

UNITED STATES OF AMERICA
Before The
COMMODITY FUTURES TRADING COMMISSION

Treatment of Funds Held in Connection with
the Clearing by The Clearing Corporation of
Euro-Denominated Contracts Executed on
Eurex Deutschland, AG

ORDER

The Clearing Corporation (“CCorp”), a registered derivatives clearing organization (“DCO”) has submitted a proposal and rules to establish and operate Phase I of a Global Clearing Link (“Euro Link”) with Eurex Clearing, AG (“Eurex Clearing”). The materials submitted by CCorp are referred to as the “Application.” CCorp has certified that the rules comply with the Commodity Exchange Act (“Act”) and the Commission’s regulations pursuant to Section 5c(c) of the Act and Commission Regulation 40.6.

The Euro Link will permit a Futures Commission Merchant (“FCM”) that is a Non-Clearing Member of Eurex Deutschland (“Eurex”) and either (1) a member of CCorp or (2) one that clears through a member of CCorp, to clear certain products through CCorp (in CCorp’s capacity as a Special Clearing Member of Eurex Clearing) rather than through a General Clearing Member or a Direct Clearing Member of Eurex Clearing.¹ CCorp would be responsible to Eurex Clearing and to CCorp’s Participants (*i.e.*, clearing members) for performance of variation margin obligations for the contracts cleared at CCorp. The products in question (the

¹ Other entities, *e.g.*, proprietary trading firms, would also be able to clear through the Euro Link.

“Eurex Products”² are Euro-denominated products that are traded on Eurex and permitted to be offered by electronic means in the U.S. for trading by U.S. persons pursuant to Commission policy and staff no-action letters.³ For purposes of this Order, the term “Euro Link Transactions” refers to transactions in Eurex Products that are either (1) carried by a CCorp Member and cleared directly through CCorp, or (2) carried by an FCM and cleared directly or indirectly through a CCorp Participant which Participant then clears the transaction through CCorp.

CCorp has sought permission for CCorp, its Participants, and other FCMs participating in Euro Link Transactions, to deposit and maintain customers’ original and variation margin for these foreign futures and options transactions in accounts segregated pursuant to Section 4d of the Act and Commission Regulation 1.20 rather than in secured amount accounts maintained pursuant to Commission Regulation 30.7.

Upon consideration of the Application, as well as of the comments received from the public, the Commission has determined to issue an Order pursuant to Section 4d(a)(2) of the Act in connection with CCorp’s proposal. Subject to the following terms and conditions, and notwithstanding any provision to the contrary in the Commission’s regulations (including, but not limited to, Regulations 1.20(a), 1.22, 1.24 and 30.7), CCorp, its Participants, and other FCMs participating in the Euro Link may commingle money, securities and other property (collectively, “customer funds”) used to margin, secure, or guarantee Euro Link Transactions with other customer funds used to margin, secure, or guarantee trades or positions in commodity futures or

² The Eurex Products are limited to the following: Dow Jones Global Titans 50 Future; Dow Jones STOXX 50 Future; Dow Jones EURO STOXX 50 Future; Dow Jones STOXX 600-Banks-Future; Dow Jones Euro STOXX-Banks-Future; DAX Future; One-Month EONIA Future; Three-Month EURIBOR Future; Options on Three-Month EURIBOR Future; Euro SCHATZ Future; Options on Euro SCHATZ Future; Euro BOBL Future; Options on Euro BOBL Future; Euro Bund Future; Options on Euro Bund Future; Euro BUXL Future.

³ See CFTC Staff Letter No. 99-48 (August 10, 1999) (Eurex no-action letter); Notice of Statement of Commission Policy Regarding the Listing of New Futures and Option Contracts by Foreign Boards of Trade That Have Received Staff No-Action Relief To Place Electronic Trading Devices in the United States, 65 Fed. Reg. 41641 (July 6, 2000).

commodity option contracts executed on a Contract Market designated pursuant to Section 5 of the Act or a Derivatives Transaction Execution Facility registered pursuant to Section 5a of the Act, in a segregated account or accounts maintained in accordance with Section 4d of the Act (including any orders issued pursuant to Section 4d(a)(2) of the Act) and Commission Regulation 1.20, and all such customer funds shall be accounted for and treated and dealt with as belonging to the customers of the participating FCM consistently with Section 4d of the Act and Commission Regulation 1.20.

The terms and conditions for this exemptive relief are as follows:

1. CCorp shall at all times fulfill all representations made in the Application including all attachments and supporting materials, whenever submitted;
2. CCorp shall do all things necessary and appropriate to remain in compliance with the Core Principles set forth in Section 5b of the Act, including maintaining the ability to engage in, and engaging in, such risk management activities related to the Euro Link as are necessary and appropriate, including, and without limitation,
 - a. CCorp shall at all times provide to Eurex Clearing, and obtain from Eurex Clearing, credit support in accordance with the provisions of the Link Clearing Agreement;
 - b. CCorp shall maintain its Guarantee Fund so that the minimum balance thereof is never less than that which would be required in accordance with the policies submitted to the Commission in the Application;
 - c. CCorp shall identify, monitor, and address risks stemming from the Euro Link including but not limited to risk management issues that arise from the cross-border nature of the arrangement, the fact that significantly disparate time zones are involved, and the fact that responsibilities are assigned to two separate clearing organizations, CCorp and Eurex Clearing;
 - d. CCorp shall obtain daily open interest and trade data for Euro Link Transactions and other data and information from Eurex Clearing regarding trades cleared through CCorp, including identification and other information regarding participants' sub-accounts, sufficient (in CCorp's reasonable judgment) for CCorp

to perform risk management oversight of its Participants' trading through the EuroLink; and

- e. CCorp shall use its abilities and follow its policies concerning risk management which include, among other things, having CCorp risk management personnel on duty during all times when Eurex Products are traded; maintaining the rights to establish a different settlement price for Euro Link Transactions for internal risk management purposes, to collect additional original margin from Participants when appropriate, and to limit or otherwise control variation pays and collects made by Eurex Clearing as agent for CCorp when circumstances warrant; and taking other steps to monitor participants' financial integrity and maintain adequate liquidity as CCorp deems suitable. CCorp will promptly notify the Commission should there be any material change to these abilities and policies;
3. CCorp shall ensure the proper performance of all self-regulatory functions required of it as a DCO under the Act and Commission regulations, including enforcement of the terms of all CCorp rules, regulations and procedures;
 4. CCorp shall fully enforce all material obligations of Eurex Clearing to CCorp under the Link Clearing Agreement ("LCA") and the Clearing Link Services Agreement ("CLSA") included with the Application and CCorp shall provide (a) reasonable advance notice to the Commission of any material changes in the LCA or the CLSA, (b) immediate notice of a Draw Event, as such term is defined in LCA Section 8, (c) immediate notice of any action taken by either party under the provisions of LCA Section 18, and (d) immediate notice of any material failure of either party to fulfill any of its obligations arising under either agreement;
 5. Large Position Reporting
 - a. CCorp shall, with respect to all Euro Link Transactions, provide to the Commission the information described in Part 16 of the Commission's regulations in the manner described in Parts 15 and 16 of the Commission's regulations;
 - b. Each FCM shall, with respect to all Euro Link Transactions in which it participates, provide to the Commission the information described in Part 17 of the Commission's regulations in the manner described in Parts 15 and 17 of the Commission's rules;
 - c. Should the Commission promulgate a regulation under the Act addressing obligations under Parts 15, 16 and/or 17 of the Commission's regulations, then such regulation will, to the extent it applies, supersede the obligations referred to in ¶¶5(a) and 5(b) above; and

