



eurex clearing circular 099/10

Date: December 13, 2010
Recipients: All Clearing Members of Eurex Clearing AG, all Trading Members of Eurex Deutschland and Eurex Zürich and Vendors
Authorized by: Thomas Book

 Action required

 High priority

Update to the Processing of Penalties for late Deliveries on Reference Day for Corporate Actions

Related Eurex Clearing Circular: 024/10

Contact: Functional Helpdesk Clearing, tel. +49-69-211-1 12 50

Content may be most important for:

➤ All departments

Attachment:

Updated sections of the Clearing Conditions for Eurex Clearing AG

Summary:

Eurex Clearing introduced a contractual penalty for late deliveries over dividend reference days and reference days for other corporate action events as of May 14, 2010 (please refer to Eurex Clearing circular 024/10). As of **January 1, 2011** the calculation method for the penalties will be changed to ensure an automated and consistent processing.

In accordance with the current Clearing Conditions, the existing penalty rule for late deliveries over dividend reference days and reference days for other corporate action events will be enforced for all equity instruments traded on Eurex Deutschland, Eurex Zurich, Frankfurt Stock Exchange (Xetra[®] and Floor) or are available for OTC trade capture of Eurex Clearing.

Update to the Processing of Penalties for late Deliveries on Reference Day for Corporate Actions

Eurex Clearing introduced a contractual penalty for late deliveries over dividend reference days as of May 14, 2010 (please refer to Eurex Clearing circular 024/10).

The calculation method for penalties due to late deliveries over dividend reference days will be changed as follows: The current methodology is defined as the difference between the net dividend and the gross dividend, where the net dividend is defined as the dividend being due to the shareholder (gross dividend) minus taxes and charges. With the automation and enforcement of the penalty regime also to non-DAX[®] 30-instruments, the application of country-specific calculation methodologies would have created a highly complex environment. After market consultation, a common penalty rate of 35.8 percent of the payable net dividend was agreed. The penalty rate is derived from the current ratio of the penalty and the net dividend:

Tax rate	26.375% : 25% withholding tax ("Abgeltungssteuer") + 5.5% German solidarity tax ("Solidarit�tzuschlag") on the 25% withholding tax
Net dividend	73.625%
Ratio	26.375 / 73.625 = 35.8%

Eurex Clearing reserves the right to charge the actual tax rate.

The calculation logic due to late deliveries over reference days for other corporate action events remains unchanged. Please refer to the Clearing Conditions Chapter V, Number 2.2 Paragraph 8 for the calculation details in such events.

With the amendment of the calculation methodology, an automation of the calculation and charging process will be established.

Members will be informed via the existing report "Daily Eurex Fines - CB225" on the second business day following the reference day for the dividend payment.

For transparency reasons, any buy and sell transaction being late will be displayed in the report CB225.

If the penalty amount is larger than the defined minimum amount of the equivalent of EUR 5,000 or a similar amount in the dividend currency, the penalty applying to each individual transaction will be displayed – including buy trades in case of offsetting trades. Buy trades will be displayed with a credit amount.

If the penalty amount is below the equivalent of EUR 5,000 or a similar amount in the dividend currency, an amount of zero will be displayed for all trades.

The penalty is calculated in the dividend currency of the respective ISIN. A conversion of the dividend currency into the billing currency is being done in line with the established billing process following the multicurrency billing concept for Eurex Clearing cash market products.

The actual debit will take place on month-end jointly with other regular billing items in the existing report "Monthly Fee Statement - CB350".

Eurex Clearing will enforce with immediate effect and in accordance with the current Clearing Conditions the penalty on all CCP eligible equity instruments traded on Eurex Deutschland, Eurex Z rich, Frankfurt Stock Exchange (Xetra[®] and Floor) or available for OTC trade capture of Eurex Clearing. This applies to dividend payments as well as to other corporate action events defined in the Clearing Conditions in Chapter V, Number 2.3. Further, Eurex Clearing reserves the right to charge penalties retroactively for all such equity instruments.

Bond products resulting out of delivery obligations on Eurex Deutschland, Eurex Z rich or Eurex Clearing, are not impacted, as a different regime is already defined and remains in place.

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The reference day referred to in this circular is defined according to the rules for processing of corporate actions by Clearstream Banking Frankfurt.

Please find attached the updated sections of the Clearing Conditions for Eurex Clearing.

December 13, 2010

CHANGES ARE MARKED AS FOLLOWS:

ADDITIONS ARE UNDERLINED

DELETIONS ARE STRUCK THROUGH

[...]

Chapter V

Transactions Concluded at the Frankfurter Wertpapierbörse

[...]

Part 2 Clearing of transactions concluded at the Frankfurter Wertpapierbörse (FWB)

[...]

2.2 Default

[...]

- (9) Should dividend or bonus payments pursuant to Chapter V, Number 2.3, Paragraph 2 lit. a occur for shares to which as yet unperformed FWB transactions refer or should additional rights pursuant to Chapter V, Number 2.3, Paragraph 2, lit. b be granted and the Clearing Member obligated to deliver be in default, i.e. should the Clearing Member not deliver the shares owed from an FWB transaction pursuant to Chapter V, Number 1 on due date to Eurex Clearing AG according to its instructions, the Clearing Member in default for not having delivered the shares in time shall be obligated to pay a contractual penalty to Eurex Clearing AG notwithstanding of Eurex Clearing AG having suffered a loss. Eurex Clearing AG reserves the right to charge a contractual penalty also if it did not explicitly declare such reserve in case of late delivery of the owed shares. The contractual penalty charged by Eurex Clearing AG to the Clearing Member in default shall be calculated as follows:

Irrespective of the delivery of the share having been effected by the Clearing Member in default or the replacement purchase by Eurex Clearing AG pursuant to Chapter V,

Clearing Conditions for Eurex Clearing AG

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Number 2.2, Paragraph 1, the amount of the contractual penalty charged by Eurex Clearing AG shall be calculated as follows:

The amount of the contractual penalty shall correspond to the difference between the gross dividend (dividend before deduction of capital gains tax and solidarity surcharge pursuant to the German Solidarity Surcharge Act) and the net dividend (dividend paid net being due to the shareholder; dividend less capital gains tax and solidarity surcharge pursuant to the German Solidarity Surcharge Act respective taxes and charges), multiplied by the amount of owed shares, if the calculation results in a value of at least EUR 5,000, USD 6,500, GBP 4,000 or CHF 7,000. Insofar, the currency in which the respective delivery of the respective shares is to be settled, shall be assigned to the result of this calculation.

[...]