

CFTC letter No. 04-31
October 25, 2004
No-Action
Division of Market Oversight

Mr. Daniel R. Waldman
Arnold & Porter
555 Twelfth Street, NW
Washington, DC 20004-1206

Re: Request for Amendment of No-Action Letter to Eurex Deutschland

Dear Mr. Waldman:

On August 10, 1999, the Division of Trading and Markets of the Commodity Futures Trading Commission (Commission) ^[1] issued a no-action letter^[2] and confirmed that it would not recommend that the Commission institute enforcement action against Eurex Deutschland (Eurex) or its members if current and future Eurex members installed additional Eurex electronic trading terminals in members' offices located in the United States or if Eurex made available for trading certain additional contracts under the terms of the no-action letter issued to its predecessor, Deutsche Terminbörse (DTB).^[3] Specifically, the Division of Trading and Markets stated that it would not recommend that the Commission institute enforcement action against Eurex or its members solely based upon Eurex's failure to obtain contract market designation pursuant to Sections 5 and 5a of the Commodity Exchange Act (Act) if: (i) Eurex members use Eurex terminals located in the U.S. to trade for their proprietary accounts through the Eurex Trading System (System); (ii) Eurex members who are registered with the Commission as futures commission merchants (FCM) use Eurex terminals located in the U.S. to submit orders from U.S. customers for submission to the System; (iii) Eurex members who are registered with the Commission as FCMs or who are exempt from such registration pursuant to Rule 30.10 (Rule 30.10 firms) accept orders through U.S. automated order routing systems (AORS) from U.S. customers for submission to the System; and/or (iv) the additional contracts listed in the Eurex no-action letter were made available for trading through the System in the manner set forth in clauses (i), (ii), or (iii) above.

The Eurex no-action letter summarized various representations made by Eurex in its request for no-action relief, including representations concerning the structure of Eurex, its membership criteria, the architecture of its trading system, the activities conducted by its representative office in the U.S., the regulatory regime in Germany, and the relevant information-sharing arrangements. The representations included a description of the settlement and clearing functions performed by Eurex Clearing AG (Eurex Clearing) for Eurex, concluding that Eurex Clearing "now manages the clearing, margining, and settlement of all transactions executed on Eurex." Eurex also represented that no clearing activities were performed from its Chicago office. The Division of Trading and Markets analyzed the membership requirements for clearing members, the level of regulatory equity capital required for membership, the

amount of the Clearing Guarantee Fund, the priority order of sources used for covering losses in case of a clearing member default and, relying upon the representations made by Eurex, concluded, among other things, that “Eurex does not maintain order matching or clearing facilities in the U.S.”

By letter dated July 9, 2004, you requested an amendment to the above no-action relief to reflect additional circumstances and arrangements relating to clearing on Eurex that were not applicable at the time that the Eurex no-action letter was issued. Specifically, you indicate that The Clearing Corporation (CCorp), a registered derivatives clearing organization (DCO), and Eurex Clearing are entering into an agreement to link clearing houses. Under this link arrangement, CCorp and Eurex Clearing each would become a Special Clearing Member of the other clearing house, and CCorp would act as counterparty to its clearing participants in specified Eurex products. This arrangement is known as the Euro-link.^[4] In essence, subject to Commission approval, the Euro-link would enable CCorp participants to carry positions in Eurex products through their existing CCorp clearing infrastructure. Only those Eurex products permitted to be traded on Eurex under Commission staff no-action letters would be eligible for clearing by CCorp participants under the Euro-link.^[5]

Under the Euro-link arrangement, Eurex Clearing, as an agent for CCorp, would facilitate CCorp’s role as counterparty to its participants for such contracts by providing the system and the settlement infrastructure to clear Euro products. Specifically, the Eurex Clearing system would be used for trade management; give-up, take-up and position transfers; position management; variation margin payment; and delivery management. However, CCorp would calculate and collect original margin using SPAN[®] methodology.^[6]

You represent that operation of the Euro-link would modify the factual statements and representations of Eurex’s request for no-action insofar as a clearing link was not part of the clearing arrangements for Eurex products at the time of Eurex’s no-action request. However, nothing about the agreement between Eurex Clearing and CCorp to link clearing houses would undermine the validity of the Division of Trading and Markets’ conclusion in the Eurex no-action letter that “Eurex does not maintain order matching or clearing facilities in the U.S.” Insofar as CCorp participants may carry positions in Euro products under the Euro-link, they would do so through their existing relationship to CCorp, a Chicago-based DCO. Moreover, this conclusion is consistent with a recent Commission Order concerning the treatment of customer funds that characterized a similar clearing arrangement as applying to “trades executed on or through a board of trade located outside the U.S. but cleared by a derivatives clearing organization located in the U.S.”^[7]

The Division has reviewed the requested amendment, additional documentation submitted by CCorp and Eurex,^[8] and the Eurex no-action letter, and has determined that granting the amendment, subject to Commission approval of operation of the Euro-link, should not have a significant impact on the no-action relief as granted and would not be contrary to public policy. Accordingly, the Division confirms that it will not recommend that the Commission institute enforcement action against Eurex or its members solely based upon Eurex’s failure to seek contract market designation or registration as a

derivatives transaction execution facility under Sections 5 and 5a of the Act,^[9] if CCorp and Eurex Clearing enter into the Euro-link agreement under which each clearing entity would become a Special Clearing Member of the other clearing house, and CCorp would act as counterparty to its clearing participants in specified Eurex products.

The Division notes that its no-action position does not relieve Eurex from compliance with the terms and conditions set forth in the Eurex no-action letter. As with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion. This amendment to the Division's no-action position applies only to the changed circumstances of Eurex Clearing entering into the Euro-link agreement, and should not be construed to express any opinion as to the effect of any other change in circumstances that may have occurred or may occur in the future.

The no-action position taken herein is taken by the Division only and does not necessarily reflect the views of the Commission or any other unit or member of the Commission's staff. It is based upon the information and representations contained in Eurex's request for no-action relief and the amendment thereto. Any materially different, changed, or omitted facts or circumstances may render this letter void.

If you have any questions regarding this correspondence, please contact Duane C. Andresen, an attorney on my staff, at (202) 418-5492.

Very truly yours,

Richard A. Shilts
Acting Director

cc: Paul Architzel, EurexUS
Peter Reitz, Eurex
Dr. Ekkehard M. Jaskulla, Deutsche Boerse AG
Gregory C. Prusik, Vice-President, Registration, NFA
Branch Chief, Audit and Financial Review Unit, Division of Clearing and Intermediary Oversight,
Chicago Regional Office

^[1] On July 1, 2002, the Commission's staff was reorganized. Requests for no-action relief from the contract market designation requirement or derivatives transaction execution facility registration requirement are now reviewed by the Division of Market Oversight (Division).

^[2] CFTC Staff Letter No. 99-48 (August 10, 1999) (Eurex no-action letter).

[3] CFTC Staff Letter No. 96-28 (February 29, 1996).

[4] The Euro-link is a distinguishable part of a larger project to link Eurex Clearing and CCorp, known as the Global Clearing Link. However, for a variety of reasons, the clearinghouses are proposing to launch the project in two discrete phases. The Euro-link, which enables CCorp participants to clear specified Eurex products, is the first phase.

[5] Those products include: Euro Schatz Futures and Options on Euro Schatz Futures; Euro Bobl Futures and Options on Euro Bobl Futures; Euro Bund Futures and Options on Euro Bund Futures; Euro Buxl Futures; Three-Month EURIBOR Futures and Options on Three-Month EURIBOR Futures; One-Month EONIA Futures; Dow Jones Euro STOXX 50 Futures; Dow Jones STOXX 50 Futures; DAX® Futures; Dow Jones Global Titans 50 Futures; Dow Jones STOXX 600-Banks Futures; and Dow Jones Euro STOXX Banks Futures. These products as referred to herein as “Euro” products.

[6] “SPAN®” is a registered trademark of Chicago Mercantile Exchange Inc. (CME).

[7] CFTC Order, Treatment of Customer Funds, 66 FR 34110 at p. 34110 (June 27, 2001). Subject to the terms and conditions set forth in the Order, certain designated members of the CME were permitted to commingle in a single account the funds received from customers trading on or through designated contract markets or derivatives trading execution facilities with those funds received in connection with the CME's clearing of certain products traded on or through the MEFF Sociedad Recotra de Productos Financieros Derivados de Renta Variable (MEFF), a board of trade located in Spain, which was designated as a Special Clearing Member of the CME. Similar to the structure of the clearing arrangement described in the Commission Order, Eurex Clearing would become a Special Clearing Member of CCorp under the Euro-link.

[8] This documentation, posted on the Commission website for comment on April 28 and May 7, 2004, includes a description of the Euro-link and the Global Clearing Link (to be implemented at a later date), a request that the Commission take steps to permit CCorp and FCMs to establish and maintain combined original margin and variation settlement accounts for U.S. Dollar- and Euro-denominated products, proposed amendments to CCorp rules, drafts of the Link Clearing and Link Clearing Services Agreement between CCorp and Eurex Clearing, a draft Eurex US Bulletin relating to the margin treatment of customer positions in Euro-link contracts, and draft amendments to Eurex Clearing rules. Division staff also reviewed comments received in response to the posted documentation and CCorp's response to the comments.

[9] The Eurex no-action letter referred only to contract market designation because at that time there was no provision in the Act or rules thereunder governing a derivatives transaction execution facility. Because of the creation of that category of board of trade under the Commodity Futures Modernization Act, the Division amended its relief accordingly.