall be the relevant Eurex Clearing AG cash account and Securities Margin Account or, as the case may be, the actual entry on the Segregated Internal Margin Account pursuant to Subpart A Number 5.3.3, or in the case of a delivery of an Eligible Margin Asset in the form of Securities pursuant to Subpart A Number 5.5, the effectiveness of the title transfer in Xemac (as defined Subpart A Number 5.5), or otherwise (ii) in the event of a set-off pursuant to Subpart A Number 2.3. or Number 1.3 of the General Clearing Provisions, the legal effectiveness of such set-off.

The term "**actual delivery**" shall be interpreted accordingly.

Where reference is made in the Individual Clearing Model Provisions to the "**aggregate value**" of Eligible Margin Assets in connection with the assessment of compliance with the Margin Requirement or Default Margin Requirement (as defined in Subpart A Number 5.2.1) or an obligation to deliver or redeliver cover in respect of the Segregated Margin or the Segregated Variation Margin, the aggregate value will be determined by Eurex Clearing AG in accordance with Number 3.2.2 of the General Clearing Provisions.

[...]

	Eurex04
Clearing Conditions for Eurex Clearing AG	As of 02.06.2014
	Page 11

## 5 Segregated Margin

[...]

### 5.3 Margin Call

5.3.1 If Eurex Clearing AG at any time on any Business Day (as defined in Number 1.2.4 Paragraph (1) of the General Clearing Provisions) determines that the aggregate value of the Segregated Margin actually delivered is insufficient to provide the cover required with respect to all Covered Transactions which are subject to the Margin obligation, Eurex Clearing AG will require the Clearing Member to deliver (additional) Eligible Margin Assets in an amount up to the Margin Requirement and by the time specified by Eurex Clearing AG. Notwithstanding the foregoing sentence, the Clearing Member shall always be required to comply with the Margin Requirement, provided that Subpart A Number 5.3.4 shall remain unaffected.

5.3.2 The Clearing Member must not provide Eligible Margin Assets to Eurex Clearing AG in excess of the applicable Margin Requirement. Any Eligible Margin Assets actually delivered in excess of the applicable Margin Requirement shall form part of the Segregated Margin and shall be subject to a Redelivery Claim which becomes due upon request by the Clearing Member.

5.3.3 If a Clearing Member elects to deliver (additional) Eligible Margin Assets in the form of cash pursuant to Number 3.3.2 of the General Clearing Provisions with respect to a Margin Call relating to Segregated Margin, then:

(i) Eurex Clearing AG shall make the relevant debit entry in the Internal Elementary Proprietary Margin Account and the respective credit entry in the Segregated Internal Margin Account with such cash credit being allocated to the relevant Standard Agreement between Eurex Clearing AG and the Clearing Member pursuant to these Individual Clearing Model Provisions; and

(ii) the aggregate value of Elementary Proprietary Margin actually delivered and the redelivery claim under the Elementary Proprietary Standard Agreement shall be reduced accordingly upon Eurex Clearing AG having made the corresponding records (which Eurex Clearing AG shall do without undue delay) in the Segregated Internal Margin Account pursuant to Subpart A Number 4.1.2 and the Internal Elementary Proprietary Margin Account pursuant to Number 4.2 of the Elementary Clearing Model Provisions. ——— The Clearing Member is entitled at any time by giving notice to Eurex Clearing AG specifying the relevant Standard Agreement and ICM Client to designate any amount of Eligible Margin Assets in the form of cash delivered by (and not returned to) the Clearing Member to Eurex Clearing AG with respect to the Elementary Proprietary Margin or Elementary Omnibus Margin pursuant to the Elementary Clearing Model Provisions as part of the Segregated Margin in order to (partially) satisfy the applicable Margin Requirement. The aggregate value of the Segregated Margin actually delivered and the Redelivery

	Eurex04
Clearing Conditions for Eurex Clearing AG	As of 02.06.2014
	Page 12

~~Claim shall be increased and the aggregate value of Elementary Proprietary Margin or Elementary Omnibus Margin, as applicable, actually delivered and the redelivery claim pursuant to the Elementary Clearing Model Provisions shall be reduced accordingly upon Eurex Clearing AG having made the corresponding records (which Eurex Clearing AG shall do without undue delay) in the Segregated Internal Margin Account pursuant to Subpart A Number 4.1.2 and the applicable internal margin account pursuant to Number 4.2 of the Elementary Clearing Model Provisions.~~

5.3.4 Non-compliance with the applicable Margin Requirement (in whole or in part) by the Clearing Member shall constitute a Termination Event pursuant to Number 7.2.1 Paragraph (1) of the General Clearing Provisions unless at such time:

- ~~(1) — the Clearing Member has complied with the Default Margin Requirement;~~ or
- ~~(2) — the aggregate value of all Eligible Margin Assets actually delivered in respect of Elementary Proprietary Margin pursuant to the Elementary Clearing Model Provisions in excess of the applicable Margin Requirement for all Own Transactions between Eurex Clearing AG and the Clearing Member pursuant to the Elementary Clearing Model Provisions (less any shortfall in the Net Omnibus Margin under the Net Omnibus Clearing Model Provisions) is equal to or higher than the aggregate value of all Default Margin Requirements of the Clearing Member with regard to all its ICM Clients for which a shortfall in Segregated Margin exists less the aggregate value of all Eligible Margin Assets actually delivered by the Clearing Member in respect of Segregated Margin with regard to all its ICM Clients for which a shortfall in Segregated Margin exists.~~

5.3.5 [...]

#### 5.4 **Direct Debit**

To the extent Eligible Margin Assets have not yet been delivered by the Clearing Member with respect to a Margin Call pursuant to Number 5.3.1, Eurex Clearing AG shall be entitled to (and without having an obligation towards the Clearing Member to do so, will on or around the time specified) Eurex Clearing AG may directly debit the Clearing Member Cash Account in an amount equal to the requested amount of Eligible Margin Assets in accordance with the daily cash clearing procedure pursuant to Number 1.4.1 of the General Clearing Provisions. Any such direct debit shall not constitute fulfilment of the relevant Margin Call relating to the relevant Standard Agreement (and consequentially such direct debit will not increase the Redelivery Claim) but shall constitute cover in respect of Elementary Proprietary Margin delivered by the Clearing Member pursuant to the Elementary Clearing Model Provisions.

5.5 [...]

[...]

	Eurex04
Clearing Conditions for Eurex Clearing AG	As of 02.06.2014
	Page 13

< Tabel of Contents

Appendices >

## Part 4 Net Omnibus Clearing Model Provisions

[...]

### 2 Content of the Net Omnibus Clearing Agreement and the Standard Agreement

[...]

#### 2.2 General Principles applicable to the Settlement of Net Omnibus Transactions and any Delivery and Redelivery of Net Omnibus Margin or Net Omnibus Variation Margin

[...]

2.2.3 A Redelivery Claim will become due with respect to Net Omnibus Margin in accordance with Number 6.7.1 and with respect to Net Omnibus Variation Margin in accordance with Number 7, provided that in each case no Termination Date (as defined in Number 7.2 of the General Clearing Provisions) has occurred.

Subject to Number 3.2.2 Paragraph (2) and (3) of the General Clearing Provisions, the terms "**actual payment**" and "**actual delivery**" when used in these Net Omnibus Clearing Model Provisions are construed to occur when:

- (i) an Eligible Margin Asset in the form of cash has been credited to the relevant Eurex Clearing AG cash account or, as the case may be, the actual entry on the Internal Net Omnibus Margin Account pursuant to Number 6.3.1 Paragraph (3) and Number 6.3.2 Paragraph (3), or
- (ii) [...]
- (iii) [...]
- (iv) [...]

The terms "**actually delivered**", "**actually paid**" and similar expressions shall be interpreted accordingly.

[...]

### 4 Internal Accounts

[...]

#### 4.2 Internal Net Omnibus Margin Account

Eurex Clearing AG shall establish and maintain an internal net omnibus margin account (the "**Internal Net Omnibus Margin Account**") on which (i) all credits and debits of Securities to the Net Omnibus Pledged Securities Account (as defined in Part 1

	Eurex04
Clearing Conditions for Eurex Clearing AG	As of 02.06.2014
	Page 14

Number 2.1.2 Paragraph (4) (a) (cc)) and all pledged or released Securities using Xemac pursuant to Number 6.6.3, and (ii) all daily cash margin credits or debits to the Clearing Member Cash Account or a foreign currency account of the Clearing Member, in each case made in relation to the Net Omnibus Transactions under the Standard Agreement, as well as all credits pursuant to Number 6.3.1 Paragraph (3) and Number 6.3.2 Paragraph (3), will be recorded.

[...]

## 6 Margin

[...]

### 6.3 Margin Call

#### 6.3.1 Margin Calls and direct debit prior to the end of a Business Day

- (1) If Eurex Clearing AG at any time prior to the end of a Business Day determines that the aggregate value of the Net Omnibus Margin actually delivered is less than the Net Omnibus Margin Requirement, Eurex Clearing AG will require the Clearing Member to provide (additional) Eligible Margin Assets in an amount sufficient to satisfy the Net Omnibus Margin Requirement by the time specified by Eurex Clearing AG.
- (2) To the extent Eligible Margin Assets have not yet been delivered by the Clearing Member with respect to a Margin Call pursuant to Paragraph (1), Eurex Clearing AG shall be entitled to (and without having an obligation towards the Clearing Member to do so, will on or around the time specified) ~~Eurex Clearing AG may~~ directly debit the Clearing Member Cash Account in an amount equal to the requested amount of Eligible Margin Assets in accordance with the daily cash clearing procedure pursuant to Number 1.4.1 of the General Clearing Provisions. Any such direct debit shall ~~not~~ discharge the relevant Margin Call relating to the Net Omnibus Clearing Model Provisions (and consequentially such direct debit will ~~not~~ increase the respective Redelivery Claim) ~~but shall constitute cover in respect of Elementary Proprietary Margin delivered by the Clearing Member pursuant to the Elementary Clearing Model Provisions.~~

For the avoidance of doubt, non-compliance with the applicable Margin Requirement (in whole or in part) by the Clearing Member shall constitute a Termination Event pursuant to Number 7.2.1 Paragraph (1) of the General Clearing Conditions.

- (3) If a Clearing Member elects to deliver (additional) Eligible Margin Assets in the form of cash pursuant to Number 3.3.2 of the General Clearing Provisions with respect to a Margin Call relating to Net Omnibus Margin, then:
  - (i) Eurex Clearing AG shall make the relevant debit entry in the Internal Elementary Proprietary Margin Account and the respective credit entry in the

Internal Net Omnibus Margin Account with such cash credit being allocated to the relevant Standard Agreement between Eurex Clearing AG and the Clearing Member pursuant to the these Net Omnibus Clearing Model Provisions; and

- (ii) the aggregate value of Elementary Proprietary Margin actually delivered and the redelivery claim under the Elementary Proprietary Standard Agreement shall be reduced accordingly upon Eurex Clearing AG having made the corresponding records (which Eurex Clearing AG shall do without undue delay) in the Internal Net Omnibus Margin Account pursuant to Number 4.2 and the Internal Elementary Proprietary Margin Account pursuant to Number 4.2 of the Elementary Clearing Model Provisions. The Clearing Member is entitled at any time by giving notice to Eurex Clearing AG to designate any amount of Eligible Margin Assets in the form of cash delivered by (and not returned to) the Clearing Member to Eurex Clearing AG with respect to Elementary Proprietary Margin and/or Elementary Omnibus Margin pursuant to the Elementary Clearing Model Provisions as part of the Net Omnibus Margin in order to (partially) satisfy the applicable Net Omnibus Margin Requirement. The aggregate value of the Net Omnibus Margin actually delivered and the Redelivery Claim shall be increased, and the aggregate value of Elementary Proprietary Margin and/or Elementary Omnibus Margin, as the case may be, actually delivered and the redelivery claim pursuant to the Elementary Clearing Model Provisions shall be reduced accordingly upon Eurex Clearing AG having made the corresponding records in the Internal Net Omnibus Margin Account pursuant to Number 4.2 of these Net Omnibus Clearing Model Provisions and the applicable internal margin accounts pursuant to Number 4.2 of the Elementary Clearing Model Provisions.

### **6.3.2 Margin Calls and direct debit at the end of a Business Day**

- (1) If Eurex Clearing AG at the end of a Business Day determines that the aggregate value of the Net Omnibus Margin actually delivered is less than the Net Omnibus Margin Requirement, Eurex Clearing AG will require the Clearing Member to provide (additional) Eligible Margin Assets in the form of cash in the Clearing Currency in an amount sufficient to satisfy the Net Omnibus Margin Requirement by the time specified by Eurex Clearing AG.
- (2) To the extent Eligible Margin Assets have not yet been delivered by the Clearing Member with respect to a Margin Call pursuant to Paragraph (1), Eurex Clearing AG shall be entitled to (and without having an obligation towards the Clearing Member to do so, will on or around the time specified) ~~Eurex Clearing~~ will directly debit the Clearing Member Cash Account in an amount determined pursuant to Number 6.3.2.1 in accordance with the daily cash clearing procedure pursuant to Number 1.4.1 of the General Clearing Provisions. Any such direct debit shall discharge the relevant Margin Call relating to the Net Omnibus Clearing Model

	Eurex04
Clearing Conditions for Eurex Clearing AG	As of 02.06.2014
	Page 16

Provisions (and consequentially such direct debit will increase the respective Redelivery Claim).

For the avoidance of doubt, non-compliance with the applicable Margin Requirement (in whole or in part) by the Clearing Member shall constitute a Termination Event pursuant to Number 7.2.1 Paragraph (1) of the General Clearing Conditions.

- (3) If a Clearing Member elects to deliver (additional) Eligible Margin Assets in the form of cash pursuant to Number 3.3.2 of the General Clearing Provisions with respect to a Margin Call relating to Net Omnibus Margin, then Number 6.3.1 Paragraph (3) shall apply *mutatis mutandis*. If, the Clearing Member has elected in the Net Omnibus Clearing Agreement appended to the Clearing Conditions as Appendix 1 that actually delivered Eligible Margin Assets pursuant to the Elementary Clearing Model Provisions shall not cover any Net Omnibus Margin shortfall, the determined and paid cash amount pursuant to Number 6.3.2.1 shall constitute cover in respect of the Net Omnibus Margin.
- (4) If the Clearing Member has refrained from electing in the Net Omnibus Clearing Agreement appended to the Clearing Conditions as Appendix 1 that actually delivered Eligible Margin Assets pursuant to the Elementary Clearing Model Provisions shall not cover any Net Omnibus Margin shortfall, Number 6.3.1.2. will apply.

[...]

## Chapter VIII Clearing of OTC Derivative Transactions

[...]

### Part 3 Clearing of OTC Interest Rate Derivative Transactions

#### 3.1 General Provisions

[...]

#### 3.1.4 Novation Criteria and Process Regarding OTC Interest Rate Derivative Transactions

[...]



	Eurex04
Clearing Conditions for Eurex Clearing AG	As of 02.06.2014
	Page 17

#### 3.1.4.4 Scheduled Intraday Margin Calls

[...]

- (4) The payment made by direct debit of the Final Shortfall Margin Amount determined in the OTC Margin Call Report produced and made available by Eurex Clearing AG at 1 p.m. CET, 3 p.m. CET and 7 p.m. CET shall constitute cover in respect of the Margin to which the margin requirement pursuant to Number 3.1.6 relates and accordingly will constitute (i) Elementary Proprietary Margin or Elementary Omnibus Margin delivered by the Clearing Member with respect pursuant to the Elementary Clearing Model Provisions, (ii) Segregated Margin delivered by the Clearing Member pursuant to the Individual Clearing Model Provisions or (iii) Net Omnibus Margin delivered by the Clearing Member pursuant to the Net Omnibus Clearing Model Provisions. ~~Proprietary Standard Agreement~~ The payment made by direct debit of the Final Shortfall Margin Amount determined in the OTC Margin Call Report produced and made available by Eurex Clearing AG at 10:30 p.m. CET shall be treated accordingly and shall constitute cover either in respect of (i) the Elementary Proprietary Margin or Elementary Omnibus Margin ~~Margin~~ delivered by the Clearing Member pursuant to the Elementary Clearing Model Provisions, (ii) the Segregated Margin delivered by the Clearing Member pursuant to the Individual Clearing Model Provisions or ~~when elected in the Net Omnibus Clearing Agreement appended to Clearing Conditions as Appendix 1 cover of~~ (iii) the Net Omnibus Margin delivered by the Clearing Member pursuant to ~~Number 6.3.2.3~~ the Net Omnibus Clearing Model Provisions.
- (5) Such amount shall be settled in full by the time when the relevant OTC Margin Call Report is published on the relevant Business Day pursuant to Paragraph (3) above.
- (6) The margin call pursuant to this Number 3.1.4.4 applies in addition to the Margin Calls pursuant to Chapter I Part 1 Number 3.3, Part 2 Number 6.3, Part 3 Subpart A Number 5.3 and Part 4 Number 6.3.

#### 3.1.4.5 Bulk Backloading of Original OTC Transactions

[...]

- (7) For Bulk Backloaded Original OTC Transactions which, on the day of submission, fulfil all novation criteria except for the provision of the Eligible Margin Asset necessary to cover the margin requirement Eurex Clearing AG will debit the shortfall amount set forth in the OTC Margin Call Report produced and made available at 10:30 p.m. CET in the agreed Clearing Currency from the relevant Clearing Member Cash Account in accordance with the daily cash clearing procedure pursuant to Chapter I Part 1 Number 1.4.1. Such payment made by direct debit shall constitute cover in respect of the Margin to which the margin requirement referred to in the foregoing sentence relates and accordingly will constitute (i) Elementary Proprietary Margin or Elementary Omnibus Margin delivered by the Clearing Member pursuant

	Eurex04
Clearing Conditions for Eurex Clearing AG	As of 02.06.2014
	Page 18

< Tabel of Contents

Appendices >

to the Elementary Clearing Model Provisions, (ii) Segregated Margin delivered by the Clearing Member pursuant to the Individual Clearing Model Provisions or (iii) Net Omnibus Margin delivered by the Clearing Member pursuant to the Net Omnibus Clearing Model Provisions. Eurex Clearing AG will make available an OTC Trade Novation Report on the Business Day following the day of submission at or around 9 a.m. CET to the Clearing Member and the Registered Customer.

[...]

	Eurex04
Clearing Conditions for Eurex Clearing AG	As of 02.06.2014
	Page 19

## **Appendix 1 to the Clearing Conditions: Clearing Agreement between Eurex Clearing AG and a Clearing Member**

[...]

### **Part 3 Transaction Types included in the Clearing, Elementary Standard Agreements, Net Omnibus Clearing Agreement, ICM Clearing Agreement for ICM-CCD**

#### **1 Type of the Clearing License**

[...]

#### **2 Elementary Standard Agreements**

2.1 [...]

2.2 The Clearing Member elects:

- In case the Asset Based Allocation is the Applicable Allocation Method, a set-off by Eurex Clearing AG pursuant to Number 1.3.1 Paragraph (2)(a)(aa) of the General Clearing Provisions shall be excluded with respect to the Elementary Omnibus Standard Agreement.
- ~~In case the Asset Based Allocation is the Applicable Allocation Method, Eligible Margin Assets actually delivered as cover in respect of Elementary Proprietary Margin under the Elementary Clearing Model Provisions shall not cover any Elementary Omnibus Margin shortfall determined at the end of the Business Day by Eurex Clearing AG.~~

#### **3 Net Omnibus Clearing Agreement**

3.1 [...]

3.2 The Clearing Member elects:

- A set-off by Eurex Clearing AG pursuant to Number 1.3.1 Paragraph (2) (a) (aa) of the General Clearing Provisions shall be excluded with respect to the Standard Agreement pursuant to the Net Omnibus Clearing Model Provisions.
- ~~Eligible Margin Assets actually delivered as cover for Elementary Proprietary Margin pursuant to the Elementary Clearing Model Provisions shall not cover any Net Omnibus Margin shortfall determined at the end of the Business Day by Eurex Clearing AG.~~

[...]