



eurex clearing circular 052/11

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Recipients: All Clearing Members of Eurex Clearing AG and Vendors
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Contractual Penalty for late Deliveries on Dividend Record Dates and Record Dates of other Corporate Actions

Related Eurex Clearing Circulares: 024/10, 099/10

Related Eurex Circular: 179/06

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Content may be most important for:

Ü All departments

Attachment:

Updated sections of Clearing Conditions for
Eurex Clearing AG

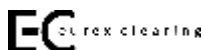
Summary:

Effective May 14, 2010, Eurex Clearing introduced a contractual penalty for late deliveries on dividend record dates and record dates of other corporate actions (see Eurex Clearing circular 024/10). Also, on January 1, 2011, the product scope was extended to all equity instruments which are cleared by Eurex Clearing (see Eurex Clearing circular 099/10). Exchange Traded Funds (ETFs) are currently not covered by the contractual penalty regulation.

The present circular illustrates in detail the application of the existing penalty regulation, partly extends its area of application or harmonises procedures.

- The extended handling of takeover offers will become effective on **July 11, 2011**
- Special handling of dividends with right of choice between cash or securities (see Eurex circular 179/06) for Dutch shares as opposed to dividends with right of choice between cash or securities for shares from other countries will be discontinued.

As of **July 11, 2011** Eurex Clearing will disclose for Exchange Traded Funds (ETFs) the counterparties as soon as a claim for potential damage due to a late delivery is raised with Eurex Clearing.



**Contractual Penalty for late Deliveries on Dividend Record Dates
and Record Dates of other Corporate Actions**

Effective May 14, 2010 Eurex Clearing introduced a contractual penalty for late deliveries on dividend record dates and record dates of other corporate actions (see Eurex Clearing circular 024/10). Also, on January 1, 2011, the product scope was extended to all equity instruments which are cleared by Eurex Clearing (see Eurex Clearing circular 099/10).

Scope of affected securities

All shares, participation rights and share certificates cleared by Eurex Clearing are subject to the current contractual penalty.

Fixed-income products are not affected by the regulation, i.e. the procedures established for these securities remain unchanged.

Exchange Traded Funds (ETFs) are currently not subject to the contractual penalty. Eurex Clearing reserves the right to extend the contractual penalty to include ETFs. If this is done, introduction will be announced in a separate Eurex Clearing circular.

If a claim for potential damage is raised with Eurex Clearing due to late deliveries in ETFs, from July 11, 2011 onwards, Eurex Clearing can disclose the counterparties of the delivery in order to achieve a bilateral settlement.

Relevance of transactions

The contractual penalty is only imposed on trades which have not settled on contractual settlement day and, at the same time, are still pending on the reference day for a corporate action. The following examples are given for clarification purposes:

Examples:

	Example 1	Example 2	Example 3	Example 4	Example 5	Example 6
Trading day	01.03.	01.03.	01.03.	01.03.	01.03.	01.03.
Contractual settlement day	03.03.	03.03.	03.03.	03.03.	03.03.	03.03.
Actual settlement day	03.03.	03.03.	04.03.	03.03.	04.03.	05.03.
Record day for corporate action	04.03.	02.03.	02.03.	03.03.	04.03.	04.03.
Contractual penalty due	No	No	No	No	No	Yes

Reference day regulation

In Eurex Clearing circular 099/10, reference days of Clearstream Banking Frankfurt were given as the rule for reference days. In order to harmonise processes with those of Eurex Clearing and allow Members the longest possible deadline for fulfilling deliveries, we will refer to the due date in the home market as of July 11, 2011.

Handling of tax-free dividends and dividends with tax benefits or other cash distributions

In case of dividend payments and cash distributions, various fiscal methods are applied which lead to different fiscal treatments. The difference between tax laws in the various issuing countries and the tax laws of the country the Clearing Member or Trading Member is domiciled in may lead to different rates of taxation. In order to establish a standardised method for late deliveries, all dividend payments will be charged with a standard contractual penalty rate of 35.8 percent on the respective compensation amount, independent of the fiscal treatment. This regulation also applies to dividends on which no tax or levy deduction is applied.

Calculation logic for other corporate actions (non-income events)

With regard to other corporate actions (non-income events), conversion offers can generally consist of securities of various categories and combinations thereof. Such conversion offers may include other shares, new shares, bonds or warrants. Also, combination with partial cash distributions is possible. In view of the potential number of combinations, it is not possible to incorporate all specific calculations in the rules and regulations per corporate action or per combination of corporate actions. The goal is to describe the regulation in a sufficiently clear manner, allowing the highest possible transparency for the Members.

The late delivery penalty is defined as the difference in cash between the current value of the shares for which the conversion offer was made (target company) and the value in cash of the offer. If there is the possibility to select between several offers, the respectively highest value in cash will be used as calculation basis for the penalty. Where the nature of the corporate action renders this necessary, calculation of the penalty is made with consideration of the acquisition ratio, i.e. the contractual penalty is calculated on the number of shares delivered belatedly according to the acquisition ratio (see examples 2 and 3).

In very rare cases, mandatory corporate actions contain a right of choice. In these cases, the difference in financial benefit represents the contractual penalty imposed.

Security prices used for calculation of the penalty are considered in the following order:

1. If new issues or new shares are offered, the issue price of the newly issued security, which is offered for subscription, is considered.
2. If existing shares (in contrast to new shares) are offered and there is a settlement price determined by Eurex Clearing for the security in question, this settlement price is considered. This is always the case for the share of the target company.
3. If there is no settlement price by Eurex Clearing available, the settlement price determined at the exchange with the largest turnover in the respective security is considered.

Examples:

Example 1: Conversion offer (shares only)	
Price of shares for which the conversion offer was made (target company, company A)	EUR 15.00
Price of shares offered by the bidder (bidding company, company B)	EUR 10.00
Conversion offer	9 shares of company B for 5 shares of company A
Acquisition ratio	100%
Financial benefit/contractual penalty amount	$(9 \times 10.00 \text{ EUR} - 5 \times 15.00 \text{ EUR}) \times 100\% = \text{EUR } 15.00$ (for 5 shares of company A, is equal to EUR 3.00 per share)

Example 2: Conversion offer (shares and cash)	
Price of shares for which the conversion offer was made (target company, company A)	EUR 15.00
Price of shares offered by the bidder (bidding company, company B)	EUR 10.00
Conversion offer	9 shares of company B for 5 shares of company A plus EUR 0.50 per company A share
Acquisition ratio	75%
Financial benefit/contractual penalty amount	$(9 \times 10.00 \text{ EUR} - 5 \times 15.00 \text{ EUR} + 5 \times 0.50 \text{ EUR}) \times 75\% = 13.125 \text{ EUR}$ (for 5 shares of company A, is equal to EUR 2.625 per share)

Example 3: Conversion offer (several offers)	
Price of shares for which the conversion offer was made (target company, company A)	EUR 17.00
Price of shares offered by the bidder (bidding company, company B)	EUR 10.00
Acquisition ratio	75%
Conversion offer 1	9 shares of company B for 5 shares of company A
Financial benefit of offer 1	$(9 \times 10.00 \text{ EUR} - 5 \times 17.00 \text{ EUR}) \times 75\% = 3.75 \text{ EUR}$ (for 5 shares of company A, equals EUR 0.75 per share)
Conversion offer 2	8 shares of company B for 5 shares of company A plus EUR 2.50 per share of company A
Financial benefit of offer 2	$(8 \times 10.00 \text{ EUR} - 5 \times 17.00 \text{ EUR} + 5 \times 2.50 \text{ EUR}) \times 75\% = 5.625 \text{ EUR}$ (for 5 shares of company A, equals EUR 1.125 per share)
Contractual penalty amount	EUR 1.125 per share (offer 2)

Example 4: Mandatory corporate action with right of choice	
Price of shares for which the conversion offer was made (target company, company A)	EUR 17.00
Price of shares offered by the bidder (bidding company, company B)	EUR 10.00
Acquisition ratio (mandatory)	100%
Offer 1	9 shares of company B for 5 shares of company A
Financial benefit of offer 1	$(9 \times 10.00 \text{ EUR} - 5 \times 17.00 \text{ EUR}) \times 100\% = 5.00 \text{ EUR}$ (for 5 shares of company A, equals EUR 1.00 per share)
Offer 2	8 shares of company B for 5 shares of company A plus 2.50 EUR per share of company A
Financial benefit of offer 2	$(8 \times 10.00 \text{ EUR} - 5 \times 17.00 \text{ EUR} + 5 \times 2.50 \text{ EUR}) \times 100\% = 7.50 \text{ EUR}$ (for 5 shares of company A, equals EUR 1.50 per share)
Contractual penalty amount	Financial benefit of offer 2 – financial benefit of offer 1 = 1.50 EUR – 1.00 EUR = 0.50 EUR per share

Standardisation of procedure for subscription rights

In this context, the current procedure for handling of subscription rights will be harmonised. Currently, compensation of dividends with right of choice between cash or securities for Dutch shares has always been made in cash if the members involved did not submit instructions (see Eurex circular 179/06). For all other markets, the two counterparties are disclosed, so that a bilateral agreement between the members can be achieved. The separate procedure for dividends with rights of choice between cash or securities for Dutch shares is discontinued with immediate effect and the counterparties in these securities will be disclosed as for any other subscription rights.

June 24, 2011

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED

DELETIONS ARE CROSSED OUT

[...]

Chapter II Transactions at Eurex Deutschland and Eurex Zürich (Eurex Exchanges)

[...]

**Part 2
Clearing of Futures Contracts**

[...]

**2.5 Sub-Part
Clearing of Futures Contracts of Exchange Traded Fund Shares**

[...]

2.5.4 Default

(1) [...]

(2) In the event that a Clearing Member which is obligated to deliver is in default and fails to deliver the underlying security on the delivery day and pursuant to the instructions of Eurex Clearing AG, Eurex Clearing AG shall take the following measures in application of the provisions pursuant to Chapter V Number 2.2; the contractual penalty regulations shall also apply accordingly.

[...]

**2.7 Sub-Part
Clearing of Futures Contracts on Shares**

[...]

2.7.4 Default

(1) [...]

(2) If the Clearing Member obligated to deliver is in default of delivery with regard to a Share Futures contract to be fulfilled by physical delivery (Number 1.6.2 Paragraph 2 of the Contract Specifications for Futures Contracts and Options Contracts at Eurex Deutschland and Eurex Zürich) and if it does not deliver the securities to be delivered on the delivery date according to the instructions of Eurex Clearing AG, Eurex Clearing AG shall take measures in accordance with the provisions according to Chapter V Number 2.2; the contractual penalty regulations shall also apply accordingly.

[...]

**Part 3
Clearing of Options Contracts**

[...]

**3.5 Sub-Part
Clearing of Options contracts on Shares of Exchange-Traded Funds
(EXTF Options)**

[...]

3.5.6 Default

(1) [...]

(2) In the event that a Clearing Member which is obligated to deliver is in default and fails to deliver the underlying security (funds) on the delivery day and pursuant to the instructions of Eurex Clearing AG, Eurex Clearing AG shall take the following measures in respective application of the provisions pursuant to Chapter V Number 2.2; the contractual penalty regulations shall also apply accordingly.

[...]

**3.6 Sub-Part
Clearing of Options Contracts and Low Exercise Price Options on
Shares**

[...]

3.6.6 Default

(1) [...]

- (2) In the event that a Clearing Member which is obligated to deliver is in default and fails to deliver the underlying security on the delivery day and pursuant to the instructions of Eurex Clearing AG, Eurex Clearing AG shall take the following measures in application of the provisions pursuant to Chapter V Number 2.2; the contractual penalty regulations shall also apply accordingly. For default with delivery of shares from options contracts with the assigned group IDs GB11 and IE11, Number 3.6.7 shall apply.

[...]

Chapter V Transactions Concluded at the Frankfurter Wertpapierbörse

[...]

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

[...]

2.2 Default

[...]

- (8) If in the course of a corporate action shareholders-bearers of securities are offered the replacement of shares-securities against cash payment amount or other securities or in the case of a mandatory corporate action with a choice between different conversion offers, and if the Clearing Member obligated to deliver is in default on the last day of the term for acceptance („value date“), i.e. should the Clearing Member not deliver to Eurex Clearing AG the shares-securities owed from the FWB transaction on the value date according to Eurex Clearing AG's instructions, the Clearing Member in default for not having delivered the shares-securities in time

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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 ~~securities~~ shares.

~~The contractual penalty charged by Eurex Clearing AG to the Clearing Member in default shall be calculated as follows:~~

- a) Irrespective of the delivery of the ~~share security~~ having been effected by the Clearing Member in default or the replacement purchase by Eurex Clearing AG pursuant to Chapter V Number 2.2 Paragraph 1, the amount of the contractual penalty shall be calculated on the basis of the offer as follows:

- Conversion offer in cash

In a conversion offer in cash, the amount of the contractual penalty shall be calculated on the basis of the offered cash amount for one security according to the conversion offer less the settlement price, multiplied by the number of securities owed on the value date and by the acquisition ratio determined at the end of the acceptance period. If necessary, the offered cash amount shall be converted into the currency of the security on the basis of the exchange rates published by Eurex Clearing AG on the value date.

- Conversion offer in securities or cash

For a conversion offer in securities (bidder's securities) or cash, the amount of the contractual penalty is calculated per security owed on the value date in accordance with the following formula; this is then multiplied by the number of securities owed on the value date:

Contractual penalty per security =

Maximum(0; (((\sum_{1-n} (Number Bidder's Securities * Price Bidder's Securities) + offered cash amount)

- Settlement Price_{Security}) * Acquisition Ratio)

~~cash compensation offered for one share according to the conversion offer less the price fixed for the respective share in the closing auction in the electronic trading system of Frankfurter Wertpapierbörse („Xetra“) on the value date, multiplied by the amount of owed shares and by the acceptance ratio determined at the end of the acceptance period.~~

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~~If on the appropriate value date no price can be determined for the respective share in the closing auction of Xetra, the volume-weighted average of the last three prices determined for this share in Xetra on the value date shall apply.~~

~~- Different conversion offers in securities or cash~~

~~If, in the event of a voluntary corporate action, there is a right to choose between different conversion offers, the contractual penalty is calculated on the basis of the highest value of the conversion offers and the settlement price of the security, multiplied by the number of securities owed on the value date and the acquisition ratio determined at the end of the acceptance period. To this end, the different conversion offers will be calculated using the formula described above and will be compared with one another. The highest contractual penalty per security shall then apply; this will be multiplied by the number of securities owed on the value date.~~

~~- Different conversion offers in the event of mandatory corporate actions~~

~~If, concerning a mandatory corporate action, a selection right exists giving a choice between different conversion offers, the contractual penalty per security is to be calculated on the basis of the difference between the highest and lowest value of conversion offers, the result being multiplied by the number of securities owed on the value date.~~

The following formula shall be used to calculate the value of the conversion offer:

Value of conversion offer per security =

$$\sum_{1-n} (\text{Number}_{\text{Bidder's Securities}} * \text{Price}_{\text{Bidder's Securities}}) + \text{offered cash amount}$$

Number_{bidder's securities}: Number of bidder's securities offered by the bidder for one security of the target company.

Price_{bidder's security}: Price for a bidder's security, which is determined as follows: (i) If new issues or new equities are offered, the issue price of the newly issued security offered for subscription will be used as the basis, (ii) if existing securities are offered and Eurex Clearing AG has a determined a settlement price for the corresponding security, such fixed settlement price shall be used as the basis, (iii) otherwise, the closing price on the stock exchange with the largest turnover in the corresponding security shall be used as the basis. The price of

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the bidder's securities shall, if necessary, be converted into the currency of the security on the basis of the exchange rates published by Eurex Clearing AG on the value date.

n: Number of the possibly different securities offered by the bidder.

Acquisition ratio: Total number of securities that the bidder plans to acquire, divided by the total number of securities offered to the bidder.

Settlement price_{security}: The daily settlement price determined by Eurex Clearing AG on the value date for the security owed on the value date.

~~The currency in which the delivery of the respective shares is to be settled, shall be assigned to the result of the calculation. As far as the determined value amounts to at least EUR 5,000, USD 6,500, GBP 4,000 or CHF 7,000, it shall determine the amount of the contractual penalty which the Clearing Member in default must pay to Eurex Clearing AG.~~

b) The contractual penalty is charged in the currency in which the corresponding delivery of securities is to be settled and shall only be claimed by Eurex Clearing AG if the calculation in the corresponding currency results in a value of at least EUR 5,000, USD 7,000, GBP 5,000, CHF 7,000, AUD 8,000, CAD 7,000, JPY 550,000, SEK 48,000, DKK 38,000, NOK 40,000 or PLN 20,000.

c) ~~Should the terms of the conversion offer on which the calculation of the contractual penalty is based pursuant to Chapter V Number 2.2 Paragraph 8, lit. a, change after the value date and the calculation of the contractual penalty have a different result in due consideration of the changed conditions, Eurex Clearing AG reserves the right to re-calculate the contractual penalty on the basis of the modified conditions pursuant to Chapter V Number 2.2 Paragraph 8 lit. a. As to the re-calculation and the preconditions for justification of a contractual penalty, Chapter V Number 2.2 Paragraph 8 lit. a shall be applied mutatis mutandis.~~

(9) Should dividend or bonus payments pursuant to Chapter V Number 2.3 Paragraph 2 lit. a occur for ~~shares securities~~ 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 securities~~ owed from an FWB transaction on due date to Eurex Clearing AG according to its instructions, the Clearing Member in

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default for not having delivered the ~~shares~~securities 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~~securities.

Irrespective of the delivery of the ~~share~~security having been effected by the Clearing Member in default or the replacement purchase by Eurex Clearing AG pursuant to Chapter V 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 be an equivalent of amounts to 35.8 % of the net dividend (dividend being due to the shareholder; less 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 securities owed on the value date. The contractual penalty is charged in the currency in which the corresponding delivery of securities is to be settled and shall only be claimed by Eurex Clearing AG if the calculation in the corresponding currency results in a value of at least EUR 5,000, USD 7,000, GBP 5,000, CHF 7,000, AUD 8,000, CAD 7,000, JPY 550,000, SEK 48,000, DKK 38,000, NOK 40,000 or PLN 20,000.~~

(10) In addition to the contractual penalty regulations pursuant to Chapter V Number 2.2 Paragraph 8 and Chapter V Number 2.2 Paragraph 9 the following shall apply:

- a) With regard to the delivery of certain ~~shares~~securities, Eurex Clearing AG may determine that in case of default in delivery of such ~~shares~~securities within a period of time specified by Eurex Clearing AG, Eurex Clearing AG can abstain from charging contractual penalties pursuant to Chapter V Number 2.2 Paragraph 8 and/or Chapter V Number 2.2 Paragraph 9. Eurex Clearing AG will notify this to its Clearing Members by circular. ~~As far as Eurex Clearing AG determines such waiver to charge contractual penalties, the respective Clearing Member vis-à-vis whom Eurex Clearing AG is in default in delivering equivalent shares, shall also abstain from charging contractual penalties pursuant to Chapter V Number 2.2 Paragraph 8 and/or Chapter V Number 2.2 Paragraph 9.~~
- b) Eurex Clearing AG Clearing shall abstain from claiming damages up to the amount of the contractual penalty vis-à-vis the Clearing Member obliged to deliver, if such penalty has been paid. The right of Eurex Clearing AG to claim damages in excess of the amount of the contractual penalty remains unaffected. Irrespective to the contractual penalties

~~regulations in Chapter V Number 2.2 Paragraph 8 and Chapter V Number 2.2 Paragraph 9, any further damage suffered by Eurex Clearing AG or by the Clearing Member to whom delivery was not performed in time, may be claimed.~~

- c) The contractual penalty regulations do not apply to delivery of ETF shares. The right of Eurex Clearing AG to claim damages remains unaffected.

- (11) To the extent cash distributions according to Chapter V Number 2.3 Paragraph 2 lit. a) accrue with regard to ETF shares which are being referred to by yet unperformed FWB transactions, and if the Clearing Member obliged to deliver is or has been in default – i.e. if the Clearing Member does not deliver to Eurex Clearing AG the ETF shares owed from an FWB transaction on the due date according to the instructions of Eurex Clearing AG, and if the Clearing Member which has not received delivery in due time has suffered damages as a result and has provided evidence for the existence of a relevant claim vis-à-vis Eurex Clearing AG within the statutory period of limitation – Eurex Clearing AG may disclose its claim for transfer of the ETF shares which were not delivered in due time by the defaulting Clearing Member, to the Clearing Member which has not received delivery in due time as a result of such default; however, such disclosure may only be made to such extent in which the number of the ETF shares to be delivered to Eurex Clearing AG by the defaulting Clearing Member corresponds to the number of ETF shares to be transferred by Eurex Clearing AG to the Clearing Member which has not received delivery in due time. Such disclosure may also be made after the claim for transfer has been satisfied.

[...]

2.4 Daily Assessment

- (1) [...]
- (2) The daily settlement price shall be determined by Eurex Clearing AG after close of trading and shall be communicated to the Clearing Members.

[...]

[...]