

EuroCCP Clearing Rule Book consultation

Proposal to change certain provisions – comments requested by 1 March 2018

Introduction

EuroCCP is pleased to announce changes to its Clearing Rule Book. In this document the proposed changes are further discussed and explained as to their intended purpose and effect. Most of these explanatory comments are also reflected as comments in the mark-up of the Clearing Rule Book.

The proposed changes can be seen in the document:

March 2018 EUROPEAN CENTRAL COUNTERPARTY N.V. CLEARING RULE BOOK and is available on the website of EuroCCP.

Proposed changes

Below we discuss and give background to the proposed changes. Some of the changes are self explanatory. Other changes require further clarification or background which is given in this document.

First the changes to some of the definitions are discussed. Thereafter the amendments per article are discussed.

Drafting changes, typos or lay-out corrections and changed cross-references are not discussed herein unless stated otherwise.

Definitions

“Credit Institution”	Reference was made to the term credit institution as defined in Directive 2000/12/EC. This directive has been repealed. Now reference is made to credit institution as defined in Regulation (EU) No 575/2013.
“GDPR”	In anticipation of the General Data Protection Regulation coming into effect on 25 May 2018 reference is already made in 5.6.3 of the Clearing Rule Book to the GDPR. For the purpose of this provision 5.6.3 a definition of GDPR is included.
“Investment Firm”	Definition of Investment Firm included for the purposes of clarity and consistency. Reference is made to the term as defined in MiFID II.
“MiFID”	Definition updated to refer to Directive 2014/65/EU (MiFID II).
“Notice of Default”	Definition of Notice of Default included for the purposes of clarity and consistency. Reference is made to article 9.3.1 of the Clearing Rule Book.
“Settlement Address”	Additional wording included to make clear that EuroCCP can also give settlement instructions directly to the settlement agent of a Trading Participant (and not only to the settlement agent a Clearing Participant). See also related changes in article 3.13.4 of the Clearing Rule Book.
“Settlement Finality Directive”	Definition of Settlement Finality Directive (Directive 98/26/EC) included for the purposes of clarity and consistency.
“VAT”	Definition of VAT included for the purposes of clarity and consistency.

Article 2.2 Fees

Provision 2.2.2 and 2.2.3 are adjusted to reflect that fees are direct debited, while invoices will continue to be sent. The mandatory direct debit is already in effect and is set out in article 4.9 of the Regulation Fees and Penalties and the changes are proposed to align the Clearing Rule Book with the Regulation Fees and Penalties.

Article 3.5 Rights of EuroCCP

A subsection 3.5.2 has been added providing that EuroCCP may suspend pending settlements of Trade Legs if this is deemed reasonably necessary to protect the Clearing System. EuroCCP could take this measure under the general provision in 3.5.1. Pursuant to a recommendation from its regulators EuroCCP now proposes to include an explicit provision in the Clearing Rule Book.

Article 3.6 Decisions EuroCCP

Provision 3.6.2 has been changed to reflect that the provisions of the Clearing Rule Book prevail above the Regulations instead of the other way around. This is a more logical approach to drafting by having the Rule Book be paramount to the Regulations.

Article 3.7 Changes in the Clearing Rule Book

Some additional wording has been added to article 3.7.3 and article 3.7.5 for clarifying purposes.

A new provision is introduced in article 3.7.6. This provision will give EuroCCP the possibility to make changes to the Clearing Rule Book without consultation if such change is required by law or regulations. Currently this possibility is not explicitly included in the Clearing Rule Book. EuroCCP deems this improvement necessary as a consultation may not always be prudent or practicable. Changes may be of mandatory or technical nature which may not be open for debate. Furthermore the 30 day notification period may not always be feasible in such cases. However EuroCCP continues to make best efforts to notify or consult the Clearing Participants to the extent permitted by the circumstances as per the same provision.

Article 3.8 Publication

Provision 3.8.3 is amended to reflect current practice. The reference to the e-mail address is deleted. The notification will be sent to the address known with EuroCCP. This may not necessarily be the e-mail address initially given during the application process.

The agreements with the co-operating CCPs are not published on EuroCCP's website but are available on request.

Article 3.13 Central Counterparty - Further provisions

The change in provision 3.13.4 is a drafting clarification.

The provision is further amended to add that EuroCCP can request to be allowed to give settlement instructions also to the settlement agent of a trading participant. Such power of attorney will reduce the time needed to transfer instructions and will enhance settlement efficiency.

Article 4.1 Clearing Participant Status

Under (b) of 4.1.2, “investment firm” is now written in capital letters as a definition for “Investment Firm” has been included.

This provision has further been amended to allow Clearing Participants that are established in jurisdictions that are members of local associations which have in turn adhered to the FATF principles. The FATF requirement is now also included for sub (c) to align this section with (a) and (b).

Article 4.2 Application Procedure

Under (g) of provision 4.2.2 an explicit condition for recognition has been included that relates to the fact that an Applicant needs IT systems and related IT security protocols that are compatible with and meet the standards of EuroCCP.

In article 4.2.3 the words “*by ordinary mail*” have been replaced by “*in writing*” to allow for the notification of the recognition to take place via other means (such as by e-mail).

Article 5.3 Financial Requirements

Under 5.3.1 and 5.3.2 the minimum capital requirements for Direct and General Clearing Participants are increased.

EuroCCP would like to further limit the exposure that a Clearing Participant could bring to EuroCCP, by increasing its capital requirement which is currently set at 10% of the average margin requirement. EuroCCP wishes to reduce the leverage factor to 5 times the margin requirement meaning that the capital of the Clearing Participant needs to be at least 20% of the average margin requirement.

The proposal is not expected to have an impact on the current Clearing Participants. Rather it aims to prevent on-boarding of prospective participants that may have a higher risk tolerance in combination with a low capital level. EuroCCP’s Risk Committee and the Supervisory Board of EuroCCP have agreed to the change.

Under 5.3.3 a new provision is included to indicate that the Regulation Trade Refusal sets higher capital requirements if OTC trades are to be cleared (EUR 30 million and EUR 50 million respectively; see Regulation Trade Refusal clause 1.5). This is not a change to the current practice but meant as a reminder to the reader that there are higher capital requirements for transactions not concluded on an Exchange.

Article 5.5 Other continuing obligations

A new provision 5.5.7 is introduced to accommodate fire drill exercises. EuroCCP strives at having the highest standards in risk management. Included in EuroCCP’s risk management procedures are exercises with its Clearing Participants to simulate default scenarios. From time to time fire drill exercises are run on an ad hoc basis for these purposes. These fire drills exercises are becoming increasingly important. To emphasize the importance of these exercises it is proposed to include a specific provision in the Clearing Rule Book and to embed it further in the contractual framework between EuroCCP and the Clearing Participants. It is EuroCCP’s intention to run such exercises in consultation with the relevant Clearing Participant. Furthermore, the recently published ESMA report emphasises the importance of fire drill exercises.¹

¹ ESMA Report: Annual peer review of EU CCP supervision dated 21 December 2017

Article 5.6. Record Keeping and providing data

A new provision 5.6.3 is included to align with the requirements that the GDPR sets for data processors. In the course of its activities, EuroCCP may process personal data to meet legal requirements (for instance under EMIR).

Article 5.7 Financial Information

Provision 5.7.1 is slightly amended as the timing of the delivery of the information as stipulated under subsection (a) and (b) are not necessarily aligned.

Article 5.8 Suspension and termination of relationship between Clearing Participant and EuroCCP

Provision 5.8.6 is also slightly amended as EuroCCP will notify the Clearing Participants of a suspension or revocation of a Clearing Participant via e-mail notification (a so called news flash). This will not be done by publishing a Regulation, as these are documents that contain rules and guidelines to implement, interpret or implement the rules as set by the Clearing Rule Book.

Article 6.2 Collateral

A new provision 6.2.6 is included for the purposes of consistency. A similar provision is already included in the relevant pledge agreements. It is repeated in the Clearing Rule Book to make clear that any collateral is to be provided free of any security rights (as is also indicated by article 5.1.1 of the Clearing Rule Book).

Article 8.1 Establishment of Clearing Fund

Provision 8.1.1 the word "*serious*" is deleted to remove subjectivity and further wording is added to clarify that the Clearing Fund is there to mitigate any risks from any default event as described in the Clearing Rules of EuroCCP or in an interoperability agreement with a co-CCP (a Link Agreement).

Article 8.2 Contributions by Clearing Participants

Provision 8.2.2 is amended to have it aligned with the provisions of the Regulation Clearing Fund. The calculation of the clearing fund contribution is done daily. The calculation of the average margin percentage that is used to determine the daily clearing fund contribution is done on a monthly basis.

By deleting "*at the end of each calendar month*" we align with the timelines as set out in Regulation Clearing Fund.

Article 8.4 Application of the Clearing Fund

In provision 8.4.2 it is clarified that before the Clearing Fund will be used all the other financial resources will have to be (sequentially) exhausted. The provision that related to a default of a co-CCP has been moved to a new provision 8.4.3.

A new provision 8.4.3 is introduced. It has a similar text that used to be part of article 8.4.2. It has been included in a separate provision to make clear that the application of the Clearing Fund following the default of a Clearing Participant and that of a co-CCP are (although equivalent) not identical. It is also further amended to make explicit that EuroCCP's own resources will also be used first (the "skin in the game") in the event of a default of a co-CCP before the Clearing Fund can be used.

9.1 Definition of a Breach

Article 9.1.2 (n) is amended to take into account that Regulation 1346/2000 on Insolvency Proceedings has been repealed. Reference is now made to Regulation (EU) No 2015/848 on Insolvency Proceedings that came into effect on 26 June 2017.

Provision 9.1.3 has been amended as the reference was not correct.

9.2 Measure in case of a declaration of a Breach

A new provision 9.2.1 (h) is included that makes explicit that following a Breach by a Clearing Participant EuroCCP can, as a measure, suspend pending settlements of Trade Legs on a DVP basis. It includes the suspension of the opposite Trade Leg from another Participant that is awaiting payment or delivery. This measure will prevent EuroCCP from having to continue to have to prefund positions that may not be delivered to / purchased by the defaulting Clearing Participant. Prepaid positions may continue to be delivered. This was already one of the measures EuroCCP could take under the general provisions in the Clearing Rule Book as an emergency measure to protect the Clearing System. Pursuant to a recommendation from its regulators EuroCCP now proposes to include an explicit provision in the Clearing Rule Book.

9.4 Measure in case of a declaration of a default

As with the measure in case of a declaration of a Breach, a new provision 9.4.1 (n) is included that makes explicit that following a default of Clearing Participant EuroCCP can, as a measure, suspend pending settlements of Trade Legs on a DVP basis. It includes the suspension of the opposite Trade Leg from a non-defaulting Participant that is awaiting payment or delivery. This measure will prevent EuroCCP from having to continue to have to prefund positions that may not be delivered to / purchased by the defaulting Clearing Participant. Prepaid positions may continue to be delivered. This was already one of the measures EuroCCP could take under the general provisions in the Clearing Rule Book aimed as an emergency measure to protect the Clearing System. Pursuant to a recommendation from its regulators EuroCCP now proposes to include an explicit provision in the Clearing Rule Book.